BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY SMART, Claimant, vs. RATHJE CONSTRUCTION CO, Employer, and INTEGRITY INSURANCE, Insurance Carrier, Defendants.	File No. 1641582.01 ARBITRATION DECISION Head Notes: 1402.40, 1803, 2907

STATEMENT OF THE CASE

Gary Smart, claimant, filed a petition for arbitration against Rathje Construction Company as the employer, and Integrity Insurance as the insurance carrier. This case came before the undersigned for an arbitration hearing on March 9, 2021. 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 video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall. The hearing proceeded without significant difficulties.

The parties filed a hearing report at 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 11, Claimant's Exhibits 1 and 2, and Defendants' Exhibits A through D. All exhibits were received without objection.

Claimant testified on his own behalf. Defendants called Robert Rathje to testify. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties served their post-hearing briefs on March 19, 2021, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to permanent partial disability benefits;

2. Whether claimant is entitled to penalty benefits; and

3. Costs.

FINDINGS OF FACT

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

Gary Smart is a 66-year-old, right hand dominant gentleman who sustained a stipulated injury on December 27, 2017. On the date of injury, Mr. Smart was working as a field mechanic for Rathje Construction Company. (Hearing Transcript, page 9) More specifically, Mr. Smart was moving a piece of equipment known as a small vibrator roller, when the control valve stuck causing the machine to lunge forward striking a concrete filled steel pillar. This caused the hood safety support to fail, and the hood shut on Claimant's right wrist. (Hr. Tr. pp. 11-12) Claimant experienced immediate pain and swelling. (See Hr. Tr., p. 13)

Claimant was initially seen by Sudha Anand, M.D. at Urgent Care in Cedar Rapids, Iowa, where x-rays revealed a lunate dislocation, mild to moderate osteoarthritis of the interphalangeal joints, and advanced changes at the second DIP joint. (JE1, pp. 1-3; JE3, p. 11) Claimant was then sent to Mercy Medical Center Emergency Room and seen by Dr. Thomas Paynter, M.D. Due to the lack of available hand surgeons on-call, Dr. Paynter transferred claimant's care to the University of Iowa Hospitals and Clinics main campus. (JE2, p. 4) Alexis Lima, M.D. reviewed the outside images and obtained additional x-rays. The imaging revealed volar dislocation of the right lunate without migration of capitate. (JE3, p. 13) Claimant's care was subsequently transferred to Andrei Odobescu, M.D. (JE3, p. 14)

Dr. Odobescu performed a diamond repair and ligament anchoring on December 28, 2017. (JE3, pp. 14-15) Because claimant did not exhibit preoperative carpal tunnel symptoms, Dr. Odobescu decided against opening the carpal tunnel. (JE3, p. 15) An orthoplastic splint was placed on January 5, 2018. (JE3, p. 17) At the January 5, 2018, appointment, claimant exhibited edema over the volar surface of the wrist and hand, as well as along both volar and palmar aspects of all five digits. (JE3, p. 17) Claimant's range of motion was "very limited and minimal" in the DIP, PIP, and MCP. (Id.) The same observations were noted at claimant's January 26, 2018, follow-up appointment. (JE3, p. 20)

Claimant continued to follow-up with Dr. Odobescu throughout January and February 2018 (JE3, pp. 16-21), and his surgical hardware was removed on February 23, 2018. (JE3, pp. 22-23) After having the pins removed, claimant presented to physical therapy. On examination, claimant exhibited severe inflammation of the right

hand and digits, as well as the wrist. The physical therapist documents "very limited" range of motion of the finger joints, as well as the joints of the right thumb and wrist. (JE4, pp. 34-35)

While claimant experienced a slight decrease in pain and swelling, he was still unable to make a full fist as of March 30, 2018. (See JE3, pp. 24-25) ("Composite fist seems to be limited by swelling.") Dr. Odobescu recommended "aggressive hand therapy" to reduce the edema. (JE3, p. 25) Claimant ultimately participated in hand therapy from February 23, 2018, to July 25, 2018. (JE4, pp. 34-46; J, p. 52) He first presented to UIHC Occupational Therapy and then Marion Physical Therapy. (JE4, pp. 34-46; JE5, pp. 47-52)

