BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| FREDDY TORO-PRADO, | : | |
| Claimant, | : | |
| vs. | : | |
| | : | File No. 5064254 |
| FUSION, INC., | : | |
| | : | A R B I T R A T I O N |
| Employer, | : | |
| | : | D E C I S I O N |
| and | : | |
| ACCIDENT FUND INSURANCE CO. OF AMERICA, | : | |
| Insurance Carrier, | : | Head Notes: 1402.30, 1802, 1808, |
| Defendants. | : | 2401, 2501, 2502 |

STATEMENT OF THE CASE

Claimant, Freddy Toro-Prado, filed a petition in arbitration seeking workers' compensation benefits from Fusion, Inc. (Fusion), employer and Accident Fund Insurance Company of America, insurer, both as defendants. This case was heard on August 21, 2019 with a final submission date of September 11, 2019.

The record in this case consists of Joint Exhibits 1-5, Claimant's Exhibits 1-11, Defendants' Exhibits A through L, and the testimony of claimant. Serving as interpreter was Astrid Gale.

It should be noted claimant's title page on his exhibits only list Exhibits 1-10. Claimant actually has Exhibits 1-11 in this matter.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

## ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether claimant's claim for benefits is barred by application of Iowa Code section 85.23.

3. Whether the injury is a cause of temporary disability.

4. Whether the injury is a cause of permanent disability; and if so

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

6. Whether there is a causal connection between the injury and the claimed medical expenses.

7. Costs.

In the hearing report the parties indicated claimant's entitlement to reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39 was an issue in dispute. In their post-hearing brief, defendants agreed claimant's initial IME with Dr. Taylor was reimbursable. (Claimant's post-hearing brief, page 15) Therefore, only the costs of Dr. Taylor's rebuttal report will be an issue in dispute in this case.

## FINDINGS OF FACT

Claimant was 58 years old at the time of hearing. Claimant was born in Puerto Rico. Claimant graduated from high school. He attended two years of college but did not graduate. Claimant speaks little English. Claimant can read and write in Spanish.

From 1983 to 2013 claimant was a recreational supervisor for the Municipality of Juana Diaz in Puerto Rico. In that capacity claimant organized sports camps, summer camps and sports activities. Claimant retired from this position in 2013. (Exhibit 3, p. 17)

Claimant moved to Iowa to be closer to his family. In April of 2016 claimant began work with CCB, a packaging facility. Claimant's jobs with CCB included opening boxes and tearing down boxes. Claimant worked for CCB for approximately one week.

Claimant began employment with Fusion on or about April 20, 2016. Claimant worked as an assembler.

Claimant said his job required that he load a few hundred small pieces on a cart. Claimant would put the parts in a washer to be cleaned. Claimant would remove the

parts from the washer. Claimant would then take the washed parts and assemble them. Claimant testified he assembled between 200-300 parts per shift. He said his job required repetitive twisting and pinching. (Transcript pages 22-28)

Claimant testified he was assessed as having diabetes in 2009, but it is well controlled.

On December 27, 2016 claimant was evaluated by Anshul Jain, M.D. Claimant had numbness in both hands for six months. Claimant was dropping things sometimes because of numbness and cramping. Claimant was assessed as having either carpal tunnel syndrome or diabetic neuropathy. EMGs were recommended. (Joint Exhibit 1, p. 4)

Claimant testified at hearing that the first time he began noticing pain in his hand was sometime in October or November of 2016. (Tr. p. 29)

On January 12, 2017 claimant underwent EMG/NCV testing in both upper extremities. Claimant indicated problems in his hands for four to five months. Testing showed evidence of severe bilateral median neuropathies in both wrists. (Jt. Ex. 2, pp. 14-15)

On February 3, 2017 claimant was evaluated by Peter Chimenti, M.D. for bilateral hand numbness. Claimant had symptoms in his right hand for six months and in his left hand for one month. Claimant was assessed as having bilateral carpal tunnel syndrome. Surgery was recommended and chosen as a treatment option. Dr. Chimenti's notes indicate claimant did not have a work-related claim. (Jt. Ex. 3, pp. 28-29)

