BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIM HANSEN, Claimant, vs. WASTE MANAGEMENT OF IOWA, INC. d/b/a/ WASTE MANAGEMENT OF CENTRAL IOWA – DES MOINES, Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	FILED FEB 17 2017 WORKERS COMPENSATION	File No. 5052825 ARBITRATION DECISION Head Note Nos.: 1108, 1803

STATEMENT OF THE CASE

Tim Hansen, the claimant, seeks workers' compensation benefits from defendants, Waste Management of Iowa, Inc. d/b/a Waste Management of Central Iowa-Des Moines, an Iowa employer, and its insurer, Indemnity Insurance Company of North America as a result of an alleged injury on March 6, 2015. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on January 6, 2017, but the matter was not fully submitted until the receipt of the parties' briefs and argument on January 27, 2017. Oral testimony and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Claimant's exhibits were marked numerically. Defendants' exhibits were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Ex. 1-2:4." Citations to the hearing transcript of testimony such as "Tr-4:5 or to a deposition transcript such as "Ex. 14-4" shall be to the actual page number(s) of the original transcript, not to page numbers of a copy of the transcript containing multiple pages or to a page number of an exhibit package.

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. On March 6, 2015, claimant received an injury arising out of and in the course of employment with Waste Management of Iowa, Inc.

2. Claimant is seeking temporary total or healing period benefits only from August 17, 2015 through August 10, 2016 and defendants agree that he was off work during this period of time.

3. The injury was a cause of some degree of permanent disability, but the nature and extent of disability remains in dispute.

4. At the time of the injury, claimant's gross rate of weekly compensation was $919.00. Also, at that time, he was married and entitled to 4 exemptions for income tax purposes. Therefore, claimant's weekly rate of compensation is $605.46 according to the workers' compensation commissioner's published rate booklet for this injury.

5. Medical benefits are not in dispute.

6. Prior to hearing, defendants voluntarily paid 70 weeks of permanent disability benefits at the stipulated weekly rate for this work injury.

ISSUE

The only issue submitted for determination was the nature and extent of claimant's entitlement to disability benefits.

FINDINGS OF FACT

In these findings, I will refer to the claimant by his first name, Tim, and to the defendant employer as Waste Management.

From my observation of his demeanor at hearing including body movements, vocal characteristics, eye contact and facial mannerisms while testifying in addition to consideration of the other evidence, I found Tim credible.

At the time of the hearing, Tim was 47 years old. He was married with two children. Tim grew up in Carlisle, Iowa and graduated from Carlisle High School in 1987. He received no further schooling or training. (Transcript-9:10)

The stipulated work injury involves a crush injury to the left hand. The primary fighting issue is whether this injury extends into the body as a whole due to the alleged onset of chronic regional pain syndrome (hereinafter referred to as CRPS) as a sequelae to the left hand injury.

Although he had prior injuries which resulted in a cervical fusion in 2004 and foot and left knee surgery, the record does not show that Tim had any permanent loss of use to any of his body parts or physician imposed permanent activity restrictions prior to the injury in this case on March 6, 2015. He was able to perform heavy, manual labor work prior to his injury in this case. (Exhibit 5-35)

After approximately three years in a prior job which involved manually delivering 60 lb. propane gas cylinders to various locations, Tim sought and obtained employment on February 9, 2015 at Waste Management, because the job paid $3 more per hour. (Tr-26) Tim's job at Waste Management was Front Load Commercial Driver. Such a job requires the pushing and pulling of large commercial trash containers (dumpsters) to and from a garbage truck that mechanically unloads the containers into the bed of the truck.

Tim was being trained by a co-worker when he suffered his hand injury on March 6, 2015. Tim and this co-worker attempted to maneuver a large dumpster away from a wall in a school parking lot. The dumpster, which weighed approximately 700 pounds, got stuck on some ice, rolled back, and crushed his left hand against a concrete wall. (Tr-27:29; 89:90) The hand was bleeding profusely. He was taken to Iowa Methodist Hospital's emergency room by his supervisor. Jeffrey Rodgers, M.D., a board certified orthopedic surgeon, performed immediate surgery at the hospital upon his diagnoses of crush injury and laceration to the left hand; open fractures of the ring and small metacarpals; small finger displacement; and, profound ulnar neuropathy. (Ex. J1-6)

Tim continued to complain to Dr. Rodgers of numbness, pain, and swelling in his left hand at follow-up visits for a couple of weeks after the surgery. (Ex. J2-23:35) On March 25, 2015, Tim began to report increased symptoms of finger and wrist stiffness, burning pain, and increased numbness moving into his fingers and wrist. (Ex. J7-35:40) On April 13, 2015, Dr. Rogers referred Tim to a pain management specialist to address neuropathic pain from the damage to the ulnar nerves. (Ex. J2- 38) Dr. Rogers kept Tim off work until March 16, 2015 with a restriction against use of the left hand, but immediately took him off work again on March 17, 2015. (Ex. JE-33-34) Dr. Rogers again released Tim back to work on April 13, 2015 with a two-pound restriction on use of the left hand.

