BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHAWN HUFFMAN,

Claimant,

vs.

CENTENNIAL WAREHOUSING CORPORATION,

Employer,

and

FARMERS INSURANCE EXCHANGE,

Insurance Carrier,
Defendants.



File No. 5062709

ARBITRATION

DECISION

Head Note Nos.: 1803; 2507; 3000; 3002

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Shawn Huffman, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on November 4, 2016. Claimant alleged he sustained a work-related injury on July 28, 2016. (Original notice and petition)

For purposes of workers' compensation, Centennial Warehousing Corporation is insured by Farmers Insurance Exchange. Defendants filed their answer on November 23, 2016. The defendants denied the occurrence of the work injury. A First Report of Injury was filed on August 23, 2016.

The hearing administrator scheduled the case for hearing on August 18, 2017. The hearing took place in Des Moines, Iowa at the Iowa Workforce Development Building at 150 Des Moines Street. The undersigned appointed Ms. Delayne Johnson, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Defendants elected not to call any witnesses to testify at the hearing. Joint Exhibits 1 through 14 were admitted. Claimant offered Exhibits 1 through 11. Defendants' exhibits A through J were admitted. The parties stipulated the record would remain open so defendants could obtain a rebuttal report from Dr. Boulden and a copy of the settlement documents between claimant and Peterson Transportation, Inc. in File No. 5061041. Those two documents were marked as K and L. They were submitted on October 6, 2017. The parties also submitted their

post-hearing briefs on the same date. The case was deemed fully submitted on October 6, 2017.

Exhibit K is the compromise settlement pursuant to Iowa Code section 85.35 that was between claimant and Peterson Transportation, Inc. and its insurance carrier, American Zurich Insurance Co. The settlement was approved by the Division of Workers' Compensation on August 23, 2017. The attorneys stated the bona fide disputes were extent and causation. On page 5 of the settlement papers, the parties agreed in relevant part:

> The terms of said settlement are that the Employer and Insurance Carrier shall pay an amount of forty-two thousand eight hundred eighty-one dollars and zero cents, ($42,881.00). The Claimant shall accept such payments in lieu of any and all benefits which may be provided for under Chapter 85, 85A, 85B, and 86. The parties stipulate that the injury dates specified and settled herein are chosen by the parties to represent the manifestation dates for all injuries, cumulative or traumatic, related to Claimant's conditions as described in paragraph A of these documents, occurring with this employer prior to the date of settlement. Said settlement shall constitute a full, final, and complete settlement and satisfaction of any and all claims under the Iowa Workers' Compensation Law or otherwise, including claims for unpaid medical expenses, unless for authorized and causally related treatment received by the claimant through February 5, 2016, as well as claims of subrogation and/or liens which the Claimant or anyone claiming by and through the Claimant now has or may hereafter have against the employer or insurance carrier, growing out of or resulting from Claimant's alleged injuries as described in paragraph A of these documents, occurring with this employer prior to the date of settlement, with stipulated dates of injury of September 29, 2014, and any condition, or sequelae thereof and any and all disability resulting or which may result therefrom.
>
> It is further agreed by and between the parties that the approval by the Iowa Workers' Compensation Commissioner shall be binding upon the parties and shall not be construed as an original proceeding which tolls the running of the Code of Iowa Section 85.26, or impairs or mitigates the defense of said statute, and that said settlement shall constitute a final bar to any further rights arising under Chapters 85, 85A, 85B, 86, or 87 of the Code of Iowa.
>
> It is further agreed that the payment of the settlement amount shall not be construed as a payment of weekly compensation as may be reviewed under Section 85.26 of the Code of Iowa or start or extend the running of the period in which a review may be made under such statute. Claimant further states that Claimant has entered into the compromise settlement agreement without any reliance upon any statement or representation by

the employer, its insurance carrier, or any of their representatives, agents, or attorneys; and that it is in Claimant's best interest to consummate this compromise settlement agreement.

(Exhibit K, page 5)

## 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; and
2. Claimant is married and entitled to two exemptions;
3. If permanency is warranted, the parties agree, the disability is an industrial disability;
4. The parties agree any weekly benefit rate should be paid at $584.30 per week;
5. Claimant waives any right to penalty benefits; and
6. The parties agree claimant has paid the costs listed in his attachment.

## ISSUES

The issues presented are:

1. Whether claimant sustained an injury on July 28, 2016, which arose out of and in the course of his employment;
2. Whether the alleged injury is a cause of temporary disability during a period of recovery;
3. Whether the alleged injury is a cause of permanent disability;
4. Whether claimant is entitled to temporary/healing period benefits for the periods: August 5, 2016 through October 30, 2016 and April 7, 2017 through June 7, 2017;
5. If claimant is entitled to permanent partial disability benefits, to what extent is the permanency?
6. Whether claimant is entitled to the payment of medical benefits pursuant to Iowa Code section 85.27;

7. Whether claimant is entitled to the payment of an independent medical examination pursuant to Iowa Code section 85.39; and

8. Whether defendants are entitled to a credit for benefits paid to claimant by Peterson Transportation and American Zurich Insurance Company in a special case settlement agreement that was approved on August 22, 2017.

