BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL DAMJANOVIC, Claimant, vs. HAWKEYE MOLD & DESIGN CO., Employer, and FEDERATED SERVICE INS. CO., Insurance Carrier, Defendants.	File No. 1666137.02 ARBITRATION DECISION Head Notes: 1800; 1801; 1802; 1803; 1803.1

STATEMENT OF THE CASE

The claimant, Paul Damjanovic, filed a petition for arbitration seeking workers' compensation benefits from employer Hawkeye Mold & Design Company ("Hawkeye"), and their insurer, Federated Service Insurance Company. Judith O'Donohoe appeared on behalf of the claimant. Rene LaPierre appeared on behalf of the defendants. Also present was Julia Adams, a staff member from defendants' counsel's office.

The matter came on for hearing on January 23, 2023, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-6, Claimant's Exhibits 1-3, 6 and 8, and Defendants' Exhibits A-H.

Prior to the hearing, the defendants timely filed objections and motions to exclude various exhibits proposed by the claimant. The first was proposed exhibit 2. The defendants argued that this exhibit was irrelevant, as it contains a lost wage summary. The claimant argued that this was relevant as it relates to a loss of earning capacity and potentially healing period benefits. I overruled the objection and admitted Claimant's Exhibit 2 in noting that "there could potentially be relevance to the extent that we're talking about a loss of earning capacity as it relates to . . . industrial disability." (Transcript, page 10).

The second objection pertained to proposed exhibit 4. This proposed exhibit was an affidavit submitted in lieu of testimony. The defendants argued that this was inappropriate and that the affidavit in the proposed exhibit contained information pertaining to things like pain and suffering. The claimant argued that the affidavit pertained to Mr. Damjanovic's employment. I sustained the objection as to this exhibit and excluded it from the record. I noted during the hearing that I had significant concerns with the prejudice to one party in admitting an affidavit without agreement by both parties as it would not afford the defendants with the opportunity to cross-examine the witness. (Transcript, pages 11-12).

The third objection related to proposed exhibit 5. The proposed exhibit was a voluminous medical chronology prepared by claimant's counsel or a member of her staff. The defendants argued that relevant medical records were included in the record, and that the fact that claimant's counsel (or a member of her staff) prepared the chronology cast doubt as to its completeness. The claimant argued that this was a summary and that the defendants had access to the medical records. The claimant also argued that the undersigned could not get "the whole history presented because of the limitation on the number of pages." (Transcript, page 13). I sustained the objection on the basis that the parties had the opportunity to move to exceed the exhibit page limits in the hearing guidelines. The claimant failed to do so. I also noted that the summary may contain duplicative information or information that may not be in the record. Based upon Iowa Code section 17A.14(1), I sustained the objection and did not admit proposed exhibit 5 to the record.

The final objection was to proposed exhibit 9. This proposed exhibit was an affidavit by Danielle Tuttle. The affidavit was served outside of the 30 days required by 876 Iowa Administrative Code 4.19(3)(c) and (d). The objection was sustained and proposed exhibit 9 was excluded from the record.

The claimant testified on his own behalf. Also testifying on behalf of the claimant were Brittany Damjanovic, Cynthia Knapp, and Danielle Tuttle. Jenny Stirling testified on behalf of the defendants and attended the hearing as the corporate representative of Hawkeye.

The defendants objected to allowing Ms. Tuttle to testify. The defendants argued that she was not disclosed as a witness in a timely manner, and that Ms. Tuttle was employed by claimant's counsel therefore making it inappropriate for her to serve as a witness. The claimants argued that Ms. Tuttle was disclosed as the claimant's current employer in a November 18, 2022, deposition. I overruled the objection and allowed Ms. Tuttle to testify only to the extent that her testimony was limited to her knowledge of the claimant's employment at the business that she co-owns. (Transcript, page 18).

Janice Doud was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted after the parties submitted post-hearing briefing on February 24, 2023.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.

2. That the claimant sustained an injury, which arose out of and in the course of employment, on June 18, 2019.

3. That the alleged injury is a cause of temporary disability during a period of recovery.

4. That the alleged injury is a cause of permanent disability.

5. That the commencement date for permanent partial disability benefits, if any are awarded is April 19, 2022.

6. That, at the time of the alleged injury, the claimant's gross earnings were eight hundred twenty-one and 04/100 dollars ($821.04) per week, and that the claimant was married, and entitled to four exemptions. Based upon the foregoing, the parties believe that the weekly compensation rate is five hundred fifty-five and 42/100 dollars ($555.42) per week.

7. That, prior to the hearing, the claimant was paid 36 weeks of compensation at the rate of five hundred fifty-five and 42/100 dollars ($555.42) per week, and that the defendants continued to pay permanent partial disability benefits in accordance with a rating provided to the left upper extremity.

There are no disputes as to medical benefits. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from June 18, 2019, to April 18, 2022.

2. Whether the claimant was off work from June 18, 2019, to April 18, 2022. The claimant indicated they were "not sure he and the employer ever agree [*sic*] to the exact weeks of temporary healing period benefit[s] within this period."