On April 17, 2015, Tim began treating with Christian Ledet, M.D., a board certified pain management specialist. Dr. Ledet's assessment was left hand pain, predominantly neuropathic, but insufficient evidence of a diagnosis of CRPS based upon Table 16-16 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Ex. J4-52) To address his pain, Dr. Ledet placed Tim on Gralise, an anti-convulsion medication composed of time-released Gabapentin. (Ex. 11) Although Dr. Rodgers had returned Tim to restricted work, Dr. Ledet took Tim off work on April 20, 2015 because the Gralise made him drowsy and dizzy and therefore he could not drive. (Ex. J4-55) Tim's attorney asserts that Dr. Ledet never lifted that restriction. Due to continued use of Gralise, Dr. Ledet continued to restrict a return to work at

follow-up visits after April 20, 2015. (Ex. J4-59, 60, 66, 78) In June 2015, Dr. Ledet attempted to replace Gralise with topical medication to remove the work restriction, but this attempt failed and Tim was back on Gralise a month later. (Ex. J4-68, 74) It is true that Dr. Ledet never formally removed his restriction from work, but on August 21, 2015, Dr. Ledet deferred to Dr. Rogers concerning Tim's date of MMI (maximum medical improvement) and any restrictions on activity despite continuing Tim on the same dosage of Gralise as before. (Ex. J4-80) He repeated his deference on January 17, 2016 stating in part as follows:

> Expressed to the injured worker that I believe an increase in paced temporal activity is warranted at this time. He states that the ongoing use of Gralise is associated with less pain. At this time continue with the Gralise at the current dose of 1800 mg per day. The injured worker requested additional statements about capacity and restrictions associated with the treatment strategy. I have declined his request for additional comment in this regard. He continues on the current medications proclaiming reduced pain, suffering and disability.
>
> . . . .
>
> I will defer to the assigned occupational medicine physician or orthopedic hand surgeon in regard to date of MMI, PPI, restrictions.

(Ex. J4-83)

Dr. Rogers continued to see Tim while being treated by Dr. Ledet. On June 15, Tim reported that he could not bend his small finger. On August 17, 2015, Dr. Rogers noted that claimant had significant disproportionate pain and disability and had reached MMI. He then performed measurements for the purpose of providing an impairment rating and referred Tim for a functional capacity evaluation (FCE) to determine restrictions. In a letter dated September 25, 2015 to defendants' claims adjuster, Dr. Rogers stated that Tim reached MMI for his injury on August 17, 2015 and suffered a 37 percent permanent partial impairment from lost range of motion of the hand and impairment to the upper extremity, for neuropathy and adopted the results of the FCE as Tim's permanent restrictions. (Ex. J2-45:48) The doctor did not specify use of the AMA Guides, Fifth Edition, but appears to have used section 16.1, pp. 434-439, of these Guides to arrive at his ratings. See Tables 16-1 and 16-2 of the AMA Guides (35% to the hand is 32% to the upper extremity [UE] and 32% of the UE plus 7% of the UE is 37% of the UE) The FCE, performed on August 27, 2015, recommended restrictions on the use of the left upper extremity are as follows:

> Waist to floor lifting – 15 lbs. occasionally
>
> Waist to above shoulder lifting – 2.50 lbs. occasionally
>
> Horizontal push/pull – 70/55 lbs. of force, occasionally

Key pinch, left – 8 lbs. of force, occasionally

Grip, left – 17 lbs. of force, occasionally

Client is unable to safety perform the following job specific activities involving the left upper extremity:

Ladder climbing

(Ex. J5-96)

The FCE also found as follows regarding Tim's ability to return to his job at Waste Management:

Based on the valid effort demonstrated by this client, the following deficits are noted:

1. Lifting capacities inconsistent with the demands of his job.

2. Inability to tolerate sustained or repetitive gripping and/or pinching and/or manipulation requiring fine motor control in the upper extremities.

