BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRENDA MEADE, Claimant, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Employer, and INDMENITY INSURANCE COMPAY OF NORTH AMERICA, Insurance Carrier, Defendants.	:	File No. 5059127 ARBITRATION DECISION Head Note Nos.: 1100, 1108, 1803 2401, 2402

STATEMENT OF THE CASE

Brenda Meade filed a petition for arbitration seeking workers' compensation benefits from State Farm Mutual Automobile Insurance Company, employer, and Indemnity Insurance Company of North America, the insurance carrier.

The matter came on for hearing on August 14, 2018, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of Joint Exhibits 1 through 7; Claimant's Exhibits 1 through 7; and Defense Exhibits A through G; as well the sworn testimony of claimant. Anne Blazejewski served as the court reporter. The parties argued this case and the matter was fully submitted on September 21, 2018.

ISSUES AND STIPULATIONS

The parties have stipulated as to an employer-employee relationship at the time of the alleged injury. The claimant alleges she sustained an injury on April 11, 2017, which arose out of and in the course of her employment. Defendants deny this allegation. The defendants contend even if there was an injury, the claimant cannot prove a causal connection between her alleged injury and any temporary or permanent disability. The claimant is not seeking temporary disability benefits. The claimant seeks permanent partial disability for permanent injury to her bilateral upper extremities under Iowa Code section 85.27(s) (2015). The defendants deny she is entitled to any such

benefits. It is stipulated that if benefits are awarded, the appropriate commencement date is September 5, 2017. Elements comprising the rate of compensation are stipulated. Defendants have raised the affirmative defenses of notice under section 85.23 and statute of limitations under section 85.26. Claimant is seeking medical expenses under section 85.27. Defendants deny claimant is entitled to any such payments. Claimant also seeks an independent medical evaluation (IME) under section 85.39, which is also denied. There is no dispute regarding credit.

FINDINGS OF FACT

Brenda Meade is a 58-year-old claims adjuster for State Farm Mutual Automobile Insurance Company (hereafter, State Farm). She has worked for State Farm since 1986. Her job requires the repetitive use of her bilateral hands and arms. While her exact duties have changed over time, she has always used her hands and arms in a repetitive fashion. Her work duties are somewhat varied. She generally worked from home but also performed some field work. A fairly substantial portion of her work involved data entry and documenting various aspects of insurance claims. Her job description is well-documented. (Defendants' Exhibit G)

Ms. Meade testified live and under oath at hearing. I find her testimony to be generally credible. More specific credibility findings will be discussed in greater detail below.

At hearing, Ms. Meade testified at hearing that she developed pain and symptoms in her wrists which extended down into her fingers. This came on gradually over a period of years. She first filed a claim contending her symptoms were work-related in April 2017. She testified that she filled out an injury report herself through an online claims process. Under date of injury, she listed that the symptoms began in March 2016. At hearing, she testified that the online claims system required her to list a specific date. She testified that she just made up a date which corresponded with her best recollection of when her symptoms became more significant. Defendants argue that her hearing testimony contradicts her deposition testimony where she testified that her symptoms began in March 2016. (See Def. Ex. E, Claimant's Deposition, pages 55-56) Having reviewed all of claimant's testimony and having listened to claimant testify live, I believe the claimant's testimony is consistent. I believe her that her symptoms came on gradually and that she probably first noticed them as being a problem in 2016. I also believe her that they continued to worsen gradually to the point where she performed online research about the condition and purchased a splint in February 2017. I believe her testimony that she estimated a date when the symptoms first began based upon her best recollection. I do not find her testimony to be contradictory.

Ms. Meade had previous minor injuries to her right hand and fingers. In approximately 2006, she was diagnosed with trigger finger in her ring finger. In approximately 2010, she suffered a fracture of her right middle finger in the end joint. (Def. Ex. F, p. 63) She also had an auto accident which resulted in neck pain with radiation into her right arm and fingers in November 2014. (Jt. Ex. 1, p. 1) This problem eventually resolved. I find that these injuries have little or no bearing on her

current alleged conditions which are the subject of this litigation.

