

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHAWN MULVANY,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured,
Defendant.

File No. 21009145.01

ARBITRATION DECISION

Head Notes: 1108, 1402.40, 1702, 1800
2907**STATEMENT OF THE CASE**

Claimant, Shawn Mulvany, filed a petition in arbitration seeking workers' compensation benefits against John Deere Davenport Works ("John Deere"), a self-insured employer. In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on July 22, 2022, via Zoom.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 3, and Defendant's Exhibits A through T. Claimant testified on his own behalf. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties filed their post-hearing briefs on September 19, 2022, at which time the case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained injuries arising out of and in the course of employment on November 13, 2019;
2. Whether the alleged injury caused temporary disability and, if so, the extent of claimant's entitlement to temporary disability benefits, if any;

3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits, if any;
4. Whether claimant is entitled to an assessment of industrial disability;
5. Apportionment; and
6. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

Shawn Mulvany is a 52-year-old individual who lived in Moline, Illinois at the time of the evidentiary hearing. (Hearing Transcript, pages 17-18). Mulvany did not graduate from high school, but received his High School Equivalency Certificate in 1990. (Hr. Tr., p. 18; Defendant's Exhibit P, Deposition page 8). Shortly thereafter, he also obtained a certificate for completing a welding and fabrication program through Scott Community College. (Ex. P, Depo. pp. 8-9) Then, in October of 2021, Mulvany received a Certificate of Training from 160 Driving Academy for completing 33 hours of Commercial Driver's License training. (Exhibit K, page 40)

The defendant in this case, John Deere Davenport Works, manufactures construction and forestry equipment. Mulvany worked for John Deere Davenport Works from November 15, 2010, to August 12, 2021. (Hr. Tr., p. 21; Ex. Q, p. 91) During his employment, Mulvany worked in several different positions, including work as an assembler, a forklift operator, and a welder. (Id.) Mulvany testified he could, "do about everything at John Deere besides flame cut." (Id.) Mulvany was working as a welder on the date of injury.

Mulvany's health history is remarkable for prior injuries to the right upper extremity and knee.

Mulvany tore his right biceps tendon picking up a car part in his garage on November 21, 2012. (Joint Exhibit 1, p. 48) Mulvany has expressed to at least one physician that his right arm was never the same after the 2012 right arm injury, and he has had pain ever since. (Id.)

Mulvany then sustained a right knee injury on June 10, 2015, when he tripped over a dolly that was placed near his workstation. (JE1, pp. 51-52) During the incident, Mulvany tore his jeans and cut his leg. (JE1, p. 51) After some encouragement from his supervisor, Mulvany reported the work injury on June 26, 2015. (Id.) By July 21, 2015, Mulvany was reporting minimal to no pain in his right knee. (JE1, p. 50)

Additionally, Mulvany sustained a work-related hernia in 2016. (See Hr. Tr., p. 22; Ex. S, pp. 93, 97) The hernia was surgically repaired and the parties entered into an Agreement for Settlement. The Agreement for Settlement was approved by this agency on June 22, 2018. (Ex. S) In the agreement for settlement, the parties stipulated Mulvany was entitled to 15 weeks of permanent partial disability benefits as a result of the work injury. (Ex. S, pp. 93-97)

During a conversation with Debra Slater, RN on August 12, 2016, Mulvany relayed his intention to undergo carpal tunnel surgery while he was off work for surgery related to an alleged hernia injury. (JE1, p. 48) Ms. Slater told claimant that she was unaware of his carpal tunnel syndrome and whether he considered the same to be work-related, to which Mulvany replied, "it is definitely [work-related], I've been swinging a hammer out there for 6 years." (JE1, pp. 48-49)

A few days later, Mulvany presented to occupational health services to fill out workers' compensation paperwork. (JE1, p. 48) He alleged work-related injuries to his right hand, wrist, elbow, and shoulder. (Id.) More specifically, Mulvany reported a cumulative injury to his right wrist, and acute injuries to his right elbow and shoulder from pulling down on a wrench. (JE1, p. 47) He reported that his right wrist pain began in June 2015, his right shoulder pain began in November 2015, and his right elbow pain began in April 2016. (Id.)

By the time he reported his injuries to defendant, Mulvany had already received treatment from Waqas Hussain, M.D. of ORA Orthopedics.

Mulvany presented to Dr. Hussain on August 9, 2016, reporting right shoulder, elbow, and hand pain, as well as right elbow weakness and right hand numbness and tingling. (JE3, p. 95) He felt as though his right shoulder was "bone on bone." (JE3, p. 98) Mulvany reported worsening symptoms and difficulty with all activities, including some exercises. (JE3, p. 95) The medical records note that claimant had previously undergone a distal biceps tendon repair, and claimant feared that his biceps tendon had torn again. (See id.)

After reviewing some initial diagnostic imaging of claimant's upper extremity, Dr. Hussain assessed claimant with right shoulder pain concerning for possible rotator cuff and bicipital labral pathology with impingement; right elbow pain concerning for possible re-tear of the distal biceps tendon; and right hand numbness, tingling, pain, and weakness consistent with carpal tunnel syndrome. (JE3, p. 96) Dr. Hussain recommended a carpal tunnel release for the right hand and a corticosteroid injection for the right shoulder. (See JE3, p. 97)

An MRI arthrogram of the right shoulder, dated August 29, 2016, revealed several segments of abnormal contrast tracking in the labrum, including the superior labrum, midportion of the posterior labrum, and central portion of the inferior labrum. (JE3, p. 100) Given these findings, an arthroscopy was recommended for further evaluation. (JE3, pp. 100-101)

After reviewing Dr. Hussain's medical records and performing a jobsite assessment, Lester Kelty, M.D. provided a causation opinion for the alleged carpal tunnel injury. (JE1, p. 46) Dr. Kelty opined that claimant's job does not require the level of highly repetitive hand activity as set out in the AMA Guidelines for work-related exposure causing carpal tunnel syndrome. (Id.) As such, Dr. Kelty opined the carpal tunnel syndrome was not related to his work at John Deere. (Id.)

