

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES LORADITCH,

Claimant,

vs.

SEABOARD TRIUMPH FOODS, INC.,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 19004961.01

ARBITRATION DECISION

Head Note Nos.: 1402.40, 1803.1

STATEMENT OF THE CASE

Claimant James Loraditch filed a petition in arbitration seeking worker's compensation benefits against Seaboard Triumph Foods, Inc., employer, and Ace American Insurance Company, insurer, for an accepted work injury date of October 12, 2019. The case came before the undersigned for an arbitration hearing on March 18, 2022. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via internet-based video. Accordingly, this case proceeded to a live video hearing via Zoom, with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 6, and Defendants' Exhibits A through E.

Claimant testified on his own behalf. Tracy Walker testified on behalf of the employer. The evidentiary record closed at the conclusion of the evidentiary hearing on March 18, 2022. The parties submitted post-hearing briefs on April 29, 2022, and the case was considered fully submitted on that date.

ISSUE

1. The nature and extent of claimant's permanent disability.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant's testimony was consistent as compared to the evidentiary record, and his demeanor at the time of hearing gave the undersigned no reason to doubt his veracity. While not a perfect historian, few witnesses are. Overall, claimant was a credible witness.

At the time of hearing, claimant was a 41-year-old person. (Hearing Transcript, p. 17) Claimant is married but going through a divorce. He has one child who lives with him. Claimant graduated from high school, but testified that he struggled with learning disabilities in the areas of math, spelling, and reading. (Tr., pp. 17-18) His grades were mainly Cs and Bs. (Tr., p. 44) He testified that he attempted to join the military but could not pass testing due to his limited math skills. (Tr., pp. 19-20) Claimant explained that he had seizures when he was young, which affected his learning abilities. (Tr., p. 43)

Prior to the defendant employer, claimant worked in production at Wells Dairy in Le Mars, Iowa. (Tr., p. 20) He worked there for about two and a half years, and was fired when another employee said that he made certain threats. (Tr., p. 45) Claimant denies that accusation, but was still fired. (Tr., pp. 21, 45) Prior to Wells claimant worked at Methodist Manor, which is a retirement home. (Tr., p. 21) He worked in the kitchen, doing dishes and preparing food for the residents. (Tr., p. 22) He worked there for about eight months and left to work at Wells Dairy.

Claimant started working at Seaboard Triumph Foods ("Seaboard") on February 5, 2018. (Tr., p. 22) His first job was "bagging butts," after which he moved to "pulling ribs." (Tr., p. 23) He only worked on pulling ribs for about two weeks, and was moved because he was not fast enough. He testified that he could not get the blades sharp enough and the job was difficult for him, so he was moved to the case sealer job. (Tr., pp. 23-24; 44-45) Claimant explained that after the product is packaged into boxes, some boxes are "strapped" and some are glued. (Tr., p. 24) Claimant's job was to ensure the case sealer was running properly, making sure the boxes were getting glued correctly and not getting jammed on the conveyor belt, and making sure the glue was filled. (Tr., pp. 25-26)

On October 12, 2019, while working the case sealer, claimant was injured. (Tr., p. 26) Claimant testified that a box was flipped the wrong way on the conveyor belt. He reached to grab the box and reposition it, and his coat sleeve got caught in the machine and pulled his left hand into the running conveyor belt. (Tr., pp. 26-27) Claimant testified that he initially panicked, and then began to yell for help as no one was around. (Tr., p.

27) He estimated his hand was stuck in the conveyor belt for 5 to 12 minutes, but he was not sure exactly how long. Eventually a coworker was able to help him get his hand out, and he was taken to St. Luke's for initial emergency care. (Tr., p. 28)

Claimant first saw Aaron Althaus, M.D., who noted a left hand degloving injury with extensor tendon injury to the index finger. (Claimant's Exhibit 4, p. 2) He performed initial irrigation and debridement of the injury, and got claimant stabilized. He noted that there was an unclosable portion of claimant's wound that measured roughly 4 by 4 centimeters. Dr. Althaus called in Laura McNaughton, M.D., a plastic surgeon, for consultation. (Joint Exhibit 4, p. 2) Dr. McNaughton noted extensor tendon injuries and open wounds, but most pressing was the third-degree friction-type burn of the hand, which involved the dorsal aspect of three metacarpophalangeal (MCP) joints. (Jt. Ex. 4, p. 3) The burn was roughly one percent total body surface area. Dr. McNaughton stated that due to the complex nature of the burn crossing joints and being on the hand, claimant met the criteria for transfer to a burn center.

