BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LIDIA TORRES-SIMENTAL,

Claimant,

vs.

JOHN MORRELL & CO. d/b/a CURLY'S,

Employer,

and

SAFETY NATIONAL CASUALTY CORP.

Insurance Carrier,
Defendants.

File No. 5058138

ARBITRATION

DECISION

Head Notes: 1100, 1108, 1803, 2500, 3000, 3002

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Lidia Torres-Simental, filed her original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on January 27, 2017. Claimant alleged she sustained work-related injuries on November 12, 2014. (Original notice and petition)

For purposes of workers' compensation, John Morrell & Co. d/b/a Curly's, is insured by Safety National Casualty Corp. Defendants filed their answer on March 31, 2017. The defendants admitted the occurrence of the work injury to the bilateral upper extremities condition but denied the occurrence of any other work injuries. A First Report of Injury was filed on August 17, 2015.

The hearing administrator scheduled the case for hearing on November 14, 2017. The hearing took place in Sioux City, Iowa at the Iowa Workforce Center. The undersigned appointed Ms. Carin Eckhoff, as the certified shorthand reporter. She is the official custodian of the records and notes. Mr. Frank Gonzalez acted as the official Spanish interpreter.

Claimant testified on her own behalf. Defendants called Ms. Kris Lee, RN, Occupational Health Nurse, to testify at the hearing. Joint Exhibits 1 through 9 were admitted. Claimant offered Exhibits 1 through 7. The parties also submitted post-

hearing briefs on December 19, 2017. The case was deemed fully submitted on that date.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;

2. Claimant sustained an injury on November 12, 2014 which arose out of and in the course of her employment;

3. The alleged injury is a cause of both temporary and permanent disability;

4. Healing period benefits are no longer an issue;

5. The parties agree any weekly benefit rate should be paid at $345.30 per week;

6. Defendants waive any affirmative defenses they may have had available to them;

7. Prior to the hearing, defendants paid claimant twenty-seven point five (27.5) weeks of permanent partial disability benefits at the rate of $345.30 per week; and

8. The parties agree claimant has paid the costs listed in her attachment.

ISSUES

The issues presented are:

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

2. The commencement date for the payment of any permanent partial disability benefits

3. Whether defendants are liable for certain medical expenses pursuant to Iowa Code section 85.27; and

4. Whether defendants are liable for the cost of the functional capacity evaluation performed by C. Robert Adams, M.D.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and Nurse Lee at hearing, and after judging the credibility of each witness, plus after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is 58 years old. She is single and resides in South Sioux City, Nebraska. Claimant was born in Mexico and attended school there for nine years. Claimant immigrated to the United States in October of 1988. She worked as a babysitter, a dishwasher in California, and as an assistant cook in a Chinese Restaurant. She moved to the Sioux City area approximately 20 years ago. For 7 months, claimant worked at TURPAK, shredding turkey. Then she started at Curly's where she has remained employed.

Claimant speaks some English but primarily she speaks, reads and writes Spanish. Claimant testified her supervisor speaks some Spanish so she does not need to speak much English at work.

Claimant works with knives, hooks or she engages in packaging products. She is right-hand dominant. Her primary job is trimming fat from ribs and breaking bones. Claimant performs the job in a standing position. She testified she works a ten-hour shift and sometimes she works five hours on Saturdays. Claimant testified she holds her knife in her right hand. She holds her rib in her left hand. (Transcript, pages 13-14) Claimant testified she uses her hands repetitively all day long. (Tr., p. 14) Claimant trims the meat products as they pass before her on the assembly line. (Tr., p. 14)

Claimant sustained a work-related injury on November 12, 2014. A forklift driver was driving his vehicle when he hit a pallet with a combo on it. The combo hit two steel doors and pushed them open. The doors slammed into claimant and knocked her to the ground. The pallet broke and struck claimant. Claimant testified her left hand, legs, buttocks, and right knee were all affected by the accident. (Tr., pp. 15-16) Claimant testified her entire left side from her neck down to her knee was impacted. (Tr., p. 16)