## FINDINGS OF FACT

This deputy, after listening to the testimony of claimant at hearing, and after judging his credibility, plus after reading the evidence, and after reading 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 42 years old and married. He is right hand dominant. Claimant smokes tobacco products. Many medical providers have counseled him to abstain from smoking. Several physicians informed claimant, his shoulder issues would greatly improve if he would stop smoking. Claimant admitted to drinking from 2 to 5 gallons of sweet tea every day.

Claimant is also considered morbidly obese by the standards set by the National Institute of Health. In 2013, his body mass index, (BMI) was 40.99. Since that time, claimant's weight has increased rather than decreased. Claimant is physically inactive for the most part. However, he does enjoy fishing.

Claimant currently resides in Guthrie Center, Iowa. It is a town of approximately 1,700 residents. Claimant grew up in Birmingham, Alabama where he completed the eighth grade. Claimant attended truck driving school. He successfully completed the course and he holds a Class A Commercial Driver's License. He is also certified to haul coil in the state of Alabama. For the last 20 years, claimant has been employed as an over-the-road truck driver. He has worked for a variety of different trucking operations. Claimant enjoys working as a professional truck driver. He has worked as both a flatbed truck driver and a closed trailer truck driver.

During the course of his employment with Peterson Transportation, Inc., claimant drove a flatbed truck. There are some uniquely heavy duties involved when one is driving a flatbed truck as opposed to operating a closed trailer truck. Claimant testified about those duties during his arbitration hearing. Firstly, he had to secure the load. (Transcript, page 16) The load had to be secured with straps or chains. (Tr., p. 16) Then heavy tarps were placed over the load. (Tr., p. 16) The tarps could weigh from 150 pounds up to 300 pounds. (Tr., pp. 17-19) Rubber bungee straps were then placed over the tarps to secure them to the trailer. (Tr., p.16) Claimant also had to

employ chains to secure coils, flat steel, or steel beams. (Tr., p. 19) The chains weighed 30 to 40 pounds. (Tr., p. 19) Claimant regularly tossed the chains across the bed of the truck. (Tr., pp. 19-20)

As early as December 7, 2012, claimant presented to Madison County Medical Associates with complaints of joint pain. (Joint Exhibit 1, page 1) Claimant reported symptoms in the left shoulder, left elbow, left wrist, left hip, left knee, left ankle, right shoulder, right elbow, right wrist, right hip, right knee and right ankle. (Jt. Ex. 1, p. 1) Claimant indicted the pain had appeared gradually over the course of several years and the pain was constant. (Jt. Ex. 1, p. 1) Stacy M. Cook, PAC, diagnosed claimant with: "Pain in joint involving multiple sites." (Jt. Ex. 1, p. 2)

On February 22, 2013, claimant visited the Mercy Arthritis and Osteoporosis Center. Claimant reported all of the problems he was having with his joints. Lifting aggravated his shoulders. (Jt. Ex. 2, p. 16) There was mild tenderness at the right upper trapezius region of the right shoulder. (Jt. Ex. 2, p. 18) Joseph Gilg, M.D., diagnosed claimant with arthralgias of several locations including the shoulders. (Jt. Ex. 2, p. 19)

On September 9, 2014, claimant returned to Madison County Health Care for a consultation with a member of the physical therapy department. (Jt. Ex. 1, p. 4) Claimant complained of right shoulder pain, right shoulder impingement, decreased right shoulder strength, and decreased functional mobility. He reported the symptoms began on August 18, 2014. Claimant attributed his problems to overuse of his upper extremities throughout the course of his working life. (Jt. Ex. 1, p. 4) The physician's assistant recommended physical therapy for the right shoulder due to suspected right shoulder impingement syndrome. (Jt. Ex. 1, p. 4)

In September of 2014, claimant was employed by Peterson Transportation, Inc., as a flatbed driver. Claimant was securing his load with chains and straps when he felt a pop in his right shoulder. Thereafter, he experienced a pop in his right arm. Claimant secured his load and finished his tasks for the day. However, claimant testified he could not move his arm on the following morning.