Claimant testified when Dr. Chimenti asked him if he had an accident at work, he said no. Claimant indicated he did not believe he had an accident at work, as there was no traumatic injury. (Tr. pp. 31-32)

On February 17, 2017 claimant had carpal tunnel release on the right. Surgery was performed by Dr. Chimenti. (Jt. Ex. 2, pp. 20-21)

Claimant began occupational therapy on March 17, 2017. He was recommended to have therapy twice a week from five to six weeks. (Jt. Ex. 3, pp. 31-34)

Claimant returned in follow up with Dr. Chimenti on March 28, 2017. Claimant had continued symptoms. Claimant indicated numbness in the right hand and wrist pain. Claimant was referred to a pain clinic. (Jt. Ex. 3, pp. 35-36)

Claimant was seen at the CRS Pain Clinic on April 14, 2017 by Douglas Sedlacek, M.D. Claimant indicated pain in his right upper extremity that was worse after surgery. Claimant was given over-the-counter lidocaine for pain. (Jt. Ex. 4)

Claimant returned to Dr. Chimenti on May 9, 2017. Claimant had returned to work. Claimant was doing repetitive activity at work, which aggravated his symptoms in his right upper extremity. Claimant was offered an injection for pain, which he declined. Claimant was returned to work with no use of the right hand. (Jt. Ex. 3, pp. 38-39)

On May 10, 2017 claimant told his employer his carpal tunnel injury was caused by his work with Fusion. (Ex. D, p. 2)

A First Report of Injury completed by the employer indicates Fusion had notice of an injury on either May 13, 2017 or May 15, 2017. (Ex. E)

Claimant testified he tried to return to work with Fusion with the restrictions given him by Dr. Chimenti. He said his employer could not accommodate his restrictions. Claimant last worked at Fusion on May 9, 2017.

An ergonomic analysis was performed on claimant's job by the AF Group. The job analysis indicates claimant was not present for the evaluation. The job analysis found claimant completed 100-200 pieces per day. The analysis found claimant's job with Fusion had a low to medium exposure for developing carpal tunnel syndrome. (Ex. D)

Claimant testified pictures shown at Exhibit D accurately represented his job.

Claimant was evaluated on August 7, 2017 by Brian Willis, M.D. with the Steindler Clinic. Claimant indicated his symptoms on the right worsened after surgery. Claimant was assessed as having bilateral carpal tunnel syndrome. Dr. Willis recommended repeated EMG testing. Dr. Willis opined, within a reasonable degree of medical certainty, the development of symptoms was not related to claimant's work at Fusion. (Jt. Ex. 5, pp. 50-53)

Claimant returned to Dr. Chimenti. Claimant's pain on the right was worse following surgery. A repeat EMG was discussed. Various treatment options were also discussed. Claimant was to continue using his wrist splint and was prescribed prednisone. Claimant was returned to work with no use of the right hand. (Jt. Ex. 3, pp. 40-42)

In a January 17, 2019 report, Mark Taylor, M.D., gave his opinions of claimant's condition following an IME. Claimant indicated his job at Fusion required repetitive use of his fingers, hands, and wrists. Claimant told Dr. Taylor he noticed numbness and tingling in his hands two to three months after starting the job. (Ex. 1, pp. 1-2)

Claimant had decreased strength in the right hand. Claimant had pain in the right forearm and palm. Claimant had numbness and tingling in the fourth and fifth fingers on the right. Claimant had left hand numbness. Claimant was assessed as having bilateral carpal tunnel syndrome and persistent bilateral hand numbness and pain, right worse than left. (Ex. 1)

Dr. Taylor believed it was more likely than not claimant's work activities were a significant contributing factor to his condition. This was based largely on the fact that claimant had worked for decades in a job that did not require repetitive hand activity. Months after beginning with Fusion, in a job requiring repetitive gripping, pinching and grasping, claimant developed carpal tunnel syndrome. (Ex. 1, pp. 7-8)

Dr. Taylor found claimant had a 23 percent permanent impairment to the right upper extremity. This converted to a 14 percent permanent impairment to the body as a whole. He recommended claimant avoid forceful grasping or gripping and avoid vibratory or power tools. (Ex. 1, pp. 8-9)