During her direct examination, claimant admitted she had problems with her legs prior to the date of the work injury. (Tr., p. 17) On June 9, 2014, claimant presented to Siouxland Community Health Center in Sioux City, Iowa. She reported she had hit her right leg at work three days prior and her right leg was red and swollen. (Jt. Ex. 2, p. 55) Claimant placed the level of pain as an 8 on an analog scale of 1 to 10 with 10 being the worst pain imaginable. (Jt. Ex. 2, p. 55) Claimant was diagnosed with "Cellulitis and abscess of other specified sites." She was told to go to a hospital emergency room. (Jt. Ex. 2, p. 57)

On June 25, 2014, claimant presented to Mercy Medical Center in Sioux City, Iowa. She was examined by Victor Idahosa, M.D. Claimant reported the following medical history to the physician:

> The patient claimed she was well until 2 weeks ago when she struck her right leg at work, her right leg became swollen with associated erythema and pain, which has been progressive. She describes her pain as sharp, intensity of 10 out of 10, nonradiating. She was seen at St. Luke's Hospital on 06/09/2014. She was given IV ceftriaxone, oral ciprofloxacin and ibuprofen and sent home. The patient claims her right leg pain was temporarily relieved when she takes ibuprofen, but redness, swelling and pain has been progrossive [sic]. She denies any aggravating factors. No fever, no chills, no nausea, no vomiting, no diarrhea, no abdominal pains. No headaches.
>
> She will be admitted to the medical ward for treatment of right leg cellulitis.

(Jt. Ex. 3, p. 112)

Claimant was placed on a broad-spectrum antibiotic with vancomycin and Zosyn. Claimant had right leg swelling but no signs of acute swelling. Claimant had chronic lymphedema and induration because of vascular insufficiency. Claimant was discharged the following day. The physician advised claimant to avoid standing for long periods of time and to lift her legs when sitting. (Jt. Ex. 3, pp. 115-116) Claimant was restricted from working for 7 days. (Jt. Ex. 3, p. 118)

Claimant was hospitalized for a month due to an infection in her right leg. She was diagnosed with cellulitis initially. (Jt. Ex. 1, p. 10) She presented to the Sioux City Emergency Department on June 9, 2014. Fady F. Jabre, M.D., diagnosed claimant with cellulitis, varicose vein of the right leg, and venous insufficiency. (Jt. Ex. 1, p. 16)

Claimant was at St. Luke's Regional Medical Center on July 1, 2014 with right leg complaints. Denise S. Hanisch, M.D., treated claimant. Dr. Hanisch found significant swelling to the right lower extremity, erythema to the right lower extremity. There was pain with palpation but no open wounds. The treating physician found an area of redness that extended from the midfoot to almost the knee region. Dr. Hanisch diagnosed claimant with cellulitis of the right leg. Claimant was admitted to the hospital. (Jt. Ex. 1, pp. 20-21) Claimant was administered IV antibiotics. A PICC line was placed in a satisfactory position. Claimant was also administered subcutaneous Lovenox. (Jt. Ex. 1, p.27) A pharmacist was obtained to follow and adjust the Vancomycin therapy as clinically indicated. (Jt. Ex. 1, p. 31)

Daniel Lamptey, M.D. was asked to consult on claimant's case. Dr. Lamptey diagnosed claimant with "Sepsis, secondary to severe right lower extremity cellulitis." (Jt. Ex. 1, p. 36) Claimant was hospitalized for a month due to the infection in her right leg. Eventually, claimant was referred to a vein specialist.

On November 26, 2014, claimant presented to Tracey Pick, ARNP, at Unity Point Occupational Medicine Clinic, following the November 12, 2014 work injury. The photocopies of the medical records from the clinic were all of such poor quality it was very difficult for the undersigned to read the exhibits provided. In claimant's exhibit 7, page 8, Nurse Pick diagnosed claimant with left hand and wrist sprain, left thumb pain, lumbar sprain, left hip pain, and bilateral foot and ankle pain. (Ex. 7, p. 8) The nurse practitioner imposed various restrictions for the left upper extremity and the foot. (Ex. 7, p. 8)

Claimant returned to Tracey Pick on December 3, 2014. Claimant complained of having right upper extremity and neck pain from overuse since she was restricted in the use of her left upper extremity. (Ex. 7, p. 7) Bracing was ordered.