Claimant visited Occupational Medicine Plus, P.C. on October 1, 2014. Daniel C. Miller, M.D., examined claimant. The physician diagnosed claimant with "Sprain/strain: shoulder, rotator cuff." (Jt. Ex. 4, p. 26) Claimant was released to modified duty. He was precluded from using his right shoulder. (Jt. Ex. 4, p. 24) Dr. Miller continued to treat claimant with conservative modalities. The occupational medical doctor referred claimant for physical therapy. (Jt. Ex. 5, p. 28)

Dr. Miller referred claimant to Stephen A. Ash, M.D., an orthopedic surgeon at Iowa ORTHO. (Jt. Ex. 6, p. 36) The initial examination occurred on October 21, 2014. Dr. Ash interpreted the results of the MRI testing to be consistent with some partial thickness supraspinatus tearing. (Jt. Ex. 6, p. 36) Conservative treatment measures commenced. There were cortisone injections into the right shoulder. (Jt. Ex. 6, p. 37)

On February 11, 2015, Dr. Ash performed a right shoulder exam under anesthesia, right shoulder arthroscopy, arthroscopic subacromial decompression, and arthroscopic rotator cuff repair. Claimant tolerated the procedure without complications. He was taken to the recovery room in good condition. (Jt. Ex. 7, pp. 55-56)

Two days post-surgery, claimant visited with Dr. Ash. The surgeon provided stretching exercises for claimant. Claimant was advised he could return to work on February 18, 2015 with no use of the right arm and a 10-pound lifting restriction with the left arm. (Jt. Ex. 6, p. 41) Claimant continued to engage in regular follow up appointments with Dr. Ash. Claimant also participated in a formalized physical therapy program. He had a right shoulder MR arthrogram on September 4, 2015. Dr. Ash agreed with the radiologist. There was no clear evidence of a full-thickness tear. (Jt. Ex. 6, p. 48) The cuff at the site of the repair was intact. (Jt. Ex. 6, p. 48) There was degenerative fraying of the labrum in the superior and posterior quadrant. (Jt. Ex. 8, p. 57) Dr. Ash opined claimant had reached maximum medical improvement on September 10, 2015. (Jt. Ex. 6, p. 48)

Dr. Ash ordered a functional capacity evaluation, (FCE). (Jt. Ex. 9) According to John Simonsen, PT, claimant had the physical capabilities and tolerances to work at the heavy physical demand level. (Jt. Ex. 9, p. 58) He did not meet the job demands of an over-the-road flatbed truck driver. That position was categorized as very heavy. (Jt. Ex. 9, p. 58) Claimant was precluded from carrying more than 40 pounds with his right hand and arm. Only occasionally could claimant lift over his head, push or pull with his right arm. (Jt. Ex. 9, p. 59)

On November 18, 2015, Dr. Ash provided a permanent partial impairment rating for claimant's right shoulder. The surgeon wrote in his report of the same date:

> According to the AMA Guides to Evaluation of Permanent Impairment, 5th Edition, Mr. Shawn Huffman has a 2% right upper extremity impairment status post right rotator cuff repair. This rating is based on the anatomic change in his shoulder. He reached maximum medical improvement on September 10, 2015. He can work at the limits set by the functional capacity evaluation. I do not anticipate further medical care for his shoulder at this time.

(Jt. Ex. 6, p. 51)

Subsequent to his release by Dr. Ash, claimant sustained a fall on a snowy parking lot in December of 2015. (Ex. H, p. 38) In his arbitration hearing, claimant described the incident as follows:

> A. I took my wife to her heart doctor for tests that she had to have done. When we got there, it had snowed the day or two before, and they had piled the snow up on the curb and stuff, and that was the only handicap parking left open.

> I pulled in there, went inside. She did her tests, come back out, and I opened the door for her. She got in the car, I shut the door, walked around to the driver's side, and in between the curb and the car, there was snow there. I guess from my shoes being warm from being inside as long as we was, [sic] I was taking my time walking across it because I knew they were warm. It started melting. I started to slide, and I was fixing to fall, and when I started falling, I noticed I was starting to fall on my right shoulder, so I turned mid-air and landed on my back right in the middle of the snow pile.

Q. When was that, approximately?

A. Toward the end of December 2015 to first part of January of 2016.

Q. Did you have any pain after the fall?

A. Yes, I did.

Q. Where?

A. Back of my shoulder all the way up to my neck area here.

Q. Okay. Let the record reflect you're pointing to sort of the shoulder blade area of your body up into your neck, right side.

. . . .

DEPUTY COMMISSIONER MCGOVERN: And it was again, the right shoulder?

THE WITNESS: Yes, ma'am.

DEPUTY COMMISSIONER MCGOVERN: Thank you.