3. Whether the disability is an industrial disability, or whether the claimant should be compensated based upon his functional disability.

4. The extent of permanent disability benefits, if any are awarded.

FINDINGS OF FACT

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

Paul Damjanovic, the claimant, lives with his wife and three daughters. (Testimony). He testified that his work history centered around manual labor positions. (Testimony).

In 2018, Mr. Damjanovic was hired by Hawkeye to produce plastic mold parts. (Testimony). He earned sixteen and 75/100 dollars ($16.75) per hour and worked 40 hours per week, along with generally about 10 hours of overtime. (Testimony). He ran a PLACO mold injection machine. (Testimony). The PLACO machine produced plastic parts from melted plastic pellets. (Testimony). The claimant wore cotton gloves and handled plastic that was ejected from the PLACO machine in a tube. (Testimony). He also wore a baseball hat. (Testimony). In the morning, Mr. Damjanovic would have to purge poor plastic from the PLACO machine several times until it produced "good material to operate with." (Testimony). Since the Hawkeye facility dealt with melted plastics, the building in which Mr. Damjanovic worked often had temperatures exceeding 100 degrees. (Testimony). He also testified that the building did not have much air movement. (Testimony).

Ms. Stirling testified that the claimant worked with five or six other employees as machine operators in the plant. (Testimony).

On June 18, 2019, Mr. Damjanovic was purging several PLACO machines. (Testimony). Upon returning to the first PLACO machine that he purged, the machine malfunctioned and sprayed 500-degree molten plastic onto his face and both arms, burning him. (Testimony).

Mr. Damjanovic then sought medical care at the Floyd County Medical Center. (Testimony; Joint Exhibit 4:59-60). He described the incident, and the medical record notes where the burns occurred, including the face and bilateral upper extremities. (JE 4:59). His left arm was worse than his right arm. (JE 4:59). The provider at the emergency room estimated that the burns covered 2 percent to 3 percent of the bilateral upper extremities, and 4 percent of the face. (JE 4:59). Mr. Damjanovic was provided with Morphine for the pain, as well as Visine for his eyes. (JE 4:60). GoJo hand cleaner was applied to the parts of his body covered in plastic to remove what they could. (Testimony; JE 4:60). Additional GoJo was placed on his arms, and they were wrapped. (JE 4:60). Mr. Damjanovic was then discharged from the hospital. (JE 4:60). There were photos from this visit included in the medical records. (JE 4:63-69). The photos are in black and white, but show some areas that are presumably burns. (JE 4:63-69).

He was sent to the University of Iowa for additional treatment and removal of plastic from his body. (Testimony). Thomas Granchi, M.D., at the University of Iowa, saw the claimant on June 18, 2019. (JE 2:19-29). The claimant had burns to 1.3 percent of his body surface area, specifically the face, neck, trunk, left upper extremity, and right upper extremity from melted plastic at his work. (JE 2:19). Mr. Damjanovic estimated that the plastic was greater than 500-degrees when it splattered on his body. (JE 2:19). Dr. Granchi removed the plastic from the claimant using GoJo and provided him with pain medications. (JE 2:19). The records included photos showing the location of the burns. (JE 2:21-27). The photos are black and white, so it is difficult to see the true extent of the burns. (JE 2:21-27).

Dr. Granchi examined the claimant again on June 25, 2019, to recheck his burns. (JE 2:30-36). Mr. Damjanovic noted improvement in his wounds, but difficulty sleeping. (JE 2:30). He continued to take acetaminophen and ibuprofen for pain relief. (JE 2:30). Additional photos of the burns were included with these records, but again they are black and white, so it is difficult to determine the extent of the burns. (JE 2:33-36). Dr. Granchi opined that the burn wounds had improved and healed with only "a few scattered open and deep areas with granulation tissue and eschar." (JE 2:35). Dr. Granchi also noted that the burns would not require surgical intervention. (JE 2:35). Mr. Damjanovic was provided with a work note indicating that he was excused from work until his next visit. (JE 2:51).

On July 9, 2019, Robert Bertellotti, M.D., at the University of Iowa, examined the claimant for his continued burn issues. (JE 2:36-42). Mr. Damjanovic complained of difficulty sleeping due to burning, itching, and tingling pain in his left arm. (JE 2:37). To combat these issues, he took trazodone at night. (JE 2:37). This helped him fall asleep initially, but he would wake up when the medication wore off. (JE 2:37). There are again black and white photos included which are of little benefit since it is difficult to tell the burned area. (JE 2:39-40). Mr. Damjanovic reported that he had pain in the upper extremities with extremes in temperature, including heat and cold. (JE 2:40). He expressed dismay as to whether or not he could perform his previous work duties due to this temperature intolerance. (JE 2:40). Dr. Bertellotti continued to keep Mr. Damjanovic off work, and was provided with a work excuse until his next appointment in three weeks. (JE 2:40, 51-52).