Claimant was transferred to the University of Iowa Burn Clinic on October 13, 2019, where he first saw Robert Bertellotti, M.D. (Jt. Ex. 1, p. 1) Dr. Bertellotti noted that claimant had a history of Crohn's disease, and was there for a wound on the dorsum of his left hand with exposed tendons. The conveyor belt had abraded the dorsum of his left hand. He noted that there was a central non-blanching, insensate portion with a surrounding blanching, tender area. (Jt. Ex. 1, p. 3) Claimant was able to flex at that time, but was not able to extend the left second digit. The following day claimant saw Ericka Lawler, M.D., who recommended physical therapy to work on active and passive finger range of motion. (Jt. Ex. 1, p. 13)

On October 15, 2019, claimant saw Andrei Odobescu, M.D., in plastic and reconstructive surgery. (Jt. Ex. 1, p. 5) Dr. Odobescu noted a full-thickness third-degree burn to the dorsum of the left hand with exposed extensor tendons and inability to extend the left index finger. He measured the skin defect at approximately 12 by 8 centimeters. (Jt. Ex. 1, p. 8) Dr. Odobescu's plan was to defer to the burn surgery service for acute wound care and complete debridement of the involved skin, after which claimant would likely require either venous flap coverage or ALT (anterolateral thigh) flap coverage of the dorsum of the hand. He also noted claimant would require tendon transfer versus tendon graft from the palmaris to reestablish function of the extensor mechanism of the index finger. Finally, Dr. Odobescu noted that claimant was on Humira due to his Crohn's disease, which may affect wound healing.

On October 18, 2019, claimant was taken to the operating room for burn excision/debridement. (Jt. Ex. 1, p. 19) The debrided area was then grafted with 100 square centimeters of allograft. (Jt. Ex. 1, p. 21) On October 25, 2019, claimant was taken for another surgery. (Cl. Ex. 4, pp. 5-7) This surgery consisted of a venous free flap closure. The right volar forearm was chosen as the donor site for the venous flap. (Cl. Ex. 4, p. 6) Additionally, claimant's right thigh was used as the donor site for a split-thickness skin graft harvest to place over the donor site in claimant's right forearm.

Unfortunately, the venous flap failed, and claimant was returned to the operating room to have it removed on November 15, 2019. (Cl. Ex. 4, p. 8) A “purulent pocket” was discovered underneath the flap, and some necrosis of the interosseous muscles in the second and third interosseous space was noted. There was exposed tendon and bone but due to the purulent drainage it was not covered at that point. Infectious Disease was consulted for antimicrobial treatment, and he was then returned to the operating room on November 17, 2019 for definitive closure with ALT flap coverage and resorbable antibiotic beads. (Jt. Ex. 1, p. 45) Claimant’s right leg was used as the donor site for the ALT flap, and a split thickness skin graft was then harvested from the left thigh to cover the donor site. (Cl. Ex. 4, pp. 10-11)

Following this surgery, claimant was found to have MRSA and peptostreptococcus, and was treated with IV antibiotics for six weeks. (Jt. Ex. 1, p. 45) Meanwhile, the flap remained bulky, and he had “acquired syndactyly,” essentially meaning the graft incorporated the web spaces of his fingers, resulting in limited range of motion. (Jt. Ex. 1, p. 45; Defendants’ Exhibit B, p. 2)