Claimant returned to light duty work on or about April 14, 2018. (See JE3, p. 25; Hr. Tr., p. 26) Robert Rathje testified Mr. Smart continued doing the same kind of work, just in a controlled environment rather than out in the field. (Hr. Tr., pp. 48-49) According to Mr. Rathje, claimant transitioned from a field mechanic to a shop mechanic. (Hr. Tr., p. 46) Claimant continued working for the employer in this accommodated role until August 5, 2019, when he retired. (Hr. Tr., p. 33)

As of July 17, 2018, claimant was able to make a moderate composite fist. However, he continued to demonstrate minimal strength and limited range of motion. (JE3, p. 28) Dr. Odobescu recommended an additional six to eight weeks of hand therapy. (JE3, p. 29)

Dr. Odobescu discharged claimant on August 24, 2018. (JE3, p. 31) At the August 24, 2018, appointment, claimant continued to demonstrate reduced range of motion in his wrist and fingers. (Id.) Claimant told Dr. Odobescu, "if he could fix one thing, it would be range of motion of the thumb." Claimant also endorsed decreased range of motion in digits 2 and 3, along with wrist pain. (Id.) Dr. Odobescu's notes indicate that claimant's decreased grip strength stemmed from his reduced range of motion. (JE3, p. 31) Diagnostic imaging, dated August 24, 2018, revealed moderate degenerative changes of the interphalangeal and metacarpophalangeal joints, mostly involving the thumb, index and ring fingers. (JE3, p. 33)

At hearing, claimant testified that the current condition of his hand is similar to how it was in August, 2018. (Hr. Tr., p. 21) Claimant did not have any problems working with his right hand prior to the date of injury. (Hr. Tr., p. 23)

After being released by Dr. Odobescu, defendants referred claimant to Patrick Hartley, M.D., for an assessment of permanent disability. As part of his evaluation, Dr. Hartley referred claimant for a functional capacity evaluation (FCE). (JE6, p. 53)

On November 6, 2018, Darrin Ausman, O.T. administered a functional capacity evaluation of claimant. (JE7, p. 63) Claimant demonstrated capabilities and functional tolerances to function within the medium physical demand level. (Id.)

Relying on the results of the November 6, 2018 FCE, Dr. Hartley assessed 51 percent right upper extremity impairment for claimant's "right wrist and hand injury."

(JE6, pp. 56-59) Individually, he assigned 35 percent impairment to the hand, 21 percent impairment to the wrist, and 4 percent impairment to the elbow. (JE6, p. 56)

Defendants subsequently scheduled claimant for an independent medical examination (IME) with Robert Broghammer, M.D. (Ex. D, p. 24) The evaluation occurred on March 4, 2019. (Id.) Dr. Broghammer disagreed with Dr. Hartley's analysis, opining claimant's impairment rating should be confined to the wrist, because the physical injury was only to the wrist. (Ex. D, pp. 29-30) Dr. Broghammer felt as though an impairment rating to the wrist would adequately account for any loss of motion in the hand, fingers, or elbow. (Ex. D, p. 30) While Dr. Broghammer could not explain claimant's inability to fully close the fingers on his right hand, in his medical opinion, he believed it may be due to the claimant's "significant osteoarthritis, including multiple Heberden and Bouchard nodes in this right-greater-than-left hands." (Ex. D, p. 31) After assessing claimant's range of motion, Dr. Broghammer assigned 13 percent right upper extremity impairment. (Ex. D, pp. 30-31)

Complicating matters is a personal health issue that presented shortly after claimant retired from the defendant employer. Mr. Smart presented to his primary care provider on August 20, 2019, for an evaluation of neck pain that "began 1 month ago and has been gradually worsening." (JE8, pp. 73, 78-79) He reported neck pain, as well as aching, burning, throbbing and hand pain which radiated down both arms and into his hands. (JE8, pp. 79-80) He reported his hands felt weak with numbness and tingling. (Id.) Sara Hubbell, A.R.N.P. suspected claimant was experiencing cervical radiculopathy and ordered a cervical MRI. (Id.)