After she filed the claim, Ms. Meade was directed to medical treatment with Jon Yankey, M.D. (Jt. Ex. 4, p. 1) This was the first time claimant received any medical treatment for the condition in her bilateral wrists and hands. Dr. Yankey wrote a lengthy report documenting Ms. Meade's medical history and symptoms. I find it is generally consistent with Ms. Meade's testimony. "The patient reported that she developed numbness and tingling in her wrists and hands approximately one year ago in March 2016. She is unable to recall a specific date of onset of her symptoms. She is also unable to recall a specific incident, injury, or activity which she can relate to the onset of her symptoms," (Jt. Ex. 4, p. 1) He concluded that her symptoms "are suggestive of carpal tunnel syndrome" and recommended conservative care, including diagnostic testing (EMG), wrist splints, wrist exercises, and ice. (Jt. Ex. 4, p. 3) An EMG was performed on April 25, 2017, which demonstrated "bilateral median neuropathy". (Jt. Ex. 5) She returned to Dr. Yankey on March 1, 2017, who diagnosed bilateral carpal tunnel. (Jt. Ex. 4, p. 5) He opined that it was not connected to her work activities. He opined that this condition was not "work related" and discharged her from his care. (Jt. Ex. 5, pp. 5-6)

Ms. Meade followed up with Gregory Yanish, M.D., an orthopedic hand surgeon, on June 2, 2017. He agreed with the diagnosis of bilateral carpal tunnel and recommended surgery. (Jt. Ex. 6, pp. 4-5) After taking a full, consistent history of the condition, he opined "it is quite obvious in this particular case, her repetitive duties are the major contributing factors." (Jt. Ex. 6, p. 5) Surgery was performed on the right side on July 11, 2017. (Jt. Ex. 7, p. 1) Surgery was performed on the left side on August 1, 2017. (Jt. Ex. 7, p. 3)

Two other expert physicians have offered expert medical opinions on causation.

On May 31, 2018, Robert Rondinelli, M.D., opined the following.

> In my opinion, she has a convincing history of exposure to sustained keyboarding activities over an extended period of time, and for which it appears likely related in some way to her symptom onset at this particular time. I would therefore conclude it is medically probable that her work-related activity was an accelerating (i.e. aggravating) factor in the development of her carpal tunnel syndrome even if there are other contributing causal factors.

(Cl. Ex. 1, p. 4) Dr. Rondinelli assigned a 12 percent permanent impairment rating for the right side and a 4 percent on the left. (Cl. Ex. 1, pp. 4-5)

Defendants retained Michael Gainer, M.D. for an opinion. He stated her condition was not caused or aggravated by her carpal tunnel syndrome. (Def. Ex. A, p. 1)

All of the medical opinions in this file are from well-qualified experts. The most

convincing opinions, however, are the opinions of Dr. Yanish, the treating surgeon, and Dr. Rondinelli, claimant's expert. Dr. Yanish appears to be completely unbiased and neutral in this matter and merely offered an expert opinion based upon the facts presented. He performed two relatively successful surgeries and examined her on multiple occasions. Dr. Rondinelli clearly performed a careful review of the medical records, medical history provided by claimant and a careful medical evaluation.

Dr. Yankey is an occupational medicine physician. His opinion was influenced by the fact that claimant's injury was "nonspecific". (Jt. Ex. 4, p. 3) It is unclear exactly what he meant by this, however, it appears that he is referring to the fact that the injury came on gradually. He did not record any analysis of her well-described work activities in his causation analysis. It does not appear that Dr. Gainer ever actually examined the claimant. He merely performed a record review and looked at claimant's testimony. For these reasons, I give more credence to the opinions of Dr. Yanish and Dr. Rondinelli.

Having reviewed all of the evidence in the file, I find that the claimant's bilateral carpal tunnel developed, in substantial part, as a result of her work activities and they manifested on April 11, 2017, the date of her first medical treatment for this condition.

CONCLUSIONS OF LAW

The first two questions in this case are (1) whether the claimant suffered a cumulative injury to her bilateral wrists which arose out of and in the course of her employment, and (2) if so, whether the injury manifested on April 11, 2017. The claimant contends that is exactly what happened. The defendants contend that the claimant's work activities are not causally connected to her development of bilateral carpal tunnel and, even if they did substantially contribute to the condition, her injury manifested well before April 11, 2017, thereby barring recovery under sections 85.23 and 85.26.

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.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about,

not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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).