On July 12, 2019, Mr. Damjanovic returned to the Floyd County Medical Center for a re-examination of his burns. (JE 4:62). He expressed concern over weakness and dexterity issues in his left hand, along with pain at night in his left arm. (JE 4:62). The examiner noted that the burns were healing well with no signs of infection. (JE 4:62). Mr. Damjanovic continued with wound care wraps and had yet to return to work. (JE 4:62).

Dr. Granchi at the University of Iowa examined the claimant on July 30, 2019, following the claimant's burns to his face, neck, trunk, and bilateral upper extremities at work. (JE 2:17). The claimant was doing well since his previous visit, and was applying lotion to his burned areas on a daily basis. (JE 2:17). He complained of some pain in his fourth and fifth left digits, along with weakness. (JE 2:17). Dr. Granchi opined that this may be due to ulnar nerve irritation. (JE 2:47). He referred the claimant to physical

therapy and occupational therapy along with an orthopedic doctor. (JE 2:47). Dr. Granchi allowed the claimant to return to light duty work on August 5, 2019, and full duty work on August 26, 2019. (JE 2:47, 52).

There is a note indicating that the claimant had canceled his first occupational therapy appointment on July 30, 2019, and had not rescheduled or returned calls to do so. (JE 4:62). He also did not show up for an appointment on August 1, 2019. (JE 4:62).

On August 5, 2019, Mr. Damjanovic resigned his employment with Hawkeye via text message. (Testimony; Defendants' Exhibit A:2). His message stated, "I won't be returning back to work at this time I have some [*sic*] that needs to be figured out[.]" (DE A:2). At the time of his resignation, he earned seventeen and 50/100 dollars ($17.50) per hour, and worked some overtime. (Testimony). Since his resignation, he has not reapplied for employment with Hawkeye. (Testimony).

Ms. Stirling testified that the company was working with Federated to bring Mr. Damjanovic back to work. (Testimony). She testified, "[w]e had everything set up. Paul had stopped in. There wasn't any indication at that time that he wasn't coming back." (Testimony). During the meeting Mr. Damjanovic spoke with the owner of the company and a supervisor about bringing him back to work in a maintenance position in an air-conditioned building. (Testimony). Mr. Damjanovic then did not return to work on the Monday that he was supposed to do so. (Testimony). After calling and texting the claimant, he texted Ms. Stirling and/or a supervisor that "he wasn't coming back, he had things to take care of." (Testimony).

On August 8, 2019, Kyle Kroymann, PA-C, issued a medical excuse. (JE 2:18). The excuse allowed the claimant to return to work light duty in a temperature controlled building with air conditioning. (JE 2:18, 53). Other than temperature, Mr. Kroymann provided the claimant with no other restrictions. (JE 2:18). He was allowed to return to work full-duty on August 26, 2019. (JE 2:18, 53).

On August 26, 2019, Hawkeye sent a letter to Mr. Damjanovic confirming the contents of the text message and accepting his resignation. (Testimony; DE A:1). Ms. Stirling testified that Mr. Damjanovic never replied to the letter. (Testimony). The letter indicated, "I note that your doctor from the University of Iowa had returned you to light duty on August 5, 2019 and full-time regular duty effective August 26, 2019, but that apparently is not your desire either." (DE A:1). The letter also outlines COBRA benefits available to the claimant, along with compensation for his unused vacation or paid time off. (DE A:1). Mr. Damjanovic testified that he never received a letter offering him an alternate job, nor did he have any oral conversations regarding an alternate position. (Testimony).

Robert Bartelt, M.D. examined the claimant on August 10, 2020, for complaints of left upper extremity numbness, tingling, and pain, following a burn injury. (JE 1:15-16). Mr. Damjanovic told Dr. Bartelt that he experienced numbness and tingling from his elbow to his small finger in his left arm. (JE 1:15). He also described weakness. (JE 1:15). Dr. Bartelt found the claimant to have normal range of motion in his left elbow, along with a "[v]ery sensitive Tinel's at the elbow which reproduces his symptoms." (JE

1:16). Dr. Bartelt discussed with Mr. Damjanovic and his wife that the claimant's symptoms were consistent with left cubital tunnel syndrome, and that the claimant "would be a candidate for surgery." (JE 1:16). He ordered an EMG. (JE 1:16).

Ivo Bekavac, M.D., Ph.D., performed an EMG on the claimant on September 21, 2020. (JE 1:13-14). Dr. Bekavac wrote a letter to Dr. Bartelt outlining the findings of the EMG. (JE 1:13). The EMG showed mild ulnar neuropathy distal to the left elbow, and left mild median neuropathy at, or distal to, the wrist that was consistent with carpal tunnel syndrome. (JE 1:13).