Neurosurgeon Patrick Hitchon, M.D., examined claimant and reviewed his imaging on September 5, 2019. (JE9, p. 94) Claimant complained of bilateral hand numbness and clumsiness for the preceding two months. (Id.) It is noted that claimant had previously been diagnosed with prostate cancer, for which he had been receiving androgen deprivation therapy for 4-5 years. (Id.; JE10, p. 110) The cervical MRI revealed an intradural extramedullary tumor at C3-4, which was compatible with a diagnosis of lymphoma. (See JE9, p. 98) Dr. Hitchon prescribed Decadron to reduce the swelling and alleviate the numbness claimant was experiencing. (Id.) Surgical intervention was recommended; however, claimant had a fishing trip planned, so Dr. Hitchon prescribed steroids to tide him over until his return for possible surgery. (See JE9, p. 100)

Later that morning, claimant presented to Mark Smith, M.D., for a radiation therapy evaluation. (JE10, p. 107) The medical records note that claimant had been experiencing right arm and hand numbness for many years. (JE10, p. 108)

Dr. Hitchon referred claimant to Mark Karwal, M.D. of the clinical cancer center. Claimant's initial evaluation with Dr. Karwal occurred on September 18, 2019. (JE11, p. 111) Dr. Karwal, when detailing claimant's medical history, noted, "In July 2019 [claimant] noted after a long day at work increasing neck pain that was radicular down both arms. He now began to notice paresthesias in he left hand that radiated up his left arm." (JE11, p. 111) Dr. Karwal assessed claimant's condition as follows: "[This] is a 65-year-old healthy male with a 2-month history of neck and radicular pain to his arms

thought to be secondary to a [*sic*] enhancing dural mass at C3/C4." (JE11, p. 112) It is noted that claimant's paresthesias improved with steroid therapy, and was now only present in the left hand. (Id.)

An updated MRI, dated October 2, 2019, revealed resolution of the epidural mass at C4. Based on this report, Dr. Hitchon opined there was no longer a need for surgical intervention. (JE9, p. 102) Dr. Hitchon recommended claimant discontinue his Decadron prescription. (See JE11, p. 114) Claimant would later tell Dr. Karwal that he experienced a marked increase in paresthesias in both hands and arms the morning after he discontinued his Decadron prescription. (JE11, p. 114) Claimant made the decision to continue taking Decadron and it is reported that he noticed improvement in his symptoms as a result. (Id.) Claimant reported that his then current symptoms precluded him from driving, as he did not feel his hands were strong enough. (Id.) Dr. Karwal ultimately questioned whether the paresthesias in claimant's hands were related to the mass or degenerative joint disease, noting a mass at C3-4 should not produce radicular symptoms in the hands. (JE11, p. 115)

An EMG, dated November 5, 2019, revealed evidence of a length dependent, predominantly axonal, sensorimotor peripheral neuropathy. (JE11, p. 124)

At his return visit to Dr. Karwal on November 13, 2019, claimant reported paresthesias in his bilateral hands and feet. (JE11, p. 126) He did not have any neck pain at the time. (Id.) Claimant's wife expressed concern over claimant's general weakness. She described how a recent walk through the mall was difficult for claimant. (Id.) After reviewing claimant's EMG and nerve conduction studies, Dr. Karwal opined that claimant's symptoms and findings are most consistent with the development of peripheral neuropathy with an unknown etiology. (JE11, p. 127) Dr. Karwal recommended further evaluation to see whether an etiology could be ascertained. (Id.)

After additional testing and analysis, claimant was prescribed gabapentin. At his February 4, 2020, follow-up appointment with Dr. Karwal, claimant reported improvement in his neuropathy symptoms. Claimant did not have any neck pain or symptoms of spinal cord compression. (JE11, p. 135) According to claimant, the gabapentin medication reportedly dulled his neuropathy symptoms. (See JE11, pp. 135, 138) Dr. Karwal continued claimant's gabapentin prescription and recommended repeat MR imaging of the cervical spine take place in June, 2020. (JE11, p. 136)

Between February 4, 2020, and June 12, 2020, claimant worked hard to lose the weight he put on while taking steroid medications. In total, he lost approximately 18 pounds. (See JE11, p. 138) He reported being happy with his health. With respect to his neuropathy symptoms, claimant reported that the symptoms in his hands come and go, and he has good days and bad days. (JE11, p. 138) It is noted that claimant had been back to working in his wood shop and he was scheduled to participate in an upcoming bass fishing tournament. (Id.)

