

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIGUEL CASTILLO,

Claimant,

vs.

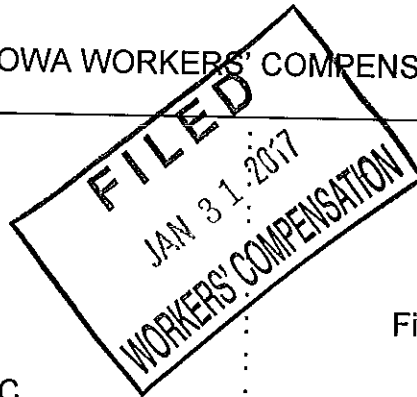
FARMLAND FOODS, INC.,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,  
Defendants.



File Nos. 5051308, 5054867,  
5054868, 5054869

ARBITRATION

DECISION

Head Note Nos.: 1100, 1802, 1803

STATEMENT OF THE CASE

Claimant, Miguel Castillo, filed petitions in arbitration seeking workers' compensation benefits from Farmland Foods, Inc., employer, and Safety National, insurance carrier, both as defendants, as a result of stipulated injuries sustained on September 12, 2014 (File No. 5054867) and May 7, 2015 (File No. 5054868) and alleged injuries sustained on December 3, 2012 (File No. 5051308) and August 12, 2015 (File No. 5054869). This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on August 3, 2016, in Des Moines, Iowa. The proceedings were translated by Ana Rodriguez. The record in this case consists of claimant's exhibits 1 through 20, defendants' exhibits A through D, and the testimony of the claimant and William Mishnick. The parties submitted post-hearing briefs, the matter being fully submitted on September 19, 2016.

ISSUES

In File No. 5051308 (Date of Injury: December 3, 2012; Right Arm):

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on December 3, 2012 which arose out of and in the course of his employment;
2. Whether the alleged injury is a cause of temporary disability;

3. Whether claimant is entitled to temporary disability benefits from November 3, 2014 through April 28, 2015;
4. Whether the alleged injury is a cause of permanent disability;
5. The extent of permanent disability to claimant's right arm;
6. Whether defendants are responsible for claimed medical expenses;
7. Whether defendants are entitled to credit for short-term disability benefits paid; and
8. Specific taxation of costs.

The stipulations of the parties contained in the hearing report are accepted and incorporated by reference in this decision. The parties are expected to and ordered to comply with stipulations that have been accepted.

In File No. 5054867 (Date of Injury: September 12, 2014; Right Shoulder and Back):

The parties submitted the following issues for determination:

1. Whether the stipulated injury is a cause of permanent disability;
2. The extent of claimant's industrial disability;
3. Whether defendants are responsible for claimed medical expenses; and
4. Specific taxation of costs.

The stipulations of the parties contained in the hearing report are accepted and incorporated by reference in this decision. The parties are expected to and ordered to comply with stipulations that have been accepted.

In File No. 5054868 (Date of Injury: May 7, 2015; Left Shoulder):

The parties submitted the following issues for determination:

1. Whether the stipulated injury is a cause of permanent disability;
2. The extent of claimant's industrial disability;
3. Whether defendants are entitled to credit for permanent disability benefits paid in File No. 5054867 pursuant to Iowa Code section 85.34(b)(7)(1); and
4. Specific taxation of costs.

The stipulations of the parties contained in the hearing report are accepted and incorporated by reference in this decision. The parties are expected to and ordered to comply with stipulations that have been accepted.

In File No. 5054869 (Date of Injury: August 12, 2015; Right Shoulder):

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on August 12, 2015 which arose out of and in the course of his employment;
2. Whether the alleged injury is a cause of permanent disability;
3. The extent of claimant's industrial disability;
4. Whether defendants are entitled to credit for permanent disability benefits paid in File No. 5054867 and/or File No. 5054868 pursuant to Iowa Code section 85.34(b)(7)(1); and
5. Specific taxation of costs.

The stipulations of the parties contained in the hearing report are accepted and incorporated by reference in this decision. The parties are expected to and ordered to comply with stipulations that have been accepted.

#### FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant's testimony was clear and consistent as compared to the evidentiary record. His demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 54 years of age at the time of hearing. He resides in Denison, Iowa; his wife and daughter remain in their native country, Mexico. Claimant was born and raised in Zacatecas, Mexico, where he attended 11 years of schooling. Claimant's education included some vocational training in electromechanics; however, he did not earn a degree in this subject. (Claimant's testimony)

Claimant came to the United States in 1986; shortly after arriving, claimant took 6 months of English language courses. He has obtained no further formal education. Claimant converses in Spanish; his English skills are limited. He is able to speak and understand basic English, including phrases used in his employment history. He is unable to converse fluently, read, or write in English; he utilizes assistance of an

interpreter with in-depth conversations or comprehension of written documents. Claimant lacks typing or computer skills. He is right-hand dominant. (Claimant's testimony)

Claimant's work history consists of physical labor positions. While in Mexico, claimant worked in agriculture with his family, including planting crops. Such work required him to lift and carry seed bags weighing 100 pounds. Upon arrival in the United States, claimant worked planting and harvesting crops in North Carolina. His duties required lifting and carrying crops weighing 60 to 70 pounds, as well as frequent overhead lifting. Claimant earned \$4.25 per hour. Claimant then moved to California and worked packing flowers. He was required to lift and carry containers of water and flowers weighing 30 to 40 pounds. Claimant earned \$5.75 per hour. Next, claimant worked in Texas, performing cement and tiling work for bathrooms. The work required lifting and carrying of 50 to 70 pounds. Claimant then moved to Kansas and performed meatpacking, pulling skin from cow carcasses. His work required no lifting or carrying, but frequent to constant overhead work; he earned \$11.25 per hour. Claimant next performed meatpacking in Indiana, trimming loins. His duties also involved occasional lifting and carrying of boxes of meat weighing 50 to 70 pounds. He earned \$12.50 per hour. Claimant then moved to Texas, to perform construction work. Such work required claimant to carry construction supplies weighing 60 to 70 pounds. He earned \$8.00 per hour. Next, claimant performed pool repair and cement work in Pennsylvania. His work required lifting and carrying up to 80 pounds and brought claimant earnings of \$110.00 to \$130.00 per day. Finally, claimant worked as a fish processor in Alaska, earning \$2,200.00 biweekly. This work required lifting and carrying trays of fish weighing 45 pounds. (Claimant's testimony; Exhibit 18, pages 199-200)

Claimant began work at defendant-employer, at a plant in Denison, Iowa, in November 2010. (Claimant's testimony; Ex. 18, pp. 199-200) At the time claimant began his employment with defendant-employer, he labored under no permanent restrictions and passed a pre-employment physical examination without any limitations. (Claimant's testimony) The general job description for the position of a production employee at defendant-employer includes requirements of: standing 2 to 3 hours without a break; lifting and lowering objects weighing up to 60 pounds; frequent static or awkward postures with neck and spine flexion while grasping, pinching, pulling, lifting, and extending and/or flexing the hands and arms; a variety of hand and arm movements to apply force, movement, and repetition; and use of knives and tools. Claimant signed copies of this job description on both November 20, 2012 and May 13, 2014. (Ex. 16, pp. 184, 186)

During the first 3 to 4 years of claimant's employment, he worked trimming bellies. His duties involved pulling and trimming skin from the bellies of carcasses, using a whizzard knife. He described the work as repetitive in nature, performed at levels between his stomach and chest. His duties also required him to move and lift 20- to 30-pound pig bellies with his left hand; he held the whizzard knife in his right hand throughout his shift. (Claimant's testimony)

Thereafter, in October or November 2014, claimant moved to a position requiring him to remove fat from the bellies of carcasses. Carcasses hang from an overhead line; he utilizes a whizzard knife to cut fat from the belly cavity in a top-to-bottom fashion. The whizzard knife is also suspended from overhead. No lifting is required in his position. Claimant remained employed in this position on the date of evidentiary hearing; he holds the whizzard knife in his right hand. Claimant testified his cuts extend from approximately his head height and down to below his waist. (Claimant's testimony)

Claimant testified in October and November 2012, he suffered with right upper extremity difficulties on three occasions. (Claimant's testimony)

On October 15, 2012, claimant felt a twisting sensation and heard a pop in his right wrist while lifting items onto a "tree." He reported the incident to his supervisor and sought care at the nurse's station. (Claimant's testimony) Nursing records reveal claimant presented on October 16, 2012 with complaints of right wrist pain. Claimant explained he had been injured on October 15, 2012 while "push[ing] trees." (Ex. 1, p. 17) Over the following week, claimant received conservative treatment of ice, ibuprofen, naproxen, topical gel, and a neoprene wrap. (Ex. 1, pp. 17-18)

On October 25, 2012, nursing records denote claimant returned to the nurse's station and reported he had been struck by a falling "tree," which struck his right forearm and wrist. (Ex. 1, p. 18) Over the following days, claimant was treated with ice, ibuprofen and acetaminophen. Nursing records note claimant was released from care for this incident, without pain, on October 27, 2012. (Ex. 1, pp. 18-19)