On October 20, 2016, Mulvany returned to Dr. Hussain and reported continued right shoulder pain and constant instability. (JE3, p. 102) He described his pain as a

burning sensation. (Id.) Dr. Hussain reviewed the MRI arthrogram and opined that claimant's right shoulder pain was consistent with superior, posterior, and inferior labrum tear, biceps splitting, and tendinopathy. (Id.) He recommended surgical intervention and Mulvany verbalized his desire to move forward with the same. (Id.)

On October 21, 2016, Dr. Kelty reviewed the medical records and found no evidence that Mulvany injured his shoulder at work. (JE1, pp. 45-46) Dr. Kelty stressed that Mulvany did not report the November 2015 work injury until August 16, 2016. He explained that claimant would have had right shoulder symptoms and difficulty working before August 16, 2016. (JE1, p. 46)

Dr. Hussain performed a right shoulder arthroscopy with biceps tenolysis, conversion to an open subpectoral biceps tenodesis, superior, posterior, inferior, and anterior labral debridement, glenoid chondroplasty, subacromial decompression, and subacromial bursectomy on October 31, 2016. (JE4, pp. 158-160; see JE3, p. 104)

At his initial follow-up appointment, Mulvany reported that he was happy with his progress. He reported some mild pain, but denied swelling, numbness, and tingling. (JE3, p. 104)

Mulvany sustained another right arm injury in late November 2016. (See JE3, p. 105) According to the medical records, Mulvany was removing a pan from the oven with his left hand when the pan began to slip. He quickly moved his right arm to catch the pan, which caused him pain. He reported increased pain and bruising as a result of the injury. He also reported difficulty with physical therapy due to said increased pain. (Id.)

Fortunately, it appears Mulvany's increased pain was short-lived, as he was back to reporting that he was "very happy" with his progress since surgery at his December 20, 2016, follow-up appointment. (See JE3, p. 109)

Mulvany described persistent pain and popping in his right wrist at the December 20, 2016, appointment. (JE3, p. 109) More specifically, he described persistent pain and popping in the volar ulnar aspect of his wrist. (Id.) Dr. Hussain opined that Mulvany's pain was consistent with FCU tendinitis, possible TFCC injury. (Id.) According to the medical records, Mulvany was "persistent" with his desire to undergo an MRI and MRI arthrogram of his wrist. He also requested and received a Kenalog injection. (JE3, p. 110)

The MRI, dated December 29, 2016, revealed contrast in the distal radioulnar joint from a TFCC tear. (JE3, p. 111) After reviewing the imaging, Dr. Hussain recommended and administered a corticosteroid injection. (JE3, p. 113) He then referred Mulvany to Justin Munns, M.D. for further evaluation. (See JE3, pp. 115-116)

Dr. Munns conducted an initial evaluation of Mulvany on February 6, 2017. (JE3, p. 115) He reported that the pain in his wrist was from the repetitive activity he performed for John Deere. (Id.) He further reported that his pain had been present for more than one year. (Id.) The medical record highlights that Mulvany had been off work managing his wrist pain for six months. (Id.) On examination, Mulvany demonstrated

full range of motion in the right elbow, wrist, hand, and fingers. (Id.) When reviewing claimant's MRI, Dr. Munns did not observe, "a frank area of tear present in the TFCC aside from some mild attenuation centrally." (Id.) Dr. Munns recommended against a second injection. Instead, Dr. Munns recommended Mulvany wear a wrist splint and report back as to whether the initial injection continued to provide him relief. Dr. Munns noted that if claimant's symptoms did not improve, he would consider a wrist arthroscopy with possible TFCC debridement. (JE3, p. 116)

Mulvany initially saw improvement in his right wrist pain with injections and immobilization. Unfortunately, he experienced a recurrence of his symptoms once he returned to full duty work. (See JE3, p. 117) After discussing treatment options with Mulvany, Dr. Munns opined that neither conservative management, nor surgical intervention would succeed if Mulvany continued to handle high-level machinery work with repetitive activities and no ability to control his wrist. (Id.) In response, Mulvany told Dr. Munns that he hoped to be working in a new role that would be less strenuous on his wrist by the end of the year. (See id.) Dr. Munns administered an injection at the TFCC joint and advised Mulvany to avoid exacerbating activities. (JE3, pp. 117-118)

On April 19, 2017, Mulvany presented to Dr. Kely and reported that the right carpal tunnel surgery did not work. (JE1, p. 44)

On July 2, 2018, Mulvany presented to Christine Deignan, M.D., complaining of right knee pain that had been present for the past few months. (JE1, p. 42) He related his pain to the fall he sustained on June 19, 2015. (Id.) According to Mulvany, his knee "never really got better" and it was now starting to interrupt his sleep. (See JE1, p. 43) According to Dr. Deignan's notes, Mulvany requested treatment and then demanded she order an MRI of his right knee. (JE1, p. 42) Dr. Deignan assessed patella femoral crepitations in the right knee and released Mulvany to regular duty work. (Id.)