On December 12, 2014, claimant returned to see Nurse Pick. Claimant still had left and right upper extremity pain. She complained of cervical and lumbar strain, and left sciatica pain. Claimant had returned to regular duty. (Ex. 7, p. 6)

Claimant visited the clinic on January 5, 2015. She reported her cervical and lumbar strain had improved. Her left sciatica had also improved. Claimant still experienced left hand, wrist and thumb pain. The nurse injected the thumb and wrist. Claimant was restricted from using her left hand for 24 hours. (Ex. 7, p. 5)

Claimant saw Nurse Pick on January 15, 2015. (Ex. 7, p. 1) Another injection was administered. Claimant was restricted from using her left hand for 24 hours. (Ex. 7, p. 1)

Finally, claimant reported to Nurse Pick on February 16, 2015. Claimant was still having difficulties with her left hand, wrist and thumb. An EMG was ordered. (Ex. 7, p. 3) The results showed mild to moderate carpal tunnel syndrome. (Ex. 7, p. 2) Claimant was referred to Russell DeGroote M.D. (Ex. 7, p. 2)

Dr. DeGroote's initial examination of claimant occurred on March 3, 2015. She complained of left hand pain, occasional numbness that ran down to her thumb, and constant wrist pain. Claimant reported she had problems when she used a hook in her left hand. (Jt. Ex. 6, p. 171) Dr. DeGroote diagnosed claimant with "Mild to moderate carpal tunnel syndrome left side." (Jt. Ex. 6, p. 172) The physician injected the carpal tunnel with Decadron. He returned claimant to work with restrictions.

On March 10, 2015, claimant returned to Dr. DeGroote for follow up care. (Jt. Ex. 6, p.173) Claimant reported cramping at the base of her left thumb and she reported some pain radiating into the left elbow. Dr. DeGroote opined most of claimant's symptoms were related to the CMC joint. The physician commenced a progressive work hardening program.

Claimant returned to Dr. DeGroote on March 24, 2015 because of significant palpable tenderness at the base of the first metacarpal. The physician injected the joint with Decadron. (Jt. Ex. 6, p. 176)

The next appointment occurred on April 29, 2015. Claimant had significant complaints about her left wrist, and especially the first CMC joint. (Jt. Ex. 6, p. 177) Dr. DeGroote diagnosed claimant with osteoarthritis localized primarily involving the hand. (Jt. Ex. 6, p. 178) Claimant's restrictions were increased to occasional pinch, pull, and grasp. (Jt. Ex. 6, p. 178)

On May 13, 2015, claimant had a detailed discussion with Dr. DeGroote about the condition of her left hand. The physician wrote in his clinical notes for the same date:

> **Dr. DeGroote's Summary of HPI:** She returns to clinic today to follow up on her left hand. She is still having severe pain in the first CMC joint and developed some De Quervain's on top of that. She has not been allowed to use a thumb spica brace at work [.] She is working two hours of regular duty with a knife and hook and then she works six hours packing or unpacking boxes. She localizes the pain primarily to the first CMC joint, would rate it as an 8/10. She would like to proceed with surgery to her first CMC joint.

(Jt. Ex. 6, p. 179)

By June 10, 2015, Dr. DeGroote opined it was reasonable to proceed with a first CMC arthroplasty of the left hand with allograft. The physician did not believe claimant would improve with time, as she had undergone many conservative measures. (Jt. Ex. 6, p. 184)

On August 4, 2015, Dr. DeGroote performed a first carpometacarpal arthroplasty with allograft. (Jt. Ex. 7, pp. 1-2) There were no intraoperative complications. Claimant tolerated the procedure well. (Jt. Ex. 7, pp. 1-2)

Claimant visited Dr. DeGroote for a follow-up examination on August 11, 2015. There were no significant complaints of pain. The staples were removed. (Jt. Ex. 6, pp. 185-186) Claimant was advised to commence gentle range of motion exercises of the fingertips.