Dr. Bartelt examined Mr. Damjanovic on October 16, 2020, following the results of the EMG. (JE 1:11-12). Mr. Damjanovic complained of left upper extremity numbness and tingling. (JE 1:11). Dr. Bartelt reviewed the results of the EMG, and opined that it showed mild ulnar neuropathy and mild carpal tunnel in the left arm. (JE 1:11). Mr. Damjanovic also told Dr. Bartelt that his burns sometimes bothered him in heat, but that "they do not specifically limit his activities." (JE 1:11). Dr. Bartelt opined that Mr. Damjanovic showed signs of nerve entrapment, and that he would benefit from a decompression. (JE 1:12).

On November 24, 2020, Dr. Bartelt performed a left wrist carpal tunnel release and left elbow ulnar nerve decompression on the claimant at Waverly Health Center. (JE 1:9-10). The procedure was completed with no complications. (JE 1:9). Dr. Bartelt requested that the claimant return for suture removal in two weeks. (JE 1:10).

Mr. Damjanovic saw Dr. Bartelt again on May 11, 2021, for a follow-up of a left elbow ulnar nerve decompression and carpal tunnel release. (JE 1:8). Mr. Damjanovic indicated that his left hand was "doing okay," but he still had trouble with his elbow. (JE 1:8). If he used any force, he felt electric shocks in his left hand into his finger. (JE 1:8). Dr. Bartelt also found the claimant to have reduced strength in the left hand when compared to the right. (JE 1:8). When the claimant flexed his arm, Dr. Bartelt observed that "we can see that the ulnar nerve is subluxing out of the cubital tunnel." (JE 1:8). Since Mr. Damjanovic was not progressing, and developed instability of his ulnar nerve, Dr. Bartelt recommended a submuscular transposition in the left arm. (JE 1:8). Dr. Bartelt halted therapy and continued a restriction of lifting at most 10 pounds with the left hand. (JE 1:8).

On June 22, 2021, Mr. Damjanovic reported to Waverly Health Center where Dr. Bartelt performed a left elbow revision ulnar nerve decompression with submuscular transposition. (JE 1:7). Dr. Bartelt diagnosed Mr. Damjanovic with left elbow ulnar neuropathy. (JE 1:7). There were no complications from the surgery. (JE 1:7).

Dr. Bartelt saw Mr. Damjanovic again on July 6, 2021, following a revision of the previous left elbow ulnar nerve decompression with submuscular transposition. (JE 1:5). Overall, the claimant was doing well and had no issues with feeling in his fingers. (JE 1:5). Dr. Bartelt noted a diagnosis of left cubital tunnel syndrome. (JE 1:5). He prescribed physical therapy to improve range of motion, and restricted the claimant from lifting anything heavier than a cup of coffee in his left hand. (JE 1:5).

On October 5, 2021, Mr. Damjanovic returned to Dr. Bartelt's office for his left elbow complaints. (JE 1:4). He noted continued improvement, but had occasional painful popping in his elbow. (JE 1:4). Dr. Bartelt found Mr. Damjanovic to have a loss of 5 degrees of extension in his left elbow. (JE 1:4). Dr. Bartelt also noted that Mr. Damjanovic had a reduction in strength in his left hand. (JE 1:4). Dr. Bartelt recommended continued therapy, and advanced his work restrictions to lifting a maximum of 10 pounds. (JE 1:4).

Mr. Damjanovic had a physical therapy appointment at Synergy on January 19, 2022, for pain in his left elbow. (JE 3:54-55). His previous treatment was noted. (JE 3:54). The claimant expressed frustration with his lack of progress through work hardening, and a lack of answers during a previous visit with a doctor. (JE 3:54). He noted that his elbow was "really bothering him," and that when he left work hardening he was "wiped out for the entire day." (JE 3:54). Mr. Damjanovic felt he was making no progress in therapy. (JE 3:54). The therapist opined that the claimant showed small improvements in his left hand grip strength, but noted that his pain and activity was not improving. (JE 3:55). The therapist measured the claimant's grip strength three times during the appointment and found it to be 75 pounds, 75 pounds, and 78 pounds with the left hand. (JE 3:54-55). The therapist felt that the claimant's grip strength may improve. (JE 3:55).

On January 21, 2022, Mr. Damjanovic returned to Synergy for additional work hardening physical therapy. (JE 3:56-57). The claimant reported continued frustration with his left elbow and soft tissue surrounding his left elbow. (JE 3:56). Mr. Damjanovic felt that "things are not getting better" and told the therapist that he was quite fatigued by the end of a therapy session. (JE 3:56). The therapist found that the claimant experienced significant struggles with activity tolerance, despite his "great efforts." (JE 3:57). Mr. Damjanovic required more breaks between sets of therapy due to "poor tolerance" in his left elbow. (JE 3:57).