(Ex. J5-99)

On January 28, 2016, Tim's left hand was evaluated at the request of his attorney by John Kuhnlein, D.O., an occupational medicine physician. Dr. Kuhnlein reports that Tim complained of extreme stiffness and significant pain behaviors with light touch. The doctor noted Dr. Ledet's view that the neuropathic pain was insufficient to diagnose CRPS, but he was concerned that Tim has developed that syndrome and suggested that Tim return to Dr. Ledet to re-evaluate whether or not Tim suffered from CRPS.

On March 25, 2016, Tim returned to Dr. Ledet complaining of more severe hand pain and the doctor reports as follows:

> The patient has a clearly identifiable injury causally related to a work-related event that required surgical intervention and internal fixation of a fracture. While he does not meet sufficient criteria for diagnosis of complex regional pain syndrome based upon criteria as established in the AMA Guides to the Evaluation of Permanent Impairment, fifth edition, table 16-16 on page 496, a change in treatment strategy is certainly warranted.

(Ex. J4-86)

Dr. Ledet then ordered a ganglion or stellite block to see if there is evidence of a sympathetically maintained component to Tim's pain. (Id.)

Tim returned to Dr. Rogers on May 16, 2016 at the request of Dr. Ledet to explore the possibility of hardware removal improving his pain. Dr. Rogers did not think such a removal would improve Tim's function and continued to state that Tim presents with disproportionate pain and disability and that Tim will not get any better until his workers' compensation case is settled. (Ex. J2-46)

Dr. Ledet saw Tim again on May 31, 2016 and reports that Tim received no benefit from the block. (Ex. J4-92) The doctor states that Tim had a degree of atrophy secondary to his lack of use. The doctor also noted skin color changes, but there was no evidence of abnormality of vasomotor or sudomotor activity. (Id.) The doctor also made a reference about hair and nail growth that could not be deciphered from the wording in his notes. (Id.) He still maintains the view that Tim did not meet the criteria set forth in the AMA Guides for CRPS. (Id.) The doctor then prescribed additional medication and continued physical therapy to address the increased pain and other complaints. (Id.) The last record in evidence of Dr. Ledet's treatment was a visit on October 12, 2016. At that time, the doctor reported that Tim reported some pain relief, but that he continued to have inadequately improved physical, functional and psychosocial activity. He continued the same medications for the chronic pain. (Ex. J4-95)

Tim testified that in addition to the purplish discoloration, he also has a burning sensation in his left hand, which is colder than his right hand; extreme reaction to touch, swelling, and decreased range of motion. (Tr. 44:23-25; 45:1-25; 46:1-25; 47:1-15) He is unable to bend his left hand without experiencing severe pain (Tr. 47:20-23) and cannot move his small and ring fingers at all. It hurts when he moves his pointer and middle fingers, though he can move his thumb "a little bit." (Tr. 48:2-6) At the time of the hearing, Tim testified that his pain has progressed from his fingertips to his neck since the injury. (Tr. 48:18-24)

At hearing, I personally inspected Tim's left hand twice during claimant's testimony. First, I touched the hand briefly to feel for a temperature change but claimant quickly withdrew the hand and expressed significant pain from just the light touch. (Tr-45) The touching was too brief to find any temperature difference. The second time occurred during cross-examination after a discussion about a physical therapist's suggestion that the discoloration or redness of the left hand and wrist was due to wearing the wrist splint. Tim testified that he now only uses the splint at night and that he had taken off the splint a 6:00 a.m. on the morning of the hearing. I personally observed definite redness from just above the left wrist to the end of the fingers, and in areas where the splint does not touch, according to Tim. (Tr-69:70)

In a letter to Tim's attorney dated September 20, 2016, Jacqueline Stoken, D.O., another occupational medicine physician, reports that she examined Tim on September 7, 2016. From her examination and review of Tim's medical records, Dr. Stoken diagnosed Tim's left hand injury to have developed into permanent CRPS based on diagnostic guidelines of the "National Guideline Clearinghouse" due to continuing pain disproportionate to any inciting event and more than two years of

hyperalgesia or allodynia; skin color changes, edema and sweating changes, decreased range of motion and motor dysfunction. (Ex. 2-11:12) The doctor also opined that Tim reached MMI on August 10, 2016. (Ex. 2-11) Dr. Stoken further opines that Tim has suffered a 60 percent permanent partial impairment to the whole person due to lost range of motion of the left upper extremity and the loss of use of the left arm due to CRPS. The doctor states that currently Tim is unable to use the left arm for work and most activities of daily living, but may be able to perform sedentary work in the future if his pain is under better control. (Ex. 2-12)

