

benefits, that being January 2, 2017. The elements which comprise the rate of compensation are stipulated and based upon this stipulation, I find the appropriate rate of compensation is \$522.58 per week. Affirmative defenses have been waived. Claimant seeks medical expenses under Iowa Code section 85.27 as set forth in Claimant's Exhibit 6. Defendants dispute that these expenses are causally connected to her work injury. Defendants claim an overpayment of both temporary and permanency benefits. Claimant is also seeking payment of IME expenses under Section 85.39.

The claimant alleges she suffered a prior injury on October 17, 2013, which resulted in a functional disability to her left arm and foot. The claimant alleges that she is entitled to Second Injury Fund benefits. The Fund disputes this. If claimant is entitled to industrial disability benefits through the extent of industrial disability is disputed, as well as the amount of the credits.

FINDINGS OF FACT

Brenda DeHaai was 60 years old as of the date of hearing. She appeared at hearing and was energetic and articulate. She testified live and under oath and I find her testimony to be highly credible. She was a good historian and her testimony was generally supported by the other portions of the record. There was nothing about her demeanor which caused the undersigned any concern for her truthfulness.

Ms. DeHaai is a bright person and a hard worker. She has an applied science degree in culinary arts and she worked as a cook from 1983 to 1993. (Claimant's Exhibit 4) In 1993, she began working in manufacturing. Between 1993 and 2007, she worked a variety of different manufacturing positions, such as Pella Plastics, Pella Corporation, Dave's Wholesale, and Firestone Tire. (Cl. Ex. 4) In 2007, she began working for Kermco-DeHaai, Inc., a steel manufacturing business which specializes in manufacturing fence tighteners. Kermco-DeHaai is her husband's family business. In 2008, Ms. DeHaai also began working for Casey's in Monroe, Iowa.

On December 20, 2016, Ms. DeHaai slipped and fell while working at Casey's, landing on her outstretched right hand. She experienced immediate pain and swelling in her hand and wrist. She further testified that she developed a lump on her wrist. She called the store manager and reported the injury right away. She initially also had some symptoms in her left leg, but those symptoms fully resolved relatively quickly. On December 21, 2016, she was evaluated by Mackenzie Worthington, D.O., for right wrist pain and swelling. (Jt. Ex. 2, p. 47) Dr. Worthington treated the injury as a right wrist sprain and noted the x-rays were negative for fracture. (Jt. Ex. 2, p. 52) She was instructed to rest and use conservative treatment measures (ice, elevation, compression, ibuprofen) as needed. (Jt. Ex. 2, p. 52) The x-ray noted an "old ossicle off the ulnar styloid" and diagnosed degenerative joint disease. (Jt. Ex. 2, p. 54)

The employer alleges that claimant has had severe, chronic, degenerative arthritis in her wrist before she fell at Casey's. Ms. DeHaai testified that she did not have any difficulties performing any of her work activities, either as a cook, or in manufacturing, or in her work for Casey's or Kermco-DeHaai. Ms. DeHaai testified that she suffered a fall when she was 19 years old where she fractured her right wrist. The fracture was set and casted. She testified that the wrist was not set correctly and it was never quite right after treatment. Ms. DeHaai also was diagnosed with right trigger thumb and bilateral carpal tunnel syndrome prior to working at Casey's. Joshua Kimelman, M.D., performed a right trigger thumb release in February 2011. (Jt. Ex. 2, p. 5) EMG testing in June 2013 demonstrated distal median neuropathies in both wrists. (Jt. Ex. 3, p. 101) She had a left carpal tunnel release in October 2013, but never had the right side done. (Jt. Ex. 2, p. 14) Medical records from her primary physician document that she complained of numbness and tingling in her right wrist in September 2014. (Jt. Ex. 2, p. 19) In October 2014, she saw Michael Gainer, M.D., at Iowa Ortho for her right carpal tunnel. In the intake paperwork, she reported a several year history of right carpal tunnel pain which flared up with use of her arm. (Jt. Ex. 4, p. 102) In October 2014, her symptoms were worsening and radiating. (Jt. Ex. 4, p. 105) Dr. Gainer placed her in a wrist brace at night. She testified both at hearing and in her deposition that the carpal tunnel symptoms had never fully resolved.