Mr. Damjanovic had a functional capacity evaluation performed at Athletico Physical Therapy on March 30, 2022 based upon the orders of Dr. Bartelt. (JE 6:75-84). The examiner found that the claimant provided consistent performance, and opined that the test results were a valid representation of the claimant's functional abilities. (JE 6:75). The examiner opined that the claimant was "functionally employable at this time," and that he had capabilities and functional tolerances within the medium physical demand level. (JE 6:75). The claimant had some limited sensation in his left elbow and hand, which resulted in "difficulty grasping items and gripping with a full fist." (JE 6:77). Mr. Damjanovic also noted numbness and tingling on the inside of his left elbow that progressed into his hand. (JE 6:77). On some occasions, he also had shooting pain. (JE 6:77). The FCE also had a grip strength test for the claimant, during which the claimant had a 36 pound, 32 pound, and 20 pound grip strength with his left hand. (JE 6:79). The exam found the following tolerances:

Floor to Waist Lift (Occasional)	25 pounds
12" to Waist Lift (Occasional)	30 pounds

Waist to Shoulder Lift (Occasional)	15 pounds
Overhead Lift (Occasional)	10 pounds
Unilateral Floor to Waist Lift Left (Occasional)	12 pounds
Unilateral Waist to Shoulder Lift Left (Occasional)	7 pounds
Bilateral Carry (Occasional)	30 pounds for 25 feet
Unilateral Carry Left (Occasional)	15 pounds for 25 feet
Pushing (Occasional)	23 pounds for 25 feet
Pulling (Occasional)	20 pounds for 25 feet
Unilateral Forward Reach Left	No functional limitations
Unilateral Overhead Reach Left	Frequent

(JE 5:75-76).

Mr. Damjanovic testified that he provided his best effort into the FCE. (Testimony). He recalled that the FCE took 220 minutes to complete. (Testimony). He did not recall being tested for environmental issues during his FCE. (Testimony).

Dr. Bartelt examined the claimant for his left upper extremity issues, and issued a note with work restrictions on April 19, 2022. (JE 1:3). The claimant complained of left elbow soreness with radiation down to his hand. (JE 1:3). He noted that if he overused his left hand, his left elbow swelled. (JE 1:3). Dr. Bartelt opined that Mr. Damjanovic achieved a plateau in his progress, and that he had an FCE. (JE 1:3). Dr. Bartelt observed that Mr. Damjanovic had normal range of motion in his left elbow, but that his grip strength was weak compared to his right side. (JE 1:3). Dr. Bartelt also noted that the claimant had a mildly abnormal sensation in his fifth finger. (JE 1:3). Dr. Bartelt placed Mr. Damjanovic at maximum medical improvement ("MMI") and provided him with work restrictions based upon the results of the valid FCE. (JE 1:3). These were: "[l]ifting max at waist level 25 lbs, occasional pushing/pulling of 20 lbs max, occasional overhead lifting of 10 lbs max." (JE 1:2-3).

On April 20, 2022, Dr. Bartelt issued a note. (JE 1:1). Dr. Bartelt noted that Mr. Damjanovic had "extensive physical therapy and has been unable to resume unrestricted work." (JE 1:1). Based upon the FCE results, Dr. Bartelt noted the following restrictions: lifting to the waist up to 25 pounds, occasionally pushing and pulling up to 20 pounds, and occasional overhead lifting of 10 pounds. (JE 1:1). Dr. Bartelt provided a permanent impairment rating for Mr. Damjanovic using Tables 16-10 and 16-15 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (JE 1:1). Dr. Bartelt opined that the claimant had a 3 percent permanent impairment due to sensory loss. (JE 1:1). Based upon a loss of grip strength, as noted in Table 16-

34 of the Guides, Dr. Bartelt assigned the claimant a 30 percent impairment. (JE 1:1). Dr. Bartelt used the combined values chart on page 604 of the Guides to arrive at a 32 percent impairment of the left upper extremity. (JE 1:1).

Thomas Gorsche, M.D., of Cedar Valley Orthopedic Surgery, performed an IME and issued a report on May 25, 2022. (JE 5:70-74). In preparing his report, Dr. Gorsche reviewed medical records from the University of Iowa, Synergy, and Dr. Bartelt. (JE 5:70). He also reviewed the results of an FCE from Athletico performed on March 30, 2022. (JE 5:70). Dr. Gorsche met with Mr. Damjanovic in preparing his report. (JE 5:70-74). Mr. Damjanovic complained of intermittent numbness of his left fifth finger and "somewhat of the ring finger." (JE 5:72). He also had numbness and nocturnal paresthesia in the palm and dorsal ulnar aspect of his left hand. (JE 5:72). Upon examination, Dr. Gorsche found the claimant to have tenderness over the flexor carpi ulnaris muscle and the cubital tunnel. (JE 5:72). Dr. Gorsche observed that the claimant had 11 mm two-point discrimination of his left ring and fifth finger. (JE 5:72). Dr. Gorsche found the claimant to have full range of motion in his wrist and elbow. (JE 5:72). Dr. Gorsche tested the claimant's strength using a hydraulic hand dynameter, which showed 165 pounds, 160 pounds, and 160 pounds of strength in the right hand. (JE 5:72). The left hand showed 65 pounds, 75 pounds, and 70 pounds of strength. (JE 5:72). He had 5 out of 5 finger strength. (JE 5:72).