The injury that is the subject of this case occurred on or about November 13, 2019, while claimant was working as an assembler in a new department. (JE1, pp. 39-40) In this position, claimant utilized high torque and impact wrenches, as well as a brass hammer. (JE1, p. 40) Mulvany used an approximately 26-pound impact wrench to secure bolts that were at or above shoulder height. (JE1, p. 38) The job also required claimant to crawl on his knees and under machines. (See Hr. Tr., pp. 26-28) Claimant testified that he could not move his arm over his head after four days in this position. (Hr. Tr., p. 29) He further testified that his right knee began to hurt again and his right hand swelled up to the point he could not make a fist. (Hr. Tr., p. 30)

Mulvany first presented to John Deere's on-site occupational health clinic on November 13, 2019. He complained of right hand, right knee, and bilateral elbow pain. (JE1, pp. 39-41) He relayed that eight days prior, he was forced into a new position due to layoffs and he did not think he could continue working in said position. (JE1, p. 41) On examination, Dr. Deignan observed swelling in the right arm and knee. (JE1, p. 40) She assessed Mulvany with a likely biceps strain and right knee patella-femoral crepitation. She also explained that the right hand swelling was coming down from the elbow. (Id.)

A few days later, Dr. Deignan performed a jobsite assessment. (JE1, pp. 38-39) She did not observe all of the job duties for Mulvany's new position, but she did observe the duties he considered problematic. Dr. Deignan concluded there were multiple activities that could put excess strain on claimant's previously operated biceps and result in injury. (JE1, p. 39) She subsequently referred Mulvany to orthopedics. (Id.)

Mulvany presented to Dr. Hussain on November 22, 2019, and reported a history of constant, radiating right shoulder pain that began on November 9, 2019. (JE3, p. 121) Mulvany described radiating pain traveling from the shoulder down to the elbow and into the thumb. (Id.) Dr. Hussain assessed Mulvany with right scapula, biceps, and arm pain, with a biceps tendon sprain and possible cervical radiculopathy. (Id.) He then administered a corticosteroid injection to Mulvany's right shoulder and prescribed physical therapy. (JE3, pp.121-122)

On November 25, 2019, claimant told Dr. Deignan that his right shoulder was doing "much better" following the corticosteroid injection. (JE1, p. 36) However, despite the improvement, claimant still expressed concern over his ability to return to his new position at work. (Id.) He also noted a lump in his right wrist and wondered if the same was causing the numbness he was experiencing in his hand. (Id.) Dr. Deignan assessed claimant with a right biceps strain and right wrist ganglion cyst. (Id.) Dr. Deignan reviewed the medical records from claimant's 2016 carpal tunnel surgery and noted that the records did not mention a ganglion cyst. (Id.)

Dr. Hussain eventually ordered an MRI arthrogram of the right shoulder. (JE3, p. 123) The arthrogram revealed mild insertional tendinopathy distal supraspinatus tendon without tear, labral tearing involving multiple labral segments, and moderate AC joint degenerative joint disease. (JE3, pp. 124-125)

On December 4, 2019, claimant presented to OHS and reported that his right knee pain had returned. (JE1, p. 32) An x-ray of the right knee returned normal and Dr. Deignan assessed right knee chondromalacia. (Id.) Claimant requested an MRI of the right knee, but Dr. Deignan explained that claimant's issues were in the patella femoral joint and not surgical. (Id.)

At some point between December 18, 2019, and January 13, 2020, claimant was on "shut down" and not working. (See JE1, p. 27) During shut down, Mulvany completed 30 minutes of swimming on three different occasions. He also went fishing on his boat in Florida. (See JE1, pp. 25-27)

Mulvany returned to Dr. Hussain on January 31, 2020, and reported that his level of pain was starting to impact his activities of daily living. (JE3, p. 127) Dr. Hussain reviewed the MRI arthrogram results with claimant and recommended a right shoulder arthroscopy, labral debridement, and subacromial decompression. (Id.)

Dr. Hussain performed surgery on March 9, 2020. (JE6, pp. 177-179) Due to complaints of AC joint pain on the morning of surgery, Dr. Hussain added an AC joint resection with distal clavicle excision to the list of procedures. (JE6, p. 176)

Mulvany's post-surgery appointments were conducted via telehealth due to the COVID-19 pandemic. (See JE3, p. 131) At his first telehealth visit, Mulvany reported some pain to the anterior aspect of the shoulder and significant improvements to his range of motion. (JE3, p. 131) He also reported increased numbness and tingling in his right hand since undergoing surgery. (Id.) Dr. Hussain ordered additional physical therapy sessions, prescribed meloxicam, and restricted Mulvany to light duties of less than five pounds. (JE3, p. 132)

Dr. Deignan ordered an MRI of the right knee on June 22, 2020. (JE1, p. 17) The June 23, 2020, MRI report revealed no significant internal derangement and very mild focal chondromalacia of the anterior central surface of the medial femoral condyle along the trochlear groove. (See JE1, p. 15)

When Mulvany failed to present to Dr. Deignan's office to review his MRI results on June 29, 2020, Dr. Deignan drafted a causation opinion. (JE1, p. 15) Based on claimant's history, physical examination, and testing, Dr. Deignan opined that the right knee complaints were not a result of claimant's work activities at John Deere Davenport Works. (Id.) She believed claimant's symptoms were the result of muscle imbalance and a personal condition. (JE1, p. 14) She opined that any symptomatic exacerbation of the right knee resulting from work activities resolved on February 5, 2020. (JE1, p. 15)

Defendant produced a letter to Mulvany, formally denying the alleged right knee injury as work-related on July 6, 2020. (Ex. C, p. 14)

