

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DILCIA ANTUNEZ ERAZO,

Claimant,

File Nos. 21012704.01; 21008748.01

vs.

BRAND FX BODY COMPANY,

Employer,

ARBITRATION DECISION

and

CNA INSURANCE COMPANY,

Insurance Carrier,
Defendants.Headnotes: 1100; 1108; 1800; 1801.01;
1802; 1803; 2500**STATEMENT OF THE CASE**

Claimant, Dilcia Antunez Erazo, filed two petitions in arbitration seeking workers' compensation benefits against Brand FX Body Company, employer, and CNA Insurance Company, insurance carrier, as defendants. The agency file numbers are 21012704.01 for an alleged work injury date of February 10, 2021, and 21008748.01 for an alleged work injury date of June 23, 2021.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner, hearing for these matters commenced on March 14, 2023, via Zoom. The record consists of the testimony of the claimant, Dilcia Antunez Erazo, Jamie Gonzalez, Barbara Vasquez, and Nina Harbaugh, as well as joint exhibits 1-7; claimant's exhibits 1-15; and defendants' exhibits A-B.

These matters were considered fully submitted on May 2, 2023, upon the filing of the defendants' brief. Claimant had previously filed her brief on April 10, 2023.

ISSUES**File No. 21012704.01**

1. Whether claimant sustained an injury arising out of and in the course of employment on February 10, 2021;

2. Whether the injury of February 10, 2021 was the cause of temporary disability from November 21, 2022 to December 5, 2022, and again from February 16, 2023 to the present;
3. Whether claimant's alleged injury was industrial in nature;
4. Whether claimant's alleged injury resulted in a permanent disability and, if so, the extent;
5. Whether claimant's recovery is limited to a schedule, per Iowa Code section 85.34(2)(v);
6. The commencement date of benefits, if any are awarded;
7. Whether claimant is entitled to reimbursement of medical expenses;
8. Whether claimant is entitled to reimbursement of an IME pursuant to Iowa Code section 85.39;
9. Future medical treatment;
10. Whether claimant is entitled to costs.

File No. 21008748.01

1. Whether the injury of June 23, 2021 was the cause of temporary disability from November 21, 2022, to December 5, 2022, again from February 16, 2023, to the present;
2. Whether claimant's alleged injury was industrial in nature;
3. Whether claimant's alleged injury resulted in a permanent disability and, if so, the extent;
4. The commencement date of benefits, if any are awarded;
5. Whether claimant is entitled to reimbursement of medical expenses;
6. Whether claimant is entitled to reimbursement of an IME pursuant to Iowa Code section 85.39;
7. Future medical treatment;
8. Whether claimant is entitled to costs.

STIPULATIONS

File No. 21012704.01

The parties stipulate claimant sustained an injury arising out of and in the course of her employment with defendant employer on February 10, 2021. Claimant was off work from November 21, 2022, to December 5, 2022.

All affirmative defenses are waived.

At the time of the alleged February 10, 2021 injury, claimant's gross earnings were \$564.00 per week. At all times material hereto, claimant was married and entitled to six exemptions. The parties agree that the weekly benefit amount for the February 10, 2021, injury is \$404.43.

The parties agree that the fees and prices charged for the medical services are fair and reasonable and that the defendants will not offer contrary evidence.

File No. 21008748.01

The parties stipulate claimant sustained an injury arising out of and in the course of her employment with defendant employer on June 23, 2021. Claimant was off work from November 21, 2022, to December 5, 2022.

All affirmative defenses are waived.

At the time of the alleged June 23, 2021 injury, claimant's gross earnings were \$634.00 per week. At all times material hereto, claimant was married and entitled to six exemptions. The parties agree that the weekly benefit amount for the June 23, 2021, injury is \$452.82.

The parties agree that the fees and prices charged for the medical services are fair and reasonable and that the defendants will not offer contrary evidence.

FINDINGS OF FACT

Claimant was born in Honduras where she completed the fifth grade. She immigrated to the United States in 2016. At all relevant times, claimant was married with five children. Four of them reside with claimant.

Her past employment history includes working at a meat processing plant and a dairy farm. She began working for defendant employer on December 29, 2020. Claimant asserts she sustained an injury to her back on February 10, 2021 (File No. 21012704.01). Defendants have denied this claim. Claimant also asserts that she sustained an injury to her right upper extremity on or about June 23, 2021 (File No. 21008748.01). Defendants have accepted this injury.

On or about February 10, 2021, at 1:10 pm, claimant was lifting a door mold for a fiberglass utility truck body with a co-worker, Danielle Dahlgren, when she felt a pop in her hip, waist area, and pain in her low back and down her right leg. (CE 1:1) Nina Harbaugh, a safety supervisor, testified that these molds weigh thousands of pounds and that there would never be a situation where the buckets would be lifted overhead. Instead, a hoist is used, and the buckets are lifted only a few inches off the ground. They are then pushed and moved around.