In an August 8, 2019 report, Charles Mooney, M.D. gave his opinion of claimant's condition following an IME. Claimant had severe pain in his right hand. Claimant indicated he avoided using the hand for most activities. Claimant avoided writing with a pen, as use of a pen increased his symptoms. Claimant was using a night splint. Dr. Mooney found claimant had a severe carpal tunnel syndrome. (Ex. A, pp. 1-8)

Dr. Mooney opined claimant's bilateral carpal tunnel syndrome preexisted his employment with Fusion. He opined any symptoms from his employment with Fusion would have been only a brief exacerbation of claimant's preexisting condition. Dr. Mooney also opined it was medically implausible claimant had no symptoms prior to his employment with Fusion. (Ex. A, pp. 8-9)

Dr. Mooney opined claimant reached maximum medical improvement (MMI) on August 11, 2017. He found claimant had a 20 percent permanent impairment to the right upper extremity. He found claimant had no permanent impairment to the left upper extremity. He opined claimant did not require additional medical treatment. He opined claimant could return to work using his right hand but should avoid repetitive activities. (Ex. A, pp. 9-10)

In an August 27, 2019 report, Dr. Taylor indicated he reviewed the ergonomic analysis of claimant's job, Dr. Mooney's IME report, and other records. Dr. Taylor's review of the additional records did not change his opinion that claimant's job at Fusion caused claimant's carpal tunnel syndrome. (Ex. 11)

He found claimant had a 12 percent permanent impairment to the left upper extremity converting to a 7 percent permanent impairment to the body as a whole. When combining the permanent impairment to both upper extremities, claimant had a 20 percent permanent impairment to the body as a whole. (Ex. 11)

Claimant testified he has not had surgery on his left hand due to the very poor results with surgery on his right upper extremity. Claimant says he has a lot of pain in his right hand and has difficulty holding items.

Claimant said he did not believe he could return to work full time given the problems he has using his right hand. Claimant said he has not worked since leaving

Fusion. He said he has not looked for work since leaving Fusion. Claimant says he does not believe he can use his hands to work. Claimant takes over-the-counter medication for pain.

## CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained an injury that arose out of and in the course of employment.

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. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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). Unrebutted expert medical

testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Claimant was 58 years old at the time of hearing. Claimant worked for approximately 30 years in Puerto Rico as a recreational coordinator. Claimant testified he had well-controlled diabetes diagnosed in approximately 2009. There is no record in evidence claimant had any preexisting problems with his hands, wrists, or his upper extremities before working with Fusion.

In April of 2016 claimant began working as a small parts assembler for Fusion. The job required repetitive twisting, pinching and grasping over an eight-hour day. This was the first job claimant ever had requiring the use of both hands for repetitive small parts work.

Claimant first saw a physician regarding his problems with his upper extremities in December of 2016. In January of 2017 diagnostic testing showed claimant had bilateral carpal tunnel syndrome. (Jt. Ex. 1, p. 3; Jt. Ex. 2, p. 15)

A job analysis of claimant's position was performed by the AF Group. The evaluation was performed by a person by the name of Bill Luebke. The analysis was apparently commissioned by defendants. There is no evidence in the record who the AF Group is. There is no evidence in the record what Mr. Luebke's background, experience or qualifications are. (Ex. D)

Mr. Luebke opined claimant had a low to medium exposure for developing carpal tunnel syndrome. His analysis indicates claimant handled between 100-200 parts per day. (Ex. D, p. 2)

An Employee Assembly Results Report from Fusion indicates claimant actually handled between 200-300 parts per day. During some weeks, claimant averaged in excess of 350 parts per day. (Ex. 6, pp. 23, 24, 27, 29)

The ergonomic report suggests the risk factor for claimant's job is from low to medium for developing carpal tunnel syndrome. The study was paid for by defendants. The testing was performed by a person whose credentials are unknown. The job analysis indicates claimant was not present for the evaluation. The study dramatically underreports the amount of parts claimant handled per day. Given these issues, it is found the ergonomic report, at Exhibit D, is not convincing regarding causation of claimant's injury.