On another date in October 2012, the whizzard knife claimant was using became caught in a carcass and pulled claimant's right wrist. Claimant testified he suffered a similar incident in November 2012, when his right wrist was again pulled while using a whizzard knife to cut a moving carcass. On each occasion, claimant felt pain, informed his supervisor of the incident and proceeded to the nurse's station. (Claimant's testimony) Records from the nurse's station reveal claimant received near-daily conservative care, consisting of ice, heat, ibuprofen, acetaminophen, neoprene wrap, and a topical gel from October 29, 2012 until November 10, 2012. On November 10, 2012, claimant was released from care, without pain. (Ex. 1, pp. 19-21)

Claimant testified on December 3, 2012, he was performing his duties while standing upon a raised platform. He indicated the platform gave way and he fell through while standing. As he continued to hold the whizzard knife during the fall, he felt pulling and pain of his right arm. He testified the pain was more severe than he had previously suffered and extended from his right elbow to wrist. (Claimant's testimony)

Claimant reported the injury to defendant-employer and assisted in completion of an incident report. The documents note claimant suffered an injury to his right wrist. (Ex. 1, pp. 1-2) Claimant reported the injury occurred when "[t]he stand where we put our feet fell." (Ex. 1, p. 2) Claimant was then seen at the nurse's station for a chief

complaint of right wrist pain. The nurse noted claimant had stepped off a stand, resulting in him bumping his abdomen and straining his wrist due to holding a knife. (Ex. 1, p. 22) Following the initial evaluation, claimant continued to receive treatment at the nurse's station, including ice, ibuprofen, topical gel, Biofreeze and use of a neoprene wrap. This care continued throughout the months of December 2012 and January 2013. (Ex. 1, pp. 22-24)

Defendant-employer arranged for claimant to be evaluated by Todd Woollen, M.D., on February 6, 2013. Dr. Woollen assessed right ulnar pain at the extensor carpi ulnaris and recommended use of Naprosyn. He opined claimant was capable of performing his regular duties, but advised claimant to look for a job which did not require ulnar flexion of the wrist. (Ex. 1, p. 24) Thereafter, claimant continued to receive treatment at the nurse's station, including ice, Biofreeze, naproxen, and Aleve. (Ex. 1, pp. 24-26)

At a follow-up nursing appointment on February 28, 2013, the nurse inquired if claimant had considered bidding into another job, as discussed with Dr. Woollen. Claimant responded that his pain remained constant, regardless of if he was working or not. He also indicated he did not desire a different job. (Ex. 1, p. 26) His conservative care at the nurse's station continued, including ice, Biofreeze, Aleve, ibuprofen, topical gel, and a neoprene wrist wrap. (Ex. 1, pp. 26-28)

On March 22, 2013, claimant returned to Dr. Woollen in follow up of his right wrist complaints. Dr. Woollen noted he previously evaluated claimant at defendant-employer's facility, at which time he recommended an injection; however, claimant declined due to fear of further damage. Claimant expressed a desire to have x-rays of the wrist. (Ex. 3, p. 59) Accordingly, Dr. Woollen ordered and claimant underwent x-rays of the right wrist. The radiologist read the results as findings consistent with an impaction fracture of the right radius, likely old in nature. (Ex. 2, p. 51) Dr. Woollen also reviewed the x-ray results, which he opined were normal, as he expected. Dr. Woollen again recommended a tendon sheath injection. Claimant expressed a desire to be seen by an orthopedic surgeon. Dr. Woollen opined claimant had failed conservative care and nonsteroidal medications; he recommended defendants arrange evaluation by an orthopedic surgeon. (Ex. 3, p. 59)

Claimant denied any history of right wrist fracture. (Claimant's testimony)

At defendants' referral, on April 8, 2013, claimant presented to Manning Regional Healthcare Center for a second opinion of his right wrist condition. Claimant was examined by Michael Gainer, M.D. X-rays were obtained, which Dr. Gainer opined revealed ulnar positive variance, potentially due to a childhood injury, and findings suspicious of a previous fracture. Dr. Gainer diagnosed right wrist pain and noted a need to rule out a triangular fibrocartilage complex (TFCC) tear. Accordingly, he ordered an MRI with arthrogram of claimant's right wrist. (Ex. 4, pp. 69-72) On May 21, 2013, claimant underwent the ordered right wrist arthrogram and MRI. (Ex. 2, pp. 52-54)

On July 8, 2013, claimant returned to Dr. Gainer in follow up. Claimant reported no relief from a prior corticosteroid injection of his right wrist. Dr. Gainer opined claimant's MRI revealed a positive ulnar variance with edema changes and a likely central tear of the TFCC. Dr. Gainer recommended an ulnar shortening osteotomy with arthroscopic debridement of the TFCC; claimant expressed a desire to proceed. Dr. Gainer opined claimant's condition was work-related and noted he would seek authorization of the procedure. He explained claimant related suffering three or four injuries to his right wrist and had no history of fracture, despite the appearance of a possible past fracture of the radius. Dr. Gainer opined: "Therefore I'd have to consider it to be work related." (Ex. 4, p. 73)

Thereafter, claimant continued to receive conservative care of his right wrist at defendant-employer's nurse's station through August 29, 2013, including ice, ibuprofen, and Tylenol. (Ex. 1, pp. 28-41)

Defendants arranged for claimant to undergo an independent medical evaluation (IME) with occupational medicine physician, Dean Wampler, M.D. Defendants requested Dr. Wampler's opinions as to claimant's right wrist diagnosis and whether Dr. Wampler believed the condition was work related. Dr. Wampler interviewed and examined claimant on August 30, 2013; a report of Dr. Wampler's findings and opinions was issued on the same date. (Ex. 5, p. 77)

In interview, Dr. Wampler noted claimant reported involvement in four separate injurious events between October and December 2012; claimant related his wrist condition to these events. Dr. Wampler noted that although claimant had described four separate events, Dr. Wampler did not fully understand the second and fourth events. He noted in the fourth incident, claimant fell off or through a metal grate, causing his right wrist to twist while holding a knife. (Ex. 5, p. 78)

Dr. Wampler noted claimant sought evaluation by a physician in February 2013, as he became "tired of it hurting all the time." (Ex. 5, p. 78) Dr. Wampler reviewed claimant's subsequent medical records regarding the right wrist. Dr. Wampler also performed a physical examination. (Ex. 5, pp. 77-79) Based upon his summary of records, it does not appear Dr. Wampler reviewed the in-house nursing records from defendant-employer's facility.

Following records review, interview and examination, Dr. Wampler opined claimant's right wrist condition was most likely "the end result" of an old distal radius fracture "resulting in slight shortening and rotation, leading to ulnar positive variance and chronic impingement against the carpal bones." (Ex. 5, p. 80) Dr. Wampler noted ulnar variance could result from congenital variation or injury. (Ex. 5, p. 79)

Dr. Wampler further opined claimant's work at defendant-employer "was not the cause or aggravation" of claimant's wrist condition. He explained that three of the four described injurious events were unlikely to aggravate the underlying condition. Dr. Wampler then opined the injurious event involving twisting of the wrist while holding

an object did have the potential to aggravate the wrist condition, but only temporarily. Dr. Wampler ultimately opined the surgery recommended by Dr. Gainer was appropriate in treatment of the wrist condition; however, the need for surgery was not attributable to any injury suffered at defendant-employer. (Ex. 5, p. 80)

On September 4, 2013, defendants denied claimant's claim of a December 3, 2012 injury, based upon Dr. Wampler's opinions. (Ex. 16, p. 180)

On July 31, 2014, claimant returned to the nurse's station and indicated his right wrist remained painful. He expressed desire to be evaluated by a physician. The nurse indicated she would check into the status of claimant's workers' compensation claim. (Ex. 1, p. 41)

Claimant, thereafter, sought medical attention at Miller Orthopedic Specialists. On August 25, 2014, claimant presented for right wrist evaluation by Huy Trinh, M.D. Dr. Trinh performed a physical examination and reviewed claimant's prior MRI with arthrogram. (Ex. 6, p. 82) Dr. Trinh assessed chronic right wrist pain and multiple MRI findings. Due to the complexity of claimant's condition, Dr. Trinh referred claimant to his colleague, Caliste Hsu, M.D. Dr. Trinh allowed claimant to continue with full work duties. (Ex. 6, p. 83)

Per Dr. Trinh's referral, on September 10, 2014, claimant was examined by Dr. Hsu. In addition to a physical examination, Dr. Hsu reviewed claimant's MRI and x-rays, which she opined revealed an old healed distal radius fracture and ulnar variance. (Ex. 6, p. 84) Dr. Hsu assessed ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury and post-traumatic right carpal tunnel syndrome. (Ex. 6, p. 85) She ordered an EMG/nerve conduction study to investigate the existence and extent of any carpal tunnel syndrome. Dr. Hsu recommended claimant undergo ulnar shortening osteotomy to improve wrist pain attributable to ulnar impaction syndrome and to help stabilize the TFCC tear and ligament injuries. She noted claimant might also require a carpal tunnel release. (Ex. 6, p. 85)