Claimant reported the injury to Tammy, the HR manager, and an incident report was filled out. (CE 1:1) Ms. Harbaugh testified that an interpreter was provided but there are at least two errors on the report. First, the report states the claimant is not married. She is married¹. Second, the report identifies the date of injury as February 10, 2020, and not February 10, 2021. (CE 1:3)

Claimant testified that Tammy informed claimant that no doctor's appointment was available until the following day and that claimant would have to return to work on February 11, 2021, or she would not be able to see the doctor.

On February 11, 2021, claimant was seen by Sara Thorkildsen, ARNP. (JE 1:1) In the records, claimant reported that she felt pain in her low back while working on February 10, 2021. (JE 1:2) Claimant explained that her job tasks included lifting parts for assembly. Id. She and her partner were not in sync which left claimant handling a greater weight. Id. She felt something "unattached" in her back. Id. Since then, she had increased pain. Id. She rated her back pain an 8 on a scale of 10 and described it as primarily in the right side of her low back radiating into her knee. Id. The pain was sharp and worsened with activity and improved with rest. Id. Claimant self-treated with Tylenol, ice, back cream and massage, but did not find relief. Id.

During the examination, claimant had pain with forward bending and leaning backward. (JE 1:3) Claimant was not able to walk on her toes or heels, nor was she able to squat. She had a positive straight leg raise test and was unable to perform a cross leg test. Id. She had palpable muscle spasms to the right paraspinal muscles. Id. ARNP Thorkildsen administered 60 mg ketorolac for pain, prescribed naproxen, prednisone, and Flexeril. (JE 1:4) Claimant was also advised to limit lifting at work to 10 pounds. Id.

On March 1, 2021, claimant was seen by Selena Meacham, ARNP for back pain, which had improved per the claimant's report. (JE 1:7) Claimant wished to return to work without restrictions. Id. ARNP Meacham released claimant to return to work without restrictions and advised claimant to return if worsening symptoms surfaced. (JE 1:8-9) Claimant's prescription for Naproxen was renewed. Id.

¹ Defendants stipulated to claimant being married with six exemptions but then asked several questions of claimant as well as her husband concerning the location and date of the wedding. While the claimant was not able to recall the date of the wedding, she stated that the ceremony took place at the Christian Church of Monticello and the party took place at a hall in the library of Pocahontas, Iowa. There was snow on the ground, and she believed that the date was at some point between November and December. Mr. Gonzalez testified as well. He had been sequestered. He testified the wedding took place in Rolfe in a little hall. Defendants did not challenge the stipulation later and it stands.

On or about June 23, 2021, at approximately 12:00 pm, claimant was putting clamps on a part when she felt pain in her left hand radiating into the shoulder and down into the fingers. (CE 2:2) Her fingers felt numb. The clamps are made out of a black metal, possibly iron. The upper part of the clamp is a threaded rod. The clamp is tightened by twisting the rod until the upper and lower portions make contact with the object between the clamp's surfaces. (CE 3)

On June 28, 2021, claimant returned to ARNP Thorkildsen, but this time to report pain in the hand. (JE 1:11) Since the previous Wednesday, she had been working with pliers. Id. Following this work, she felt pain, numbness, tingling. Id. She rated her pain 7 out of 10, and described the pain as throbbing that worsened with movement of her shoulder. Id. She reported pain in the right shoulder to the biceps tendon with radiation down the right arm to the palm. Id. In the review of symptoms section, it was noted that claimant was negative for arthralgia, myalgia, and back pain with exception of the right hand pain and tenderness. (JE 1:12) Claimant was positive for the following tests: Neers impingement; Hawkins impingement; belly press; lift off; apprehension; Jobe; and empty can. (JE 1:13) ARNP Thorkildsen diagnosed claimant with acute right shoulder pain and right shoulder tendonitis. Id. X-rays were ordered, naproxen was prescribed, and work restrictions of no lifting more than 10 pounds and no lifting overhead were issued. Id.

On July 6, 2021, Claimant returned to ARNP Thorkildsen for complaints of right shoulder and wrist pain, which she rated 5 out of 10. (JE 1:18) Claimant indicated that the pain had improved since the previous week. Id. She was taking naproxen and resting her shoulder. Id. However, she was continuing to work which caused pain when she moved her arm and wrist in repetitive movements. Id. ARNP Thorkildsen continued to diagnose claimant with right shoulder tendonitis. (JE 1:20) Claimant was continued on light duty and given a referral to orthopedics.