Dr. Willis evaluated claimant once for an IME. Dr. Willis opined he did not believe, within a reasonable degree of medical certainty, claimant's symptoms were related to his work at Fusion. (Ex. C, p. 6) There are several problems with Dr. Willis' opinions. Dr. Willis based his opinion, in large part, on the ergonomic report. As noted above, that report has been found not convincing regarding the issue of causation. Dr. Willis opined causation is based, in part, on information in Dr. Chimenti's evaluation that claimant did heavy labor for many years. The record in this case indicates that is incorrect. Third, Dr. Willis based his opinion on causation, in part, on claimant's alleged late reporting of a work injury. Dr. Willis did not consider claimant's language barrier. Dr. Willis apparently has no information that claimant had never worked a repetitive production job involving small parts. Given the problems with his opinion, the opinions of Dr. Willis regarding causation are found not convincing.

Dr. Mooney also opined claimant's job at Fusion did not cause claimant's carpal tunnel syndrome. Dr. Mooney indicated:

> It is my opinion the medical record provides clear evidence that Mr. Toro-Prado's findings of bilateral carpal tunnel syndrome preexisted his employment with Fusion Incorporated. It is my opinion that the

> independent ergonomic job analysis clearly demonstrates that there is very low risk of either aggravating, or causing carpal tunnel syndrome based on the measurements taken.

(Ex. A, p. 8)

There is no evidence in the record claimant had any preexisting carpal tunnel syndrome symptoms before his employment with Fusion. As noted, the ergonomic report is found not convincing regarding the issue of causation in this case. For these reasons, the opinions of Dr. Mooney regarding causation are found not convincing.

Dr. Taylor opined it was more likely than not that claimant's work with Fusion significantly contributed to his carpal tunnel syndrome. His opinion of causation is based on claimant's job history. Claimant worked for 30 years as a recreational director with no evidence of problems in either upper extremity. In April of 2016 he began working in a job requiring repetitive pinching and squeezing. Claimant had never worked in this environment before. Based on the temporal relationship between claimant starting a new job and ultimately developing carpal tunnel symptoms, Dr. Taylor believed claimant's work at Fusion significantly contributed to claimant's condition. As Dr. Taylor's opinions are corroborated by claimant's job history, and his development of carpal tunnel symptoms, it is found his opinions regarding causation are more convincing than those of Dr. Mooney or Dr. Willis.

Claimant had no preexisting history or problems with his hands or upper extremities. Claimant's work at Fusion involved repetitive use of his hands. After claimant began working at Fusion he developed carpal tunnel symptoms. The opinions of Dr. Mooney and Dr. Willis regarding causation are found not convincing. The opinions of Dr. Taylor regarding causation are found convincing. Given this record, claimant has carried his burden of proof he sustained an injury that arose out of and in the course of employment with Fusion.

The next issue to be determined is if claimant's claim for bilateral carpal tunnel injury is barred by application of failure to give timely notice to his employer under Iowa Code section 85.23.

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days of the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice for actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notices met when the employer, has a reasonably conscientious manager, is alerted of the possibility of the potential compensation claim through information which makes the employer aware that the injury occurred and it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W.91 (1940).

The 90-day limit for notice does not begin running until the employee, acting reasonably, should know the injury is both serious and work connected. Robinson v. Dept. of Transportation, 296 N.W.2d 809, 812 (1980).

The time period both for giving notice and filing a claim does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness, and probable compensable character of the injury. The reasonableness of claimant's conduct is to be judged in light of claimant's education and intelligence. Claimant must know enough about the condition or incident to realize that it is work connected and serious. Claimant's realization that the injurious condition will have a permanent adverse impact on employability is sufficient to meet the serious requirement. Positive medical information is unnecessary if information from any source gives notice of the condition's probable compensability. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256 (Iowa 1980); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

To have actual knowledge, an employer must have information that an injury might be work-related. Robinson v. Department of Transp., 296 N.W.2d 809, 911 (Iowa 1980); Johnson v. International Paper Co., 530 N.W.2d 475, 477 (Iowa App. 1995). General information that a claimant has a physical problem without more is not sufficient notice. Johnson, 530 N.W.2d at 477.