Dr. Gorsche directly related the claimant's cubital tunnel and carpal tunnel issues to the burns suffered on June 18, 2019. (JE 5:73). Dr. Gorsche found that the claimant had a complete recovery from the carpal tunnel surgery. (JE 5:73). Regarding the cubital tunnel surgery, Dr. Gorsche opined that the claimant had permanent damage to the nerve based both on two-point discrimination and grip strength testing. (JE 5:73). Dr. Gorsche agreed with Dr. Bartelt's and the FCE's proposed work restrictions. (JE 5:73). Dr. Gorsche then used the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to provide an impairment rating. (JE 5:73). Dr. Gorsche cites to Table 16-15 to assign a 7 percent sensory deficit to the left upper extremity "based on the loss of sensation to the ulnar nerve." (JE 5:73). This is then multiplied by Dr. Gorsche based upon Table 16-10, for which Dr. Gorsche assigned a grade 2 with a 70 percent sensory deficit. (JE 5:73). He multiplied 7 percent with the other 7 percent to arrive at 4.9 percent ". . . or 5% with rounding." (JE 5:73). Dr. Gorsche then used Table 16-34 "and the strength loss index percentage" to arrive at a 58 percent strength loss, which amounts to a 20 percent left upper extremity impairment. (JE 5:73). Dr. Gorsche used the combined values chart on page 604 of the Guides to add the 20 percent rating with the 5 percent rating, to arrive at a 24 percent left upper extremity impairment. (JE 5:73). Converting this to a whole person impairment, Dr. Gorsche arrived at a 14 percent whole person impairment. (JE 5:73). Dr. Gorsche placed the claimant at MMI on April 19, 2022. (JE 5:73). Dr. Gorsche also adopted the restrictions provided by Dr. Bartelt and the Athletico FCE. (JE 5:73-74).

Dr. Gorsche was deposed by the parties on January 9, 2023. (Claimant's Exhibit 6:42-49). Dr. Gorsche indicated that he did not provide an impairment rating due to any of the burn issues, as these issues are outside of his area of expertise as an orthopedic physician. (CE 6:44). Dr. Gorsche agreed that the claimant did not mention anything

during the IME with regard to his alleged sensitivity to heat and cold, as he would have recorded that in his IME report. (CE 6:45). Dr. Gorsche agreed that the results of the FCE with regard to Mr. Damjanovic's grip differ greatly between the FCE and exams with Synergy and the IME. (CE 6:48). He also agreed that grip strength was dependent on effort, and that the grip strengths displayed during the IME were more consistent with the Synergy measurements. (CE 6:48).

Mr. Damjanovic testified that Hawkeye never communicated with him about returning him to work. (Testimony). He further testified that he was never provided with a written offer of employment to return to his prior position, nor was a position in the newly built, air-conditioned building discussed. (Testimony).

After leaving Hawkeye, Mr. Damjanovic found a job at Express Lube in Charles City, Iowa from September of 2019 through August of 2020. (Testimony). When he applied for the job he made no mention of his previous employer, nor did he mention any restrictions. (DE D:17-18). He was hired at Express Lube to detail vehicles when they were in the shop for service. (Testimony). He also did some oil changes and small repairs. (Testimony). He earned twelve and 00/100 dollars ($12.00) per hour initially at Express Lube. (Testimony). When his time there ended, he earned thirteen and 00/100 dollars ($13.00). He worked between 40 and 45 hours per week at Express Lube. (Testimony). When he worked overtime, he earned nineteen and 50/100 dollars ($19.50) per hour. (Testimony). Mr. Damjanovic testified that Express Lube was aware of his "environmental limitations," and that he was able to work within these limitations. (Testimony). He further testified that Express Lube involved working in a climate-controlled building. (Testimony).

Immediately after leaving Express Lube, Mr. Damjanovic found a job at S & S Dura-Line. (Testimony). At S & S Dura-Line, he welded metal and built trailers. (Testimony). He mentioned making fourteen and 00/100 dollars ($14.00) per hour at Express Lube on his application. (DE E:24). He also made no mention of any physical limitations on the application despite there being a section in which to provide this information. (DE E:24). He was initially paid fifteen and 50/100 dollars ($15.50) per hour. (Testimony). He testified that he required assistance for tasks that were normally one-person tasks. (Testimony). While working on this job, Mr. Damjanovic began to notice problems with strength and grip in his left arm. (Testimony).

The claimant testified that he experienced irritation such as tingling, burning, and numbness in his right arm when it is exposed to "too much heat or cold." (Testimony). Because of this, Mr. Damjanovic opined that he could not return to his old position. (Testimony).

Mr. Damjanovic testified that he also began to experience pain through the back side of his neck. (Testimony). This caused a headache which caused him to be sick to his stomach. (Testimony). At some point during this ordeal, he would vomit. (Testimony). Vomiting alleviated his pain. (Testimony). He testified that these episodes lasted for several hours depending on how much he used his arms. (Testimony). At the time of the hearing, he indicated that these symptoms occurred "once to twice a week" depending on how much he used his arm(s). (Testimony). Mrs. Damjanovic also

testified as to these incidents. (Testimony). She indicated that when the incidents occur, Mr. Damjanovic has to lay in a dark room, relax, and close his eyes. (Testimony). These incidents can last "anywhere from a couple hours to . . . half a day to all night long." (Testimony). She believed that the incidents only occur once a week, or so, at the time of the hearing. (Testimony).