July 19, 2021, claimant was seen by Jacob Rittgers, D.C. for right lower back and right mid back to right shoulder pain, all of which were attributed to claimant's work. (JE 2:1) Claimant and Dr. Rittgers communicated via Google translate. Dr. Rittgers wrote: "Patient stated that this was not to be a work comp case following a conversation from an individual at work. She states that this did, however, happen at work. She states that she fell on her right shoulder and right hip." (JE 2:1) Claimant did not have pain with Straight Leg Raiser Test, Bechterew's test, or Lhermitte's Sign test. (JE 2:2) Claimant indicated moderate segmental level pain at left pelvis, sacrum and L5 on the Kemp's test. Id. The Belt test resulted in increased pain on unsupported flexion on the left and right, greater on the left. Id. The Distraction test resulted in relief of segmental level pain, greater on the right. Id. With the Shoulder Depression test, claimant indicated pain that was moderate to severe bilaterally, greater on the right at C7/T1 with non-radiating pain. Id. All dermatomal findings were normal, as were gross touch and vibrations. Id. Her active range of motion in the lumbar regions was normal but with pain and stiffness in extension, left lateral flexion, and bilateral rotation. Id. Her range of motion in the cervical spine was also within normal limits, but with pain and stiffness with extension, left lateral flexion, and bilateral rotation. (JE 2:3)

Dr. Rittgers assessed claimant with sciatica, right sided segmental and somatic dysfunction of the lumbar region, pelvic region, and thoracic region. (JE 2:3) He found her to be "of good health" and expected her to "make good progress and recovery with few residuals." Id.

Claimant treated again with Dr. Rittgers on July 22, 2021, and reported improvement. (JE 2:5) At hearing, claimant said that Dr. Rittgers told her that he could not help her much and that she should return to a different doctor for treatment.

Claimant then returned to ARNP Thorkildsen on August 3, 2021, for acute low back pain with right-sided sciatica. (JE 1:23) The summary portion states that patient reported "I went to the chiropractor and recommended I come back to the Dr." (JE 1:23) Claimant was prescribed Flexeril and a Medrol dosepak. (JE 1:25)

On August 3, 2021, x-rays were taken of Claimant's lumbosacral spine. (JE 1:26-27) There was no evidence of acute osseous or alignment abnormality.

On August 18, 2021, claimant was seen by Andrew G. Pick, D.O. for evaluation of right shoulder pain, which she attributed to work. (JE 3:3) Claimant reported shoulder and arm pain, along with numbness and tingling into her hand. Id. X-rays were normal. Id. Hawkins-Kennedy impingement test was positive, Neer impingement test was positive, and Jobe test was positive, consistent with the testing results obtained by ARNP Thorkildsen on June 28, 2021. (JE 3:3) Tinel's sign was positive, Phalen's test was positive, Carpal compression test was also positive. Id. Dr. Pick assessed claimant with right carpal tunnel syndrome and right shoulder pain. Id. He administered an injection to the right shoulder, and recommended an EMG. Id. He believed that the shoulder pain was separate from the hand issues. Id. Dr. Pick returned claimant to work with the same restrictions as previously imposed and instructed claimant to return after the EMG. (JE 3:5)

On September 7, 2021, claimant returned to ARNP Thorkildsen with continued complaints of low back with radiation to the right low back. (JE 1:29) She rated the pain 7 out of 10, and described the pain is sharp. Id. ARNP Thorkildsen recommended physical therapy, but claimant reported that the insurance would not cover it. Id. Claimant reported that her work had been threatening her by asking her for a real name and social security number, whether she had children or husband, and they threatened to send investigators to her home. Id. On examination, claimant was negative for arthragia, myalgia, and positive for back pain. (JE 1:30) ARNP Thorkildsen recommended physical therapy, prescribed Zanaflex and Mobic, and recommended work restrictions of no lifting more than 10 pounds. (JE 1:31)

October 12, 2021, Claimant returned to ARNP Thorkildsen for continued complaints of low back pain radiating down her right leg. (JE 1:40) She reported gradual worsening since January, and rated her pain at 8 out of 10. Id. ARNP Thorkildsen again recommended an MRI and physical therapy. (JE 1:41) Claimant's prescriptions at this

visit included Tylenol 325 mg, diazepam, meloxicam, Medrol dosepak, and ondansetron. (JE 1:45)

A job function evaluation was conducted on October 26, 2021, and it recorded the following physical requirements for claimant's position:

- stand - over 8 hours a day
- walk - 4 hours a day
- sit - 1 hour a day
- fine manipulation of the bilateral hands - under three hours a day
- forceful gripping — none
- lifting and carrying 0-10 pounds all day, 11-25 pounds 3 hours a day, and 25-50 pounds 2 hours a day
- Equipment used — scissors, stapler, fiberglass material, spray glue, scrapers, drill, clamps, air tools

(CE 6)

On December 9, 2021, Claimant returned to ARNP Thorkildsen for follow up of right neck, shoulder, and arm pain radiating into the right hand. (JE 1:47) Despite the work restrictions of no lifting greater than 10 pounds, claimant reported she was being made to lift 18 to 20 pounds four times a day. Id. Additionally, she was hammering with her right hand and this work activity was worsening her pain. Id. She rated her pain 9 out of 10. Id. Her palm had been turning purple in color with numbness, tingling, and swelling of the right hand. Id. The examination was positive for arthragia, myalgia to the right neck and shoulder with radiation to right wrist and hand, and back pain. Id. However, the skin examination was negative for color change, pallor, rash and wound. Id.

