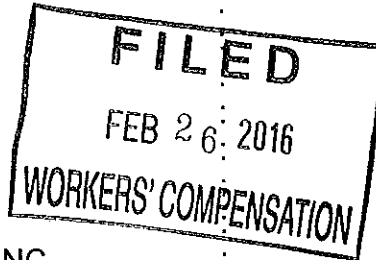
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARTHA IZARRAZAZ, Claimant, vs. TYSON FRESH MEATS, INC., Employer, Self-Insured, Defendants.	:	File No. 5048867 ARBITRATION DECISION Head Note Nos.: 1802, 1803, 2500



STATEMENT OF THE CASE

Martha Izarrazaz, claimant, filed a petition in arbitration seeking workers' compensation benefits from Tyson Fresh Meats, Inc., self-insured, defendant, as a result of an alleged injury she sustained on January 21, 2013 that allegedly arose out of and in the course of her employment. This case was heard in Des Moines, Iowa and fully submitted on September 3, 2015. The evidence in this case consists of the testimony of claimant, Deb Adams and Curtis Muckey and claimant's exhibits 1 through 16 and defendants' exhibits A through D. Both parties submitted briefs. The hearing was interpreted.

ISSUES

1. Whether claimant sustained an injury on January 21, 2013, which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

3. Whether the alleged injury is a cause of permanent disability and, if so;

4. The extent of claimant's disability.

5. Whether claimant is entitled to payment of medical expenses.

6. Assessment of costs.

The stipulations contained in the Hearing Report are accepted and incorporated into this decision. The parties stipulated that defendant is entitled to a credit of two thousand one hundred sixty dollars ($2,160.00) for payment of short-term disability. The weekly rate stipulated to by the parties is accepted.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Martha Izarraza, claimant, (a/k/a Martha Izarraza Garcia) was 45 years old at the time of the hearing. She completed the sixth grade and has no other formal education. Her primary language is Spanish. She can speak a little English, but cannot read or write in English. She briefly attended some English classes for about three months. (Transcript, page 12) Claimant is right handed. She understands her restriction from Sunil Bansal, M.D., to be no lifting more than five to ten pounds above the shoulder.

Claimant's first work in the United States was seasonal farm work picking apples in Washington. (Tr. p. 16) She worked on an egg farm in Minnesota. In 2007 she started her employment with Tyson in Storm Lake, Iowa. Claimant had no restrictions at the time she started her work for Tyson. (Tr. p 20) Claimant's complete work history is found in Exhibit 10, page 202.

When claimant first started work at Tyson she had the job of drop bungs. This job requires the insertion of a "gun" into the rectum if a hog and the gun separated the intestine from the hog. (Tr. p. 20) The work is performed below shoulder level and did not require much force except when there was a bone in the way. The job was fast paced with the claimant processing ten to twelve hogs per minute. She also performed another job at the same time removing eye lids with a Whizard knife. (Tr. p. 22) Claimant testified that she developed problems with her right shoulder in 2007 due to the repetitive work. (Tr. p. 22) Claimant was provided treatment by David Archer, M.D., for approximately three months. Claimant was released to work without restrictions. Claimant said that she had problems with her right hand due to her work. (Tr. p. 27) Claimant said she received treatment from the company nurses for about three weeks for her hand problems. She was able to resume her work without problems. (Tr. p 28)

Claimant returned to her position of removing eyelids with a Whizard knife for about a year before she said she claimed she was injured in January 2013. (Tr. p. 28) While working the removing eyelids she would also rotate and perform the drop bungs job. She would work about four hours in one job and then four hours in the other job. (Tr. p. 29) For the removing eyelids job, claimant said that while performing this job the hogs would come down a line and she would use her left hand to move aside the ear and used her right hand to cut with the Whizard knife. (Tr. p. 30) Claimant said that this work was at her face/mouth level. (Tr. p. 31) Claimant said that the repetitive work caused her problems in her shoulders and wrists. (Tr. p. 32) She said that it was on