Claimant had a revision surgery on May 19, 2020, to release the second and third web space syndactyly and partial flap debulking. (Cl. Ex. 4, pp. 12-13; Jt. Ex. 1, p. 45) Shortly thereafter he started physical and occupational therapy in order to improve motion and reduce sensitivity. (Def. Ex. E) Claimant did miss some sessions due to hospitalization for his Crohn’s disease, which also resulted in decreased participation in his home exercise program. (Def. Ex. E, p. 2) He also cut some sessions short due to the pain from his Crohn’s, but was still able to make some progress with range of motion. (Def. Ex. E, pp. 5-7) By July 30, 2020, claimant had cancelled several sessions due to his Crohn’s disease, and had not met his therapy goals related to range of motion and sensation, nor for his home exercise program. (Def. Ex. E, p. 8) The therapist recommended continuing therapy, and noted concern for claimant’s progress due to his decreased participation in therapy and home exercise.

At claimant’s next therapy session on August 5, 2020, he reported that therapy was helping, and he no longer had pain in his hand and was starting to use it more. (Def. Ex. E, p. 9) However, he continued to have serious issues related to the Crohn’s disease. He next attended therapy on August 19, 2020, and reported increasing functional use of his hand, and no pain. (Def. Ex. E, p. 12)

On October 26, 2020, claimant had another surgery for MCP tenolysis and dorsal capsulotomies in order to improve his MCP range of motion. (Jt. Ex. 1, p. 45; Cl. Ex. 4, p. 15) He then returned to occupational therapy, and on November 19, 2020, he reported frustrations with his current job duties and tightness in his MCP joints. (Def. Ex. E, p. 14) He also reported that he would be having surgery for his Crohn’s disease in December.

The next medical record in evidence is dated February 1, 2021. (Cl. Ex. 4, pp. 17-18) On that date claimant had his eighth and final hand surgery for flap debulking. He then returned to occupational therapy, and continued to make progress toward his goals. (Jt. Ex. 2, pp. 1-2) By May 3, 2021, claimant was progressing toward his goals for

range of motion and sensitivity, as well as fine motor coordination. (Jt. Ex. 2, p. 10) By that time claimant had returned to light duty work in the personal protective equipment (PPE) room. (Jt. Ex. 2, p. 9; Tr., pp. 34-35) His job was essentially to ensure employees had the proper PPE and keep the area organized. The therapist noted his work status was light duty, with restrictions of "clean/warm environment, LUE as assist." (Jt. Ex. 2, p. 9)

At some point claimant was transferred to another position within the plant that fell within his restrictions. That job was on the "harvest floor," or "hot side" of the plant. (Tr., p. 71) Claimant testified that his job on the "hot side" involved burning eyebrows off pig carcasses with a hand-held torch. (Tr., p. 37) He testified that the torch weighed "maybe 5 pounds" and the area where he worked was "90-plus degrees." Claimant testified that he could not take the heat due to his skin grafts and his Crohn's disease. With respect to the torch, he was able to use his uninjured right hand to grip the torch, but after time his hand would get tired, and he would need to also use his left hand to hold the torch. (Tr., p. 38)

In a letter dated May 25, 2021, Paul Parmelee, D.O., recommended that claimant be transferred to a different department "due to his intolerance of increased temperatures." (Cl. Ex. 2, p. 1) Dr. Parmelee is claimant's personal care physician, who also treats his Crohn's disease. (Tr., pp. 38, 46) Claimant testified that he took the note to the company nurse, who brought him to the office where he spoke to "Christina." (Tr., p. 39) He testified that Christina told him the note did not have "the right language," but he did not understand what language she meant. In any event, claimant testified he has not worked at Seaboard or anywhere else since that time.