Photographs of claimant's palm are included in Exhibit 4, which depict purplish bruising at the base. (CE 4) Claimant could not remember the time she took the photos, but confirmed that they were after she had been using the clamps at work.

ARNP Thorkildsen diagnosed claimant with chronic midline low back pain with right-sided sciatica, numbness and tingling of the right hand, neck pain on the right side, chronic right shoulder pain, and localized swelling on the right hand. (JE 1:48) An MRI of the hand was ordered, and claimant was instructed to follow up with Dr. Deffer for the right hand issues. Id. Her prescriptions at this time were Tylenol 325 mg, diazepam, and meloxicam. (JE 1:50)

On December 12, 2021, claimant underwent an MRI of the lumbar spine. (JE 1:52) The MRI showed a slight disc extrusion at L2-L3 which approached but did not displace the exiting right L2 nerve root, mild bilateral facet arthropathy at L4-L5, and mild bilateral facet arthropathy at L5-S1. (JE 1:52-53)

On December 30, 2021, Claimant returned to the UnityPoint Family Medicine Clinic and was seen by ARNP Meachem for complaints of back pain, radiating to the right hip, the front of the right hip, and down her leg into her foot. (JE 1:56) She reported that the

pain was so severe it was causing nausea. Id. During the examination, claimant was tender in the lumbar back and had decreased range of motion due to pain. (JE 1:57) ARNP Meachem referred claimant to CNOS for further evaluation. Id.

On February 2, 2022, claimant was seen by Scott Feese, PA-C at CNOS for back pain and leg pain, greater on the right than the left. (JE 4:2) Claimant maintained the pain started in February, 2021. Id. The pain radiated into the buttocks, around the anterior thigh and then all the way down into the anterior shin and to the top of her foot, primarily on the right although she did feel some discomfort in the left. Id. She reported she had undergone no physical therapy and no injections, but later stated she had an injection soon after the pain started a year ago.² Claimant said the injection left her weak. Id. PA-C Feese reviewed the MRI, but was unsure whether the pain claimant described was related to the L2-L3 disc extrusion. (JE 4:3) He offered an injection for diagnostic purposes as well as relief. Id. Claimant was reluctant due to the past bad reaction and passed on the treatment at that time. Id. PA-C Feese recommended another injection as well as physical therapy.

On March 16, 2022, claimant was seen by Matthew Johnson, M.D. at CNOS in follow-up for the back pain radiating into the right buttock and occasional right anterior thigh pain. (JE 4:6) Dr. Johnson was not sure whether claimant suffered from a right extraforaminal disc herniation at L2-L3, or a dorsal root ganglion lateral to the foramen. (JE 4:7) His examination of claimant revealed no abnormalities, positive test results, or tenderness. (JE 4:6) He recommended physical therapy and encouraged claimant to consider an L2 transforaminal epidural steroid injection. (JE 4:7)

On April 20, 2022, claimant began physical therapy at Pocahontas Community Hospital. (JE 5:2) Claimant had tenderness to palpation over the right SIJ and low back with mild increase in muscle tone throughout the superior gluteals and gluteus medius. (JE 5:4) She had impaired range of motion and decreased strength. (JE 5:5) Additional therapy occurred on April 22, 2022, April 25, 2022, April 27, 2022, May 4, 2022, and May 6, 2022. (JE 5:7-14) At the May 6, 2022 visit, the therapist noted that the claimant demonstrated minimal to no improvement with therapy and that the exercises worsened her pain. (JE 5:14) Therapy was put on hold until after claimant could see a specialist.

May 5, 2022, claimant returned to ARNP Thorkildsen for follow up for the back pain. (JE 1:59) Claimant believed physical therapy was helping to ease the pain but that she still had pain with standing, mopping and sweeping, which made her job difficult to perform. (JE 1:60) It was noted that claimant had been prescribed zanaflex, valium, mobic, and naproxen with minimal relief. Id. ARNP Thorkildsen recommended claimant follow up with back specialist. (JE 1:62)

On June 15, 2022, claimant returned for follow up with PA-C Feese. (JE 4:9) She maintained that her pain was continuing despite physical therapy and thus agreed to proceed with an injection. Id.

² The records indicate she had an injection of ketorolac on February 11, 2021, and an injection in the right shoulder on August 18, 2021 with Dr. Pick.