Unfortunately, the June 2020 imaging revealed that the mass on claimant's cervical spine had returned. Claimant returned to Dr. Hitchon on July 9, 2020, who ultimately performed a cervical laminoplasty and biopsy. (JE9, pp. 103-104) The tissue appeared to be benign. (See JE11, p. 140)

In October 2020, a Dr. Garje diagnosed claimant with castrate resistant metastatic prostate carcinoma. (See JE11, p. 143)

On January 11, 2021, claimant reported to Dr. Karwal that he has good days and bad days with regards to his hands. (JE11, p. 142) The medical record provides, "On the good days he barely notices any troubles with his hands. Other days he notes tingling all the way up his arms." (Id.)

Given the disparity between the ratings provided by Drs. Broghammer and Hartley, defendants conducted a conference call with Dr. Hartley and subsequently asked him to revisit his initial rating. (JE6, p. 60) In a letter, dated June 12, 2020, Dr. Hartley amended his initial report. (JE6, pp. 61-62) More specifically, Dr. Hartley revised his assessment of claimant's upper extremity impairment to only include the impairments to the wrist and elbow. (JE6, p. 62) Citing to the American Medical Association Guides to Evaluation of Permanent Impairment, Fifth Edition, Dr. Hartley disagreed with Dr. Broghammer's opinion that claimant's overall impairment rating should exclude any impairment to the elbow. (JE6, p. 61)

> I would respectfully disagree with him in this regard, and direct you to page 472 of the AMA Guides to the Evaluation of Permanent Impairment (5th edition) which addresses "Pronation and Supination" of the forearm, which is limited in range of motion Mr. Smart's examination. The pertinent paragraph in the second column of this page states: "Impairments of pronation and supination are ascribed to the elbow because the major muscles for this function are inserted about the elbow. The applies even if the loss of forearm rotation results primarily from wrist involvement in the presence of an intact elbow."

(Id.) Dr. Hartley could not state to a reasonable degree of medical certainty that claimant's digital/hand impairment is attributable to the work injury. (JE6, p. 62) In conclusion, Dr. Hartley assessed claimant with 24 percent upper extremity impairment. (Id.)

In response to Dr. Hartley's updated impairment rating, claimant sought an independent medical examination (IME) with Mark Taylor, M.D. The IME took place on June 24, 2020. (Ex. 1, p. 1) Dr. Taylor agreed with Dr. Hartley that claimant's cumulative impairment rating should include ratings for both the forearm and the wrist. (Ex. 1, p. 7) Additionally, Dr. Taylor felt it appropriate to include impairment for the hand/digits. (Id.) Dr. Taylor opined that claimant's injury represented a substantial contributing factor to the loss of motion identified in the digits of the right hand. (Ex. 1, p. 8) In total, Dr. Taylor assigned 44 percent right upper extremity impairment and recommended permanent restrictions consistent with the November 6, 2018 FCE report. (Ex. 1, p. 9)

In January, 2021, claimant's counsel produced updated medical records to, and requested an updated opinion from, Dr. Taylor. (Ex. 1, p. 12) Specifically, claimant's counsel provided claimant's UIHC medical records from September 5, 2019, through January 21, 2021, and asked Dr. Taylor to address whether it is appropriate to include loss of range of motion of the digits and thumb in Mr. Smart's overall impairment rating.