In response to questions posed by Tim's counsel, Dr. Ledet stated on November 11, 2016 that he still is of the opinion that Tim does not meet the criteria under the AMA Guides for CRPS and that he has reviewed the diagnostic guidelines by the National Guidelines Clearing House and found them parallel or similar to the AMA Guides, although not interchangeable. (Ex. 4-27) The doctor did not specify whether Tim did or did not meet the Clearing House guidelines or provide any reasons why he chose to use the AMA Guides rather than other guidelines.

At the request of defendants' counsel, Tim was evaluated by Charles Mooney, M.D., who is also an occupational medicine physician. In his IME report of November 29, 2016, Dr. Mooney agreed with Drs. Rogers and Ledet's impairment ratings and MMI dates. (Ex. A-13:15) He also appears to agree that Tim does meet the Clearing House's, or what he calls the Budapest Criteria's, scoring system for a diagnosis of CRPS, but states that use of the Budapest Criteria is inappropriate because they are inconsistent with the AMA guidelines. (Ex. A-14) He agrees with Dr. Ledet's view that Tim's hand condition does not meet the AMA Guides criteria for a CRPS diagnosis. (Id.) Dr. Mooney did not express an opinion as to which guidelines are superior. The doctor appears to believe the use of the AMA Guides, Fifth Edition, is mandatory.

Dr. Kuhnlein was asked to respond to the appropriateness of the use of the CRPS diagnostic criteria in the AMA Guides, Fifth Edition over the Budapest Criteria. The doctor states that the AMA Guides criteria were developed without peer-review and without evidence of source of the criteria before they were published in 2001. (Ex. 3-21:23) Whereas, the doctor stated the Budapest Criteria was peer-reviewed and validated by peer-reviewed studies and published after the AMA Guides, Fifth Edition. (Id.) Dr. Kuhnlein agrees with Dr. Ledet that the criteria are similar, but adds that what is very different is the scoring system discussed by Dr. Mooney in his report. (Ex. 3-22) Also, the doctor points out that the authors of the AMA Guides, Fifth Edition, claim to have used the latest scientific evidence in providing the criteria. While that may have been the case when the Guides were published in 2001, this is not the case now. (Id.) Such criteria have now been superseded by the Budapest guidelines which is now the consensus view by international pain specialists. (Id.) Dr. Kuhnlein states that he fully agrees with the diagnosis of CRPS and the impairment ratings by Dr. Stoken. (Id.)

Ultimate Findings for the Work Injury

I find the work injury of March 6, 2015, extends beyond the left hand and arm and into the body as a whole due to the onset of CRPS as a result of the work injury. I find that the injury is a cause of a 60 percent permanent impairment to the body as a whole and an inability to use the left arm for work activity. This is based on the diagnosis of CRPS under the Budapest Criteria guidelines as done by Drs. Stoken and Kuhnlein. Use of the AMA Guides, Fifth Edition, for diagnostic purposes is not appropriate pursuant to agency precedent which I will discuss in the Conclusions of Law section of this decision. However, regardless of that agency precedent, I also find that use of the Budapest Criteria to diagnose CRPS rather than the AMA Guides, Fifth Edition, was the most appropriate and convincing diagnostic tool. Dr. Kuhnlein's statements that the AMA guidelines were not peer-reviewed and outdated and that the Budapest guidelines are peer-reviewed and validated by peer-reviewed studies, and that they are now the consensus guidelines internationally is uncontroverted in this record.

Industrial Disability Findings

According to Dr. Stoken, Tim is unable to work due to pain. Given his presentation and testimony at hearing, which I found credible, I find Dr. Stoken's views the most convincing and consistent with Tim's presentation and testimony at hearing which I found credible. I simply did not understand Dr. Ledet's change of view from his consistent restrictions against work due to Tim's medications and then suddenly to defer to Dr. Rogers' views on restrictions which allow a limited return to work. He really did not explain the basis of this change and his notes do not show a significant change in medications, dosage or pain complaints. Dr. Ledet's deferral to Dr. Rogers could be interpreted as an act of loyalty to a referring physician or the result of pressure from defendants. My confusion over his views led me to not giving his views the weight I would normally give to a doctor with Dr. Ledet's qualifications. Also, Dr. Roger's view that claimant would improve upon settlement of the workers' compensation claim suggests that the doctor did not believe his complaints to be real. No other doctor suggests such a thing.