Mr. Damjanovic testified that, prior to his June 18, 2019, work injury, he had no major health issues. (Testimony). He had no issues with left arm sensitivity to heat or cold, or headaches. (Testimony).

At the time of the hearing Mr. Damjanovic worked for Leatherneck Lawn Care. (Testimony). He began working there in the summer of 2022, and earned fifteen and 00/100 dollars ($15.00) per hour. (Testimony). When he started with Leatherneck Lawn Care, he presented them with his permanent restrictions. (Testimony). He testified that he abided by the restrictions. (Testimony). He operated equipment such as skid loaders or a heated side-by-side with a snowplow on the front. (Testimony). Sometimes, he unloads mowers from a trailer. (Testimony). He also performs some minor maintenance on Leatherneck vehicles. (Testimony; DE C:15-16). At the time of the hearing, he earned seventeen and 50/100 dollars ($17.50) per hour, and worked between 5 and 40 hours per week. (Testimony). However, how many hours per week the claimant works depends on the weather conditions. (Testimony). Mr. Damjanovic felt that he could not work anything more than a 40-hour week, even if overtime was offered. (Testimony). Based upon this, Mr. Damjanovic opined that he had a 25 percent reduction in his earnings between his work at Hawkeye and his work at Leatherneck Lawn Care. (Testimony).

Mr. Damjanovic enjoys hunting for whitetail deer. (Testimony). He now uses a crossbow instead of a compound bow in order to accommodate his arm issues while hunting. (Testimony). If he hunts with a firearm, he uses a bipod or shooting stick in order to support the weapon. (Testimony). He also testified that he hunts "a little less" now than he did prior to his work injury, and generally takes another adult with him. (Testimony). Mrs. Damjanovic testified that she, or her daughter, often go hunting with the claimant. (Testimony). He also enjoys ice fishing while sitting in a heated blind. (Testimony). He enjoys boating, but does not own a boat. (Testimony). Finally, Mr. Damjanovic testified that he was an oval track car racer at county fairs. (Testimony). He would race during the summer, and wore a single-layer fire suit. (Testimony).

Mrs. Damjanovic confirmed that the claimant wears a protective sleeve on his arm when he is in the sun. (Testimony). He also wears a beard in order to help keep his facial burns covered and protected from the sun and cold. (Testimony).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3).

Temporary Disability

The claimant seeks an award of temporary disability benefits regarding several different periods. The claimant argues that these benefits comprise temporary total disability or healing period benefits, and temporary partial disability benefits.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefits depends on whether or not the employee has a permanent disability. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury.

Iowa Code 85.33(1) provides

> ...the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the first employment in which the employee was engaged at the time of injury, whichever occurs first.

Temporary total disability benefits cease when the employee returns to work, or is medically capable of returning to substantially similar employment.

Iowa Code 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until: (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or, (3) the worker has achieved maximum medical recovery. The first of the three items to occur ends a healing period. See Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., 881 N.W.2d 360 (Iowa 2012); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App., Mar. 20, 2020). The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

An employee has a temporary partial disability when, because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability." Iowa Code 85.33(2). Temporary partial disability benefits are payable in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and

"shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

Additionally, Iowa Code 85.33(3)(a) provides in pertinent part:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of the injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

Iowa Code 85.33(3)(a). The employer is required to communicate an offer of temporary work to the employee in writing. Iowa Code section 85.33(3)(b). The offer should include certain details regarding details of lodging, meals, and transportation. Id. It should also warn the employee that, if the offer is refused, the employee will not be entitled to temporary disability benefits during the period of refusal. Id.

The Iowa Supreme Court held that there is a two-part test to determine eligibility under Iowa Code 85.33(3): "(1) whether the employee was offered suitable work, (2) which the employee refused. If so, benefits cannot be awarded, as provided in section 85.33(3)." Schutjer v. Algona Manor Care Center, 780 N.W.2d 549, 559 (Iowa 2010). "If the employer fails to offer suitable work, the employee will not be disqualified from receiving benefits regardless of the employee's motive for refusing the unsuitable work." Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 519 (Iowa 2012).

If an employee refuses an offer of temporary work by claiming that the work is not suitable, the employee must communicate the refusal, and reasons for refusal, to the employer in writing when the offer of work is refused. Iowa Code section 85.33(3)(b). If an employee does not communicate the reason for a refusal in writing, the employee is precluded from raising suitability of the work as the reason for refusal until the reason for the refusal is communicated in writing to the employer. Id.