On August 24, 2020, Mulvany presented to Dr. Munns reporting right wrist pain with numbness and tingling. (JE3, p. 136) He reported that the wrist pain began eight months prior after using a hammer at work for six days straight. (Id.) Mulvany also described radiating pain into his arm, as well as a mass over the volar radial wrist, "just off the thumb CMC joint." (Id.) It is also noted that Mulvany saw a rapid increase in the size of the mass after starting a new job on the cab line. (JE1, p. 12) Dr. Munns assessed Mulvany with right volar radial wrist pain, likely ganglion cyst, and right hand numbness and tingling, likely recurrent carpal tunnel syndrome. (JE3, p. 136) Dr. Munns ordered an MRI to more fully assess for volar ganglion cyst, and an updated EMG/nerve conduction study to rule out right carpal tunnel syndrome. (JE3, p. 137)

The MRI, conducted and reviewed by Moe Phyu Tun, D.O., revealed a multilobulated ganglion cyst at the volar aspect of the radiocarpal joint. (JE3, pp. 141-142) The EMG/nerve conduction study revealed mild to moderate right carpal tunnel syndrome. When compared to a prior EMG, dated July 26, 2016, the September 4, 2020, EMG demonstrated improvement in the conduction of the right median motor and median sensory nerves across the wrist. (JE7, p. 181) The EMG did not demonstrate denervation or radiculopathy. (Id.)

Mulvany was scheduled to present for a right shoulder follow-up appointment on September 11, 2020. Unfortunately, Mulvany's shoulder "popped" in late August, prompting him to request an earlier appointment. (See JE3, p. 139; JE1, p. 13) However, it does not appear that Dr. Hussain could accommodate claimant's request. (See JE3, p. 143)

At the September 11, 2020, appointment, Mulvany complained of burning pain radiating up into his neck. (JE3, p. 143) He reported that he was recently placed in a new position at work where he has to extend his arms. (Id.) Mulvany felt that the new position had increased his pain. (Id.)

Mulvany returned to Dr. Munns' office to review the results of the MRI and EMG on November 9, 2020. (JE3, p. 148) In addition to the right wrist and hand pain, Mulvany described pain, catching, locking, and triggering in his right middle finger. (Id.) Dr. Munns assessed Mulvany with right middle trigger finger, right volar wrist ganglion cyst, right carpal tunnel syndrome, and right middle finger MP joint osteoarthritis. (Id.) Dr. Munns discussed conservative and surgical treatment options with claimant and ultimately decided to move forward with a corticosteroid injection to the middle finger MP joint. (JE3, p. 149)

With respect to causation, Dr. Deignan opined, "Generally, I do not regard ganglions as work related but this case is the exception. It is my medical opinion that this ganglion cyst should be considered part of the injury." (JE1, p. 7)

Mulvany reported worsening pain over the volar radial aspect of his wrist on December 7, 2020. (JE3, p. 151) Given this worsening pain, Dr. Munns recommended removal of the ganglion cyst. (Id.)

A right volar ganglion cyst excision was ultimately performed on January 7, 2021. (JE4, pp. 161-162; see JE3, p. 154) Dr. Munns placed claimant at maximum medical improvement and released him to return to work without restrictions on February 8, 2021. (JE3, p. 156) Dr. Munns advised claimant that continued swelling was expected and could last for months. (Id.)

Around this time, Rick Garrels, M.D. replaced Dr. Deignan as John Deere's Medical Director. Claimant first presented to Dr. Garrels on February 25, 2021, and reported persistent discomfort in his right shoulder. (JE1, p. 5) He described difficulty with overhead work resulting in pain radiating from the right shoulder into the neck. (Id.) Dr. Garrels recommended permanent restrictions to limit claimant's overhead work and use of vibratory tools. (JE1, p. 6) After consulting with the Safety Department, Dr. Garrels amended claimant's vibratory tools restrictions to no high torque tool use. (JE1, p. 5)

On March 12, 2021, Dr. Garrels modified claimant's work restrictions to no work above shoulder height. According to the medical records, claimant was being asked to perform two-handed work using his left arm only. He did not feel such a request was possible. (JE1, p. 4)

Defendant sought an evaluation of permanent partial impairment from Dr. Deignan on February 24, 2021. (Ex. F, p. 29) At the time of the evaluation, claimant complained of right shoulder pain that increased with overhead work and the act of looking upward. (Ex. F, p. 28) He complained of intermittent swelling, but denied numbness and tingling in the right hand. (Id.) Claimant reported a concern for reinjury since his return to full-duty work. (Id.) On examination, claimant's grip strength and flexion were noticeably worse in his right hand when compared to the left. (See Ex. F, p.

29) Dr. Deignan examined claimant's bilateral shoulders and documented range of motion measurements for both. (Ex. F, p. 30)

In her report, dated March 18, 2021, Dr. Deignan assessed claimant's permanent impairment relating to the right shoulder and wrist injuries. (Ex. F, p. 27) Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Deignan assigned 13 percent upper extremity impairment for the right shoulder injury, and 3 percent upper extremity impairment for the right wrist injury. (Ex. F, p. 31) These figures combine for a total of 16 percent right upper extremity impairment, or 10 percent whole person impairment. (Ex. G, p. 33)

Pursuant to Dr. Deignan's impairment assessment, Defendant volunteered 64 weeks of permanent partial disability benefits at a rate of \$626.27 per week. (Ex. H, p. 34)

Mulvany requested additional physical therapy for his right shoulder and neck on June 25, 2021. (JE1, p. 3) He also inquired about working reduced hours. (Id.) On examination, Dr. Garrels observed full range of motion in the right shoulder and neck. He also observed normal strength in the right shoulder. Ultimately, Dr. Garrels opined that he had nothing more to offer claimant, and no basis to restrict claimant's work hours. (Id.)