Tim clearly is unable to return to his job at Waste Management or any other work for which he is best suited given his age, education and work experience. While there is no specific restriction from driving, his continued complaints of drowsiness from his medications suggest that commercial driving is no longer an option and personal driving any significant distance is not a safe option. Tim worked primarily in physically demanding jobs, most of which required him to drive and lift. During and after high school, Tim worked as a farmhand, driving tractors and feeding livestock. (Tr-10) He then worked at Monfort, a packinghouse in Marshalltown, and later repossessed cars for five years at Center Recovery & Investigations, as well as driving for Coca-Cola. (Tr-14:15) He then moved to Colorado and worked as a ready-mix driver and operator for three different companies: Aggregate Industries, Brannan Ready Mix, and Asphalt Specialties Company, where he mixed concrete and ran the chutes. (Tr-1516) All of his jobs as a ready-mix operator required him to drive, climb up and down a ladder,

hang chutes, and mix concrete. (Tr-16:18) Following a car accident in which he injured his neck, Tim returned to Iowa with his pregnant wife to work for Liberty Ready Mix. (Tr-17:19) After two years there, Tim was laid off during a recession and took a job with Barker Lemar as a geothermal driller's helper, shoveling out the mud pan and "pretty much whatever the driller needed." (Tr-20:7-14) He later took a job with Northwest Respiratory Services, where he lifted and delivered 30- to 40-pound tanks of oxygen to veterans and nursing homes across the state. (Tr-21:23) After he was injured on that job, he was terminated. (Id.) Tim next worked for Synico Select as a tugger driver, in which he drove a small electric cart and pulled trailers filled with items, weighing up to 15 pounds, which he delivered throughout the warehouse. (Tr-20:23) He worked there for about two years before taking a job with AmeriGas Propane, in which he delivered 60-pound propane cylinders used to power forklifts, previously discussed in this decision. He described that job as "very" physically demanding. (Tr-25)

At the request of his attorney, Tim was evaluated by Lewis Vierling, M.S., a vocational expert. Vierling opines that Tim is not employable. However, he did not base this opinion only on the views of Drs. Rogers and Stoken, but upon a personal assessment of his physical abilities from Tim's description of his symptoms and limitations. Vierling was not shown to possess the medical qualifications to opine as to physical impairments, not verified by medical opinion. Consequently, his views cannot be given full weight. On the other hand, Vierling's view is consistent with Dr. Stoken's view that he cannot work from a medical standpoint.

From examination of all of the factors of industrial disability, it is found that the work injury of March 6, 2015 was a cause of a 100 percent or total loss of earning capacity.

CONCLUSIONS OF LAW

I. 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 treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404.408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 593; 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man." Functional impairment is an element to be considered in determining industrial disability, which is the reduction of earning capacity. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured worker's qualifications intellectually, emotionally and physically; the worker's earnings before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted. Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

I found in this case that the work injury initially was only to the left arm, a scheduled member, but I also found that the injury extended into the body as a whole due to the onset of CRPS which is a cause of a significant permanent impairment to the body as a whole, a nonscheduled loss of use. Iowa has adopted the majority view set forth by Professor Arthur Larson in his treatise on workers' compensation law concerning "spill-over" effects of a scheduled injury. Larson states that if the effects of

the loss of the member extend to other parts of the body and interfere with their efficiency, the schedule allowance for the lost member is not exclusive. 4-87 Larson's Workers' Compensation Law Section 87.02. Therefore, various spill-over conditions resulting from a scheduled injury are now compensated industrially in this state. Collins v. Department of Human Services, 529 N.W.2d 627, 629 (Iowa App. 1995); Blacksmith v. All-American, Inc., 290 N.W. 2d 248 (Iowa 1980) (phlebitis); Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 17 (Iowa 1993) (psychological or mental conditions); Dowell v. Wagner, 509 N.W. 2d 134, 136 (Iowa 1993) (phantom pain); and; Enteshamfar v. UTA Engineered Systems Div., 555 N.W.2d 450 (Iowa 1996) (tinnitus). Specifically, this includes spill-over CRPS. Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660-664 (1961); (chronic regional pain syndrome formerly called Sudeck's atrophy, causalgia or reflex sympathetic dystrophy (RSD); these Courts rejected the argument that these complications or effects which extend beyond the initial location of the injury were anticipated in the schedule.