Ten days later, claimant returned to Dr. DeGroote. Claimant rated her pain as 3/10. She described her pain as "burning". Claimant was released to work with one-arm duty only. (Jt. Ex. 6, pp. 187-188)

On September 25, 2015, Dr. DeGroote examined claimant. He rated her left wrist pain at 4/10. Claimant explained she had been using her left hand because she developed "significant tendonitis to her right elbow and wrist." Claimant reported her right upper extremity was aching. (Jt. Ex. 6, p. 191) Claimant was advised to use her

left hand occasionally to trim ribs. She was also prescribed supervised physical therapy. (Jt. Ex. 6, p. 192)

On October 12, 2015, Dr. DeGroote referred claimant to physical therapy for six sessions. Work hardening was increased too. (Jt. Ex. 6, p. 194) Dr. DeGroote opined claimant had "some right lateral epicondylar pain likely associated with overuse on that side for [sic] as a compensatory problem." (Jt. Ex. 6, p. 194)

On October 26, 2015, claimant saw Dr. DeGroote again. Claimant was advised to continue with her work hardening program. She was performing her regular duties two hours per day. (Jt. Ex. 6, p. 195) Dr. DeGroote informed claimant that she could wear her brace on an as-needed basis. (Jt. Ex. 6, p. 196)

Clamant returned on November 16, 2015. She was not at maximum medical improvement. (Jt. Ex. 6, p. 198)

Dr. DeGroote examined claimant on December 7, 2015. The surgeon diagnosed claimant with unilateral primary osteoarthritis of the first carpometacarpal joint and lateral epicondylitis of the right elbow. (Jt. Ex. 6, p. 200) Claimant was not at maximum medical improvement, but she could return to work with restrictions. (Jt. Ex. 6, p. 200)

On December 21, 2015, claimant returned to the surgeon with complaints of right wrist pain. (Jt. Ex. 6, p. 201) Claimant also had pain in her right shoulder. Claimant was working light duty by cleaning the floors. (Jt. Ex. 6, p. 201) Dr. DeGroote conducted a physical examination of both upper extremities. He noted:

> ...On examination of her left hand, she got a full range of motion to the thumb, no pain. Full range of motion to the wrist, no pain. On examination of the right forearm, some mild tenderness to the right lateral epicondyle but otherwise she has got a full range of motion.

(Jt. Ex. 6, p. 202)

Dr. DeGroote recommended claimant start a work hardening program of two hours per day and increase two hours per week. The surgeon also suggested a home exercise program for the right upper extremity. (Jt. Ex. 6, p. 202)

On January 11, 2016, claimant continued to complain about her right wrist. She indicated her pain was an 8-9/10 on the analog pain scale. Claimant described the pain as aching and burning. (Jt. Ex. 6, p. 23) Dr. DeGroote noted claimant had some tenderness to the right lateral epicondyle. She had full range of motion to the shoulder, elbow, wrist, and hand. Claimant was counseled to continue with her work hardening program. (Jt. Ex. 6, p. 204)

On January 25, 2016, claimant visited Dr. DeGroote. Claimant complained of bilateral arm pain on a scale of 8-9/10. (Jt. Ex. 6, p. 205) Claimant returned to full-duty work. Both elbows were painful. (Jt. Ex. 6, p. 205) Claimant had tenderness to the

lateral epicondyle at both the right and left sides. (Jt. EX. 6, p. 206) She had pain with resistance. Dr. DeGroote ordered a Medrol Dosepak for claimant. Claimant was placed on one-arm duty with a 2.5 pound lifting limit on the left side. (Jt. Ex. 6, p. 206)

The next appointment occurred on February 5, 2016. Claimant reported she had improved since she was working light duty. (Jt. Ex. 6, p. 207) Claimant had significantly less tenderness to the right lateral epicondyle. (Jt. Ex. 6, p. 207) Claimant remained on light duty. (Jt. Ex. 6, p. 208)

Claimant returned to Dr. DeGroote on February 22, 2016. She had bilateral arm pain in the range of 3-4/10. Claimant indicated she was bothered by the cold. Dr. DeGroote ordered physical therapy. (Jt. Ex. 6, pp. 209-210)