On September 12, 2014, claimant testified he was working in a seated position, pulling meat from fat. An approximately 200-pound carcass fell onto him from above, striking his right shoulder, neck, and back. Claimant testified he felt immediate pain from his right shoulder and neck, down his entire back. (Claimant's testimony)

Claimant presented to the nurse's station and reported he had sustained a work injury. The corresponding notes indicate claimant was in a seated position when a hog carcass fell from the trolley line, striking claimant in the right arm and shoulder region. The notes also indicate he was not unseated by the impact and his hard hat remained on his head. Claimant complained of right forearm, elbow, upper arm, and shoulder pain, as well as upper back and neck pain. Ice wraps were applied; it was noted claimant was already utilizing ibuprofen for a left knee injury. (Ex. 1, p. 47)



Thereafter, claimant continued to follow up at the nurse's station. During this time, ice was applied to claimant's shoulder and ibuprofen was administered. At one such visit, claimant was scheduled for evaluation with Dr. Woollen. (Ex. 1, pp. 47-50)

Claimant underwent the EMG and nerve conduction studies recommended by Dr. Hsu on September 30, 2014. Marvin Hurd, M.D. opined the study results were normal. (Ex. 7, pp. 108-109)

On October 1, 2014, claimant presented to Dr. Woollen in evaluation of the right shoulder injury of September 12, 2014. Claimant complained of pain of his elbow, bilateral shoulders, and T-11 region. Dr. Woollen noted evidence of right medial epicondylitis on examination. He ordered an x-ray of claimant's right shoulder and recommended use of Naproxen for shoulder and back pain. (Ex. 1, pp. 4-5) Claimant underwent the recommended right shoulder x-ray later that same date. (Ex. 2, p. 57)

Claimant returned to Dr. Woollen in follow up on October 9, 2014. Dr. Woollen opined claimant's right shoulder x-ray revealed osteoarthritis. He noted claimant complained of right shoulder pain about the infraspinatus and supraspinatus areas, as well as back pain. Dr. Woollen ordered a right shoulder MRI. (Ex. 3, pp. 62-63)

On October 15, 2014, claimant returned to Dr. Hsu for review of electrodiagnostic studies. Dr. Hsu opined claimant's EMG study was normal. She assessed right ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury, as well as right Guyon canal syndrome. Dr. Hsu recommended proceeding with a right ulnar shortening osteotomy with a right Guyon's canal release. In the interim, Dr. Hsu issued a prescription for Norco; she imposed no restrictions on claimant's activities. (Ex. 6, p. 88)

On October 27, 2014, claimant underwent the right shoulder MRI recommended by Dr. Woollen. The radiologist read the results as revealing a low-grade partial thickness tear of the supraspinatus tendon, underlying tendinosis of the supraspinatus and infraspinatus, subscapularis tendinosis, labrum tears, and mild glenohumeral degenerative joint disease. (Ex. 9, pp. 113-114)

On November 3, 2014, claimant underwent surgery by Dr. Hsu, consisting of right ulnar shortening osteotomy and right Guyon's canal release. Dr. Hsu noted operative diagnoses of right ulnar carpal impaction syndrome and right Guyon's canal syndrome. (Ex. 10, pp. 132-133) Dr. Hsu removed claimant from work post-surgery. (Ex. 1, p. 9; Ex. 6, p. 90) During this recovery period, claimant continued to follow up with Dr. Hsu. At a follow up appointment on November 14, 2014, Dr. Hsu removed the placed sutures and casted claimant's right arm. Dr. Hsu imposed restrictions of no use of the right hand until February 3, 2015. (Ex. 6, p. 93) Claimant also participated in a home exercise program, due to his denial of formal physical therapy sessions. (Ex. 6, p. 94)

On November 13, 2014, claimant returned to Dr. Woollen for evaluation. Following examination, Dr. Woollen assessed radiculopathy and thoracic back pain. He recommended MRIs of the lumbar and thoracic spine. (Ex. 3, p. 65) Per the orders of Dr. Woollen, on November 24, 2014, claimant underwent MRIs of the lumbar and thoracic spines. (Ex. 9, pp. 117-120, 127-131)

Claimant returned to Dr. Woollen on December 1, 2014 to discuss the results of the thoracic and lumbar spine MRIs. Dr. Woollen opined the thoracic MRI was unremarkable, with the exception of some mild degenerative changes. Dr. Woollen also assessed radiculopathy, with some bilateral S1 problems of left-sided pain and right-sided numbness. Dr. Woollen noted these symptoms began, per claimant's history, in 2012. He opined "the problem" at the S1 level would have predated, to some extent, the recent injury and pain. Dr. Woollen indicated a referral for evaluation of "mechanism of injury" could be "worthwhile, especially since we can definately [sic] establish that the L5-S1 level was having problems predating the most recent pain in the left S1 pattern." (Ex. 3, p. 66)

On January 15, 2015, claimant returned to Dr. Hsu with complaints of persistent right wrist pain and continued paresthesias. Dr. Hsu opined claimant's continued right wrist pain would not be attributable to ulnar impaction, but potentially to arthritis. Claimant also reported tingling and numbness of two digits of his right hand; in the event this symptom did not improve, Dr. Hsu indicated claimant might be suffering from a pinched ulnar nerve at the elbow, in addition to the Guyon canal. She raised the possibility of a need for a right cubital tunnel release. Dr. Hsu referred claimant for ultrasound and iontophoresis treatment by physical therapy, in hopes of alleviating wrist pain. Dr. Hsu left claimant's restriction in place limiting him to no use of the right hand until February 3, 2015. (Ex. 6, p. 96)

Claimant returned to Dr. Hsu on January 29, 2015. At that time, he reported continued wrist pain, increased elbow pain, and numbness and tingling of the small and ring fingers. Dr. Hsu assessed claimant as 2 ½ months post-osteotomy and Guyon canal release, without improvement in digit paresthesias; as well as with persistent right wrist pain, most likely secondary to osteoarthritis, right cubital tunnel syndrome, and right lateral and medial epicondylitis. She halted claimant's physical therapy, pending recommended cubital tunnel release. Dr. Hsu also imposed restrictions allowing light use of the right hand, with no lifting, pushing or pulling over 5 pounds. (Ex. 6, pp. 97-98)

On February 9, 2015, Dr. Hsu performed right endoscopic cubital tunnel release for a diagnosis of right cubital tunnel syndrome. (Ex. 10, pp. 135-136) On February 17, 2015, claimant returned to Dr. Hsu for post-surgical follow up. Claimant reported no tingling or numbness of his right ring finger and only a limited amount of numbness of the small finger. He also reported some continued pain of the right lateral epicondyle region. Dr. Hsu assessed improving paresthesias post release, right lateral epicondylitis, and right wrist and 1<sup>st</sup> CMC joint arthritis. Claimant declined a steroid

injection; Dr. Hsu ordered continued use of Meloxicam and Percocet. She also removed claimant from work until April 15, 2015. (Ex. 6, p. 100)

During the period of November 14, 2014 through April 14, 2015, while claimant remained off work due to right upper extremity treatment, claimant received short-term disability payments in the amount of \$8,979.84. (Ex. D, p. 1)

Claimant returned to Dr. Hsu in post-surgical follow up on April 28, 2015. At that time, Dr. Hsu released claimant to return to work effective April 28, 2015, with light duty restrictions for the right hand. Restrictions included a 5-pound lift, push, and pull limit; no use of vibratory tools; and no repetitive use of the right elbow. (Ex. 6, p. 101)

Claimant returned to work in his pre-injury position and performed his job duties utilizing his left arm. Shortly following his return to work, on May 7, 2015, claimant injured his left shoulder. While cutting, the whizzard knife became stuck on a piece of meat and resulted in jarring movements and immediate pain of claimant's left shoulder. (Claimant's testimony) Claimant reported the incident to defendant-employer and completed a statement which indicated his whizzard knife had become stuck, resulting in shaking of his left shoulder. Claimant noted complaints of pain of his neck and shoulder. Nursing staff advised claimant to use ice, ibuprofen, and return to the nurses' station for daily rechecks. (Ex. 1, pp. 10-12)

Claimant testified he last saw Dr. Hsu in June 2015. At that time, he informed Dr. Hsu that he required a release without limitations. Claimant explained that an employee at defendant-employer, Rhonda, informed him that defendant-employer would not honor restrictions from an unauthorized physician. He understood the conversation as indicating he would lose his job if Dr. Hsu imposed work restrictions. (Claimant's testimony) A representative of defendant-employer expressed belief the individual referenced by claimant previously served as defendant-employer's workers' compensation coordinator; however, he had no personal knowledge of any purported conversations. (Mr. Mishnick's testimony)