On July 7, 2022, claimant received a corticosteroid injection at L2-L3 for lumbar radiculopathy. (JE 6:1-2) At hearing, claimant testified that the injection reduced her swelling but the pain remained.

On August 8, 2022, claimant returned to ARNP Thorkildsen for continued right neck pain radiating to the right wrist. (JE 1:65) She had tried Tylenol, ice, and rest without improvement. Id. At this appointment, claimant exhibited chronic midline low back pain with right neck pain and tenderness that radiated to the right palm. Id. ARNP Thorkildsen recommended claimant return to the pain clinic. (JE 1:66)

On August 17, 2022, claimant returned to Dr. Johnson and reported the injection helped a "little bit". (JE 4:13) She described her pain as starting in her back, radiating down into her buttock, posterior thigh, posterior calf and bottom of her foot. Id. Dr. Johnson noted that this was an SI pattern, whereas the pain was previously described as L3 pattern and L4 pattern pain. Id. He was unclear whether the pain she was currently describing was the same or different from what she had previously reported. Id. Dr. Johnson ordered a new MRI. (JE 4:14)

The August 31, 2022 MRI results showed minimal degeneration of the L2-3 and L3-4 disc spaces but no significant spinal stenosis, disk herniations, or spondylolitheses according to Dr. Johnson (JE 4:21). Comparing the two MRIs, however, there appeared to be slightly worsening conditions. (JE 4:16-17). At L1-L2 disc level, bilateral facet joints small effusion was seen; at L2-L5 disc level, diffuse annular disc bulge with bilateral exit foraminal narrowing, mild central canal stenosis, and bilateral facet joints effusion; at L5-S1 disc level, diffuse annular disc bulge with bilateral exit foraminal narrowing. (JE 4:17-18) Straightened lumbar spine may suggest underlying muscle spasm. (JE 4:16)

On November 21, 2022, claimant was seen by Shane D. Kirkegaard, D.O. and was given a work release until December 5, 2022. (JE 1:68) The note also states when returning to work, Claimant should avoid repetitive motions with her right wrist for an additional two weeks. Id.

Robert Brogrammer, M.D. performed an IME on January 9, 2023, and issued a report based on the same on January 16, 2023. (DE A:1-14) At the time of the examination, claimant's complaints included pain in the right low back, as well as occasional radiation to the right foot. Initially, she denied any additional injuries. However, during the examination claimant mentioned she injured her right hand and repeated the problems she had identified earlier, which include swelling, pain radiating up the arm into the shoulder and neck region, paresthesias with numbness and tingling in the entire right hand in all digits, and hand locks while rolling resin. (DE A:11)

All of her lower extremity tests were negative, except for some tightness in the hamstrings with forced foot dorsiflexion, and decreased sensation in the right lower extremity at all lumbar levels of L1, L2, L3, L4, and L5, as well as S1 nerve distributions. (DE A:11) She was able to heel and toe walk without difficulty and had full range of motion at the lumbar spine. There was no tenderness to palpation of the paraspinous muscles

or of the gluteus medius or the piriformis notch bilaterally. Id. She did have exquisite tenderness with even light touch on the right sacroiliac joint. Id.

For the right hand, Dr. Broghammer did not see any signs of swelling or asymmetry. (DE A:11) The claimant was able to make a complete fist with both hands. Id. There was tenderness to light touch over the proximal carpal row causing vocalizations of pain and withdrawal. Id. Dr. Broghammer concluded there was no difference in comparing the right and left hands, despite the subjective complaints. (DE A:12)

Dr. Broghammer opined that, assuming claimant was credible, she sustained a lumbar strain as a result of the February 10, 2021 incident. (DE A:12) As for the shoulder, Dr. Broghammer maintained claimant never spoke of any shoulder pain, but rather right hand pain that radiated into the arm. (DE A:12) Claimant may have had a temporary shoulder problem that resolved on or about January 9, 2023. Id.

For her right hand, Dr. Broghammer felt that her condition was “more of an intolerance to her occupational activities rather than evidence of an actual true injury” and that for “all practical intents and purposes, appear normal without any difference between the right and left other than subjective complaints of pain.” (DE A:13) He assessed a zero percent impairment for the right hand. Id.

In regard to the lumbar condition, he concluded claimant sustained a lumbar strain. (DE A:13) He attributed the disc extrusion in the MRI as a dorsal ganglion and thus without evidence of a true disc herniation, he assessed zero percent impairment for the low back. Id. He thought that the tenderness in the low back was due to a separate lumbar injury rather than related to the work injury of February 10, 2021, although he did not identify this other injury. (DE A:13-14)

Dr. Broghammer appeared influenced by what he perceived as malingering by claimant. “As noted in the record review and particularly the statement given by Ms. Erazo’s coworker, Danielle Dahgren, there may be secondary gain issues regarding Ms. Erazo’s ongoing subjective complaints and there may be frank issues of possible malingering given Ms. Dahgren’s statement.” (DE A:14)

While Dr. Broghammer mentions this, and is concerned about it, there is little in the medical records to suggest malingering. He stated during the initial subjective component that she did not mention any injury other than the low back but during the examination she spoke of a right hand injury, which was consistent with previous complaints in the medical records, as well as her testimony at hearing.