On May 27, 2021, Gretchen Kass, ARNP, with the plastic surgery clinic at UIHC, authored a letter indicating claimant would continue to work with restrictions of 10-pounds lifting with the left hand; no gripping, pushing, pulling, or fine motor movements; and a compression sleeve to left hand as needed for comfort along with a glove on the left hand. (Cl. Ex. 4, p. 1)

Tracy Walker testified on behalf of defendants. (Tr., p. 70) Her testimony was consistent as compared to the evidentiary record, and her demeanor at the time of hearing gave the undersigned no reason to doubt her veracity. She was a very credible witness. Ms. Walker is the director of safety and workers' compensation at Seaboard. She has been with the company since July 13, 2020, and has been in the director position since the end of September 2021. (Tr., p. 73) Ms. Walker testified that at the time of claimant's injury, he was making \$16.70 per hour. (Tr., p. 71) When he was moved to the hot job, he was making \$18.45 per hour due to a plantwide pay increase. Ms. Walker testified that at the time he was moved to the hot side job, the job duties were within his restrictions, as the job could be performed one-handed, and the temperature was within the range of 60 to 90 degrees Fahrenheit. (Tr., pp. 71-72)

Ms. Walker testified that the torch claimant used in the hot side position weighed around 4-pounds, and the job can be done using one hand. (Tr., pp. 74-76) She could not provide an exact number of carcasses that would go by claimant for eyebrow

singeing per hour, but estimated it would be more than 100 carcasses per hour. (Tr., pp. 74-75) She testified that when she asked the operational leaders at the plant about jobs that would be within claimant's restrictions this was the job in which he was placed. (Tr., p. 77)

Ms. Walker testified that any note from an employee that comes in from a personal physician is forwarded to human resources, and it is then up to human resources to determine whether an accommodation will be made. (Tr., p. 79) As such, when claimant brought in the letter from Dr. Parmelee, he was referred to human resources, as Dr. Parmelee was not an authorized treating provider or otherwise involved in claimant's care related to his workers' compensation injury. (Tr., p. 78) In claimant's case, human resources was unable to accommodate Dr. Parmelee's restriction, and claimant was placed on a personal leave of absence starting May 28, 2021. (Tr., p. 80) At the time of hearing, claimant was still considered an active employee on leave. Claimant testified that he has not worked anywhere since. (Tr., p. 39)

On June 1, 2021, claimant underwent a functional capacity evaluation (FCE), which was determined to be invalid due to claimant "performing inconsistently" and failing to give maximum voluntary effort. (Jt. Ex. 3, p. 1) The FCE report indicates that claimant failed 7 of 7 validity criteria during the hand strength assessment; there was an absence of correlation between lifts of unmarked steel bars and the corresponding lifts on the XRTS Lever Arm; and claimant lifted and carried more weight than he indicated he could as his "maximum lifting capacity." However, despite the invalid result, claimant was found to meet the material handling demands for a medium capacity position.

Claimant advised the therapist during the FCE that he was not having any pain in his hand at rest, but with prolonged gripping his pain level increased to a 6 or 7 out of 10. (Jt. Ex. 3, p. 6) His main concerns with return to full duty work were his hand getting cold, any gripping, and lifting boxes. Prolonged gripping and cold weather aggravated his symptoms, and keeping his hand warm improved his symptoms. He reported that he could lift up to 15 pounds to waist height, but testing showed that he could lift between 45 and 49 pounds. (Jt. Ex. 3, pp. 3-6)

Following the FCE, claimant continued with occupational therapy. (Jt. Ex. 2, pp. 15-25) By August 18, 2021, claimant had gradually improved with range of motion, strength, activity tolerance, sensitivity, swelling, and functional use. (Jt. Ex. 2, p. 25) However, he still had range of motion deficits and stiffness in the second and third digits, which limited his ability to grasp items. On August 25, 2021, claimant saw ARNP Kass for a follow up. (Jt. Ex. 1, p. 45) ARNP Kass noted claimant had largely plateaued in therapy, with the plan to attend a few more sessions and then discharge to a home program. Her note states that claimant reported being happy about the progress he made, although he still had significant limitations. She noted he was able to work restricted work, and had a FCE to help "guide his return to work." Finally, she noted that claimant "no longer has intolerance to temperatures as of recently."