Ms. DeHaai has arthritis in other joints in her body and has treated regularly with her primary care physician for these conditions and symptoms for several years, including her right shoulder, left hand, right hip, left ankle and bilateral knees. She was using hydrocodone to treat the pain for these problems.

She testified, however, that her right hand, wrist and arm were essentially fully functional prior to her fall at work in December 2016. She testified that her other conditions never impacted her ability to work.

Ms. DeHaai was taken off work and missed a couple of shifts at Casey's for which she was paid her regular wages. Ms. DeHaai testified that she had hoped her wrist would get better with time so she did not seek immediate follow up treatment. Dr. Worthington had documented that Ms. DeHaai was to follow up within 7 to 10 days if needed. She did not. Ms. DeHaai did return to Casey's, performing her regular work activities for a short period and then retired in January 2017. On February 2, 2017, she saw her family physician, who documented the following: "she was seen in clinic for wrist pain last month, feels better recently quit working at cassey [sic], better with back pain, still has another job pain scale is 1 average. . . ." (Jt. Ex. 2, p. 56) She testified that her condition did not get better but in the spring of 2017, rather the symptoms worsened. She testified that she had continued performing assemble work for Kermco-DeHaai through the spring of 2017. In March 2017, she underwent and passed an Iowa Department of Transportation (DOT) physical where she specified that she did not limit the use of her arms, hands or fingers. (Jt. Ex. 2, pp. 59-62)

In May 2017, Ms. DeHaai returned to her primary care physician and the notes documented that she had seen Dr. Worthington for her right wrist injury in December 2016, which was denied by workers' compensation as a preexisting condition. (Jt. Ex. 2, p. 63) She was diagnosed generally with right wrist pain and her medications were refilled. (Jt. Ex. 2, pp. 71-72) On May 22, 2017, she returned to Dr. Worthington. Dr. Worthington documented the following:

Back in December she fell at work, she worked at Caseys and x rays came back negative to her right wrist and hand. Patient also c/o left foot pain. Patient notes that she has continued to have pain upon the right wrist but has been giving implants on the heel. Patient notes there is a small swelling over the dorsum of the right wrist which is new. She does have an old fracture history with this wrist from an injury at age 19. Patient also previously had some carpal tunnel symptoms which have resolved. Patient now notes the majority of pain on the medial dorsum of the right wrist which sometimes transitions around the medial half of her right arm. Patient denies any numbness or tingling in her fingers.

(Jt. Ex. 2, p. 73) Dr. Worthington ordered new x-rays which were essentially the same as before. Ms. DeHaai underwent physical therapy beginning in June 2017. (Jt. Ex. 5, p. 110) She was discharged from physical therapy on August 29, 2017, after 10 visits. (Jt. Ex. 5, p. 110)

Ms. DeHaai began treating with Todd Peterson, D.O., an orthopedic specialist on August 29, 2017. (Jt. Ex. 6, p. 112) He ordered new x-rays and opined "that the symptomology is coming from osteoarthritis of the radiocarpal joint." (Jt. Ex. 6, p. 113) The x-ray report diagnosed polyarticular DJD with soft tissue swelling. (Jt. Ex. 6, p. 116) He provided a steroid injection and indicated such injections could be performed every three months as needed. (Jt. Ex. 6, p. 114) He released her to full work activities and indicated the condition was "work related." (Jt. Ex. 6, p. 115) Dr. Peterson performed a second injection on March 2, 2018, and again indicated the condition was "work related". (Jt. Ex. 6, pp. 118, 120) Ms. DeHaai passed another DOT physical in March 2018 as well. (Jt. Ex. 2, p. 99)

On March 19, 2019, Dr. Peterson authored a report at the request of the insurance carrier providing his opinion on medical causation.