Q. Had you felt pain in that area of your body before this fall?

A. Yes, and it wasn't as intense as it was after the fall.

Q. So did the fall increase the intensity of the pain?

A. Yes it did.

Q. Did you see a doctor after that?

A. Yes, I did. I seen [sic] Dr. Ash.

Q. Do you recall when that was?

A. January or February - -

Q. Okay.

A. - - of 2016.

Q. 2016? Okay. Did Dr. Ash provide you with any treatment at that time?

A. Yes, he did. He looked at it and said I had to have an MRI because he thought it was a pinched nerve.

Q. Did he tell you where he thought the pinched nerve was?

A. In my neck.

Q. Okay. After the fall did the pain in the back of your shoulder and neck calm down at all?

A. Yes. Later it started going down and finally just went back the way it was, every once in a while.

Q. Did you ever get that MRI that Dr. Ash recommended?

A. No, I did not.

Q. Why not?

A. Did not have insurance.

(Transcript, pages 26 through 29)

On February 5, 2016, claimant returned to see Dr. Ash. (Jt. Ex. 6, p. 54) Claimant complained of "RIGHT shoulder pain that flared up after he slipped on the ice and fell in December. He is also having some neck pain." (Jt. Ex. 6, p. 54) X-rays of the cervical spine showed clear evidence of significant disk space narrowing. (Jt. Ex. 6, p. 54) Dr. Ash did not recommend any additional treatment modalities. (Jt. Ex. 6, p. 54)

Claimant presented to Sunil Bansal, M.D., on March 4, 2016. (Ex. 5, p. 14) Counsel for claimant had retained Dr. Bansal to perform an independent medical examination for claimant's alleged September 29, 2014 injury with Peterson Transportation. Dr. Bansal did not note any weakness with external rotation of claimant's right shoulder when the medical examiner performed range of motion testing. (Ex. 5, p. 14)

On March 16, 2016, claimant applied for a full time position as a truck driver with Centennial Warehousing in Des Moines, Iowa. (Ex. D) Claimant commenced his employment on March 28, 2016. (Ex. 10, p. 39) Claimant's gross earnings were $912.04 per week.

Claimant described the duties he performed at Centennial Warehousing during the arbitration hearing. He testified:

Q. What kind of work did you do for Centennial?

A. Climbed in that truck, drove a dry van, get to the customer, open up the door, back up to the dock or whatever they wanted it unloaded, and they'd unload it.

Q. So this was closed trailer trucking?

A. Yes, it was.

Q. Did you have to handle any freight or was it a no-touch position?

A. No-touch.

Q. Did you have to do any lifting at all?

A. No, I did not.

Q. How about getting in and out of the truck? How were you supposed to do that?

A. Three-point stance is what the DOT requires.

Q. What's that? What's the three-point stance?

A. Two hands, one foot, or two feet, and one hand. They got a bar on this side of the truck and you can either grab the door or the steering wheel to guide yourself up into the truck.

Q. Is there a reason for that regulation?

A. To keep you from falling.

Q. Okay. Did you consider getting in and out of the truck to be violating your work restrictions?

A. No, I did not.

Q. As you were working at Centennial did you believe that any of the other job duties you had were causing you to violate those job restrictions?

A. No, sir.

Q. During that time period was violating your job restrictions something you tried to avoid?

A. Yes, it was.

(Tr., pp. 30- 32)

Claimant also described his alleged right shoulder injury of July 28, 2016. During the course of his arbitration hearing, he testified:

Q. During your time with Centennial did you sustain any injury?

A. Yes, I did.

Q. To which part of your body?

A. My right shoulder.

Q. Do you recall when and where that happened?

A. July 2016. It was in Missouri.

Q. Would you mind describing what happened for me?

A. I was going down a back road, a two-lane road, going to a customer, and in a left-hand curve, turning the steering to the left. I had my right hand up here, and my left one was down here.

Q. Your right hand up where?

A. Up on the top of the steering wheel.

Q. And your left one where?

A. Toward the bottom.

Q. Okay.

A. As I was going around the curve where they either tried to fix a pothole or the road was messed up or something, it hit it. And when it did, it jerked back as I was pushing up and it shoved my arm back when it did it and I felt a pop.

Q. When you say it hit it, what do you mean?

A. The tire.

Q. What kind of reaction did that cause with your arm and the steering wheel?

A. It jerked it back to the right as I was pushing to the left.

Q. Okay. Did you feel any pain after that occurred?

A. Yes, I did. It was right there.

Q. Let the record reflect you're pointing to sort of the front muscular area of your shoulder, is that accurate?

A. Yes, sir.

Q. Was that new pain?

A. Yes, it was.

Q. Had you ever felt pain in that area of your shoulder before?

A. The only time I've ever felt that before is when I first injured it at Peterson.

(Tr. pp. 32-34)

Claimant reported the injury to his employer within a few days. On August 4, 2016, claimant presented to Methodist Occupational Health and Wellness for treatment of his right shoulder. (Jt. Ex. 10, p. 70) Sara C. Glover, PA-C, examined claimant's right shoulder. The physician's assistant noted:

> Right Shoulder: No open injuries. There is no shoulder deformity. No erythema or swelling noted. He has tenderness with guarding and wincing noted with very light palpation to the anterior, lateral, and posterior right shoulder. He has shoulder flexion to 150 degrees, extension to 45 degrees. He has horizontal abduction to 145 degrees and positive drop arm and passive arc test. He can internally rotate to L1 on the right. He has decreased strength with shoulder flexion, extension, and external rotation on the right compared to the left. Grip strength is 5/5 bilaterally. Pain with Neer's and Hawkin's test. Positive Empty can test. Pain with Speed's test. Pain and weakness with Lift off test. Skin: Skin is warm and dry without rashes seen. Vascular: Radial pulses 2+ and full capillary refill bilaterally. Neurological: Sensation to light touch is intact with light touch to bilateral upper extremities.
>
> X-rays of the right shoulder were performed today and overread there is a healed fracture of the distal right clavicle. No acute fracture or dislocation, [.] A bone anchor is noted in the humeral head. Mild acromioclavicular

> degenerative change noted. I also reviewed the imaging and agree with the radiologist's interpretation.

(Jt. Ex. 10, pp. 70-71)

Claimant provided a medical history to the physician's assistant. It was recorded as follows:

> The patient reports today a new injury 1 week ago that he felt flared his chronic right shoulder pain. He had reported an injury in which he felt he got "jerked" back while turning the steering wheel and this caused a sudden right shoulder pain on 07/28/2016 between 9:30 a.m. and 10:30 a.m. The patient reports he was able to finish driving that day and finish the job and trip until he returned home on Friday night. This was all while driving a manual semi-truck and trailer. The patient was off on Saturday and he later reported his injury to his work yesterday, almost a week later. Based on the patient's history, it does not appear there was a specific injury that occurred that would cause significant damage or injury to his right shoulder. The patient was working within his normal duties of his job and he reported no change or increase in his work duties. He was able to keep driving a manual semi-truck without difficulty or medical treatment for two full days. The patient did not report the injury until nearly a week after his reported incident of pain.

(Jt. Ex. 10, p.72)

The insurance carrier, Farmers Insurance Exchange, denied claimant's claim. As a consequence, claimant presented to Jeffrey Wahl, D.O., on January 25, 2017. (Jt. Ex. 12, p. 84) Dr. Wahl conducted a physical examination of claimant's right shoulder. The physician found:

> Examination of the right shoulder shows his previous incisions to be well healed. He has no significant swelling of the shoulder and no effusion. There are no signs of infection. He appears to have full active motion of the shoulder, although he does have painful crepitant motion, especially above 90 degrees of forward elevation and abduction. He actually has reasonably good rotator cuff strength today on stress testing. He does have painful impingement maneuvers, as well as painful speeds test. He also has tenderness over the intertubercular groove. Neurovascularly he is intact.
>
> X-rays of the right shoulder were reviewed with the patient today. He has a solitary metallic anchor within the greater tuberosity consistent with his previous surgery. Otherwise, x-rays are unremarkable.

> **IMPRESSION:** Continued right shoulder pain following previous rotator cuff repair.

(Jt. Ex. 12, p. 85)

Dr. Wahl recommended claimant obtain an updated MRI arthrogram of the shoulder. (Jt. Ex. 12, p. 85.) Claimant sought payment through his personal health insurance carrier. The results revealed:

> A partial thickness articular sided tear of the supraspinatus tendon measuring roughly 2mm x 1.5 mm from anterior to posterior and medial to lateral, but no evidence for full thickness cuff tear or muscle atrophy. He also has an additional superior labral tear from 10 o'clock to 2 o'clock. Explained to Shawn that it appears that he either has a recurrent cuff tear of incomplete healing of his previous rotator cuff repair. In addition, he also has a SLAP tear, which I think is also contributing to his shoulder pain. I explained that neither of these tears will heal on their own. We discussed therefore with repeat shoulder arthroscopy and rotator cuff repair versus rotator cuff take down and repair, in addition to bicipital tenotomy versus tenodesis.

(Jt. Ex. 13, p. 87)

In a report of April 5, 2017, Dr. Ash admitted he did not repair the partial articular surface tear of claimant's supraspinatus tendon during the February 11, 2015 surgery. (Ex. C, p. 4) Dr. Ash did not repair the tear because the fraying was relatively trivial. (Ex. C, p. 4) Dr. Ash opined, "it is most likely that his anterior partial articular surface tear persisted until February 10, 2017 when he had a right shoulder MRI arthrogram." (Ex. C, p. 4)

On April 7, 2017, Dr. Wahl repaired claimant's right rotator cuff and labrum tears by performing a right shoulder arthroscopic bicipital tenotomy with rotator cuff take down and repair. (Jt. Ex. 13, p. 88) Claimant tolerated the surgical procedures well and was transferred to the recovery room. (Jt. Ex. 12, p. 90)

Dr. Wahl opined:

> 3) It is more likely than not the July 28, 2016 accident described above caused the decreased range of motion in Mr. Huffman's shoulder described in Sara Glover, PA-C's August 4, 2016 notes.