ARNP Kass stated that claimant's exam was virtually unchanged from his last visit, so she agreed with the discharge from therapy to a home program. (Jt. Ex. 1, p. 46) She noted claimant was unlikely to gain much additional range of motion with more releases, so she did not recommend additional surgery. She placed claimant at MMI as of August 25, 2021, and kept the same work restrictions in place from her May 27, 2021 letter. She noted the FCE was difficult to interpret, and referred to occupational medicine to review and help determine safe permanent work restrictions.

Claimant returned for his last approved occupational therapy sessions and was discharged. (Jt. Ex. 2, pp. 27-28) On October 8, 2021, claimant attended an independent medical examination (IME) at defendants' request with Dean Wampler, M.D. (Def. Ex. B, p. 1) Dr. Wampler interviewed and examined claimant in person and reviewed medical records. (Def. Ex. B, pp. 1-3; See also Tr., p. 59) Claimant advised Dr. Wampler that he still had some cold sensitivity along the radial border of his graft and left index finger. (Def. Ex. B, p. 3) He stated he previously had difficulty working in a cold environment, and "does not register any heat intolerance, but has not really thought he was next to a radiant heat source in the recent past."

Claimant reported wearing his compression glove sometimes at home, and confirmed "modest decreased sensibility" in the graft on the dorsum of his hand. He reported his biggest frustration was the lack of mobility in his index and ring fingers, such that he was unable to pinch grasp with them to his thumb. Dr. Wampler noted that he was able to get a "fairly forceful" pinch grasp with his fourth and fifth fingers against his thumb. Claimant reported he was able to care for all of his personal needs at home and help with light chores. He was able to do light grasping with the left hand of larger objects. He also noted he had done some yardwork and cleanup as a handyman for an older woman through his church. Other than that, claimant reported that he "can't work until this is all settled."

On physical examination, Dr. Wampler stated that he examined the left upper extremity, and also assessed claimant's skin graft donor sites since he reported some occasional prickling feeling in those. (Def. Ex. B, p. 3) With respect to the donor sites on claimant's thighs and right forearm, the scars were well healed. There was no dryness, and claimant was not using any lotion on the sites. There was no evidence of skin or scar breakdown, hypertrophic changes, or hyperpigmentation. Dr. Wampler concluded that all scars from the skin graft donor sites were benign.

With respect to claimant's left hand, Dr. Wampler noted some slight webbing remaining between the index and middle finger, and middle finger and ring finger. (Def. Ex. B, p. 4) However, abduction at those joints was essentially normal. Claimant had good radial and ulnar artery circulation, and skin temperature testing showed that the graft was about two degrees Fahrenheit less than the surrounding tissues, but it did not feel cold nor did claimant register cold in normal environments. Dr. Wampler concluded the temperature difference was typical of a full thickness graft without its own blood supply. Dr. Wampler found slightly diminished sensation to touch, and claimant reported occasional sharp or burning feelings under the graft, but said it was uncommon and unpredictable and did not limit his activities of daily living.

When asked to make a fist, claimant could bring his fourth and fifth fingers down reasonably well, but the index and ring fingers were substantially limited. During range of motion testing of claimant's finger joints, his findings were "nearly identical" to the findings of the FCE. He determined those findings were valid, and did not find the loss of motion surprising given the duration of claimant's recovery and periodic interruptions in occupational therapy.

Using the Fifth Edition of the AMA Guides to the Evaluation of Permanent Impairment, Dr. Wampler provided a total combined impairment of 41 percent of the left hand. (Def. Ex. B, p. 5) This rating was based on the loss of multiple finger mobility, which he combined for a total of 40 percent, and sensory loss to the dorsum due to the skin graft, for which he provided an additional one percent. (Def. Ex. B, pp. 4-5) Dr. Wampler specifically determined there was no impairment to the skin graft donor sites, as he previously found them to be benign. (Def. Ex. B, p. 5) In a second letter dated October 13, 2021, Dr. Wampler addressed work restrictions. (Def. Ex. B, p. 8) He recommended following the FCE outcomes. He noted that while the examiner repeatedly stated the FCE as a whole was not valid, the parts of the test that were not reproducible were static lift and grip strength. However, the inconsistencies were not reflected in claimant's material handling abilities, so Dr. Wampler found he could lift 50 pounds to waist height and 30 pounds to chest height if using both hands. His main limitations were related to overhead lifting and poor left hand function, as reflected in his examination. (Def. Ex. B, p. 8)