January 21, 2013 when the pain in the shoulders and wrist started. (Tr. p. 32) Tyson had Dr. Archer provide care. He put the claimant on light duty and she was placed on a job of checking for contamination. (Tr. p.35) Dr. Archer kept claimant on light duty from January through August 2013. (Tr. p. 39) He sent claimant to Wade Jensen, M.D. Dr. Jensen ordered an MRI of her neck. She was told by Dr. Jensen, he did not see anything was operable. Dr. Jensen provided an injection to the right shoulder. (Tr. p. 17) In May of 2013 claimant was sent to Douglas Martin, M.D. Dr. Martin ordered an MRI of the right shoulder and claimant was sent back to Dr. Jensen. And was told by Dr. Jensen that her tendons were inflamed, damaged and she needed surgery. (Tr. p. 38) Surgery was scheduled for August 3, 2013. The surgery was canceled after Tyson decided her injury was not work related. (Tr. p. 39) After Tyson said the injury was not work related claimant was informed that she could not continue to work until she was able to work without restrictions. (Tr. p. 40) Claimant applied for and received 13 weeks of short-term disability. She returned to Dr. Jensen and had surgery in October 2013. Claimant used private insurance to cover the costs. Claimant was off work completely from the beginning of August 7, 2013 through April 15, 2014. (Tr. p. 41; Hearing Report)

Claimant saw Bruce Watkins, M.D., in April 2014 for her wrists. At that time, claimant said she had not been working for some time and were not hurting as much. Dr. Watkins recommended she return to work and if she had additional problems to return to him. During that same time period, Dr. Jensen returned claimant to work without restrictions. (Tr. p. 44)

Claimant returned to her work removing eyelid and the drop bungs gun jobs that she had before her asserted injuries in April 2013. (Tr. p. 45) Claimant said that the remove eyelids job had been modified and when she returned two people performed the job, rather than one. (Tr. p. 45)

Claimant said she continues to have pain in her shoulders. She has brief stabbing pain in her wrists three to four times a day. (Tr. pp. 46, 47) Claimant acknowledged that only Dr. Bansal has provided her with restrictions and that Dr. Jensen, who performed her surgery did not give her any restrictions. (Tr. p. 5)

Claimant reviewed the video, Exhibit D, and admitted that the removing eyelids job was not done above shoulder level. (Tr. p.56) The claimant admitted that the drop bungs gun job was done out in front at waist level. Claimant stated that the added pressure of drop bungs gun job may have contributed to her problems as she would need to use extra force sometimes when she would hit bone. (Tr. p. 57)

Deb Adams, medical case manager for Tyson's Storm Lake plant testified at the hearing. Ms. Adams said that since claimant returned to work in April 2014 she has not been to the nurses' station for any reason related to her shoulders or wrists. (Tr. p. 62)

Curtis Muckey, kill floor general manager, testified. He stated that neither the remove eyelids nor drop bungs job required overhead work. (Tr. p. 70)

Claimant reported to the nurses' station on January 21, 2013 with sore left upper extremity due to her work. (Ex. 1, pp. 1, 2) Her work was modified to ½ pace. On February 19, 2013, David Archer, M.D., examined claimant for the bilateral shoulder pain, upper back pain and left hand pain. (Ex. 2, p. 90) Dr. Archer's assessment was shoulder joint pain ("secretary shoulders"), midback pain and cervicalgia. Dr. Archer wrote, "Based upon the description of the mechanism of injury and examination this is a work related injury. (Ex. 2, p. 91) On March 18, 2013, Dr. Archer included an assessment of hand pain in addition to his February 19, 2013 assessment. On April 2, 2013, Dr. Archer noted that an EMG of the left upper extremity reveals no nerve muscle abnormalities. (See. Ex. 4, p. 106) He assessed claimant with shoulder pain, vitamin D deficiency and cervicalgia. (Ex. 2, p. 98)

On April 15, 2013, Wade Jensen, M.D., examined claimant. Dr. Jensen's diagnosis was "1. Possible cervical disc herniation with C6 radiculopathy on the left side. 2. Ulnar neuropathy at the elbow on the left." (Ex. 5, p. 108) Dr. Jensen ordered a cervical MRI. After reviewing the MRI, Dr. Jensen said the MRI was essentially normal and assessed mild ulnar neuropathy at the elbow and new right subacromial bursitis after physical therapy. He provided a shoulder injection and referred her to Doug Martin, M.D., for a return to work evaluation. (Ex. 5, pp. 112, 113)

Dr. Martin examined claimant on May 28, 2013. His analysis was,

1. Widespread upper extremity pain complaints.
2. Possible right shoulder impingement syndrome.
3. Cervical trapezius myofascial pain disorder.