Defendants referred claimant for left shoulder evaluation with Tracey Pick, ARNP on July 24, 2015. Ms. Pick noted examination findings consistent with a left shoulder strain and spasms. (Ex. 1, p. 14) Ms. Pick ordered left shoulder x-rays, which the radiologist read as normal. (Ex. 12, p. 138) Ms. Pick noted potential cervical spine components, yet indicated she was authorized only to treat the left shoulder. Conservative care of physical therapy, Celebrex, and Flexeril was instituted. Claimant was allowed to work without restrictions. (Ex. 1, p. 14)

Claimant testified Ms. Pick advised him to return in two weeks' time, but defendant-employer did not schedule a return appointment. (Claimant's testimony)

Claimant testified on August 12, 2015, he was performing his pre-injury job duties, utilizing his right arm on the whizzard knife. He testified the whizzard knife again became stuck in a carcass and caused his right shoulder to jerk. He testified at the time

of the incident, he was suffering from continued right shoulder pain related to the September 2014 incident, but this incident caused increased pain. (Claimant's testimony) Claimant reported the event and an incident report was created noting right shoulder, right arm, and upper back pain. (Ex. 1, p. 15)

At the arranging of claimant's attorney, on October 20, 2015, claimant presented to board-certified occupational medicine physician, Sunil Bansal, M.D. for an independent medical examination (IME). Dr. Bansal issued a report containing his findings and opinions dated November 20, 2015. (Ex. 13, p. 139)

In performance of the IME, Dr. Bansal was provided a number of records to review. Such documents included claimant's deposition transcript and claimant's medical records, including the on-site nursing records from defendant-employer. (Ex. 13, pp. 165, 168-169) Dr. Bansal's report contains a summary of the medical records reviewed, including the on-site nursing records. (Ex. 13, pp. 139-147)

Dr. Bansal also personally interviewed claimant. Claimant reported he injured his right arm on December 3, 2012, when a footrest opened and claimant fell through the opening while standing. He reported jerking his right wrist while holding a whizzard knife during the fall, resulting in pain of his right arm and wrist. Dr. Bansal noted claimant reported the injury and received treatment at the nurse's station. (Ex. 13, pp. 147-148) Claimant informed Dr. Bansal he sustained three prior injuries to his right wrist in October and November 2012, including two incidents while trimming with a knife and one incident where he was struck on the wrist by a falling object. Claimant indicated his pain gradually increased with these incidents, but was worse following the injury of December 3, 2012. While his pain was a level 3 or 4 on a 10-point scale prior to the December 3, 2012 injury, his pain level increased to an 8 or 9 thereafter. (Ex. 13, pp. 148-149)

Dr. Bansal noted claimant suffered a left knee injury during a slip and fall on August 4, 2014. Claimant also reported he was struck by a hog on his right shoulder on September 12, 2014, which resulted in pain of his right shoulder and back, for which he was treated by a plant nurse. Claimant reported he suffered another work injury on May 7, 2015, at which time he was cutting meat with his left arm. Claimant reported the knife he utilized became stuck in a piece of meat and jerked his left shoulder in multiple directions. Finally, claimant reported he suffered a similar incident on August 12, 2015. On this occasion, claimant was cutting meat with his right arm when the knife became stuck and shook his right shoulder, a similar mechanism of injury to the May 7, 2015 injury to the left shoulder. (Ex. 13, p. 148)

Claimant complained of constant right hand and wrist pain; tingling of the right elbow; numbness from the right elbow to the thumb, index and middle fingers; swelling of the lateral epicondyle; sharp shooting pain of the right elbow area; constant right shoulder pain; numbness of the bilateral shoulder blades; constant left shoulder pain; numbness and swelling of the left arm from the elbow to wrist; numbness of the back of the neck; constant center back pain; radicular symptoms down the bilateral legs; and

soreness of the neck at the conclusion of a work shift, with painful range of motion. (Ex. 13, p. 149) Claimant and Dr. Bansal discussed claimant's job duties. (Ex. 13, pp. 150-151) Dr. Bansal also performed a physical examination. (Ex. 13, pp. 151-153)

Following records review, interview and examination, Dr. Bansal issued diagnoses for claimant's right shoulder, right wrist, right elbow, left shoulder, back and left knee. With respect to the right shoulder, Dr. Bansal assessed a rotator cuff tear and posterior, superior and anterior labrum tears. For claimant's right wrist, Dr. Bansal assessed right ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury, right Guyon's canal syndrome, and status post right ulnar osteotomy and right Guyon's canal release. Dr. Bansal also assessed right cubital tunnel syndrome, status post release at the right elbow. With respect to the left shoulder, Dr. Bansal opined claimant's symptoms and examination were consistent with rotator cuff pathology, but claimant had not undergone an MRI to confirm such findings. For claimant's back, Dr. Bansal assessed an L5-S1 disc bulge with clinical S1 radiculopathy. Finally, Dr. Bansal assessed a contusion of the left knee, with examination findings characteristic of cartilage pathology; he again noted a lack of MRI to confirm pathology. (Ex. 13, p. 154)

Dr. Bansal opined claimant had achieved MMI relative to his right wrist and elbow conditions as of the date of IME, October 20, 2015. He found claimant achieved MMI for his back condition on December 1, 2014, consistent with the timing of his final evaluation with Dr. Woollen. Dr. Bansal recommended a surgical evaluation of claimant's right shoulder; absent such an evaluation or further treatment, he assigned an MMI date of December 1, 2014. With respect to claimant's left shoulder, Dr. Bansal recommended an MRI; however, in the absence of further care, he assigned an MMI date of December 1, 2014. Finally, Dr. Bansal recommended an MRI of claimant's left knee; without such testing, he assigned an MMI date of October 20, 2015. (Ex. 13, pp. 154-155)

Dr. Bansal also addressed the question of causal connection between claimant's conditions and claimed work related injuries. He opined the violent jerking of claimant's right arm on December 3, 2012 was consistent with an aggravation of ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury, right Guyon's canal syndrome, right cubital tunnel syndrome, and claimant's need for surgical intervention. He opined the TFCC and ligament injury was most likely contributed to by the October 2012 injury resulting in a snapping of the right wrist; however, Dr. Bansal opined the condition was further aggravated by the December 3, 2012 injury. (Ex. 13, p. 155) Dr. Bansal opined the May 7, 2015 jerking of claimant's left shoulder resulted in injury to the rotator cuff and attached muscles; he noted no left shoulder pathology prior to the May 7, 2015 event. (Ex. 13, pp. 157-158) Dr. Bansal opined the September 12, 2014 injury involving claimant being struck by a falling hog carcass was consistent with acute rotator cuff and labral tears. He opined the impact also aggravated underlying lumbar spondylosis at L5-S1 and sensitized the L5-S1 disc, resulting in chronic pain. Dr. Bansal opined the August 12, 2015 jerking injury of claimant's right shoulder further aggravated claimant's right shoulder pathology. (Ex. 13, pp. 156-157)

Dr. Bansal offered opinions regarding the extent of permanent impairment sustained by claimant as a result of the alleged work injuries. Dr. Bansal cautioned claimant required further evaluation of his right and left shoulders, but offered opinions as to the current extent of permanent impairment. Based upon range of motion, Dr. Bansal opined claimant sustained a 4 percent whole person impairment to the right shoulder and a 2 percent whole person impairment to the left shoulder. He opined claimant fell within DRE Lumbar Category II, warranting a permanent impairment of 5 percent whole person relative to his back condition. Based upon range of motion of the right wrist, Dr. Bansal opined claimant sustained a permanent impairment of 5 percent right upper extremity or 3 percent whole person. Finally, due to sensory and motor deficits involving the ulnar nerve, Dr. Bansal opined claimant sustained a 5 percent right upper extremity or 3 percent whole person impairment. (Ex. 13, p. 159)

Dr. Bansal also recommended permanent restrictions relative to each of claimant's impacted body parts. For the right shoulder, resulting from the injuries of September 12, 2014 and August 12, 2015, Dr. Bansal recommended permanent restrictions of lifting 10 pounds occasionally or 5 pounds frequently with the right arm; no lifting over shoulder level with the right arm; and no frequent overhead lifting with the right arm. With respect to the right elbow and wrist conditions arising from the December 3, 2012 injury, Dr. Bansal recommended no frequent squeezing, pinching or grasping with the right hand. With respect to the left shoulder injury of May 7, 2015, Dr. Bansal recommended lifting of 15 pounds occasionally or 10 pounds frequently with the left arm; lifting 5 pounds above shoulder level occasionally with the left arm; and no frequent overhead lifting with the left arm. Finally, with respect to claimant's back condition, which Dr. Bansal related to the injuries of December 3, 2012 and September 12, 2014, Dr. Bansal recommended restrictions of no lifting greater than 30 pounds occasionally or 15 pounds frequently; no frequent bending, squatting, climbing or twisting; sitting, standing and walking as tolerated; avoidance of sitting or walking longer than 60 minutes; and avoidance of standing over 4 hours. (Ex. 13, pp. 160-161)

With regard to claimant's need for further medical care, Dr. Bansal noted he recommended surgical consultation of the right shoulder; he indicated claimant might also require intermittent steroid injections or NSAIDs. He recommended an MRI of claimant's left shoulder, with potential treatment tailored to the results. Finally, he recommended maintenance care of claimant's back condition, including NSAIDs, pain medication, and epidural injections. (Ex. 13, pp. 160-161)