In cumulative injury cases, the issues of whether an injury arose out of and in the course of employment and causal connection are closely intertwined. Based upon the evidence in the record, I find that claimant did suffer a cumulative injury to her bilateral upper extremities which arose out of and in the course of her employment. This is based upon the claimant's testimony, and the credible medical opinions of her treating orthopedic surgeon, Dr. Yanish and her expert witness, Dr. Rondinelli, as set forth in the findings of fact.

Defendants contend that, even if claimant's work activities did substantially contribute to the development of her condition, her claim is barred by both the statute of limitations under Iowa Code section 85.26(2) and notice under Iowa Code section

85.23.

The Iowa Workers' Compensation Act imposes time limits on injured employees both as to when they must notify their employers of injuries and as to when injury claims must be filed.

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

Iowa Code section 85.26(1) requires an employee to bring an original proceeding for benefits within two years from the date of the occurrence of the injury if the employer has paid the employee no weekly indemnity benefits for the claimed injury. If the employer has paid the employee weekly benefits on account of the claimed injury, however, the employee must bring an original proceeding within three years from the date of last payment of weekly compensation benefits.

That the employee failed to bring a proceeding within the required time period is an affirmative defense which the employer must plead and prove by a preponderance of the evidence. See Dart v. Sheller-Globe Corp., II Iowa Industrial Comm'r Rep. 99 (App. 1982).

There is, of course, no question that claimant provided notice and brought her claim timely if the appropriate manifestation date of the injury is April 11, 2017. The defendants are really arguing that, by her own admission, the claim manifested prior to that date, and therefore is barred.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include

missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

The defendants point to the claimant's deposition testimony, as well as her reports to the physicians, wherein she conceded that she first remembered significant symptoms in the March 2016 timeframe. It is undoubtedly true that Ms. Meade knew she had some symptoms and pain during that timeframe. Knowledge of symptoms, however, is not the same as an "occurrence" or "manifestation" under the cumulative injury rule. Ms. Meade did not seek any treatment in March 2016. She did not report any problems to her co-workers. She did not perform internet research about her symptoms at that time. She did not miss work and continued to complete all of her work activities without restrictions or accommodation. In March 2016, she simply knew she had some symptoms. She did have symptoms of numbness and tingling which bothered her, particularly at night. These symptoms had come on gradually. I find that this is very common for individuals who develop cumulative injuries. The best evidence of when she knew both the fact that she had an injury and the causal relationship of the injury to her employment is when the symptoms became so significant that she felt the need to seek treatment. This date is not subjective. It is not left to the claimant's memory. This date is a documented date when she first saw a medical provider for the condition, April 11, 2017. I find this is the appropriate manifestation date.

Where an injury is limited to a scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a)-(t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability."

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Thus, when the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National

Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921).

The parties have stipulated that any disability is calculated to the bilateral upper extremities under Iowa Code Section 85.34(2)(s) (2015).

The AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition , has been adopted as a guide for determining an injured worker's extent of functional disability. Rule 876 Iowa Administrative Code section 2.4. In making an assessment of the loss of use of a scheduled member, however, the evaluation is not limited to the use of the AMA Guides. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). This agency has a long history of recognizing that the actual loss of use which is to be compensated is the loss of use of the body member in the activities of daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions, and other pertinent factors may all be considered when determining scheduled disability. Bergmann v. Mercy Medical Center, File Nos. 5018613 & 5018614 (App. March 14, 2008); Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Community Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Bieghler v. Seneca Corporation, File No. 979887 (Arb. February 8, 1994); Ryland v. Rose's Wood Products, File No. 937842 (Arb. January 13, 1994); Smith v. Winnebago Industries, File No. 824666 (Arb. April 2, 1991).

Having reviewed the evidence as a whole, I find that claimant suffered a permanent loss of function of 12 percent of her right arm and 4 percent of her left. Using The AMA Guides, Fifth Edition to convert these ratings to the body and combine them, I find claimant has sustained a combined functional disability of 9 percent. Under Iowa Code section 85.35.(2)(s) (2015), this converts to 45 weeks of compensation.

ORDER

THEREFORE IT IS ORDERED

Defendants shall pay the claimant forty-five (45) weeks of benefits at the rate of one thousand one hundred eighteen and 81/100 dollars ($1,118.81) per week commencing on September 5, 2017.

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 pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable

and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

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

Costs are taxed to defendants.

Signed and filed this _____20th_____ day of November, 2019.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Richard R. Schmidt (via WCES)
Terri C. Davis (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 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.