(Ex. 7, p. 163)

He agreed that claimant was not a surgical candidate for her neck and recommended an MRI for her shoulder. On July 18, 2013, Dr. Martin wrote the defendant that he was somewhat surprised in the findings of the MRI which showed a SLAP tear (superior labral tear from anterior to posterior). He also commented, "Additionally, there is a small partial articular sited tear on the supraspinatus with some mild fatty atrophy of the surpraspinatus muscle noted coupled with some AC degenerative changes." (Ex. 7, p. 166)

Dr. Martin wrote he did not believe claimant's shoulder condition was causally related to her work at Tyson. (Ex. 7, p. 167) Dr. Martin stated that the work at Tyson did not aggravate the underlying condition. He wrote that due to her SLAP tear and degenerative condition of the AC joint, her work became more intolerable to her as time went on, which was a different concept than causation. (Ex. 7, p. 167) On February 27,

2015, Dr. Martin responded to a letter from defendants concerning the claimant and Dr. Bansal's IME. Dr. Martin stated he had a good knowledge of the remove eyelids and drop bungs. He said there is no requirement to reach above shoulder level for the eyelids job and the drop bungs job the gun is counter balanced so the force needed to control the gun is low. (Ex. 7, p. 171) Dr. Martin stated that risk factors for work related shoulder problems involved force and repetition of force and posture. He did not believe that claimant jobs met these factors for causation of a work injury. (Ex. 7, pp. 171, 172)

Claimant returned to Dr. Jensen on September 11, 2013. Claimant used her private insurance. Dr. Jensen recommended shoulder surgery. (Ex. 5, p. 120) On October 3, 2013, Dr. Jensen performed surgery on the claimant's right shoulder. His post-operative diagnosis was,

1. Right shoulder subacromial bursitis, symptomatic.
2. Right shoulder acromioclavicular joint arthrosis, symptomatic.
3. Right shoulder biceps tendonitis, symptomatic.
4. Right shoulder partial rotator cuff tear possibly contributing to symptoms.
5. 80% full-thickness rotator cuff tear that was taken down and repaired.

(Ex. 8, p. 174)

On January 6, 2014, Dr. Jensen medically released her to return to light duty work, with a 20-pound shoulder restriction. (Ex. 5, 139) On March 10, 2014 Dr. Jensen assessed the claimant with,

1. Right shoulder postoperative rotator cuff repair, biceps tenotomy, and subacromial decompression with an AC joint resection.
2. Left shoulder tendinosis.

(Ex. 5, p. 144)

On May 12, 2014 Dr. Watkins examined claimant's left wrist. He assessed claimant with left ulnar sided wrist pain. He offered to provide a splint and an injection; however, claimant declined at that time. (Ex. 5, pp. 149, 150)

On May 23, 2015, Sunil Bansal, M.D., performed an independent medical examination (IME). (Ex. 9, pp. 176 – 193) In describing the claimant's work he said, "In other words, she [claimant] was working all day long with her arms held up at shoulder level." (Ex. 9, p. 187) He also said "Careful scrutiny of her job duties indicates that she

was involved in a job that required frequent overhead work, all day long." (Ex. 9. p. 191) Dr. Bansal wrote concerning causation, "Thus, to a degree of medical certainty, Ms. Izzarraz-Garcia's work duties were a significant contributing factor to her bilateral shoulder pathologies and need for the right shoulder surgery." (Ex. 9, p. 192)