With reference to the diagnosis of CRPS, defendants assert claimant does not have CRPS using the diagnostic criteria in the AMA Guides, Fifth Edition. However, this agency has rejected the assertion that our administrative rule, 876 IAC 2.4 requires use of the diagnostic criteria for CRPS contained in the AMA Guides, Fifth Edition. This agency finds the AMA Guides, Fifth Edition, to be a useful tool in evaluating loss of use, but cautions that they are just a guide and not binding on this agency, especially where the Guides attempt to limit diagnoses of licensed physicians. These Guides were not adopted as a diagnosis guide and they were not meant to replace Iowa law on causation. Medical professionals are free to diagnose based on the condition and its physical impact on disability. Hornaday v. Jimart Corp. d/b/a Taco Johns, File No. 5035343 (App. March 28, 2013); Ausborn v. City of Mount Pleasant, File No. 5028555 (App, July 26, 2011); Atchison v. Platinum Hospitality, File No. 5016528 (App, September 23, 2008). These are binding precedents for deputy commissioners.

Regardless of agency precedent, a simple reading of rule, 876 IAC 2.4, does not require use of the Guides as the sole means for determining permanent disability. The rules states as follows:

> Nothing in this rule shall be construed to prevent the presentation of other medical opinion or other material evidence for the purpose of establishing that the degree of permanent disability to which the claimant would be entitled would be more or less than the entitlement indicated in the Fifth Edition of the AMA guides.

(Administrative Rule 876 IAC 2.4)

Not only can a physician use other guidelines and tools to diagnose a condition or evaluate the extent of impairment, but even lay testimony and demonstrated difficulties from claimant which are deemed credible must also be considered in determining the actual loss of use. Miller v. Lauridsen Foods, Inc., 525 N.W. 2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Notwithstanding suggestions to the contrary in the AMA Guides, this agency has a long history of recognizing that the actual loss of use which is to be compensated is the loss of use of the body member in the activities of daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions, and other pertinent factors may all be considered when determining scheduled disability. Bergmann v. Mercy Medical Center, File Nos. 5018613 & 5018614, (App. March 14, 2008); Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Comm. Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Bieghler v. Seneca Corp., File No. 979887 (Arb. February 8, 1994); Ruylnad v. Rose's Wood Products, File No. 937842 (Arb. February 13, 1994).

Regardless of the agency precedents, I found that claimant's case for a diagnosis of CRPS was the most convincing for the reasons I provided in the Findings of Fact.

Although claimant is closer to a normal retirement age than younger workers, proximity to retirement cannot be considered in assessing the extent of industrial disability. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). However, this agency does consider voluntary retirement or withdrawal from the work force unrelated to the injury. Copeland v. Boones Book and Bible Store, File No. 1059319 (App. November 6, 1997). Loss of earning capacity due to voluntary choice or lack of motivation is not compensable. (Id.)

Assessments of industrial disability involve viewing a loss of earning capacity in terms of the injured worker's present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 617 (Iowa 1995). However, an employer's special accommodation for an injured worker can be factored into an award determination to the limited extent the work in the newly created job discloses that the worker has a discerned earning capacity. To qualify as discernible, employers must show that the new job is not just "make work" but is also available to the injured worker in the competitive market. Murillo v. Blackhawk Foundry, 571 N.W.2d 16 (Iowa 1997).

In the case sub judice, I found that claimant suffered a 100 percent or total loss of his earning capacity as a result of the work injury. Such a finding entitles claimant to permanent total disability benefits as a matter of law under Iowa Code section 85.34(3), which consists of payments for an indefinite period of time for the duration of the disability. Absent a change of condition, such benefits last a lifetime.

The issue of healing period benefits is moot since permanent total disability benefits commence by law from the date of the injury, March 6, 2015.

ORDER

1. Defendants shall pay to claimant permanent total disability benefits at the stipulated weekly rate of six hundred five and 41/100 dollars ($605.41) per week from March 6, 2015 and continuing thereafter during the period of disability.

2. Defendants shall pay accrued weekly benefits in a lump sum and shall receive credit against this award for weekly benefits previously paid.

3. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

4. Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter.

5. Defendants shall file subsequent reports of injury (SROI) as required by our administrative rule 876 IAC 3.1(2).

Signed and filed this 17th day of February, 2017.

LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

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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.