The last day of work for an employee has been used in other cumulative injury cases as the date of injury. Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992). The last day of employment has been found to be an appropriate manifestation date because whatever impact the injury and disability will have on the employee's employability manifests itself when the employee leaves the employer's workforce. Meier v. John Deere Dubuque Works of Deere & Company, File No. 5002128 (App. July 22, 2004).

The record indicates claimant gave notice to his employer of a work injury on either May 10, 2017 (Ex. D, p. 2) or May 13, 2017. (Ex. E, p. 2) It should be noted that in the First Report of Injury, it indicates defendants first knew of claimant's injury on May 15, 2017. The addendum to the First Report of Injury shows the employer first had knowledge of the work injury on May 13, 2017. (Ex. E, p. 2)

Claimant testified he began noticing carpal tunnel symptoms in either October or November of 2016. (Tr. pp. 29-30, 49; Ex. 8, p. 41) While claimant had symptoms, the record indicates claimant did not miss work. In December of 2016 claimant mentioned symptoms to his family doctor. (Jt. Ex. 1, pp. 1-3)

Claimant had EMG testing done on January 12, 2017. It revealed claimant had carpal tunnel syndrome. (Jt. Ex. 2, p. 15)

On February 3, 2017 Dr. Chimenti evaluated claimant for bilateral carpal tunnel syndrome. Claimant had symptoms on the right for about six months, and one month on the left. The record indicates claimant worked for many years as a heavy laborer and his injury was not work related. (Jt. Ex. 3, p. 28)

As detailed above, claimant did not work as a heavy laborer. Claimant testified he did not believe, at the time he saw Dr. Chimenti, his injury was work related. This is because Dr. Chimenti asked him if he had an accident at work. Because claimant did not have a specific traumatic accident, he told Dr. Chimenti his injury was not work related. (Tr. pp. 31-32, 55-56)

On February 17, 2017 claimant had carpal tunnel surgery on the right. (Jt. Ex. 2, p. 20)

As detailed above, the time period for giving notice does not begin to run until a claimant knows the injury is both serious and work-related. The reasonableness of claimant's conduct is judged by his education, intelligence, and experience. Robinson at 911; Herrera at 288-289.

Given this record, it is found claimant did not know he had serious injury until it was explained to him that he had bilateral carpal tunnel syndrome on January 12, 2017. (Jt. Ex. 2, pp. 14-15)

It is clear from the record that when claimant saw Dr. Chimenti on February 3, 2017, he was still unclear his carpal tunnel syndrome was work related. The record indicates because he did not have a traumatic work injury, claimant did not know his carpal tunnel syndrome was considered a work injury.

Claimant had surgery on his right upper extremity on February 17, 2017. It was not until that surgery that claimant first missed work due to his carpal tunnel syndrome. It is a little unclear from the record when claimant actually knew his carpal tunnel syndrome was work related. Claimant indicated on both his application for long-term disability benefits and for Social Security Disability benefits he believed his disability began on February 17, 2017. (Ex. I, p. 1; Ex. K, p. 1) Because claimant was first off work for his injury on February 17, 2017, and because his applications for long-term disability and Social Security Disability benefits indicate his disability began on February 17, 2017, it is found claimant first knew, or should have known, his condition was work related was on February 17, 2017.

Claimant gave notice to his employer either on May 10, 2017 or May 13, 2017. Claimant first knew his condition was work related on February 17, 2017. As the period of time between February 17, 2017 to May 13, 2017 does not exceed 90 days, it is found claimant's claim is not barred by application of Iowa Code section 85.23.

This is not an easy case. As noted above, claimant began having symptoms in his upper extremity in October or November of 2016. Claimant knew at the time of his EMG studies in January of 2017 he had carpal tunnel syndrome. He indicated at that time he worked a lot with his hands.