On March 7, 2016, claimant returned to Dr. DeGroote for follow up care. She rated her pain as 2/10 for her bilateral arms. (Jt. Ex. 6, p. 211) Claimant had excellent range of motion to the wrist and almost no pain to the lateral epicondyle. Supervised physical therapy was continued. (Jt. Ex. 6, p. 212)

Claimant's next appointment occurred on March 21, 2016. Claimant reported her bilateral arm pain was 4/10. (Jt. Ex. 6, p. 213) Dr. DeGroote noted claimant's elbows were doing great and her right arm had dramatically improved. (Jt. Ex. 6, p. 213) Claimant experienced pain with active resistance to extension of the thumb. She had a positive Finkelstein's test. (Jt. Ex. 6, p. 214) Dr. DeGroote ordered a soft thumb spica for claimant's left thumb. The surgeon also limited claimant's work activities with the left hand. (Jt. Ex. 6, p. 214)

On April 4, 2016, claimant again saw Dr. DeGroote for her bilateral arms. Claimant's right upper arm had completely healed. She just had some residual pain to her De Quervain's. Claimant was not using her splint. Claimant felt she could return to regular duty. (Jt. Ex. 6, p. 215) Dr. DeGroote placed claimant at maximum medical improvement on April 4, 2016. Claimant was returned to work without restrictions. (Jt. Ex. 6, p. 216)

Dr. DeGroote was asked to provide permanent impairment ratings for claimant. On June 2, 2016, the surgeon rated claimant's left upper extremity. The report is duplicated below:

> History: This very pleasant woman suffered a chronic degeneration of the left first CMC joint requiring resection arthroplasty.
>
> Physical Exam: Limited
>
> Diagnostic Imaging: Not required
>
> Analysis: Using table 16-27 she has a 11% impairment of the upper extremity.

> Impairment Rating: Using the Guides to the Evaluation of Permanent Impairment 5th edition. [sic] She has a permanent impairment of 11% of the upper extremity.

(Jt. Ex. 6, p. 217)

On April 14, 2017, Dr. DeGroote rated the right upper extremity. The surgeon determined claimant had normal vascular and neurologic exams. She had full and symmetric range of motion. There was no pain with provocative maneuvers. Dr. DeGroote did not find there was any permanent impairment to the right hand according to the AMA Guides. (Jt. Ex. 6, p. 218)

Claimant was seen by Mark W. Nielsen, M.D. at the Siouxland Vein Center on June 8, 2017. There were complaints of swelling, and heaviness with dull, aching, cramping, and sharp pain of both legs. The right leg was worse than the left one. (Jt. Ex. 8, p. 221) The treatment was not authorized as treatment resulting from a work-related injury.

Dr. Nielsen wrote in the patient history:

> Ms. Torres Simental has been experiencing swelling and heaviness with dull, aching, cramping and sharp pain of both legs, right worse than the left associated with varicose veins of both legs, right more than the left, for many years and it appears to be getting worse over time. She states that these symptoms are interfering with her daily activities and quality of her life whereby she has pain and swelling that is made much worse when standing as required at her job. Ms. Torres Simental claims there is not a family history of varicose veins and has worn compression grade stockings for 3 months without relief of her pain and swelling. The patient has had phlebitis, has no known history of DVT, no known history of pulmonary embolism and has no known bleeding from veins. The patient has not had sclerotherapy in the past, cannot recall having a sonogram, has not had any prior vein surgery and has no history of hemorrhoids. The patient has no history of IV drug use, has no history of AIDS/HIV and/or hepatitis, has had no trauma to the legs and has no history of clotting disorders. She is gravida 3, para 3.

(Jt. Ex. 8, p. 221)

Dr. Nielsen diagnosed claimant with symptomatic varicose veins/venous insufficiency of the bilateral lower extremities. (Jt. Ex. 8, p. 223) The vein specialist recommended the following procedures:

Recommended Procedures:

1. **Endovenous radiofrequency ablation of the right great saphenous vein (CPT code 36475)**

2. **Chemical ablation of the varicose veins of the right lower extremity (CPT code 36471-3 sessions)**

3. **Chemical ablation of the left posterior thigh perforator vein and associated varicose veins (CPT CODE 36471-3 sessions)**

(Jt. Ex. 8, p. 224)