On April 8, 2016, Dr. Hsu issued responses to questions posed by claimant's counsel. She confirmed her qualification as a board-certified general surgeon, specializing in hand surgery. (Ex. 6, p. 105) Dr. Hsu represented she treated claimant's right arm from September 2014 through June 2015. (Ex. 6, p. 105) She confirmed claimant's diagnoses as right ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury; right Guyon's canal syndrome; status post right ulnar shortening osteotomy and Guyon's canal release; right cubital tunnel syndrome; and chronic right wrist pain. Dr. Hsu opined these diagnoses were causally related in substantial part to the December 3, 2012 work injury, with the injury serving

either as the direct cause or as a substantial aggravation of an underlying condition. (Ex. 6, p. 106)

Dr. Hsu recommended permanent restrictions of a 10-pound maximum lift, push, or pull with the right upper extremity and no frequent squeezing, pinching, or grasping with the right hand. While Dr. Hsu did not personally rate the extent of claimant's permanent impairment, she expressed belief claimant had sustained permanent impairment to his right wrist and arm as a result of the December 3, 2012 work injury. She further opined the percentage of impairment assigned by Dr. Bansal was reasonable. (Ex. 6, p. 106)

Claimant testified he continues to suffer with symptoms of his right arm, bilateral shoulders, and back. He testified he continues to have residual pain of his right arm, with pain increasing with activities. Claimant testified his bilateral shoulder pain remains constant. He also complained of continued pain of his back, extending from the center down to the low back. On occasion, he testified the back pain may radiate down his right leg. Claimant testified the surgeries performed by Dr. Hsu resulted in decreased numbness of fingers of his right hand. (Claimant's testimony)

Claimant testified he continues to receive treatment of his ongoing complaints at the nurse's station. Claimant testified he visits the nurse's station two times per day on workdays; this pattern continued from his return to work in April 2015 to the date of evidentiary hearing. While in the nurse's station, a nurse applies a warm cloth to his right shoulder; he also applies a provided ointment to his back, shoulders, and right arm. Additionally, claimant continues to see his personal provider, Dr. Rose Mary Mason. Dr. Mason has issued prescriptions for oxycodone-acetaminophen; claimant acknowledged the prescription is issued for all pain he suffers, including arising from conditions not at issue in this proceeding. Claimant testified he takes 4 to 5 of these pills following a workday. Claimant testified he also utilized a Mexican medication to treat inflammation. (Claimant's testimony)

Claimant continues to work for defendant-employer in the position requiring trimming of fat from bellies. He testified he performs his duties utilizing his right arm and the constant activity and overhead work irritate his right shoulder. Despite ongoing symptoms, claimant has not looked into bidding into other jobs at defendant-employer. Claimant described his position as one of the least physically demanding positions in the plant, to his knowledge. He intends to continue to perform this job for as long as he is able to tolerate his duties, with the assistance of treatment in the nurse's station and medication use. Claimant explained he needs to maintain employment in order to support his family. He earned \$17.10 per hour as of the date of evidentiary hearing, having received a raise in September 2015. (Claimant's testimony)

William Mishnick, safety manager at defendant-employer, testified at evidentiary hearing. He testified in this role, he is familiar with the demands of job positions, including claimant's duties "lard scraping." He explained employees in this position are tasked with removing lard from the inside of a carcass. Mr. Mishnick disagreed to some

extent with claimant's description of his job duties, in that he did not believe claimant's duties would require him to begin his cuts above claimant's head level. He acknowledged cuts would begin at or above shoulder level. Mr. Mishnick acknowledged he was unaware of the manner in which claimant personally performed his duties and instead, based his references upon the approximate position of the belly inside a carcass. (Mr. Mishnick's testimony)

Mr. Mishnick testified defendant-employer employs approximately 650 workers in the Denison plant. He expressed belief the plant employed workers in less physically demanding jobs than that held by claimant and noted claimant possessed seniority over some employees, given his 6 years of employment. Mr. Mishnick also clarified the ointment provided in the nurse's station is similar to Bengay and is provided for all employees to use at their discretion, akin to hand sanitizer and lotion. (Mr. Mishnick's testimony)

Mr. Mishnick's testimony was clear and largely consistent with the evidentiary record. His demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt his veracity. Mr. Mishnick is found credible.

#### CONCLUSIONS OF LAW

In File No. 5051308 (Date of Injury: December 3, 2012; Right Arm)

The first issue for determination is whether claimant sustained an injury on December 3, 2012 which arose out of and in the course of his employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is



proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Claimant credibly testified he sustained three injuries to his right arm and wrist in the months of October and November 2012. Claimant's testimony is supported by consistent references to these events throughout the medical records and specifically, in contemporaneous records from nursing staff at defendant-employer's plant. Nursing staff noted claimant was provided conservative care during this period and further noted claimant was released without pain on November 10, 2012.

Claimant credibly testified he then suffered an alleged work related injury on December 3, 2012, when he fell through the platform on which he stood to perform his duties. Claimant promptly reported the incident and completed an incident report which listed a consistent mechanism of injury. Claimant then received conservative care at the nurse's station, where he reported suffering an injury after stepping off a stand. This conservative care continued throughout the months of December 2012 and January 2013. In February 2013, claimant was seen by Dr. Woollen and thereafter, conservative care continued. Per Dr. Woollen's notation, discussion was had between claimant and nursing staff with respect to bidding into a new job position which did not require ulnar flexion of the wrist. In March 2013, Dr. Woollen referred claimant for consultation with an orthopedic surgeon.

Defendants referred claimant to Dr. Gainer for evaluation. Following an MRI arthrogram of claimant's right wrist, Dr. Gainer assessed positive ulnar variance with edema changes and a likely central tear of the TFCC. He recommended an ulnar shortening osteotomy with arthroscopic debridement of the TFCC. With knowledge of claimant's medical history, Dr. Gainer opined claimant's condition was work related and indicated he would seek authorization for surgery. While awaiting authorization, claimant continued conservative care at the nurse's station.

Defendants did not, however, authorize the surgery recommended by Dr. Gainer. Rather, defendants arranged for claimant to undergo an IME with Dr. Wampler on August 30, 2013. Claimant again reported a history of four separate injurious events; Dr. Wampler indicated he did not clearly understand the potential mechanisms of injury. Dr. Wampler noted claimant sought evaluation with a physician in February 2013, when he grew tired of ongoing pain. Dr. Wampler then summarized the subsequent medical records; however, there is no indication in his written report that Dr. Wampler reviewed the in-house nursing records from defendant-employer. Dr. Wampler ultimately opined claimant's condition was the end-result of a prior fracture, with claimant's work at defendant-employer serving as neither the cause or as an aggravation of the wrist condition. He opined only one of the reported injuries had the potential to aggravate the underlying condition, but any aggravation would have been temporary in nature. Dr. Wampler agreed surgery was warranted; however, he opined the need for surgery was not work related. Thereafter, defendants denied liability for claimant's claim.

Claimant continued to suffer with right arm symptoms, as evidenced by his nurse's station visit in July 2014. At that time, claimant requested further evaluation of his right wrist. No referral for the requested care was made.

As a result, claimant sought medical care with Dr. Trinh. Due to the complexity of claimant's case, Dr. Trinh referred claimant to his colleague, Dr. Hsu. Dr. Hsu assessed ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury and Guyon's canal syndrome. She recommended an ulnar shortening osteotomy and Guyon's canal release, which claimant underwent on November 3, 2014. Due to continued symptoms, Dr. Hsu performed endoscopic cubital tunnel release on February 9, 2015.

Dr. Hsu subsequently offered opinions regarding claimant's diagnoses and causation. Dr. Hsu identified claimant's diagnoses as right ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury; right Guyon's canal syndrome; status post right ulnar shortening osteotomy and Guyon's canal release; right cubital tunnel syndrome; and chronic wrist pain. She opined each of these diagnoses were causally related in substantial part to the December 3, 2012 injury as either a direct cause or as a substantial aggravation of an underlying condition.

Claimant also underwent an IME with Dr. Bansal. Claimant again reported a consistent mechanism of injury, falling through a foot rest, as well as the occurrence of three injuries in October and November 2012. Dr. Bansal noted claimant's history of treatment at the nurse's station. Dr. Bansal issued the following diagnoses: right ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury; Guyon's canal syndrome; status post right ulnar osteotomy and Guyon's canal release; right cubital tunnel syndrome; and status post cubital tunnel release. He opined the jerking mechanism of the December 3, 2012 injury was consistent with an aggravation of ulnar impaction syndrome with TFCC and scapholunate/lunotriquetral ligamentous injury, right Guyon's canal syndrome, right cubital tunnel syndrome, and claimant's need for surgical intervention.