However, this is a case involving a claimant who has no prior experience doing factory work. Claimant speaks little English. He began with Fusion in April of 2016. This was the first time claimant had done repetitive work in a factory type of environment. The record is clear that in his 30 years as a recreational supervisor, claimant had no problems with his upper extremities. It is clear from claimant's meeting with Dr. Chimenti in early February of 2017 claimant did not believe, at that time, he had a work injury because he did not have a traumatic injury. It is found claimant has work-related bilateral carpal tunnel syndrome. Given the facts in this case, it is found claimant's claim for benefits is not barred by application of Iowa Code section 85.23.

The next issue to be determined is whether the injury is a cause of temporary disability.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

Claimant was off work beginning May 9, 2017 due to his carpal tunnel syndrome. This was because his employer could not accommodate his restrictions. The parties stipulate the commencement of permanent partial disability benefits should be August 12, 2017. Claimant is due healing period benefits from May 9, 2017 through August 11, 2017.

The next issue to be determined is whether claimant's injury resulted in a permanent disability. Claimant had surgery on the right upper extremity in February of 2017. He credibly testified his symptoms on his right upper extremity have worsened since surgery. Claimant still has pain and limitations in both upper extremities. Dr. Taylor and Dr. Mooney both opine claimant has permanent impairment in his right upper extremity. Given this record, claimant has carried his burden of proof his work injury resulted in a permanent disability.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

Claimant sustained a permanent disability involving two members caused by a single accident. As a result, his injury is compensated as a scheduled member benefit under Iowa Code section 85.34(2)(s).

Dr. Taylor found claimant had a 23 percent permanent impairment to the right upper extremity. (Ex. 1, p. 8) Dr. Mooney opined claimant had a 20 percent permanent impairment to the right upper extremity. (Ex. A, p. 9) Dr. Taylor's notes indicate he assessed a slightly higher rating for claimant's right extremity, as claimant is right-handed. Because Dr. Taylor's rating takes into account claimant is right-hand dominant, and because the record indicates claimant still has a great deal of problems with his right upper extremity, it is found Dr. Taylor's rating is more convincing than that of Dr. Mooney. A 23 percent permanent impairment to an upper extremity converts to a 14 percent impairment to the body. Guides, p. 439.

Dr. Taylor also found claimant had a 12 percent permanent impairment to the left upper extremity converting to a 7 percent permanent impairment to the body as a whole. Guides, p. 439. The combined values for both upper extremities results in a 20 percent permanent impairment to the body as a whole. (Ex. 11) Given this record, claimant is due 100 weeks of permanent partial disability benefits (20% x 500 weeks).

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

As claimant's bilateral carpal tunnel syndrome has been found to be an injury arising out of and in the course of employment, defendants are liable for medical expenses, including medical mileage, related to the treatment of claimant's bilateral carpal tunnel syndrome.

The final issue to be determined is costs. Costs are reimbursed at the discretion of this agency. The only cost in dispute in this case is whether defendants are liable for costs associated with the rebuttal report by Dr. Taylor. The rebuttal report by Dr. Taylor is in response to the late submission of an IME report by Dr. Mooney. The record indicates defendants had agreed to allow claimant to submit the late rebuttal report by Dr. Taylor, given the late submission of the report by Dr. Mooney. (Tr. pp. 8-17) Given this record, defendants are to pay costs. This includes the costs of Dr. Taylor's rebuttal report, which will be reimbursed under rule 876 IAC 4.33.

ORDER

Therefore, it is ordered:

That defendants shall pay claimant healing period benefits from May 9, 2017 through August 11, 2017 at the rate of two hundred ninety-six and 18/100 dollars ($296.18) per week.

That defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the rate of two hundred ninety-six and 18/100 dollars ($296.18) per week commencing on August 12, 2017.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be 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. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

That defendants shall be given credit for benefits previously paid under Iowa Code section 85.30(2).

That defendants shall reimburse claimant for costs associated with Dr. Taylor's IME.

That defendants shall pay claimant's medical expenses as detailed above.

That defendants shall pay costs, including costs associated with Dr. Taylor's rebuttal report.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 23rd day of January, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Valerie Foote (via WCES)
Lindsey Mills (via WCES)
Laura Schultes (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.