On December 15, 2021, claimant attended an IME with Sunil Bansal, M.D. (Cl. Ex. 1, p. 1) Dr. Bansal's report is dated January 7, 2022. (Cl. Ex. 1, p. 7) Although not explicitly noted in his report, Dr. Bansal's IME was not in-person, but took place via Zoom. (Tr., pp. 58-59) As such, Dr. Bansal did not perform a physical examination or take any measurements or perform any testing as part of his evaluation. Dr. Bansal reviewed medical records, and spoke to claimant regarding his injury and current condition. (Cl. Ex. 1, pp. 1-6) According to Dr. Bansal, claimant reported "constant" left hand pain, especially when it is cold. (Cl. Ex. 1, p. 5) Claimant reported being unable to tie his shoes at times and also reported his left hand gets colder compared to his right hand. (Cl. Ex. 1, pp. 5-6) He reported difficulty and limitations with movement of his index and middle fingers. (Cl. Ex. 1, p. 6) He reported occasional numbness and tingling in his fingers, as well as electric shock and odd sensations in his hand, as well as the areas of his arm and legs where the donor sites are located. Finally, he noted sunlight bothers the graft sites, and he has to use sunscreen.

Dr. Bansal's report reflects that claimant was no longer working due to his last position at Seaboard requiring him to work in 90-degree heat, which he could not tolerate due to his graft sites. He stated that he was not working elsewhere because "he could not get hired because they would not take a risk due to his hand." (Cl. Ex. 1, p. 6)

Dr. Bansal's diagnosis was left hand crush injury with third degree friction burn and index finger extensor tendon injury. His prognosis was poor. With respect to impairment, Dr. Bansal agreed with Dr. Wampler's 41 percent rating to the left hand based on finger range of motion and sensation. However, Dr. Bansal provided

additional impairment for the skin burn that resulted in a graft to the hand and skin loss from the thighs. (Cl. Ex. 1, pp. 6-7) He stated that the grafted burn site is sensitive to heat and sunlight and requires moisturizers and sunscreen. (Cl. Ex. 1, p. 7) Using Table 8-2 of the AMA Guides, he stated that skin conditions from burns that result in grafts are ratable as whole person impairments. He opined that claimant's burn is sensitive to heat and sunlight, meeting the criteria for a Category I impairment. As such, he provided a 5 percent whole person impairment rating, in addition to the 41 percent of the hand. (Cl. Ex. 1, p. 7)

With respect to restrictions, Dr. Bansal recommended no lifting greater than five pounds with the left hand; no frequent grasping or gripping with the left hand; and avoiding exposure to prolonged heat, cold, or sunlight. (Cl. Ex. 1, p. 7) For future treatment, Dr. Bansal recommended scar desensitization treatment and continued occupational therapy.

Claimant testified that Dr. Wampler did not talk to him about his skin grafts, and only looked at the one donor site on his left forearm. (Tr., p. 16) However, given Dr. Wampler's report describing his questions and examination of the skin graft donor sites, it is clear claimant's testimony on the issue was inaccurate. (Def. Ex. B, p. 3) Additionally, Dr. Wampler examined claimant in person, while Dr. Bansal's examination took place via Zoom. (Tr., pp. 58-59) As a result, Dr. Bansal did not perform any physical examination of claimant, or take any measurements of his own. Further, with respect to Dr. Bansal's additional 5 percent rating for the skin, he bases that rating on the fact that claimant told him the grafted burn site is sensitive to heat and sunlight, and he requires moisturizers and sunscreen. (Cl. Ex. 1, p. 7) However, he told ARNP Kass that he no longer experienced temperature intolerance. (Jt. Ex. 1, p. 45; Tr., p. 56) Additionally, he told Dr. Wampler that while he still has cold sensitivity, he does not register any heat intolerance. (Def. Ex. B, p. 3) He also told Dr. Wampler that he did not use lotion on the donor sites, and Dr. Wampler found no dryness or other ratable findings with respect to those sites. The only rating Dr. Wampler provided related to the graft on claimant's hand was the one percent of the upper extremity he added due to sensory loss. (Def. Ex. B, p. 5)