I believe the exacerbation for her work injury was temporary. She did have some arthritis in her wrist that was exacerbated by her work injury but after seeing her again and speaking with her, I believe she will continue to have wrist pain that is not necessarily related to her work injury. Because of this, I believe her work injury exacerbation is temporary.

To answer your second question, any future injections are not directly related to her work injury. I believe the continued pain that she has in her

wrist is due to underlying issues that the work injury simply exacerbated. Any future injection would be related to prior injuries.

(Def. Ex. B, p. 2)

In June 2018, Ms. DeHaai returned to Dr. Peterson and complained that the injections were not providing significant relief. He informed her the only definitive treatment would be surgery (joint replacement or fusion). (Jt. Ex. 6, p. 122) Casey's and its insurance carrier did not pay the bill for this visit. (Cl. Ex. 6, p. 23) Dr. Peterson performed another injection September 2018. (Jt. Ex. 6, p. 125) This was her last documented visit with Dr. Peterson.

Ms. DeHaai has continued to follow up with her primary physician for her various conditions, including her right wrist and arm. She was eventually scheduled for a surgical consultation with Teri Formanek, M.D. She testified that after she indicated that she was still pursuing her workers' compensation claim, Dr. Formanek's nurse told her that Dr. Formanek would be unable to see her. (Jt. Ex. 7, p. 137)

In August 2019, Ms. DeHaai saw Sunil Bansal, M.D., for independent medical examination (IME). He reviewed records and examined her before preparing a thorough report rendering his expert medical opinions. At the time of his evaluation, Ms. DeHaai reported significant symptoms in her right hand, wrist and arm which affected her functional abilities. (Cl. Ex. 1, p. 13) Dr. Bansal evaluated both wrists and arms and both feet. Regarding the right wrist he diagnosed aggravation of primary osteoarthritis. (Cl. Ex. 1, p. 14) He opined that the December 20, 2016, work injury resulted in a 5 percent functional disability in her right arm.

She walked into the kitchen into the dish room, and she did not see that the floor was soaking wet. She slipped and fell in the doorway, and landed on her right hand and wrist.

In my medical opinion, the mechanism of violent direct impact to the wrist with resultant wrist pain is consistent with an aggravation of her pre-existing, yet clinically quiescent arthritis from localized chondrocyte destruction and resulting inflammation. A temporary exacerbation versus a permanent aggravation presupposes that the former implies a return to the pre-injury baseline after a reasonable treatment period. In Ms. DeHaai's case, her pre-injury baseline was a nonpainful right wrist. After the injury, and coming forward almost three years later, she continues to have right wrist pain and loss of range of motion, denoting permanent aggravation.

(Cl. Ex. 1, p. 15)

Following her IME with Dr. Bansal, Dr. Peterson authored a responsive report disagreeing with his opinions which was served just prior to hearing. (Def. Ex. C, p. 3) In this report, Dr. Peterson provides more details for the reasons that he could not state within a reasonable degree of medical certainty that claimant's injury permanently worsened her condition.

Ms. DeHaaï testified that she continues to have pain and symptoms in her right wrist, which causes her difficulty performing her work at Kermco-DeHaaï. She testified that she is no longer able to perform the assembly work she did prior to her injury due to the pain in her right wrist and arm. She now oversees production and drives occasionally. Because it is a family business, her employer has provided accommodations and changed her job duties. (Cl. Ex. 2) Jennie VanWaardhuzien, is the office manager for Kermco-DeHaaï and claimant's sister-in-law. She provided two statements and testified under oath at hearing. She is a highly credible witness. She confirmed that Ms. DeHaaï's job duties have been adjusted to accommodate her "tolerances of her right hand." (Cl. Ex. 2, p. 17) Eventually she became unable to perform as much assembly work or perform deliveries. At hearing, Ms. VanWaardhuzien testified that her pay was reduced as a result of her decreased work responsibilities. Ms. DeHaaï believes her ongoing symptoms and corresponding decrease in pay are directly related to her fall at Casey's in December 2016.