Mulvany has not sought or received any medical treatment for his right shoulder since April 2020. (See Hr. Tr., p. 87; Ex. P, pp. 83-84) At hearing, Mulvany confirmed that he had not sought or received any medical treatment for his wrist in over a year. (Hr. Tr., p. 88) He does not take any medication for either condition. At hearing, Mulvany testified to his current symptoms and functional abilities. With respect to his right wrist, Mulvany reported ongoing swelling, tingling, and sharp, shooting pains if he positions it the wrong way. (Hr. Tr., p. 54) Mulvany testified that his wrist swells up following certain activities, such as putting bolts on a motor. (Id.) Similarly, Mulvany testified that his right shoulder is uncomfortable and painful all the time. (Hr. Tr., p. 55)

In addition to his physical injuries, Mulvany asserts he sustained a mental health injury as a sequela of the November 13, 2019, work injury. Defendant disputes causation with respect to claimant's mental health symptoms.

Mulvany has dealt with mental health issues in the past. He presented to Cynthia Rowley-Sullivan, PA-C on December 29, 2015, reporting symptoms consistent with anxiety. (JE2, p. 53) He felt overwhelmed at work and considered his job very stressful. (Id.) It is noted that claimant found himself, "agitated, throwing tools, blowing up with his family and girlfriend over little things." (Id.) Ms. Rowley-Sullivan assessed claimant with anxiety and insomnia, and continued prescription medications addressing each condition. (JE2, p. 56)

Mulvany asserts his pre-existing mental health condition was aggravated while working light duty. According to claimant, his co-workers gave him grief, called him names, and wrote distasteful messages on his laptop. (See Hr. Tr., pp. 32-33; Ex. 3)

On September 22, 2020, Mulvany presented to Mary Huesmann, NP and reported that he had been experiencing chest tightness on and off for approximately two months. (JE1, p. 11) He provided that he had been “stressed out” and did not feel as though he could return to work. (*Id.*) The next day, he reported similar complaints to Paul Wang, M.D. (JE2, p. 67) Dr. Wang referred Mulvany to psychiatry. (JE2, p. 69)

Claimant presented to psychiatrist Gonchigari Narayana, M.D. on September 30, 2020. (JE8, p. 182) According to Dr. Narayana’s notes, claimant was frustrated from being ridiculed and harassed in the workplace. (*Id.*) Dr. Narayana assessed Mulvany with major depressive disorder, single episode, moderate, and prescribed medication. (JE8, p. 183)

Fortunately, Mulvany was reporting no signs or symptoms of depression, anger, or hostility as of November 6, 2020. (JE8, p. 191) Dr. Narayana returned claimant to work on November 17, 2020. (*Id.*) In total, Mulvany was off work for approximately six weeks. (*See* JE1, pp. 11-12)

At hearing, claimant testified that he is not currently struggling with anxiety and depression. (Ex. P, Depo. pp. 76-77) Several physicians assessed claimant with anxiety and/or depression; however, no physician definitively addressed whether claimant’s anxiety and/or depression arose out of and in the course of his employment. Claimant did not address causation or permanent impairment relating to his alleged mental health injury in his post-hearing brief.

Due to the lack of evidence supporting claimant’s assertion, I find claimant failed to carry his burden of proving his mental health condition arose out of and in the course of employment with defendant.

The next issue to be addressed is whether claimant’s right knee condition is causally related to the November 13, 2019, work injury.

Dr. Deignan is the only physician to address whether claimant’s right knee condition arose out of and in the course of his employment with John Deere Davenport Works. On June 29, 2020, Dr. Deignan reviewed claimant’s June 23, 2020, MRI and concluded there was no significant internal derangement of the right knee and very mild focal chondromalacia of the anterior central surface of the medial femoral condyle along the trochlear groove. Dr. Deignan added that physical examination did not reveal any signs of internal derangement in 2015, 2018, or 2019. Based on the medical history, physical examination, and testing, Dr. Deignan opined that claimant’s right knee complaints were not the result of work activities at John Deere Davenport Works. She further opined that any symptomatic exacerbation resulting from his work activities resolved on February 5, 2020. (Ex. C, pp. 14-15)

Although claimant testified that Dr. Kreiter examined his right knee, Dr. Kreiter did not address the same in his IME report. Claimant did not address causation in his post-hearing brief. Given the evidentiary record, I find claimant failed to meet his burden of proving his right knee condition arose out of and in the course of his employment on or about November 13, 2019.

Next, the nature and extent of permanent impairment attributable to the stipulated right shoulder and right wrist injuries must be decided. Mulvany asserts entitlement to industrial disability benefits. Defendant disputes the same and contends claimant's permanent disability should be limited to his functional impairment as claimant returned to work following his injury and received greater wages and earnings than he did at the time of the November 13, 2019, work injury.

Dr. Deignan and Dr. Kreiter agree that claimant sustained permanent impairment relating to his right shoulder and right wrist injuries. In a report, dated March 18, 2021, Dr. Deignan assessed claimant's permanent impairment relating to the right shoulder and wrist injuries. (Ex. F, p. 27) Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Deignan assigned 13 percent upper extremity impairment for the right shoulder injury, and an additional 3 percent for the right wrist injury. (Ex. F, p. 31) These figures combine for a total of 16 percent right upper extremity impairment. (Ex. G, p. 33)

After receiving Dr. Deignan's impairment assessment, claimant sought an independent medical examination with Richard Kreiter, M.D. The examination occurred on December 28, 2021. (Claimant's Exhibit 1, p. 1) Dr. Kreiter assessed claimant with adhesive capsulitis with limited motion status post resection of the lateral clavicle, labral tears, biceps tenodesis with chronic pain. (Ex. 1, p. 4) Dr. Kreiter further assessed claimant with grip weakness of the right with distal radioulnar joint dysfunction, history of TFCC pathology and possible ulnar entrapment at the cubital tunnel area. (Id.)