Based on all of the above, I find Dr. Wampler's IME report to be more credible and carry greater weight overall than that of Dr. Bansal. As such, I find claimant sustained a 41 percent impairment to his left hand.

CONCLUSIONS OF LAW

The only issue to determine in this case is the nature and extent of claimant's permanent disability. Claimant argues that claimant's skin grafts and scarring to the donor sites has resulted in impairment to the body as a whole, and he is entitled to industrial disability. Defendants argue that claimant's injury is limited to the left hand, and he is only entitled to Dr. Wampler's functional impairment rating.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or as an unscheduled injury pursuant to the provisions of section 85.34(2)(v). An injury to a scheduled member may, because of after-effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment that determines whether the schedules in section 85.34(2)(a)-(u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Claimant argues that Dr. Wampler's opinion should be disregarded because he did not examine or rate claimant's skin grafts, his opinion is not reliable as he is "an insurance company minion," and he did not use "the guidelines," presumably meaning the AMA Guides, in proving his rating. (Cl. Brief, pp. 5-6) He further argues that Dr. Bansal's opinion is more reliable as he did examine claimant's skin grafts, asked questions about sensitivity to heat and cold, and referenced Table 8-2 of the guides in providing his rating.

First, as noted above, Dr. Wampler's report makes clear that he did, in fact, examine claimant's skin graft, as well as the donor sites "on the thighs and right forearm." (Def. Ex. B, p. 3) He made specific findings in his report regarding those areas, and found all scars from the donor sites to be benign, and therefore, specifically stated there was no impairment. (Def. Ex. B, pp. 3, 5) Additionally, he did provide an impairment rating related to the skin graft on claimant's hand, based on loss of sensation to the dorsum. (Def. Ex. B, p. 5) He provided, in great detail, the steps he took using the AMA Guides, Fifth Edition, to reach both the 40 percent rating for loss of multiple finger mobility, and the one percent for the sensory loss. (Def. Ex. B, pp. 4-5) Additionally, he provided color photographs of claimant's hand, as recommended by the AMA Guides when rating scars and skin grafts. See AMA Guides, p. 176.

With respect to claimant's argument that Dr. Wampler is an "insurance company minion" and his rating cannot be trusted, there is no evidence in this case that Dr. Wampler provided anything other than his medical opinion regarding claimant's permanent functional impairment based on the medical records, his physical examination of claimant, and the AMA Guides. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert

opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Dr. Wampler's prior medical opinions are not a part of the record in this case, and the two cases cited in claimant's brief involve his opinions regarding causation, not impairment. In short, claimant's argument that Dr. Wampler is biased toward defendants in this case based on his past opinions in unrelated cases is not convincing.

Claimant's argument is further undermined by the fact that Dr. Bansal agreed with Dr. Wampler's impairment rating as it related to the loss of motion in multiple fingers. (Cl. Ex. 1, p. 6) Presumably, Dr. Bansal had little other choice as he did not perform his own physical examination of claimant's hand. As for the remainder of Dr. Bansal's opinion, I do not find it more reliable than Dr. Wampler's opinion. While he may have looked at claimant's scars via videoconference, he did not provide any information regarding dryness, skin or scar breakdown, hypertrophic changes, or hyperpigmentation, as Dr. Wampler provided. Further, he did not provide a detailed description or photographs of the full thickness skin graft across the dorsum of claimant's hand, as Dr. Wampler provided. He did not measure claimant's circulation or skin temperature, perform sensory testing, or make any objective findings whatsoever. The entire basis for Dr. Bansal's 5 percent rating for the skin is that claimant's "grafted burn site is sensitive to heat and sunlight and requires moisturizers and sunscreens," which is contrary to information claimant provided to other medical providers. When looking at the record as a whole, Dr. Wampler's opinion is supported by the greater weight of evidence, and more reliably based on his more thorough and complete in-person physical examination.