(Ex. 1, p. 13) In a letter, dated January 22, 2021, Dr. Taylor explained why the additional medical records did not alter his initial opinions regarding consideration of claimant's loss of range of motion in his digits and thumb when calculating the overall impairment rating. (Ex. 1, p. 17) The updated report provides,

> Mr. Smart was diagnosed with a sensorimotor peripheral neuropathy. He has experienced neuropathy-like symptoms in his hands and feet, but only the right hand demonstrated a significant loss of motion, and the loss of motion occurred at the time of his work injury. Mr. Smart's range of motion of the digits of the right hand never returned to his baseline, which was presumably as good or better than his range of motion in the left hand, which has also experienced neuropathy symptoms. Despite neuropathy-like symptoms in both hands, Mr. Smart has only experienced a significant decrease in range of motion on the right side, where the trauma occurred and only after the trauma. Again, an underlying neuropathy may have placed Mr. Smart at increased risk for a poor outcome, but it is still my opinion that it is more likely than not that the work injury represented a substantial contributing factor to the loss of motion identified in the digits of the right hand, especially when compared to the left side. My opinion would have been different if Mr. Smart's digit range of motion returned to normal after the injury, with the subsequent development of decreasing range of motion impacting both hands at some point well after the injury. This would have then been more suggestive of an underlying condition as a causative factor as opposed to the work injury.
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> . . . Given this information, it is still my opinion that it is appropriate to include a rating related to digit range of motion, but the impairment due to a loss of motion of the digits must be compared to the contralateral extremity, which was the approach that I used in assigning a rating.

(Id.)

At hearing, claimant testified he still experiences swelling in his wrist, but no longer in his thumb and fingers. (Hr. Tr., p. 24). He also testified to his grasping, pushing, and pulling limitations. (Hr. Tr., pp. 30-31) Claimant cannot pick up a coffee cup with his right hand. (Hr. Tr., p. 30) He can pull, but he cannot push with his right hand. (Hr. Tr., p. 31) Claimant testified the limited range of motion in his fingers and thumb started immediately after the injury and never got better. (Id.)

As previously discussed, Drs. Broghammer, Hartley, and Taylor offered opinions about claimant's permanent functional impairment. Reviewing the respective expert medical opinions, I have a difficult time accepting the opinions of Dr. Broghammer. First and foremost, Dr. Broghammer's opinions regarding permanent impairment are not supported by Dr. Hartley or Dr. Taylor. (See JE6, p. 61) Dr. Broghammer did not provide a convincing argument as to why claimant's permanent impairment should be confined to the wrist. The statement, "the injury itself is confined to the wrist, and the

only appropriate impairment rating would be for the wrist" is contrary to Iowa's workers' compensation laws as disability can, and often does, extend beyond the situs of injury into other parts of the body.

Second, Dr. Broghammer speculates that claimant's decreased range of motion in his right hand could be related to osteoarthritis. Such a finding, if true, would not preclude a finding of causation. If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover.

Third, claimant testified that Dr. Broghammer's examination lasted approximately 15 minutes. (Hr. Tr., p. 25) Defendants attempt to address this assertion in their post-hearing brief; however, their explanation does little to rebut claimant's testimony. Defendants directed the undersigned's attention to Dr. Broghammer's report, which provides, "I spent a total of 2 hours 10 minutes reviewing the medical records, interviewing and examining the worker, and preparing and dictating this report." (Ex. D, p. 24) This statement does not discredit claimant's testimony. It is not difficult to imagine a scenario in which Dr. Broghammer spent nearly two hours reviewing medical records and drafting his 15-page report, and then 15 minutes examining claimant.

Lastly, Dr. Broghammer's report includes an appeal to authority that is entirely unconvincing. Dr. Broghammer provides, "I did also discuss this case with a colleague of mine who has been practicing occupational medicine in the State of Iowa for over 30 years. He is in agreement that the workers' impairment is confined to the wrist[.]" This remarkably unhelpful statement adds nothing to the overall report. The statement does not provide who the colleague is, what was discussed during the conversation, or what information the colleague was privy to. Dr. Broghammer does not provide any information to legitimize this individual's authority. That the individual is purported to be an occupational medicine physician does little to legitimize the expert for a question requiring an analysis of the different tissue, bone, ligament, and muscle structures of the hand/upper extremity.