(Ex. 4, p. 7)

Effective June 7, 2017, Dr. Wahl allowed claimant to return to work in the capacity of a long distance truck driver. Claimant was precluded from lifting and carrying objects. (Jt. Ex. 13, p. 93) Dr. Wahl released claimant to unrestricted work duties on July 5, 2017. (Jt. Ex. 13, p. 94)

Claimant presented to Dr. Bansal, for an independent medical examination. Dr. Bansal issued a report in which he discussed the alleged injury on July 28, 2016. (Ex. 5, pp. 13-14) Dr. Bansal opined claimant injured his right rotator cuff and sustained labral tears as a result of the incident that occurred on July 28, 2016. (Ex. 5, p. 13) Dr. Bansal restricted claimant from driving trucks with manual transmissions. (Ex. 5, p. 14)

With respect to the matter of causation, Dr. Bansal opined:

> **9. What, if any, functional impairment does he suffer pursuant to the AMA Guides of Evaluation for Permanent Impairment, Fifth Edition as a result of the July 28, 2016 injury?**
>
> Mr. Huffman has had a total of three injuries since September 29, 2014. To recap, he had the September 29, 2014 work injury, the fall on ice in December 2015, then an additional work injury on July 28, 2016, In trying to apportion out what if any, contribution the July 28, 2016 injury had towards his shoulder condition given the backdrop of the two earlier injuries, I scrutinized the records to determine if there was a change in his diagnosis and corresponding physical examinations after the July 28, 2016 injury.
>
> Of note, an MRI performed after the July 28, 2016 injury performed on February 10, 2017 showed a labral tear. This was repaired by Dr. Wahl on April 7, 2017. This finding was not present on the MRI performed before that injury, and after the September 29, 2014 injury. Complicating the issue was an interim fall on the ice in December 2015, which could also have contributed to his labral tear.
>
> It is my opinion that the July 28, 2016 injury was at least a significant aggravating factor for this new labral tear. This is based on a characteristic of labral tears, which is weakness in external rotation. The only examination that documents this weakness is the visit shortly after the July 28, 2016 injury on August 4, 2016. In fact my own examination performed on March 4, 2016 did not indicate weakness with external rotation. Based on this rationale, a functional impairment would be confined to this specific and new aspect of his condition. Any other impairment assignment would be pure speculation between the three injuries. Per Table 16-35, this weakness with external rotation would be afforded an approximately 2% upper extremity impairment.

(Ex. 5, pp. 13-14)

Pursuant to a request from defense counsel, William R. Boulden, M.D., performed a records review of claimant's medical records. (Ex. A) Dr. Boulden

discussed the cause of claimant's need for a second right shoulder surgery. In his report of July 11, 2017, Dr. Boulden wrote in relevant portion:

> It is my medical opinion that the patient's rotator cuff tear was pre-existing, which was documented by MRIs before this alleged injury. Also, the MRIs showed degenerative changes of the labrum. The mechanism of injury would not be a significant factor in causing a superior labrum anterior-posterior SLAP) tear. Likewise, the patient has switched his occupation since that accident and, according to what I assume, the Department of Transportation (DOT) physical did not mention any problems with his shoulder. Finally, Dr. Bansal states that the mechanism of injury is possible but there are also other issues, since the patient had a fall in December 2015. He stated that could also be a contributing factor. Dr. Bansal, however, goes on to say that the injury was a substantial aggravating factor. He based this on the fact that he said the patient did not have any weakness with external rotation in his first IME, but he did in the second one. He said this is a classic sign of a labral problem; however, I disagree with that. Labral injuries have nothing to do with strength with external rotation. Those would be rotator cuff issues.
>
> With reference to question number four, I do not feel the July 28, 2016, alleged injury was a significant contributing factor to his need for surgery. In my opinion, this was all pre-existing pathology.