He provided a ten percent body as a whole rating for both of the shoulders and said there were not ratable impairments for her wrists. (Ex. 9, p. 193)

On June 3, 2015, Dr. Jensen provided an opinion to Tyson's counsel concerning the claimant's injury. (Ex. 5, pp. 153, 154) Dr. Jensen stated he agreed with Dr. Martin that claimant's injuries were not work related, and disagreed with Dr. Bansal. Dr. Jensen wrote:

> Further, the patient's alleged stated injury date was January 2013. She had surgery by October 2013, and an MRI on 05/31/2013, only 5 months after her original reported date, showing small, partial articular-sided tear of the posterior aspect of the supraspinatus with mild fatty atrophy of the supraspinatus muscle. It is also showing a SLAP tear involving the labrum, and mild hypertrophic change of the AC joint, with impingement of the musculotendinous junction showing some regional edema. It is unlikely that the patient would show atrophy of the tendon with still some attached portion of the rotator cuff between January and May and, therefore, I believe that the rotator cuff findings predated her reported injury date....

(Ex. 5, pp. 153, 154)

Dr. Jensen stated that he had visited the Tyson plant and observed the jobs that claimant performed. He noted that Dr. Bansal had not. His opinion was claimant did not do repetitive activity with heavy lifting over prolong periods.

On June 12, 2015, Dr. Bansal responded to Dr. Martin and Dr. Jensen's reports as to causation. He stated that he believed claimant worked above 60 degrees with her shoulder and that in fact claimant was working above 90 degrees. (Ex. 9, p. 194B)

A review of exhibit D, shows the worker's elbows were below shoulder level and the hands were at or above shoulder level while performing the remove eyelids job. It is not clear for the evidence that claimant's shoulders were raised more than 60 degrees on a regular basis. The drop bungs gun job does not require any overhead work. Both jobs involved significant repetitive activity. The drop bung gun job occasionally requires force when an obstruction is present.

Claimant has requested costs in the amount of $3,150.88. (Ex. 14, p. 220) Of these cost $2,975.00 are for the IME performed by Dr. Bansal. (Ex. 9, p. 194)

CONCLUSIONS OF LAW

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

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

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

> When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion.

Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

In this case there are three primary opinions concerning causation in this case. Dr. Bansal has opined that claimant's repetitive work with her shoulder raised above 60 or 90 degrees caused her shoulder condition.

Dr. Martin and Dr. Jensen have opined that claimant's work did not cause or aggravate her shoulder conditions. Based upon a review of the evidence and considering the testimony, I find that claimant did not consistently work with her arms above her shoulders. I find the evaluations performed by Dr. Martin and Dr. Jensen to be more consistent with the work claimant actually performed. Dr. Bansal's conclusion that claimant's work required sustained work with her shoulders elevated is not accurate based upon the convincing evidence. I find that claimant has not met her burden of proof to show that she has a temporary or permanent impairment that arose out of and in the course of her employment with Tyson.

I find that claimant has established she is entitled to reimbursement of the IME costs for Dr. Bansal's IME expense. Tyson retained Dr. Martin to provide an opinion about the work injury and held that the injury was not work related. This is equivalent to a zero rating. Claimant was entitled to obtain an IME after Dr. Martin's opinion. The fact that claimant did not prevail on the claim is not dispositive. Dodd v. Fleetguard, Inc. (Iowa Ct. App., 2008)

I decline to award claimant any additional costs in this case.

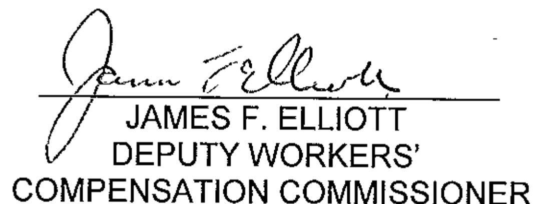
ORDER

Claimant shall take no additional benefits.

Claimant shall not take medical expenses.

Defendants shall pay claimant the IME expense of two thousand nine hundred seventy-five dollars ($2,975.00).

Signed and filed this 26th day of February, 2016.



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DEPUTY WORKERS' COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.