I similarly have a difficult time accepting the updated opinions of Dr. Hartley. First, it is unclear what, if any, new or additional medical records were produced to Dr. Hartley for review prior to providing his supplemental report. While the March 13, 2020, letter provides defendants sent Dr. Hartley medical records from claimant's primary care provider and UIHC, the June 12, 2020, updated report does not reflect the same. According to the June 12, 2020, updated report, Dr. Hartley only reviewed his own initial report from November, 2018, the November 6, 2018 FCE report, and Dr. Broghammer's IME report in anticipation of drafting his updated report. (See JE6, p. 61) ("I have reviewed the report of the independent medical examination (IME) conducted by Dr. Robert Broghammer on 3/4/2019. I have also reviewed my impairment rating report dated 11/29/2018, and the functional capacity evaluation from Athletico on 11/6/2018.") It is entirely possible this was simply an oversight by Dr. Hartley, as the report later provides the opinion" "My review of subsequent UIHC medical records indicates that Mr. Smart has since been diagnosed with a neuropathy[.]" Nevertheless, it is still unclear what UIHC records he reviewed as the records were not listed or summarized in the March 13, 2020 letter to Dr. Hartley, or in his June 12, 2020 report.

Second, Dr. Hartley's updated opinion regarding digit/hand impairment is tepid at best. His opinion that claimant's neuropathy "may explain at least some of his hand/digital dexterity and range of motion impairments" does not rule out the work injury as being a substantial factor. The work injury need only to be a "substantial factor" in bringing about the result, not the only factor. Dr. Hartley's report does not address whether the work injury was a substantial factor in bringing about the loss of range of motion. For these reasons, I find Dr. Hartley's updated report, and the opinions contained therein, are not credible or convincing.

Instead, I find the explanation and medical opinions offered by Dr. Taylor to be consistent with the other credible medical evidence in the evidentiary record. Dr. Hartley's initial report is similar to, and supports, Dr. Taylor's analysis and opinions. It is well documented that claimant experienced significant swelling of the fingers immediately after the work injury. The swelling continued while his hand and wrist were immobilized. Claimant credibly testified the limited range of motion in his fingers and thumb started immediately after the injury and never got better. (Hr. Tr., p. 31) As noted by Dr. Taylor, while the unrelated, neuropathy-like symptoms are present in both hands, it is only in the injured right hand that there is a loss of motion. Moreover, medical records indicate that the neuropathy-like symptoms in claimant's hands are worse in the right hand due to the work-related injury. (See JE11, p. 132) Claimant continues to have a strong grip and good range of motion of the left hand and fingers.

Dr. Taylor's opinions could be critiqued because he did not review medical records from UIHC prior to drafting his initial IME report. That being said, claimant's counsel wisely produced claimant's UIHC medical records to Dr. Taylor and requested a supplemental report. Dr. Taylor's supplemental report adequately summarized and analyzed the pertinent UIHC medical records. His analysis of the UIHC records is credible and convincing.

Defendants further attempt to discredit Dr. Taylor's report by noting Dr. Taylor's conclusion that claimant's neurologic exam "revealed no subjective loss of sensation, and completely normal two-point discrimination." Defendants point out that at the time of his examination, claimant had been complaining of neuropathy-like symptoms for over 10 months. While it is true claimant began presenting to his primary care providers for neuropathy-like symptoms in August, 2019, it is not entirely accurate to say that claimant was experiencing significant neuropathy at the time of Dr. Taylor's examination. By the time Dr. Taylor's examination occurred in June 2020, claimant's neuropathy was well-controlled by gabapentin. (See JE11, pp. 136, 138, 142) ("Today, Gary reports he has improved. He is taking Gabapentin 300 mg 3 times a day with improvement in his neuropathy symptoms.") ("His neuropathy symptoms in his hands come and go yesterday was a bad day today's a good day.") ("On the good days he barely notices any troubles with his hands. Other days he notes tingling all the way up his arms.") Claimant did not exhibit neuropathy symptoms on June 21, 2020, the date of Dr. Taylor's examination. It is entirely possible claimant was having a good day on June 21, 2020, from a neuropathy standpoint.