Having reviewed all of the evidence, I find that the greater weight of evidence supports a finding that claimant suffered a work injury on December 20, 2016, which resulted in a temporary exacerbation of her underlying arthritis in her right wrist.

CONCLUSIONS OF LAW

The first question is whether the admitted December 20, 2016, injury is a cause of permanent disability, and if so, the extent of such disability. The question is whether her fall on that date permanently aggravated or lit-up the preexisting arthritis in her right wrist and arm.

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).

Having carefully reviewed all of the evidence in the record, I find that the claimant has failed to meet her burden of proof that the December 20, 2016, work injury is a cause of permanent disability in her right arm. The expert opinions as to the medical impairment in this case are conflicted. I find that Dr. Peterson's opinion is the most convincing and most consistent with the other evidence in the record.

Dr. Bansal's opinion is thoughtful and well-reasoned. Dr. Bansal, however, concluded that Ms. DeHaai had a normal functioning wrist prior to her work injury. In fact, she had treated consistently and fairly significantly for her right wrist and arm as late as 2014. In September 2014, medical records of her primary care provider document Ms. DeHaai had numbness and tingling and that her right carpal tunnel was worsening. (Jt. Ex. 2, p. 19) She also reported occasional "right-sided pain due to her old fracture." (Jt. Ex. 2, p. 19) She was taking hydrocodone, in part for these ailments. In October 2014, Ms. DeHaai's intake paperwork at Iowa Ortho documented a several year history of right carpal tunnel pain that flared with use and interfered with her assembly work at Kermco-DeHaai. (Jt. Ex. 4, pp. 102-103) She was given a brace at this time to wear for pain.

In her own mind, Ms. DeHaai can clearly distinguish her old wrist injury, her carpal tunnel syndrome symptoms, and the new wrist condition caused by her fall. And to be clear, I understand that Ms. DeHaai truly believes her work injury is a cause of her ongoing right wrist condition. I, however, have to decide whether she has proven, more likely than not, that her fall on December 20, 2016, permanently aggravated or "lit up" the condition of arthritis in her right wrist. Dr. Peterson, the physician best positioned to assess the truth of this matter, could not support this conclusion. The medical documentation demonstrates that she continued to have relatively significant ongoing pain and symptoms prior to her work injury, as late as 2014. Moreover, there was a significant gap in her treatment after her work injury. She was injured on December 20, 2016. She saw Dr. Worthington the next day who diagnosed a sprain and told her to come back if needed. She did not seek further medical treatment until May 2017, during which time the nature and severity of the pain changed. Again, I believe Ms. DeHaai that the pain she attributed to the fall during that time never completely resolved, however, examining all of the facts and circumstances herein, I find the opinion of Dr. Peterson to be the most believable medical causation opinion in the record.

Having found that the claimant has failed to prove she has a permanent disability resulting from the December 20, 2016, work injury, I conclude it is unnecessary to address the legal issues surrounding her Second Injury Fund claim.

The next issue is whether the employer is responsible for medical expenses set forth in Claimant's Exhibit 6.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code section 85.27 (2013).

Dr. Peterson opined these expenses were not causally connected.

The final issue is the IME expense.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

I find that all conditions precedent to the IME have been met and his fees are fair and reasonable for this evaluation. The defendants are responsible for Dr. Bansal's IME bill in the amount of \$2,763.00.

ORDER

THEREFORE IT IS ORDERED:

Claimant shall take no further weekly benefits from these proceedings.

The defendants are responsible for Dr. Bansal's IME expenses in the amount of two thousand seven hundred sixty-three and 00/100 dollars (\$2,763.00).

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 31st day of July, 2020.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Powell (via WCES)

Gregory Taylor (via WCES)

Meredith Cooney (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.