(Ex. A, pp. 1-2)

On August 16, 2017, Dr. Bansal supplied another report in answer to the one authored by Dr. Boulden. Dr. Bansal specifically disagreed with Dr. Boulden about labral tears. Dr. Bansal opined:

> I have reviewed Dr. Boulden's report and stand by my opinions as stated in my IME report. I would like, however, to address one key aspect of Dr. Boulden's report that I respectfully disagree with. He states labral tears do not present with shoulder external rotation weakness. This is a surprising statement given this is a very basic and commonly accepted medical principle. The sine qua non example of labral tearing provided is that of a quarterback throwing a football and getting tackled. The position of the arm throwing the football is in classic external rotation. It is stress in this position that will stress the labrum, shearing it.
>
> In fact, external rotation strengthening is one of the most important aspects of a post labral tear rehabilitation program. Again while this is a basic medical concept, for full clarity, I have provided the post labral tear rehabilitation program of one of the leading orthopedic programs in the country, Harvard affiliated Massachusetts General Hospital. There is no single more important strengthening exercise stressed than external

> rotation. In fact, supine external rotation is performed, side-lying external rotation, standing external rotation, and external rotation at 90 degrees of abduction. The purpose of providing the belaboring examples above was to demonstrate how important external rotation strengthening is to labral tears. The full protocol is provided as part of this addendum.

(Ex. 6, p. 15-16)

Dr. Boulden issued a subsequent report on September 26, 2017. In his "fill in the blank" type report, he disagreed with the statement:

> Do you agree that the mechanism of injury that claimant alleges in this case, i.e. that his right hand was resting on the steering wheel when his truck hit a pothole, is consistent with what Dr. Bansal describes as the "sin[e] qua non example" of an injury sustained by a quarterback?

(Ex. L, p. 53)

Dr. Boulden also answered the following question posed by defense counsel:

> 5. Do you believe the condition which Dr. Wahl observed in his first encounter with claimant, for which surgery was ultimately performed, was caused by a new injury, or was instead a result of incomplete healing of claimant's prior rotator cuff repair following his 2014 injury which he sustained while working for Peterson Trucking?
>
> Please explain: Incomplete healing.

(Ex. L, p. 54)

## 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.

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 he sustained an injury to his right shoulder which arose out of and in the course of his employment as a result of a work injury on July 28, 2016. Claimant described the mechanism of injury in detail during the course of his arbitration hearing. The February 2017 MR arthrogram showed a labral tear. The MR arthrogram of September 4, 2015 did not show evidence of a full-thickness tear. There was only degenerative fraying of the labrum in the superior and posterior quadrant.

Dr. Wahl, the treating orthopedic surgeon, opined:

> 3) It is more likely than not the July 28, 2016 accident described above caused the deceased range of motion in Mr. Huffman's shoulder described in Sara Glover, PA-C's August 4, 2016 notes.

(Ex. 4, p. 7)

Dr. Wahl had numerous encounters with claimant. He not only personally examined claimant, he performed the requisite right shoulder surgical procedures. He opined the work injury in question caused claimant's condition.

Dr. Bansal opined the July 28, 2016 injury was at least a significant aggravating factor for the labral tear. (Ex. 5, pp. 13-14) The independent medical examiner based his opinions on claimant's weakness with external rotation during the examination on August 4, 2016. Dr. Bansal provided research to establish labral tears do cause external rotation weaknesses. He supplied a copy of the post labral tear rehabilitation program from the Harvard affiliated Massachusetts General Hospital. (Ex. 6. p. 16) Dr. Bansal's research gave support to his opinions.

This deputy considered the records review performed by Dr. Boulden. However, not as much weight was accorded to the opinions expressed by Dr. Boulden as the weight that was given to Dr. Wahl or to Dr. Bansal. Firstly, Dr. Boulden did not personally examine claimant. He did not conduct any physical testing. Dr. Boulden expressly disagreed with Dr. Bansal with respect to labral injuries and external rotation. (Ex. A, p. 1)

Additionally, Dr. Boulden disagreed with Dr. Wahl as to the type of surgery that was performed. Dr. Boulden indicated Dr. Wahl "just did a biceps tenodesis." (Ex. A, p. 2) Dr. Wahl described the surgery he performed as "Right shoulder partial thickness rotator cuff tear plus slap tear." (Jt. Ex. 13, p. 88) Post surgery, Dr. Wahl referred to the surgical procedures as "right shoulder arthroscopic rotator cuff debridement with repair and bicipital tenotomy." (Jt. Ex. 13, p. 91) Dr. Boulden did not properly characterize the surgical procedures accurately. Therefore, the undersigned does not find his opinions to be credible. Dr. Boulden did not possess a clear profile of claimant's condition.

The next issue for resolution is the nature and extent of claimant's right shoulder injury. When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Commissioner Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 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, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. 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).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Dr. Bansal rated claimant as having a 2 percent permanent impairment to the right upper extremity as a result of the work injury on July 28, 2016. According to Table 16-3 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, a 2 percent permanent impairment to the right upper extremity equates to a 1 percent permanent impairment to the body as a whole. This is an extremely low impairment rating, especially when one considers it is a rating provided by Dr. Bansal. The independent medical examiner restricted claimant to driving trucks with automatic transmissions only.

Dr. Wahl released claimant to unrestricted work duties effective July 5, 2017. There was no problem with claimant returning to work as a long distance truck driver.