Defendants assert claimant's digit/hand impairment should not be included in the determination of permanent impairment given claimant's personal conditions. I do not

find this argument to be convincing. Defendants imply that the issues within claimant's right hand are related to his documented osteoarthritis and peripheral neuropathy diagnosis. As previously discussed, a permanent aggravation of claimant's osteoarthritis would be compensable under Iowa law. Moreover, Dr. Taylor explained that while the unrelated, neuropathy-like symptoms are present in both hands, it is only in the injured right hand that there is a loss of motion. It is this range of motion that Dr. Taylor attributes to the work injury, not the neuropathy-like symptoms in claimant's bilateral hands and upper extremities.

Ultimately, I accept the medical opinions of Dr. Taylor as most convincing in this file. I find that the injury was a crush injury to the wrist, which had a direct impact on claimant's right hand and forearm, resulting in impairment. Having accepted the opinions of Dr. Taylor as most convincing, I accept Dr. Taylor's impairment rating and find claimant has proven a 44 percent permanent functional impairment of the right upper extremity as a result of the December 27, 2017, work injury.

Prior to hearing, claimant was paid 32.5 weeks of PPD benefits at the rate of $866.18 per week. (Ex. A)

On the hearing report, claimant seeks an award of penalty benefits. While claimant listed the issue on the hearing report, he did not provide an argument regarding the same in his post-hearing brief. I find claimant failed to prove entitlement to penalty benefits.

The issue of costs will be addressed in the conclusions of law section.

CONCLUSIONS OF LAW

The initial disputed issue in this case is the extent of claimant's entitlement to permanent partial disability benefits. The primary dispute revolves around whether the loss of range of motion in claimant's digits, hand, and elbow should be included in the determination of permanent impairment.

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).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. 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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

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 for loss of earning capacity under 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).

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(2)(x)

Having found the 44 percent upper extremity impairment rating offered by Dr. Taylor to be most accurate and convincing, I conclude that claimant is entitled to an award of permanent partial disability benefits equivalent to 44 percent of the right arm. The Iowa legislature has established a 250-week schedule for arm injuries. Iowa Code section 85.34(2)(m). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of his arm. Iowa Code section 85.34(2)(w).

Forty-four percent of 250 weeks equals 110 weeks. Claimant is, therefore, entitled to an award of 110 weeks of permanent partial disability benefits against defendants. Iowa Code section 85.34(2)(m), (w).

The next issue for determination is whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and, if so, how much. On the hearing report, claimant asserted entitlement to penalty benefits; however, he did not provide an argument regarding the same in his post-hearing brief. To the undersigned's knowledge, claimant offered no evidence demonstrating an unreasonable denial, delay, or termination of benefits. Claimant has failed to prove entitlement to penalty benefits.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Claimant brought a successful claim against defendants. As such, I find it appropriate to assess costs against defendants in some amount.

Claimant seeks assessment of his filing fee ($103.00) and Dr. Taylor's report ($725.00). Agency rule 876 IAC 4.33(7) specifically permits the assessment of the filing fee. Claimant's filing fee shall be assessed against defendants.

Agency rule 4.33(6) permits the assessment of the reasonable costs of "obtaining no more than two doctors' or practitioners' reports." The Iowa Supreme Court has held that only the cost of drafting the expert's report is permissible in lieu of testimony. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 845-846 (Iowa 2015).

Claimant's Exhibit 2 provides that Dr. Taylor attributed $475.00 to the cost of drafting his supplemental report. This is the only portion of the report that is reimbursable. I find the cost of Dr. Taylor's report is appropriate and assessed pursuant to 876 IAC 4.33(6).

ORDER

Defendants shall pay claimant one hundred ten (110.0) weeks of permanent partial disability benefits commencing on November 29, 2018, at the stipulated weekly rate of eight hundred sixty-six and 18/100 dollars ($866.18).

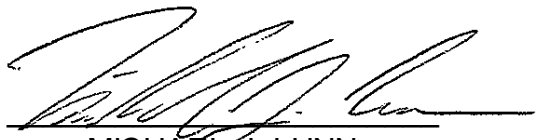
Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest payable 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, as required by Iowa Code section 85.30.

Defendants shall pay costs of five-hundred seventy-eight and 00/100 dollars ($578.00).

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.

Signed and filed this ___7th___ day of December, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wolle (via WCES)

Coreen Sweeney (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.