Three physicians, Dr. Gainer, Dr. Hsu, and Dr. Bansal, each opined claimant's right arm conditions were work related. Only one physician, Dr. Wampler, opined claimant's conditions were not related to the alleged injury of December 3, 2012. Dr. Gainer served as an authorized physician prior to issuing his opinion; however, following receipt of his opinion, defendants sought Dr. Wampler's opinions via an IME. Following receipt of Dr. Wampler's opinions, claimant ultimately sought care with Dr. Hsu and underwent an IME with Dr. Bansal. Both physicians, like Dr. Gainer, related claimant's conditions to the alleged work injury of December 3, 2012.

Three physicians have offered entirely consistent opinions on claimant's diagnoses and causation. Claimant receives tremendous support for his claim based upon the weight of this evidence. However, I believe it is also warranted to identify the faults present in the basis of Dr. Wampler's opinion. Primarily, there is no indication in Dr. Wampler's report that he reviewed the in-house records from the nurse's station. This is problematic in that such records demonstrated claimant's reports and care following the October and November injuries, as well as demonstrate claimant's prompt report of injury on December 3, 2012 and course of conservative care for over two months prior to being referred to a physician for evaluation. Had Dr. Wampler reviewed such records, perhaps he would have had a better understanding of the series of injuries in the fall of 2012; an understanding Dr. Wampler admittedly lacked. Despite lacking a full understanding of the mechanisms of injury, Dr. Wampler indicated none of the events possessed the potential to result in a material aggravation of claimant's conditions. I find this position difficult to reconcile and accordingly, provide Dr. Wampler's opinions with little weight.

Rather, I find the consistent opinions of Dr. Hsu, Dr. Gainer, and Dr. Bansal entitled to the greatest weight. Dr. Gainer served as an authorized physician prior to offering an opinion that claimant's conditions were work related and required surgery. He, therefore, was provided the opportunity to examine claimant early in his course of care and craft a treatment plan. Dr. Hsu served as claimant's treating physician and surgeon for a period of approximately nine months and covering three surgeries. She, like Dr. Gainer, was able to examine claimant on multiple occasions and craft a course of treatment, including three surgical procedures. She is a board-certified general surgeon, specializing in hand surgery; her expertise in such procedures is best acknowledged by Dr. Trinh's referral of claimant to Dr. Hsu due specifically to the complex nature of his conditions. Finally, Dr. Bansal examined claimant following his completed course of care, reviewed all relevant medical records, and offered opinions consistent with those of Dr. Gainer and Dr. Hsu.

As I provide the greatest weight to the opinions of Dr. Hsu, Dr. Gainer, and Dr. Bansal, it is determined claimant has proven by a preponderance of the evidence that he sustained an injury to his right arm and wrist arising out of and in the course of his employment with defendant-employer on December 3, 2012.

The next issue for determination is whether the alleged injury is a cause of temporary disability. The next issue for determination is whether claimant is entitled to

temporary disability benefits from November 3, 2014 through April 28, 2015. These issues will be considered together.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

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

As set forth *supra*, the undersigned determined claimant sustained a compensable injury to his right arm and wrist on December 3, 2012. Defendants denied liability, leading claimant to seek care with Dr. Hsu. Dr. Hsu performed three surgical procedures on November 3, 2014 and February 9, 2015. As a result, claimant remained off work from November 3, 2014 through April 28, 2015, the date on which Dr. Hsu released claimant to return to light duty work.

As claimant was prevented from working as a result of the compensable injury of December 3, 2012, claimant has proven the work injury was a cause of temporary disability. Claimant has also proven entitlement to temporary total disability/healing period benefits, whichever should prove applicable, during the period he remained off work. The evidentiary record supports a determination claimant was off work from the date of the initial surgery on November 3, 2014 through April 28, 2015. Claimant is entitled to temporary disability benefits during this period pursuant to section 85.33(1) or 85.34(1), whichever should prove applicable.

The next issue for determination is whether the alleged injury is a cause of permanent disability.

Dr. Bansal opined claimant sustained permanent impairment as a result of the December 3, 2012 injury to claimant's right arm and wrist. Specifically, Dr. Bansal found claimant sustained permanent impairment of 5 percent right upper extremity due to wrist range of motion and 5 percent right upper extremity for ulnar nerve sensation

and motor deficits. By the combined values chart of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, these figures combine to a total impairment of 10 percent right upper extremity. Dr. Bansal's opinion on the extent of claimant's permanent functional impairment is unrebutted. It is also supported by the opinion of Dr. Hsu, who although she did not rate claimant's permanent impairment personally, opined Dr. Bansal's ratings were reasonable.

Both Dr. Bansal and Dr. Hsu also recommended permanent restrictions as a result of the work injury of December 3, 2012. Dr. Bansal recommended a restriction of no frequent squeezing, pinching or grasping with the right hand. Dr. Hsu agreed with the restriction against frequent squeezing, pinching or grasping with the right hand; she also recommended a maximum lift, push, or pull with the right arm of 10 pounds. As Dr. Hsu served as claimant's treating physician and surgeon, with the opportunity to examine and interact with claimant throughout a course of care and three surgical procedures, she is in the best position to assess claimant's need for restrictions. Accordingly, I adopt Dr. Hsu's recommendations for permanent work restrictions.

As Dr. Bansal has offered an unrebutted opinion that claimant sustained permanent functional impairment and I have adopted Dr. Hsu's recommendations for permanent work restrictions, it is determined claimant has proven the work injury of December 3, 2012 is a cause of permanent disability.

The next issue is the extent of permanent disability to claimant's right arm.

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)-(t) or for loss of earning capacity under section 85.34(2)(u). 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).

As set forth *supra*, Dr. Bansal opined claimant sustained permanent functional impairment of 10 percent right upper extremity as a result of the work injury of December 3, 2012. His opinion is not only unrebutted, but receives support from Dr. Hsu's description of his rating as reasonable. As there is no evidence Dr. Bansal's rating methodology is inaccurate and no contradictory opinions regarding the extent of permanent disability, I adopt Dr. Bansal's opinion regarding the extent of permanent disability to claimant's right arm.

It is determined claimant sustained a 10 percent impairment to his right arm as a result of the work-related injury of December 3, 2012. Such an award entitles claimant

to 25 weeks of permanent partial disability benefits (10 percent x 250 weeks = 25 weeks), commencing on the stipulated date of April 28, 2015. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were \$823.14, and claimant was married and entitled to 3 exemptions. The proper rate of compensation is therefore, \$552.59.

The next issue for determination is whether defendants are responsible for claimed medical expenses.

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

By this decision, the undersigned determined claimant sustained a compensable work-related injury to his right arm on December 3, 2012. Although defendants initially provided medical care, defendants ultimately denied claimant's claim and ceased authorizing medical treatment. As a result, claimant sought and received medical care of his conditions. There is no evidence the care received by claimant was unnecessary or unreasonable in any fashion; even defendants' IME physician opined surgical intervention was appropriate. As defendants denied claimant's claim, failed to provide care, and the care received was reasonable and necessary in treatment of claimant's compensable injuries, defendants are found responsible for the medical expenses detailed in Exhibit 20, which are causally related to treatment of claimant's right arm conditions.

The final issue for determination is whether defendants are entitled to credit for short term disability benefits paid. If a worker receives benefits under a group plan covering non-occupational disabilities and that plan is contributed to by the employer, Iowa Code section 85.38(2) provides defendants a credit for such benefits against benefits owed on the compensable work-related claim. In this matter, no dispute has been raised regarding claimant's receipt of short-term disability benefits in the amount of \$8,979.84, nor the qualification of the plan as a non-occupational plan to which defendant-employer contributed. As no dispute on these issues has been raised, defendants are entitled to a credit for short-term disability benefits paid.

In File No. 5054867 (Date of Injury: September 12, 2014; Right Shoulder and Back)

The first issue for determination is whether the stipulated injury is a cause of permanent disability.

Claimant suffered a stipulated work-related injury on September 12, 2014, when a carcass fell upon him and struck his right shoulder and back. Claimant received care at the nurse's station and ultimately was referred to Dr. Woollen for evaluation. At the time of evaluation with Dr. Woollen on October 1, 2014, claimant complained of pain of the shoulder and T11 regions. A right shoulder MRI of October 27, 2014 was read by the radiologist as revealing a low-grade partial-thickness tear of the supraspinatus tendon; tendinosis of the supraspinatus, infraspinatus, and subscapularis; labrum tears; and mild glenohumeral degenerative joint disease. Dr. Woollen also ordered MRIs of the lumbar and thoracic spines. He opined some pathology was present at the L5-S1 level, with some radicular symptoms. He opined some of this pathology predated the September 2014 injury; yet recommended further evaluation to consider the mechanism of the recent injury. These opinions were offered on the last date Dr. Woollen evaluated claimant, December 1, 2014.