Management officials at Centennial Warehousing Corporation made the decision to terminate claimant after he was injured on the job. It is true claimant had been given a written warning from management two days prior to the date of the work injury. Claimant had delivered 2 loads in an untimely fashion during the month of July. The rationale for the termination is clear. (Ex. E, p. 12) The company could not accommodate claimant's work restrictions. Claimant was sent home and never called back to work.

Claimant applied for several trucking jobs following his termination. He was hired by Waller Truck Co., Inc., on October 31, 2016. Claimant continued to work for Waller until July of 2017. At the end of July 2017, claimant went to work for Sukup Manufacturing in Sheffield, Iowa. Claimant drives a flatbed truck but he does not load the trailer. He does have to secure a load with binders. Claimant testified he now uses both hands to secure the binders. (Tr., pp. 42-49)

Claimant's educational history negatively impacts his employability. He did not complete the ninth grade. He does not have a general equivalency diploma, (GED). He did graduate from truck driving school in Alabama and he was a certified coil hauler in that state. It is doubtful claimant will go on to school to further his education. If he does not perform work as a truck driver, he will have to resort to unskilled manual type work.

In light of all of the factors involving industrial disability, it is the determination of the undersigned; claimant is entitled to a permanent partial disability in the amount of eight (8) percent. Defendants shall pay unto claimant forty (40) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of $584.30. Said benefits were due and owing from July 5, 2017.

In arbitration proceedings, interest accrues on unpaid permanent disability benefits from the onset of permanent disability. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979); Benson v. Good Samaritan Ctr., File No. 765734 (Ruling on Rehearing, October 18, 1989).

The next issue for resolution is the matter of healing period benefits. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

In the present case, the physician's assistant, Ms. Sara Glover, provided certain work restrictions. Management personnel at Centennial could not accommodate claimant in the workplace effective August 5, 2016. Claimant was told to go home. The

work restrictions were not lifted until October 30, 2016. Claimant is entitled to healing period benefits for that time frame. The period equates to 12 weeks and 3 days.

There is another period of time for which claimant is entitled to healing period benefits. Claimant underwent surgery on April 7, 2017. His surgeon released claimant to light duty work on June 7, 2017. Claimant's entitlement to healing period benefits equals 8 weeks and 6 days. All healing period benefits shall be paid at the rate of $584.30.

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).

Defendants denied compensability of this claim. Therefore, claimant had the right to select his own medical care. In Bell Brothers Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010), the Iowa Supreme Court discussed Iowa Code section 85.27. The Court determined at page 204:

> Thus, the statute contemplates that an injured employee may select his or her own medical care when the employer abandons the injured employee through the denial of compensability of the injury. When this circumstance occurs, the employee may subsequently recover the costs of reasonable medical care obtained upon proof of compensability of the injury derived from the statutory duty of the employer to furnish reasonable medical care and supplies for all compensable injuries.

Claimant supplied a copy of the Medicaid lien that is for $12,570.01. There are charges for various medical providers too. The statement is for $629.57. Defendants shall pay the Medicaid lien directly as well as pay the medical providers.

Claimant is seeking reimbursement for the cost of the independent medical examination with Dr. Bansal in the amount of $1,498.00. The statute reads in relevant portion:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the

> examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination.

(Iowa Code section 85.39(2))

There is no dispute here. Dr. Bansal issued his independent medical report several weeks before Dr. Boulden issued his written opinions. Therefore, claimant did not follow the condition precedent in order to qualify for reimbursement from defendants. See: Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, (Iowa 2015).

Defendants are requesting a credit from the lump sum payment made to claimant by Peterson Transportation, Inc., and American Zurich Insurance Co., pursuant to Iowa Code section 85.35(3). The parties in the Peterson Transportation case entered into a compromise settlement agreement. Pursuant to Iowa Code 85.35(9), "the subject matter of the compromise and a payment made pursuant to a compromise settlement agreement shall not be construed as the payment of weekly compensation." Since the lump sum payment is not deemed by statute to be the payment of weekly compensation, the defendants in this action have no entitlement to any credit.

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).

Claimant is entitled to the following costs:

$100.00 Filing fee

$190.75 Court Reporting fee

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant forty (40) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of five hundred eighty-four and 30/100 dollars ($584.30) commencing from July 5, 2017.

Defendants shall also pay unto claimant healing period benefits at the rate of five hundred eighty-four and 30/100 dollars ($584.30) for the periods from August 5, 2016 through October 30, 2016 and from April 7, 2017 through June 7, 2017.

All past due benefits shall be paid in a lump sum together with interest as allowed by law.

Defendants shall pay medical benefits as detailed in the body of the decision.

Defendants shall pay the costs as detailed in the decision.

Defendants shall file all reports as required by law.

Signed and filed this 8th day of March, 2018.

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.