Dr. Kreiter assigned 11 percent upper extremity impairment for claimant's decreased range of motion, and an additional 10 percent for the distal clavicle excision. (Id.) In total, Dr. Kreiter assigned 20 percent upper extremity impairment as a result of the right shoulder injury. (Id.) The 20 percent upper extremity impairment rating equals 12 percent whole person impairment. (Id.) Notably, claimant demonstrated significantly worse range of motion during Dr. Kreiter's examination when compared to Dr. Deignan's findings. (Compare Ex. F, p. 30 with Ex. 1, p. 1)

Dr. Kreiter also assigned permanent impairment as a result of claimant's decreased grip strength. (Id.) Dr. Kreiter attributed the weakness in claimant's grip strength to the distal radioulnar joint symptoms from the TFCC, as well as the ganglion excision in the volar wrist area. (Id.) Utilizing table 16-34, Dr. Kreiter assigned 10 percent upper extremity impairment, or 6 percent whole person impairment, for loss of grip strength. (Id.) In comparison, Dr. Deignan assigned impairment based solely on claimant's right wrist range of motion. Dr. Deignan documented a loss of grip strength on the right; however, she did not provide any additional comment.

Dr. Kreiter's impairment ratings for the right shoulder and right wrist combine for a total of 28 percent right upper extremity impairment, or 17 whole person impairment.

When comparing the permanency assessments, I note that Dr. Deignan evaluated claimant on numerous occasions while she served as the Medical Director for John Deere Occupational Health Services between July 2, 2018, and December 23, 2020. (See JE1, pp. 7-42) During this time, she became familiar with claimant's right

shoulder and right wrist conditions. In comparison, Dr. Kreiter performed a one-time examination, which occurred over two years after the date of injury.

Defendant asserts Dr. Kreiter did not comply with the AMA Guides when assessing impairment attributable to the right shoulder. More specifically, Defendant argues that Dr. Kreiter did not comply with the AMA Guides as he failed to compare the right shoulder's range of motion with the left shoulder's range of motion. In support of its argument, defendant highlights the fact Dr. Kreiter did not include any measurements for the left shoulder, and claimant testified that Dr. Kreiter did not examine the left shoulder. Defendant's argument is somewhat perplexing, given that both Dr. Deignan and Dr. Kreiter assigned permanent impairment using the range of motion model. Dr. Deignan documented range of motion measurements for both the left and right shoulders; however, there is no evidence Dr. Deignan considered the left shoulder measurements when she assigned permanent impairment.

Defendant next asserts that Dr. Kreiter erred in assigning 10 percent impairment for the distal clavicle excision. Notably, Dr. Deignan assigned the same 10 percent impairment rating pursuant to Table 16-27 on page 506. (Ex. F, p. 31) The evidentiary record demonstrates that claimant underwent a distal clavicle excision. The AMA Guides direct physicians to assign a rating for distal clavicle excisions. It is not the agency's place to second-guess the AMA on such decisions. However, defendant correctly points out that neither expert physician applied the 25 percent modifier to the 10 percent rating as required by the AMA Guides. This results in a 2.5 percent impairment for a distal clavicle excision under the plain text of the AMA Guides.

Lastly, defendant asserts that Dr. Kreiter's right wrist impairment rating is attributable, in part, to a TFCC tear, which no physician has causally related to the November 13, 2019, work injury. Indeed, Dr. Kreiter assigned 10 percent upper extremity impairment for loss of grip strength from weakness secondary to both the distal radioulnar joint symptoms from the TFCC and the ganglion excision in the volar wrist area. Dr. Kreiter did not provide any analysis as to the causal relationship between the TFCC injury and the November 13, 2019, work injury. This omission is particularly damaging to the persuasiveness of Dr. Kreiter's opinion as no other physician has causally related the condition to the November 13, 2019, work injury.

Further, defendant notes the AMA Guides does not assign a significant role to strength measurements as they are influenced by subjective factors that are difficult to control. According to section 16.8a, strength can be utilized separately for impairment purposes if an examiner believes an individual's loss of strength represents an impairing factor that has not been adequately considered by other methods. (AMA Guides, p. 508) The AMA Guides provides the example of a severe muscle tear that healed leaving a palpable muscle defect. However,

If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.* Decreased

strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts that prevent effective application of maximal force in the region being evaluated.

(Id.) (Emphasis in original)

Dr. Kreiter did not address whether claimant's loss of strength stems from unrelated etiologic or pathomechanical causes. Additionally, Dr. Kreiter did not assign permanent impairment for both a loss of range of motion and a loss of grip strength. Rather, Dr. Kreiter only assigned impairment based on a loss of grip strength. The AMA Guides expresses a clear preference for objective anatomic findings. Lastly, Dr. Kreiter makes no reference to how claimant's pain and the decreased range of motion in his wrist could have limited his performance on the grip strength test. For these reasons, I find the range of motion method utilized by Dr. Deignan to be considerably more reliable than the loss of grip strength method utilized by Dr. Kreiter. I similarly find the impairment ratings assigned by Dr. Deignan to be the most convincing and credible in this matter.

With respect to restrictions, Dr. Garrels recommended no work above shoulder level with the right upper extremity, and no use of any heavy torque tools using the right hand. Dr. Kreiter agreed with the restrictions recommended by Dr. Garrels. Given this consensus, I find the restrictions as outlined by Dr. Garrels and endorsed by Dr. Kreiter accurately and reasonably reflect claimant's limitations.