On July 28, 2017, claimant underwent a radiofrequency endovenous ablation of the right great saphenous vein from the proximal calf to the saphenofemoral junction. (Jt. Ex. 8, p. 228) On August 1, 2017, Dr. Nielsen performed ultrasound venous mapping of the right lower extremity and an ultrasound-guided chemical ablation of the varicose veins of the right medial thigh, medial knee, and proximal medial lower leg. (Jt. Ex. 8, p. 238) On August 16 and 17, 2017, Dr. Nielsen performed ultrasound-guided chemical ablation of the varicose veins of the anterior and medial lower leg and the left posterolateral thigh and the associated varicose veins of the left posterior thigh, popliteal fossa, and posteromedial calf. (Jt. Ex. 8, pp. 244-249) An additional chemical ablation procedure was performed on claimant's left leg on August 29, 2017. (Jt. Ex. 8, p. 250)

Pursuant to a request from claimant's counsel, C. Robert Adams, M.D., performed an independent medical examination on September 29, 2017. Dr. Adams is board certified in adult and pediatric neurology. Claimant had the benefits of a friend and a formal interpreter during the course of the examination. Claimant complained of problems with her right leg, aching pain and discomfort in the left arm, hand, neck, wrist and shoulder. She attributed all of her health issues to work-related injuries. (Jt. Ex. 9, p. 256) Claimant reported her right leg had greatly improved since she had undergone the various procedures Dr. Nielsen had performed.

In the physical examination Dr. Adams conducted, he noted in relevant portion:

> Motor exam reveals very mild weakness of intrinsic hand spread bilaterally. She had mild weakness of thumb-to-index finger opposition 4/5 on the left as compared to the 4+/5 on the right. She had decreased grip strength only up to 6 Kg on the right and 4 Kg on the left with formal dynamometer testing. Proximal arm strength is, otherwise, intact. Lower extremities strength was intact proximally and distally. Coordination was okay without marked tremor, drift, microkinesia, bradykinesia, or other Parkinsonian features. Sensation is symmetrical to vibration and touch with a variable Tinel's sign on percussion of the wrists. Deep tendon reflexes are 1- in the upper extremities, 1- in the lower extremities. She can walk on her heels and toes. She can bend over and come near her toes. She was able to walk comfortably in 2-inch heel sandals.

(Jt. Ex. 9, p. 261)

Dr. Adams opined claimant incurred cervical neck strain, lumbosacral back strain, left shoulder and arm contusions and bruising. The cause resulted when she was hit by the door thrown forward by the forklift and she fell. (Jt. Ex. 9, p. 261) Claimant sustained some cervical and lumbosacral back pain with mild stiffness of the left shoulder and arm. There was no marked shoulder arthropathy or rotator cuff dysfunction. (Jt. Ex. 9, p. 261)

With respect to the left upper extremity, Dr. Adams opined:

> She has persistent carpal tunnel symptoms on the left where she has not been operated on. It is pertinent that she does have numbness of the left thumb and pain in the left thumb and in the palm of the hand, which are likely related in part to carpal tunnel syndrome. Wrist extension exercises are appropriate for carpal tunnel syndrome at this point. If progressive or persistent numbness or wrist and arm pain are occurring, consideration for carpal tunnel release may be in order.
>
> Ms. Torres does have persistent arthritis at the CMC joint with some discomfort and tenderness on extension with some tendinitis persistent causing swelling, pain, and discomfort, in the base of the left thumb. This with carpal tunnel syndrome does affect and decrease her grip strength on the left and predisposes her to pain.

(Jt. Ex. 9, p. 261)

Dr. Adams opined claimant had a permanent impairment to the left hand as a result of the work injury on November 12, 2014. In his report, Dr. Adams wrote:

> With regard to her left hand, she has some persistent CMC arthritis without subjective improvement regarding her ability to grip and with onset of pain with repeated gripping and pulling. Further procedures to the CMC joint or wrist or hand bones would not likely be appropriate or in order. If she develops progressive numbness and tingling of the left hand or progressive symptoms of forearm and palm pain, consideration for carpal tunnel release could be made. In the meantime, she should do some wrist extension exercises and range of motion of her wrist on a regular basis. She should not be lifting over 5 pounds with her left hand on an occasional but not continuous regular basis. She should only be lifting up to 5 pounds with her left hand up to chest level and not above due to propensity to drop objects and due to weakness, pain, and discomfort in her hand.
>
> Permanent impairment of the left upper extremity would have to take in to account diminished grip strength and dexterity that limits ability to lift and manipulate with the left hand and arm. Both her grip strength and pincher strength is diminished in the left upper extremity. She has had at least