The statement was not from a Ms. Dahgren, but rather Josephine Hernandez. Ms. Hernandez wrote out a statement dated February 10, 2021, wherein she said that she overheard claimant state she had an argument with her husband because claimant went out with workers from Waco and he pushed her and she “went down on a coffee table”. (DE B:1) Ms. Hernandez stated that a co-worker of the claimant responded, “we already

got a month here and we can get money from here. Tell them you got hurt lifting something and we can go home early and get paid.” Id.

At hearing, there was conflicting testimony. Claimant protested that this statement was a lie and that Ms. Hernandez worked in a different area. Claimant’s husband, Jamie Gonzalez testified that he did not push claimant after an argument. Ms. Hernandez was not available to be cross-examined and because of that, her statement is given low weight.

Barbara Vasquez testified at hearing. She worked for defendant employer and was present in or around the area claimant was working on February 10, 2021. She was working in her own area, but when she finished she went to help the claimant. When Ms. Vasquez arrived, claimant was in pain. She had tears in her eyes. Because of this, Ms. Vasquez accompanied claimant to see the plant nurse, Tammy. At the company’s request, Ms. Vasquez took claimant home that day. Ms. Vasquez also testified that the statement of Ms. Hernandez was false.

Nina Harbaugh, a safety supervisor, testified that on the date of claimant’s injury there were men from the defendants’ Waco, Texas location at the Iowa plant to help with the production of fiberglass utility truck bodies. Ms. Harbaugh also testified that as part of the injury investigation, claimant’s co-worker Danielle Dahlgren was interviewed. In the statement, as testified by Ms. Harbaugh, Ms. Dahlgren stated that she did not see any signs of pain and was not aware that claimant had filed an injury report until later that day. No statement of Ms. Dahlgren is in evidence. The only version of her statement is that which Ms. Harbaugh relayed. Ms. Harbaugh did not believe claimant was injured and discussed this with the operations manager and the HR manager. Claimant was not disciplined for making a false report of injury.

The defendants have argued claimant has created a story about her February 10, 2021 injury and brought up two co-workers of claimant to support that. Neither co-worker was present at the hearing. One co-worker, Ms. Dahlgren, had no written statement. Claimant presented a corroborating witness who was willing to be subject to cross-examination.

Claimant’s medical presentation was consistent, complaining of right sided pain from her low back radiating into her foot and right arm pain radiating up into the shoulder. Her demeanor was straightforward and she answered the cross-examination questions without significant evasion.

It appeared that defendants even tried to suggest claimant was lying about her marital status, challenging claimant on the location and date of her wedding. However, the claimant and her husband identified the same location of the wedding as a hall in Rolfe, Iowa. Based on the foregoing, it is found claimant is a credible witness. The statements of Ms. Hernandez and Ms. Dahlgren are given low weight and to the extent that the statements contradict claimant, the claimant’s version of facts is adopted herein.

Because Dr. Broghammer's opinion was so clearly influenced by the words of Ms. Dahlgren, his opinion is given low weight, since the basis of his opinion (that claimant was a malingerer) has been found to be unreliable.

On January 9, 2023, Sunil Bansal, M.D., issued various opinions regarding causation and extent arising out of the February 10, 2021, and June 23, 2021, alleged injury dates.

At the time of the examination, claimant reported constant low back pain, radiating down her right leg to the level of the anterior thigh. (CE 9:9) Her back fatigued easily, it was difficult to sit and stand for more than 20 minutes, and it was painful to bend forward and to navigate the stairs. Id.

As for her right hand, she continued to have numbness and swelling. (CE 9:9) When she performed a rolling motion at work, she felt a sharp needle-like pain in the palm of her hand. Id. The pain radiated all the way up her arm into her shoulder neck. Id.

On examination, there was tenderness to palpation over the lumbar back and right shoulder, and mild tenderness in the volar aspect of right wrist. (CE 9:10) She had a positive straight leg raise test on the right, full range of motion in both shoulders, a positive Tinel's sign and a positive Phalen's sign in her right wrist, and full range of motion in her right wrist. Id. The range of motion in her back was as follows:

Flexion: 79 degrees

Extension: 33 degrees

Left Lateral Flexion: 27 degrees

Right Lateral Flexion: 30 degrees

(CE 9:10)

Claimant also exhibited a loss of two-point sensory discrimination over the thumb and index finger on the right. (CE 9:10) There was also a loss of sensory discrimination over the distal anterior thigh on the right. (CE 9:11)

Dr. Bansal opined claimant sustained an L2-L3 disc herniation on February 10, 2021. (CE 9:11) He opined that she reached MMI for that injury on September 21, 2022. Id. Due to the disc herniation at L2-L3 with radiculopathy, Dr. Bansal assessed claimant as having sustained a ten percent whole body impairment as a result of the February 10, 2021 incident. (CE 9:12). He recommended permanent restrictions of no lifting greater than 20 pounds, no frequent bending or twisting, and no prolonged sitting or standing greater than 30 minutes at a time. Id. Dr. Bansal also recommended intermittent epidural injections at L2-L3. Id.