Claimant essentially argues that because Dr. Bansal's rating to the skin is a rating to the body as a whole, his injury should be compensated industrially. Having rejected Dr. Bansal's 5 percent skin rating, claimant's position has no merit. However, even if Dr. Bansal's skin rating were accepted, that alone would not make claimant's injury extend to the body as a whole. First, a finding of impairment to the body as a whole found by a medical evaluator does not equate to industrial disability. Dikutole v. Tyson Foods, Inc., File No. 5054404 (App. May 2018) (citing Smith v. Aramark, File No. 1199677 (App. April 2001)). Impairment and disability are not synonymous. Id.

Additionally, the fact that the skin covers the entire body does not render an injury to the skin of a scheduled member an injury to the body as a whole. Id. (citing Topete v. Global Food Processing, File No. 1167910 (Arb. June 1999)). Rather, an injury to the skin that is limited to one scheduled member is confined to and compensated as a scheduled member loss. Id. (citing Second Injury Fund v. Armstrong, 801 N.W.2d 628 (Iowa App. 2011) (Table of Unpublished Decisions); see also Gacek v. Second Injury Fund, File No. 5030637 (Arb. Feb. 2011); Singleton v. Newton Correctional Facility, File No. 5041430 (Arb. Oct. 2013); Bryan v. Kiowa Line Builders, Inc., File No. 5062947 (Arb. March 2018); Deffenbaugh v. 1st Interiors, Inc., File No. 5047330 (Arb. April 2018)).

Similar to the cases cited above, in this case, claimant's burn and graft is specific to his left hand. The injury did not result in a skin disorder that spreads about the body such as dermatitis or psoriasis. Additionally, the scarring at the donor sites was not rated by any physician, as even Dr. Bansal's whole body rating was limited to "the grafted burn site" on claimant's left hand. (Cl. Ex. 1, p. 7) Claimant makes no allegation that the scars on his thighs and forearm where the skin grafts were taken cause him any ongoing issues or disability. The mere fact that skin grafting was performed, or that a whole person impairment rating was rendered, does not convert the case from a scheduled member injury to be compensated pursuant to Iowa Code section 85.34(2)(l) into an unscheduled injury to be compensated pursuant to Iowa Code section 85.34(2)(v).

The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

Iowa Code section 85.34(x) states:

x. In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34 (x).

This agency has adopted The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association for determining the extent of loss or percentage of impairment for permanent partial disabilities. See 876 IAC 2.4.

As noted above, I found Dr. Wampler's opinion regarding permanent functional impairment to be more credible than that of Dr. Bansal. As such, I found claimant sustained a 41 percent impairment to his left hand. Under Iowa Code section 85.34(2)(l), a hand is compensated based on the proportional loss relative to 190 weeks of benefits. I conclude that 41 percent of 190 weeks is equal to 77.9 weeks of benefits. Therefore, claimant is entitled to 77.9 weeks of permanent partial disability benefits.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant seventy-seven and nine-tenths (77.9) weeks of permanent partial disability benefits, commencing August 25, 2021, at the stipulated rate of five hundred fifty-two and 72/100 dollars (\$552.72).

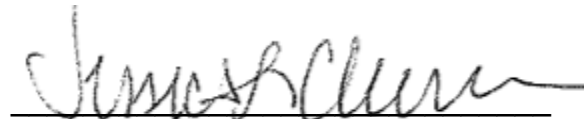
Defendants shall be entitled to a credit for all permanent partial disability benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

The parties shall bear their own costs.

Signed and filed this 10th day of August, 2022.


JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Al Sturgeon (via WCES)

Meredith Ashley (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.