> 50% loss of strength of grip and diminished ability to manipulate with the left hand. This would give her at least 20% impairment of the left upper extremity, which would correlate with at least 12% impairment of her whole person per Tables 16-31, 16-32, 16-33, 16-34, 16-2, 16-3, and other examples and suggestions given in the American Medical Association Guides to the Evaluation of Permanent Impairment. Note that this is definitely more than Dr. Degroote's [sic] left upper extremity impression of 11%. He failed to take in to account her carpal tunnel entrapment that has not been operated on.
>
> It should be noted that she has had to "favor" the left hand, using predominantly her right hand. This has put stress on her right side and has undoubtedly brought out some issues with tendonitis in the right hand and arm. This includes possible issues of carpal tunnel that could affect and decrease grip strength and ability to manipulate with her right hand.
>
> Permanent impairment with regard to her left upper extremity, shoulder and neck pain, would have to consider some residual neck stiffness and aching and post-whiplash type phenomenon. It would however be 0% per DRE Cervical Category I, Table 15-5, Criteria for Rating Impairment Due to Cervical Disorders.

(Jt. Ex. 9, pp. 262, 263)

Dr. Adams also opined claimant's right leg conditions were related to several instances of trauma that occurred at work. However, the independent medical evaluator did not find any permanent impairment to the right leg. He indicated both legs were "not markedly symptomatic" at the time he examined claimant. (Jt. Ex. 9, p. 256)

Subsequent to receiving the report from Dr. Adams, defendants retained the services of Douglas W. Martin, M.D., to conduct an independent medical evaluation of claimant and to write a report. (Jt. Ex. 4) The examination occurred on October 13, 2017. Claimant was accompanied by a family member who acted as an interpreter for claimant.

Dr. Martin assessed claimant as having:

1) Left carpal tunnel syndrome; currently asymptomatic

2) History of left CMC joint arthritis, status post resection arthroplasty and tendon transfer

3) Bilateral digital and hand degenerative joint disease/osteoarthritis

4) History of low back pain

5) History of cervical spine pain

(Jt. Ex. 4, p. 158)

Dr. Martin rated claimant as having a 15 percent permanent impairment to the left upper extremity. (Jt. Ex. 4, p. 161) The evaluating physician based his rating on the AMA Guides to the Evaluation of Permanent Impairment, 5th ed. Dr. Martin saw no need for any work restrictions. He opined claimant could return to full trimming duties. The evaluating physician stated no other condition warranted an impairment rating. (Jt. Ex. 4, p. 163)

RATIONALE AND CONCLUSIONS OF LAW

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.

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, 908, 76 N.W.2d 756, 760-61 (1956). It 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, 135, 115 N.W.2d 812, 815 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 375, 112 N.W.2d 299, 302 (1961).

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

Expert testimony may be buttressed by supportive lay testimony. Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 380; 101 N.W.2d 167, 170 (1960).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

It is the determination of the undersigned deputy workers' compensation commissioner; claimant has successfully established she sustained significant injuries to her left upper extremity. There are three separate ratings for the left upper extremity. Dr. DeGroote rated claimant as having an 11 percent permanent impairment to the left upper extremity. Dr. Martin rated claimant as having a 15 percent permanent impairment to the left upper extremity. Finally, Dr. Adams rated claimant as having a 20 percent permanent impairment to the left upper extremity.

It is the determination of the undersigned; the opinion of Dr. Adams best approximates the impairment rating claimant has to her left upper extremity. Dr. Adams opined claimant continues to display symptoms of carpal tunnel syndrome. Dr. Adams restricted claimant to lifting more than five pounds on an occasional basis only.