I must now determine whether, and to what extent, claimant is entitled to industrial disability benefits. Defendant contends claimant is only entitled to the functional impairment resulting from the injury and not in relation to the employee's earning capacity given he returned to work and received greater wages and earnings than he received at the time of the November 13, 2019, injury. Claimant contends he is entitled to industrial disability benefits as his employment relationship was terminated.

On August 2, 2021, Defendant notified Mulvany that his employment had been suspended for absenteeism. (Ex. P, p. 90) Mulvany subsequently met with a representative of John Deere Labor Relations to review the disciplinary matter. Defendant asserts claimant voluntarily quit during the meeting. Claimant testified, "Andy started talking about my attendance and this and that, I just had enough. I knew I was terminated. I just told him in the meeting I didn't want to argue anymore, so I just stood up and gave my John Deere ring back, my John Deere coat, and walked out." (Hr. Tr., p. 49) Given claimant's testimony, I find claimant's separation from employment is properly characterized as a voluntary quit. Nevertheless, claimant is entitled to an industrial disability analysis as the employment relationship was terminated prior to the evidentiary hearing.

Since leaving John Deere Davenport Works, claimant has worked at least three different jobs. Claimant worked as a welding inspector at McLaughlin Body in January 2022. (Ex. P, p. 86) Unfortunately, the job only lasted one day. According to claimant, he quit when the employer asked him to use a grinder. (Id.) Claimant next worked for Sivyer Steel as a crane operator. (Id.) Claimant quit after just one and a half days for a similar reason. (Id.)

On February 1, 2022, claimant became self-employed as a truck driver. He has a contract through Classic Transport and transports RV trailers from Goshen, Indiana to various RV dealers throughout the United States. (See Hr. Tr., pp. 50, 61-63) The drive from claimant's residence in Moline, Illinois to Goshen, Indiana typically takes four to four and a half hours. (Hr. Tr., p. 62) On a normal run, claimant will pick up his trailer and drive back to Moline, Illinois in the same day. He will then wake up the next morning and transport the trailer to its destination. (Hr. Tr., pp. 62-63) In total, claimant works roughly 14-hour days when making his deliveries. (Ex. P, depo. p. 14)

Claimant drives a 3500 dual rear wheeled truck to make his deliveries. (Ex. P, depo. p. 10) He works "whenever he feels like it" and can choose where he wants to make his deliveries. (See Ex. P, depo. p. 11) He is paid on a per job basis and estimates that he earns roughly \$500 per week. (Ex. P, depo. pp. 12-13) As part of his job, claimant must hook trailers up to his truck. According to claimant, some of the trailers have an electric lift; however, there are others that he must manually lower with a crank. (Hr. Tr., pp. 50-51) There is no lifting or overhead work to complete in this job. (Ex. P, depo. pp. 16-17)

Classic Transport requires claimant to be medically certified for a commercial driver's license. In order to be certified, claimant had to undergo a physical examination for the Department of Transportation (DOT). Prior to his physical, claimant completed a patient questionnaire. As part of the questionnaire, claimant was asked whether he has or has ever had various medical conditions. Claimant answered, "No" with respect to "Anxiety, depression, nervousness, other mental health problems[.]" as well as, "Missing or limited use of arm, hand, finger, leg, foot, toe[.]" (JE9, p. 195) Mulvany signed off on the authenticity of his questionnaire on September 28, 2021. (Id.) Following a physical examination, the medical examiner determined that claimant met the standards of the Federal Motor Carrier Safety Regulations and qualified for a two-year certificate. (JE9, p. 197)

Mulvany's hobbies include fishing, swimming, and amateur racecar driving. He races late model cars and has done so for the past twenty years. (Hr. Tr., pp. 20, 52, 71) At each racing event, claimant participates in at least one heat race and one feature race. (Hr. Tr., pp. 76-77) Claimant testified that he drives 35 to 40 laps on an average race night. (Id.) According to claimant, he drives approximately 90 miles per hour down the straightaways and slides fast into corners. (Hr. Tr., pp. 77-78) Claimant testified that he performs some of the maintenance on his late model racecar. For example, claimant testified that he installs and repairs the vehicle's motor. (Hr. Tr., pp. 20, 54)

At his March 29, 2022, deposition, claimant provided inconsistent testimony regarding his continued ability to race late model cars. Initially, claimant testified that he can no longer race late model cars. (Ex. P, Depo. p. 67) He further testified that he last tried racing in 2020 and "couldn't do it." (Id.) Eventually, however, counsel for defendant disclosed to Mulvany that he possessed several documents showing claimant participated in races throughout the summer of 2021. (Ex. P, Depo. p. 68) Instead of addressing defense counsel's statement, Mulvany testified, "There's nothing that could hurt me in the race car[.]" (Id.) When defense counsel restated his question,

Mulvany implied that his son was driving under his name “most of the time” in 2021. (Id.) He then became defensive and asked defense counsel, “And I probably – if I raced that much last year, tell me how many nights that I did.” (Ex. P, depo. p. 69) Eventually, claimant admitted that he raced late model cars in the summer of 2021. (Id.) Exhibit D suggests that claimant participated in at least 20 different racing events in the summer of 2021. (See Ex. D, pp. 16-18)

Claimant then testified that he did not have any plans to race in the summer of 2022, mainly because of his shoulder. (Ex. P, depo. pp. 72-73) He stated, “The main thing is my shoulder. I don’t want to take a chance. I just don’t want to do it no more. I can’t do it.” (Ex. P, Depo. p. 73) The evidentiary hearing in this matter occurred on July 22, 2022. At the time of hearing, claimant had already participated in two races. (Hr. Tr., pp. 52, 78) I find claimant failed to provide credible testimony regarding his race participation between the date of injury and the date of the evidentiary hearing.