Claimant was ultimately seen for an IME with Dr. Bansal. With respect to the right shoulder, Dr. Bansal assessed a rotator cuff tear and posterior, superior and anterior labrum tears. He recommended claimant's right shoulder be evaluated by a surgeon, but in the absence of further care, opined claimant achieved MMI relative to the right shoulder on December 1, 2014. Dr. Bansal opined the reported injury of September 12, 2014 was consistent with acute rotator cuff and labral tears. He also noted claimant's subsequent alleged August 12, 2015 injury further aggravated claimant's right shoulder. Based upon range of motion, Dr. Bansal opined claimant suffered a permanent functional impairment of 4 percent whole person relative to the right shoulder. He also recommended permanent restrictions of: maximum lifting 10 pounds occasionally and 5 pounds frequently with the right arm; no lifting above shoulder level with the right arm; and no frequent overhead lifting with the right arm.

Claimant suffered a stipulated work-related injury on September 12, 2014. A contemporaneous right shoulder MRI revealed objective pathology of the right shoulder. Dr. Bansal offered an un rebutted opinion with respect to the extent of claimant's permanent functional impairment and need for permanent restrictions due to his right shoulder condition. Dr. Bansal causally related claimant's right shoulder condition to the work injury of September 12, 2014. While Dr. Bansal also opined the alleged August 12, 2015 injury further aggravated claimant's right shoulder condition, this opinion does not negate the fact claimant suffered with objective pathology which has been causally related to the work injury of September 12, 2014. Accordingly, it is determined claimant has met his burden of proving the work injury of September 12, 2014 is a cause of permanent disability to claimant's right shoulder.

Claimant also claimed to sustain injury to his back as a result of the work injury of September 12, 2014. Dr. Woollen evaluated claimant for these complaints shortly following the work injury and found claimant's symptomatology significant enough to warrant MRIs of the thoracic and lumbar spines. At the time of Dr. Woollen's final evaluation of claimant on December 1, 2014, he noted objective pathology of the lumbar spine and radiculopathy. He, however, opined some level of the pathology predated the September 12, 2014 injury. Dr. Woollen opined some form of evaluation of the

mechanism of injury would be appropriate to determine the impact of the recent injury upon claimant's symptomatology. No further evaluation of claimant's back complaints was completed.

Dr. Bansal ultimately evaluated claimant and assessed an L5-S1 disc bulge with clinical S1 radiculopathy. He opined the impact claimant suffered on September 12, 2014 aggravated underlying lumbar spondylosis at L5-S1 and sensitized the L5-S1 disc, resulting in chronic pain. Dr. Bansal opined claimant suffered a 5 percent whole person impairment as a result of his back condition and recommended permanent restrictions of: a maximum lift of 30 pounds occasionally or 15 pounds frequently; no frequent bending, squatting, climbing or twisting; sitting, standing and walking as tolerated; and avoidance of sitting longer than 60 minutes or standing longer than 4 hours.

Dr. Bansal's opinion on causation is un rebutted, as Dr. Woollen did not specifically opine if the September 12, 2014 injury aggravated an underlying condition. Both physicians' opinions acknowledge claimant presented with preexisting pathology of his lumbar spine; however, only Dr. Bansal addressed the role of the September 12, 2014 injury in aggravating the preexisting condition. Dr. Bansal's opinion is consistent with claimant's representation that he suffered with back pain predating the September 12, 2014 injury and also with a lack of documentation of medical care for claimant's back prior to the stipulated September 12, 2014 injury. Dr. Bansal's opinions on the extent of functional impairment and need for permanent restrictions as a result of claimant's back condition are un rebutted. It is determined claimant has proven the work injury of September 12, 2014 resulted in a material aggravation of a lumbar spine condition, resulting in permanent disability.

The next issue for determination is the extent of claimant's industrial disability.

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)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

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.

Claimant was 54 years of age on the date of evidentiary hearing. He is a native of Mexico, where he attended school. Following arrival in the United States, claimant participated in 6 months of English courses; however, claimant's English skills remain limited. Claimant's language skills are sufficient to have allowed him to work in several manual labor positions, yet he lacks fluency. Claimant's lack of fluency significantly limits the types of employment positions available to him, with his language skills aligning better with manual labor, production and manufacturing-type positions. These are precisely the positions included in claimant's work history and in the event he was physically rendered unable to perform such work, his earning capacity would be significantly impacted. Additionally, claimant's English-language skills would limit his potential for retraining in the event he was unable to tolerate physical labor.

On September 12, 2014, claimant suffered a stipulated work related injury. By this decision, the undersigned determined the injury resulted in permanent disability to claimant's right shoulder and back. Only one physician has offered opinions regarding the extent of claimant's permanent functional impairment and need for permanent work restrictions, Dr. Bansal. With respect to the right shoulder, Dr. Bansal opined claimant sustained a 4 percent whole person impairment and recommended permanent restrictions of a maximum lift of 10 pounds occasionally and 5 pounds frequently with the right arm, and no lifting above shoulder level or overhead. With respect to the back, Dr. Bansal opined claimant sustained a 5 percent whole person impairment and recommended restrictions of a maximum lift of 30 pounds occasionally or 15 pounds frequently; no frequent bending, squatting, climbing or twisting; sitting, standing and walking as tolerated; and avoidance of sitting longer than 60 minutes or standing longer than 4 hours. As Dr. Bansal's opinions on the extent of permanent functional impairment and need for restrictions are unrebutted and not inherently flawed, the undersigned adopts these opinions in consideration of the extent of claimant's industrial disability.

It must also be stated that a proper analysis of the extent of claimant's industrial disability as a result of the September 12, 2014 right shoulder and back injury also includes consideration of claimant's condition immediately prior to the work-related injury, as claimant's condition is viewed as a whole. Specifically, in consideration of the extent of industrial disability sustained as a result of the September 12, 2014 injury, the undersigned also considers the impact of claimant's injury of December 3, 2012. As set forth *supra*, the undersigned adopted Dr. Hsu's opinions with respect to claimant's need for permanent restrictions as a result of his right arm injury. These restrictions included no frequent squeezing, pinching or grasping with the right hand; and a maximum lift, push or pull of 10 pounds with the right arm.

Despite these limitations in function, claimant has at all points in the pendency of his claims, remained a full time employee of defendant-employer. Claimant has continued to work in his pre-injury or a similar, regular production position for defendant-employer and has not demonstrated any loss of earnings, with the exception of the period he was recuperating from right arm surgeries. Given his ongoing symptomatology, it is clear claimant is motivated to continue his employment.

Review of the job description for a production employee at defendant-employer does not reveal any obvious conflict between the required physical duties and claimant's permanent work restrictions. The job description notes standing requirements of two to three hours, below the threshold set by Dr. Bansal. It also notes an ability to lift and lower objects up to 60 pounds; however, it is unclear if this duty is performed manually or with assistive devices. Claimant himself testified his position does not require lifting. Perhaps the most troublesome mention in the job description, with respect to claimant's abilities, is a requirement for grasping and use of knives. While performing such tasks for significant durations may be problematic for claimant, his ability to continue in his job tasks indicates these duties do not exceed claimant's functional abilities. Claimant remains employed in a regular, full time production position for defendant-employer, without a loss of earnings.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 30 percent industrial disability as a result of the stipulated work-related injury of September 12, 2014. Such an award entitles claimant to 150 weeks of permanent partial disability benefits (30 percent x 500 weeks = 150 weeks), commencing on the stipulated date of December 1, 2014. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were \$823.14, and claimant was married and entitled to 3 exemptions. The proper rate of compensation is therefore, \$541.74.

The final issue for determination is whether defendants are responsible for claimed medical expenses. At the time of evidentiary hearing, claimant requested defendants be found responsible for medical expenses incurred on October 27 and November 24, 2014. (Ex. 19) Defendants stipulated payment would be made for such expenses, if the expenses remained unpaid. Accordingly, no individual determination on this issue is required.

In File No. 5054868 (Date of Injury: May 7, 2015; Left Shoulder)

The first issue for determination is whether the stipulated injury is a cause of permanent disability.

Claimant suffered a stipulated work-related injury on May 7, 2015, involving his left shoulder. Claimant initially treated with the nurse's station and received conservative care. Defendants ultimately referred claimant for evaluation with Ms. Pick on July 24, 2015. X-rays of the shoulder were normal. Ms. Pick assessed findings consistent with a left shoulder strain and spasms; she also noted a potential cervical

component, but indicated she was not authorized to evaluate this possibility. She instituted a course of conservative care, including physical therapy and medications. Claimant credibly testified Ms. Pick advised him to return in two weeks for a follow up evaluation; however, defendant-employer did not arrange a repeat appointment.

Claimant was next evaluated by Dr. Bansal, who assessed findings consistent with rotator cuff pathology, but without MRI confirmation. He noted claimant complained of left shoulder symptoms, but there was no left shoulder pathology prior to the stipulated work injury of May 7, 2015. Based upon range of motion testing of the left shoulder, Dr. Bansal opined claimant sustained a 2 percent whole person impairment. He also recommended permanent restrictions of a maximum lift of 15 pounds occasionally or 10 pounds frequently with the left arm; lifting of 5 pounds above shoulder level with the left arm; and no frequent overhead lifting with the left arm.