For the June 23, 2021 injury, Dr. Bansal opined claimant suffered from a right carpal tunnel syndrome. (CE 9:12) He placed her at MMI as of January 9, 2023, and recommended further testing in the form of an EMG. (CE 9:12-13) He assigned a three percent right upper extremity impairment, which equals a two percent impairment of the

body as a whole. Id. He also recommended she avoid frequent or forceful grasping with the right hand. Id.

Dr. Bansal charged \$3,578.00 for the examination. (CE 13)

Claimant testified at hearing that she has continual pain in her back that pokes into her waist and travels down to the buttocks. She has difficulty standing and sitting, and moving sideways. Claimant works four days a week, six hours a day, at the recommendation of ARNP Thorkildsen. (JE 1:70) She is also able to sit down and take frequent rests and breaks. She also wears a brace on her right hand.

Mr. Gonzalez testified that claimant is not able to stand up for too long, cook, or lie down comfortably. She is always in pain, and because of the right arm injury, she cannot make a fist.

CONCLUSIONS OF LAW

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” refer 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 Elec. 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).

File No. 21012704.01

Claimant maintains she sustained a back injury arising out of and in the course of her employment with defendant employer on February 10, 2021.

There are two competing expert reports in the record. Dr. Bansal, the claimant's expert, causally connects the work claimant was performing on February 10, 2021, to the back symptoms claimant is currently suffering. Dr. Broghammer opined that claimant's back injury was a lumbar strain that resolved by July 19, 2021, when claimant first saw Dr. Rittger, the chiropractor. Claimant first sought out care with ARNP Thorkildsen the day after the injury. She received an injection of ketorolac for pain, given prescriptions for naproxen, prednisone and Flexeril, along with work restrictions of no lifting greater than 10 pounds. By March 1, 2021, claimant reported only mild back pain and requested a full duty work release. This was provided, along with a prescription for Naproxen. Claimant did not seek out additional medical care related to her back until the visit with Dr. Rittgers on July 19, 2021. In the intervening time, claimant had returned to ARNP Thorkildsen for claimant's hand injury. She did not report back pain, and the examination of claimant at the June 28, 2021 visit and the July 6, 2021 visit to ARNP Thorkildsen was negative for back pain. When claimant sought out care from Dr. Rittgers, it was for right-sided pain which she attributed to her work; however, she did mention that she fell. Dr. Rittgers does not speak Spanish, and they communicated using Google Translate. During his examination, he found more left-sided pain than right, and after the second visit, his notes concluded that she was of good health and expected to make good progress and recovery with few residuals. A month later, claimant returned to ARNP Thorkildsen with acute low back pain and right-sided sciatica.

In reviewing the course of claimant's medical history from the February 10, 2021 incident to the August 3, 2021 visit with ARNP Thorkildsen, the medical history more accurately aligns with Dr. Broghammer's opinion. While it was stated in the Findings of Fact that Dr. Broghammer's opinion was given lower weight due to his reliance on the statements of claimant's co-worker, Ms. Dahlgren, as it relates to the back issue, Dr. Broghammer opined that assuming claimant is credible, which is found to be accurate, then claimant's lumbar strain was work related but temporary in nature. It is found that claimant did sustain a work-related injury on February 10, 2021. This injury was the result of moving a fiberglass mold around rather than a fall as she described to Dr. Rittgers. By

July 22, 2021, claimant had improved. Claimant's back injury arising out of and in the course of her employment with defendant employer resolved by July 22, 2021, with no permanent disability. While the low back symptomatology claimant is currently suffering may be related to work activities³, it is not related to the February 10, 2021 injury which involved moving the fiberglass mold and is the subject of this claim.

Dr. Broghammerr opined that claimant achieved MMI following the visit to Dr. Rittgers, and thus the medical bills of Dr. Rittgers are awarded herein. The remainder of the issues are rendered moot by the causation finding.

The issues of the IME and costs are addressed below.