Having considered claimant's age, proximity to retirement, educational background, employment history, ability to return to work, permanent physical restrictions, permanent functional impairment, the situs and severity of the injuries, claimant's motivation, as well as all other relevant factors of industrial disability outlined by the Iowa Supreme Court, I found that claimant proved a 25 percent loss of future earning capacity as a result of the November 13, 2019, work injury.

REASONING AND CONCLUSIONS OF LAW

The initial disputed issue in this case is whether claimant sustained an injury to his right knee on November 13, 2019.

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).

After considering the competing evidence on this issue, I found the causation opinion of Dr. Deignan to be most convincing and credible. Accordingly, I found claimant failed to prove he sustained a right knee injury on November 13, 2019.

Similarly, defendant disputes whether claimant sustained a mental health injury as a result of the November 13, 2019, work injury. Given the lack of evidence causally relating claimant's mental health condition to the November 13, 2019, work injury, I found claimant failed to prove he sustained a mental health injury as a result of the November 13, 2019, work injury.

The next disputed issue is the extent of claimant's entitlement to permanent disability benefits. This case involves an injury to the right arm, as well as the right shoulder. This combination of injuries is not specifically addressed within the scheduled members itemized in Iowa Code section 85.34(2). Therefore, I conclude that the combined effects of the right arm and shoulder injuries should be compensated as an unscheduled injury. Iowa Code section 85.34(2)(v); Anderson v. Bridgestone Americas, Inc. and Second Injury Fund of Iowa, File No. 5067475 (Appeal January 2022).

Pursuant to Iowa Code section 85.34(2)(v), an unscheduled injury is compensated on a functional impairment basis if the injured worker returns to work and receives the same or greater salary that the worker earned on the date of injury. However, if the employee no longer works for the employer, permanent disability is payable based upon an industrial disability analysis. Martinez v. Pavlich, Inc., File No. 5063900 (Appeal July 2020).

In Martinez, the claimant voluntarily quit employment with the defendant-employer and accepted a position with a different employer at higher pay. (Id.) The commissioner considered the wording of Iowa Code section 85.34(2)(v) and opined:

[W]hen the two new provisions . . . are read together, as they are set forth in the statute, it appears the legislature intended to address *only the scenario* in which a claimant initially returns to work with the defendant-employer or is offered work by the defendant-employer at the same or greater earnings but is later terminated by the defendant-employer.

(Id.) In other words, the statute requires a bifurcated litigation process on permanent disability only under the circumstances its text expressly details.

In section 85.34(2)(v), the text expressly requires a bifurcated litigation process only when the claimant returns to employment with the defendant-employer or is offered work by the defendant-employer at the requisite earnings level and is then discharged after an agency award of permanent disability or an agreement for settlement with respect to permanent disability. The statute contains no mention of any other

circumstances that mandate a bifurcated litigation process to determine the extent of permanent disability.

The commissioner concluded, “though claimant in this case was earning greater wages at the time of the hearing than he was when he was injured, I conclude his earlier voluntary separation from defendant-employer removed claimant from the functional impairment analysis and triggered his entitlement to benefits using the industrial disability analysis.” (Id.)

In this instance, claimant terminated his employment in August 2021, well before the evidentiary hearing in this case. As such, this decision will address and determine what, if any, industrial disability claimant sustained as a result of his work injury.

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 Ry. Co. of Iowa, 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 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. In addition, as a result of a statutory change in 2017, “A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury.” Iowa Code section 85.34(2)(v).

Having considered claimant's age, proximity to retirement, educational background, employment history, ability to return to gainful employment, permanent physical restrictions, permanent functional impairment, the situs and severity of the injuries, claimant's motivation, as well as all other relevant factors of industrial disability outlined by the Iowa Supreme Court, I found that claimant proved a 25 percent loss of future earning capacity as a result of the November 13, 2019, work injury. This is equivalent to a 25 percent industrial disability and entitles claimant to 125 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(v).

Defendant seeks apportionment of disability pursuant to Iowa Code section 85.34(7). Defendant asserts it is entitled to a credit for the 3 percent industrial disability awarded in the Agreement for Settlement for the June 23, 2016, hernia injury. Claimant disputes defendant's entitlement to such a credit.

Iowa Code section 85.34(7) provides a straightforward approach to apportionment when compared to prior versions. Claimant received 15 weeks of permanent partial disability benefits for the June 23, 2016, work injury. Claimant's June 23, 2016, injury was an injury to the body as a whole. In the current decision, I found that claimant sustained 25 percent industrial disability attributable to the November 13, 2019, work injury. Based on this, defendant shall pay claimant 110 weeks of permanent partial disability benefits.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I conclude that claimant was successful in his claim and therefore exercise my discretion and assess costs against the defendant in this matter in the amount of \$103.00 for the filing fee and \$169.10 for the cost of claimant's deposition transcript.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant one-hundred ten (110) weeks of permanent partial disability benefits commencing on February 8, 2021, at the stipulated weekly rate of six hundred twenty-six and 27/100 dollars (\$626.27).


Defendant shall pay all accrued weekly benefits in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendant shall be entitled to credit for any weekly benefits paid to date.

Costs are taxed to defendant pursuant to 876 IAC 4.33, as set forth in the decision.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2), and 876 IAC 11.7.

Signed and filed this 28th day of February, 2023.

A handwritten signature in black ink, appearing to read "Michael J. Lunn", is written over a horizontal line.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Robert Rosenstiel (via WCES)

Benjamin Patterson (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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.