Claimant received only limited evaluation and care of his left shoulder complaints. He credibly testified he continues to suffer with constant bilateral shoulder pain and further testified he self-treats, including for left shoulder pain. Given this credible testimony and lack of a complete medical workup of claimant's left shoulder, I find the opinions of Dr. Bansal entitled to the greatest weight with respect to the extent of claimant's permanent functional loss and need for permanent restrictions. Ms. Pick did not address the extent of any functional loss sustained by claimant; accordingly, Dr. Bansal's opinion is un rebutted. While Ms. Pick released claimant to work without restrictions, she did not specifically opine on a need for permanent restrictions. As I compare the restrictions proposed by Dr. Bansal with claimant's job description, I find no inherent conflict. Accordingly, a release by Ms. Pick to resume full duty work does not automatically infer that no restrictions would be warranted in consideration of claimant's ability to engage in other job positions. As a result, I adopt the opinions of Dr. Bansal with respect to permanent impairment and permanent work restrictions.

As I have adopted the opinions of Dr. Bansal and find claimant sustained permanent functional impairment and a need for permanent work restrictions, it is determined claimant has proven the injury of May 7, 2015 is a cause of permanent disability.

The next issue for determination is the extent of claimant's industrial disability.

As an initial matter, it must be stated that a proper analysis of the extent of claimant's industrial disability as a result of the May 7, 2015 left shoulder injury also includes consideration of claimant's condition immediately prior to the work-related injury, as claimant's condition is viewed as a whole. Specifically, in consideration of the extent of industrial disability sustained as a result of the May 7, 2015 injury, the undersigned also considers the impact of claimant's injuries of December 3, 2012 and September 12, 2014. Consideration of the factors of industrial disability in connection with those injuries has been set forth *supra* and will not be restated herein.

As many of the factors of claimant's industrial disability were analyzed *supra*, in this section, I will only consider the additional factors relevant specifically to consideration of the industrial disability caused by the May 7, 2015 injury. As a result of the May 7, 2015 injury to his left shoulder, claimant has suffered an opined 2 percent whole person impairment and permanent work restrictions which are relevant to consideration of the extent of claimant's industrial disability. While, as indicated *supra*, the left shoulder restrictions are not at odds with claimant's current job duties, the restrictions do limit the universe of positions within the labor market to which claimant would have access. While claimant remains employed by defendant-employer in a regular, full time position and without loss of earnings, these restrictions undoubtedly further limit the availability of positions to him within the broader labor market.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 40 percent industrial disability as a result of the stipulated work-related injury of May 7, 2015. Such an award entitles claimant to 200 weeks of permanent partial disability benefits (40 percent x 500 weeks = 200 weeks), commencing on the stipulated date of July 24, 2015. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were \$823.14, and claimant was married and entitled to 3 exemptions. The proper rate of compensation is therefore, \$541.74.

The final issue for determination is whether defendants are entitled to credit pursuant to Iowa Code section 85.34(b)(7)(1) for permanent disability benefits paid in File No. 5054867.

Iowa Code section 85.34(7)(a) makes defendants responsible for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer.

Iowa Code section 85.34(7)(b)(1) states:

If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of subsection 2 as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.

Iowa Code section 85.34(2)(u) states:

In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof,

the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred.

Defendants are entitled to a partial satisfaction credit based upon the permanent partial disability benefits awarded in File No. 5054867 (Date of Injury: September 12, 2014) pursuant to Iowa Code section 85.34(7). As a result of the right shoulder and injury of September 12, 2014, the undersigned determined claimant sustained a 30 percent industrial disability, an award of 150 weeks of permanent partial disability benefits. There is no evidence claimant's actual earnings decreased following the September 12, 2014 injury. Defendants are therefore entitled to a credit for 150 weeks of permanent partial disability benefits against the award of permanent partial disability benefits in File No. 5054868 (Date of Injury: May 7, 2015).

In File No. 5054869 (Date of Injury: August 12, 2015; Right Shoulder)

The first issue for determination is whether claimant sustained an injury on August 12, 2015 which arose out of and in the course of his employment.

Claimant alleges he sustained an injury to his right shoulder on August 12, 2015. On this date, claimant alleges the whizzard knife he used became stuck in a carcass, resulting in jerking of his right shoulder. Claimant promptly reported the incident to defendant-employer.

Although claimant credibly testified he suffered an injury and the injury was reported to defendant-employer, there is no documentary evidence indicating claimant received medical treatment of his complaints. The only physician to evaluate claimant's right shoulder with respect to the August 12, 2015 injury is Dr. Bansal. In his analysis, Dr. Bansal addressed claimant's alleged August 12, 2015 injury in connection with the stipulated September 12, 2014 injury to claimant's right shoulder. While he opined the August 12, 2015 injury further aggravated claimant's right shoulder pathology, he provided no specific identification of the pathology or diagnosis which was attributable to the August 12, 2015 injury. He also did not identify which permanent restrictions, if any, were necessitated by the August 12, 2015 injury.

Given the lack of clarity in Dr. Bansal's report and claimant's lack of medical treatment following the alleged August 12, 2015 injury, I find claimant has failed to prove by a preponderance of the evidence that claimant sustained an injury to his right shoulder which arose out of and in the course of his employment on August 12, 2015. As claimant has failed to carry his burden on this issue, consideration of the issues of causation and extent of permanent impairment, and defendants' entitlement to credit under section 85.34(7) is unnecessary.

In All Files:

The issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs listed in Exhibit 20: \$100.00 filing fee (File No. 5051308); \$12.96 service fees (File No. 5051308); \$100.00 filing fee (File Nos. 5054867, 5054868, and 5054869); \$13.92 service fees (File Nos. 5054867, 5054868, and 5054869); \$75.00 translation fee related to Dr. Bansal's IME; and the cost of Dr. Bansal's IME report.

The costs of both filing fees and attendant services fees are allowable costs and are taxed to defendants. I find no basis in rule 4.33 to tax defendants with the cost of translation fees connected to Dr. Bansal's IME; accordingly, this cost is not taxed to defendants. Finally, with respect to Dr. Bansal's IME fee of \$3,700.00, claimant is not permitted to receive reimbursement for the full cost of Dr. Bansal's IME as a practitioner's report under rule 4.33. Rather, the Iowa Supreme Court has ruled only the portion of the IME expense incurred in preparation of the written report can be taxed. Des Moines Area Regional Transport v. Young, 867 N.E.2d 839 (Iowa 2015). Dr. Bansal's bill itemization fails to identify what portion of his fee is attributable solely to report preparation. Per the guidance provided in LaGrange v. Nash Finch Co., File No. 5043316 (Appeal July 1, 2015), I find taxation of one-third of the total expense fee is reasonable. Defendants are therefore taxed with \$1,233.21 of the cost of Dr. Bansal's fee.

Costs are taxed to defendants in the amount of \$1,460.09.

#### ORDER

THEREFORE, IT IS ORDERED:

In File No. 5051308 (Date of Injury: December 3, 2012; Right Arm)

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant healing period benefits at the weekly rate of five hundred fifty-two and 59/100 dollars (\$552.59) for the period of November 3, 2014 through April 28, 2015.

Defendants shall pay unto claimant twenty five (25) weeks of permanent partial disability benefits commencing April 28, 2015 at the weekly rate of five hundred fifty-two and 59/100 dollars (\$552.59).

Defendants shall pay claimant's prior medical expenses submitted by claimant at the hearing as set forth in the decision.

Defendants shall pay accrued weekly benefits in a lump sum.

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

Defendants shall receive credit for benefits paid as set forth in the decision.

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

In File No. 5054867 (Date of Injury: September 12, 2014; Right Shoulder and Back):

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant one hundred fifty (150) weeks of permanent partial disability benefits commencing December 1, 2014 at the weekly rate of five hundred forty-one and 74/100 dollars (\$541.74).

Defendants shall pay claimant's prior medical expenses submitted by claimant at the hearing as set forth in the decision.

Defendants shall pay accrued weekly benefits in a lump sum.

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

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

In File No. 5054868 (Date of Injury: May 7, 2015; Left Shoulder):

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant two hundred (200) weeks of permanent partial disability benefits commencing July 24, 2015 at the weekly rate of five hundred forty-one and 74/100 dollars (\$541.74).

Defendants shall receive credit for one hundred fifty (150) weeks of permanent partial disability benefits paid in File No. 5054867.

Defendants shall pay accrued weekly benefits in a lump sum.

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

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

In File No. 5054869 (Date of Injury: August 12, 2015; Right Shoulder)

The parties are ordered to comply with all stipulations that have been accepted by this agency.

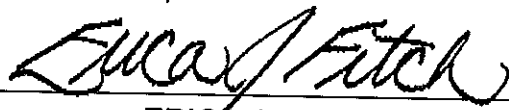
Claimant shall take nothing from these proceedings.

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

In All Files:

Costs are taxed to defendants pursuant to 876 IAC 4.33 in the amount of one thousand four hundred sixty and 09/100 dollars (\$1,460.09).

Signed and filed this 31<sup>st</sup> day of January, 2017.

  
ERICA J. FITCH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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EJF/sam

**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.