File No. 21008748.01

Defendants stipulate claimant sustained an upper extremity injury arising out of and in the course of her employment with defendant employer on June 23, 2021. They dispute that the injury extends to the shoulder and neck. Claimant's work with clamps caused visible bruising. While the photo exhibits did not have dates, there was corroboration of this bruising in the medical records of ARNP Thorkildsen. On June 28, 2021, when claimant reported this pain to ARNP Thorkildsen, claimant reported that the pain was in the right shoulder and biceps tendon, radiating into the right arm and palm. ARNP Thorkildsen's initial diagnosis was acute right shoulder pain and right shoulder tendonitis. Claimant was eventually referred to Dr. Pick, an orthopedic specialist who administered an injection into the right shoulder for bursitis and inflammation. He also ordered further testing for what he thought might be carpal tunnel syndrome. This testing was never conducted.

Claimant continued to report right shoulder and arm pain to ARNP Thorkildsen in 2021 and throughout 2022. On November 21, 2022, claimant was seen by Shane D. Kirkegaard, D.O. and was given a work release until December 5, 2022. The note references avoiding repetitive motions with the right wrist for an additional two weeks.

However, despite the ongoing reports of shoulder pain, Dr. Bansal did not provide a causation opinion regarding claimant's neck or shoulder. On page 12, Dr. Bansal provides opinions regarding the body parts injured on June 23, 2021, and he writes "Right wrist/hand." He placed claimant at MMI as of January 9, 2023, and recommended further treatment in the form of EMG testing. For restrictions, he recommended she avoid frequent or forceful grasping with the right hand. For impairment, he assigned three percent of the upper extremity, or two percent body as a whole.

Dr. Broghammer opined claimant's residual impairment was zero. In this, it is found that he was strongly influenced by the statement of Ms. Dahlgren and the opinion of Dr. Bansal is adopted herein.

³ There is no medical testimony that would support a finding claimant sustained an aggravation of a pre-existing condition or a previous injury, nor is there medical testimony supporting a cumulative injury claim. Further, neither of these alternative causation arguments were raised at hearing.

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). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

A wrist injury is an injury to the arm, not the hand. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008).

Claimant is entitled to 7.5 weeks of benefits at the stipulated rate of \$452.82, from January 9, 2023.

Claimant is entitled to temporary benefits from November 21, 2022 to December 5, 2022, as this was to avoid repetitive motions with the right wrist. While claimant is working reduced hours compared to her work schedule prior to the injury, there is a lack of evidence to show that those reduced hours are related to her upper extremity injury. The only restrictions Dr. Bansal imposed for the right hand and wrist were no frequent or forceful grasping with the right hand, and nothing regarding reduced work hours. ARNP Thorkildsen, who issued the hourly work restriction, did not provide an opinion as to the reason behind the work restriction. Therefore, no additional temporary benefits beyond the time period of November 21, 2022 to December 5, 2022, are imposed.

Claimant seeks reimbursement of 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).

To the extent medical bills pertain to treatment of the right wrist, hand, and upper extremity, claimant is entitled to reimbursement, which include the UnityPoint medical bills of November 21, 2022, and medical bills of Pocohontas Community Hospital on December 7, 14, 20, 27, and 29, 2022. (CE 14:5, 12-13)

Claimant also seeks reimbursement of the IME of Dr. Bansal pursuant to Iowa Code section 85.39. Dr. Bansal's opinions regarding the low back were not relied upon.

Given that claimant prevailed on the issue of her right wrist, hand, and upper extremity, half of the IME is awarded under Iowa Code 85.39 and IAC 4.33 which allows recovery of reports of medical experts. Additionally, claimant would be entitled to the mileage of \$177.19, which was incurred for claimant to attend defendants' IME.

Claimant is entitled to future medical treatment for her right hand and wrist, including but not limited to, an EMG.

Costs shall be awarded in the form of the report of Dr. Bansal as apportioned above and the filing fee. Claimant seeks reimbursement for the cost of her deposition, but claimant testified live at hearing and her deposition was not used. Therefore, this cost is not assessed against defendants. The cost of the transcript will remain with the defendants.

ORDER

THEREFORE, it is ordered:

File No. 21012704.01

That claimant is entitled to reimbursement of the medical bills of Dr. Rittgers.

File No. 21008748.01

That defendants are to pay unto claimant 7.5 weeks of permanent partial disability benefits at the rate of four hundred fifty-two and 82/100 dollars (\$452.82) per week commencing January 9, 2023.

That defendants shall pay accrued weekly benefits in a lump sum.

That claimant is entitled to future medical care for the right upper extremity, including but not limited to, an EMG.

That claimant is entitled to reimbursement of medical bills incurred as a result of treatment or diagnosis of the right upper extremity injury as described above.

That claimant is entitled to mileage reimbursement in the amount of \$177.19.

That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.


That defendants are to be given credit for benefits previously paid.

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

That defendants shall pay one half of the fee of Dr. Bansal's IME report.

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33 as described above.

Signed and filed this 24th day of August, 2023.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Greg Egbers (via WCES)

Caitlin Kilburg (via WCES)

Tyler Laflin (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, 10A) 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.