Then there was the credible testimony of claimant. She stated she is unable to open her thumb properly. (Tr., p. 25) The underside of her thumb is painful. Claimant testified she is unable to use her thumb to hold something. (Tr., p. 25) If she holds something with her thumb for an extended period of time, her left arm becomes numb. She places the object underneath her hand to hold onto an object. (Tr., p. 26) Claimant testified she cannot grab products weighing more than 10 pounds. (Tr., p. 26)

In light of the above, it is the determination of the undersigned; claimant has a 20 percent permanent disability to the arm. Pursuant to Iowa Code section 85.34(2)(m) claimant is entitled to fifty weeks of permanent partial disability benefits commencing from April 4, 2016 and payable at the stipulated weekly benefit rate of $345.30 per week. Defendants shall take credit for all permanent partial disability benefits previously paid to date.

Interest on the unpaid balance shall be paid as follows:

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 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).

Claimant has not established by a preponderance of the evidence that her varicose vein problems are related to work. Claimant had been treated for complaints of bilateral leg pain prior to November 12, 2014, as evidenced by the synopsis of her medical treatment listed previously in this decision. Claimant did have chronic venous insufficiency with cellulitis. (Jt. Ex. 1) On June 25, 2014, claimant was in the emergency room at Mercy Medical Center. She was diagnosed with severe right leg pain secondary to right leg cellulitis. Claimant had been experiencing difficulties with her right leg on and off since 2011. Claimant visited the emergency room at St. Luke's

Hospital on July 1. 2014. Again, she was treated for cellulitis. This time she was hospitalized until July 6, 2014.

Dr. Nielsen at the Siouxland Vein Center diagnosed claimant with symptomatic varicose veins/venous insufficiency of the bilateral lower extremities. There was pain and swelling in both legs. The right leg was worse than the left. Dr. Nielsen never attributed claimant's varicose veins to her employment or to the fall on November 12, 2014. Dr. Martin did not relate the condition to claimant's employment. Claimant did not request workers' compensation benefits for her varicose vein procedures at the time she was experiencing difficulties. The matter was not even brought to light until after Dr. Adams authored his report following his independent medical examination on September 22, 2017. Even then, Dr. Adams commented on the number of traumatic injuries claimant had sustained to the right leg. Dr. Adams noted claimant developed significant cellulitis and possible sepsis. Nowhere in his report did Dr. Adams relate claimant's cellulitis or sepsis in the right leg to the work injury on November 12, 2014. Moreover, Dr. Adams did not provide a permanent impairment rating for claimant's bilateral lower extremities.

After considering the record in its entirety, claimant has not established she has sustained any injury to her lower extremities as a result of her employment. Claimant takes nothing in the form of weekly benefits or medical care from the workers' compensation system for her bilateral legs.

Defendants are only liable for the medical costs related to claimant's left upper extremity pursuant to Iowa Code section 85.27. 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).

Claimant is requesting the cost of the independent medical evaluation by Dr. Adams in the amount of $2,500.00. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Gamble v. AG Leader Technology, File No. 5054686 (App. April 24, 2018).

Here defendants are liable for the $2,500.00 independent medical examination. Dr. DeGroote had rendered an impairment rating prior to the rating of Dr. Adams. Claimant followed the procedures established in Iowa Code section 85.39. Defendants are liable for the cost of the independent medical examination.

The final issue is the matter of costs. Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010). The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

The following costs are taxed to defendants:

$100.00 filing fee

Unknown cost of the service fee

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant fifty (50) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of three hundred forty-five and 30/100 dollars ($345.30) and commencing from April 4, 2016.

Defendants shall take credit for twenty-seven point five (27.5) weeks of benefits previously paid at the rate of three hundred forty-five and 30/100 dollars ($345.30).

All past due benefits shall be paid in a lump sum together with interest as allowed by law and as explained in the body of the decision.

Defendants shall pay the cost of the independent medical examination of Dr. Adams in the amount of two thousand five hundred and 00/100 dollars ($2,500.00).

Defendants are responsible for past and future medical costs to treat the left upper extremity.

Defendants shall pay the costs as detailed in the decision.

Defendants shall file all reports as required by law.

Signed and filed this 27th day of February, 2019.

Michelle A. McGovern

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.