An employer's acceptance of an employee's voluntary quit from suitable employment is a rejection of suitable work on that date and any future date. Schutjer, 780 N.W.2d at 559. However, an injured worker will not be considered to have refused suitable work where the employee was unable to work as a result of a disciplinary action such as a suspension or termination based upon misconduct or a violation of a work rule unless the conduct is "serious and the type of conduct that would cause any employer to terminate any employee" and "have a serious adverse impact on the employer." Reynolds v. Hy-Vee, Inc., File No. 5046203 (App. Oct. 31, 2017). The burden of proof to show a refusal of suitable work is on the employer. Koehler v. American Color Graphics, File No. 1248489 (App. February 25, 2005).

The claimant argues entitlement to temporary disability benefits for the period running from June 18, 2019, to April 18, 2022. During this time, there are periods of

healing period benefits to which the claimant alleges entitlement along with periods of temporary partial disability benefits. The defendants paid the claimant healing period benefits from June 19, 2019, through August 4, 2019. (DE H:50). Dr. Granchi indicated that the claimant was able to return to light duty work effective August 5, 2019, which included some limitation on working in areas with temperature extremes. The defendants base their cessation of temporary disability benefits on August 4, 2019, on Dr. Granchi's note. They also argue that they had verbal conversations with the claimant about returning to work, and being placed in a temperature-controlled environment in a newly constructed building at the Hawkeye facilities. The claimant argues that these conversations were never memorialized in writing as required by the statute. In reviewing the record, I note that there is no evidence of any written offer of suitable temporary work. Considering Dr. Granchi opined that the claimant would be working with restrictions effective August 5, 2019, and then working full duty again on August 26, 2019, the defendants would have needed to present an offer of temporary or light duty work in writing to comply with the requirements of the statute. They did not do so. The burden of proof on a refusal to return to suitable work is on the defendants. They did not meet their burden with regards to the August 5, 2019, return to work date.

However, Dr. Granchi allowed the claimant to return to full duty work on August 26, 2019. On July 9, 2019, Dr. Bertellotti expressed dismay as to whether or not the claimant could perform his prior work duties due to his temperature intolerance. This does not appear to be a permanent restriction. Even the work note from August 8, 2019, indicates that the claimant had no restrictions "other than the temperature." The work note then allows the claimant to return to work "in full capacity" on August 26, 2019. In reviewing this, and the records from other providers, there does not appear to be a permanent restriction related to the claimant working in temperatures provided by a medical professional. The medical records following his release from burn care also make scant mention of any issues with temperatures. The claimant expressed through his testimony that he still experiences discomfort in the areas of his burns when exposed to temperature extremes, but there are aspects of his life that contradict this. For example, the claimant still ice fishes and deer hunts. These are outdoor activities that require him to be outside in cold weather. This discrepancy affects my view of the claimant's credibility to some extent.

On August 5, 2019, Mr. Damjanovic sent a text message to the leadership of Hawkeye. In that text message, he wrote, "I won't be returning back to work at this time I have some [*sic*] that needs to be figured out[.]" He then never returned to work at Hawkeye. Hawkeye sent him a letter on August 26, 2019, indicating that they viewed the claimant's text message as a resignation, and accepting the same. The claimant took no actions in response to this letter indicating that he wished to return to work with Hawkeye. An employee of Hawkeye testified that they had conversations about Mr. Damjanovic returning to work in the air-conditioned building. Mr. Damjanovic disputes whether there were any conversations about his return to work. Due to some of my credibility concerns about Mr. Damjanovic's testimony, I tend to find the testimony of the Hawkeye employee more credible on this issue.

The claimant was not properly offered a return to temporary light duty employment. However, the medical evidence indicates that he could have returned to his work with Hawkeye on a full-duty basis effective August 26, 2019. The restrictions regarding his exposure to temperature also appears to not have been a permanent restriction based upon my review of the record. Dr. Bertellotti only expresses dismay as to whether these issues may be permanent. The claimant was also aware that Hawkeye was constructing a temperature-controlled, air-conditioned building at around this time. Hawkeye's witness testified credibly that there were conversations about the claimant returning to work in that building. As of August 26, 2019, the claimant could have returned to full-duty employment with Hawkeye, but he resigned effective August 5, 2019. His resignation makes no mention of his injury or alleged continued symptoms.

The claimant is eligible for healing period benefits from August 5, 2019, to August 25, 2019, as there was not a proper offer of temporary light duty employment during this time. The claimant could have returned to employment with Hawkeye as of August 26, 2019. There is no requirement in the statute that the offer to return to full-duty employment be in writing. Additionally, the defendants proved that the claimant refused suitable employment in resigning from his position. I also found the Hawkeye employee's testimony to be more credible on the issue of the claimant and Hawkeye having conversations regarding the claimant's potential return to work.

The claimant then reported issues with his left arm in August of 2020. At that time, he began a course of treatment that eventually led to two surgeries. Subsequent to the first surgery on November 24, 2020, the claimant stopped working. While there are no explicit records indicating that the claimant should be off of work, the work restrictions provided by the treating physicians during this time effectively precluded the claimant from working any of the type of jobs which he previously held. Mr. Damjanovic was eventually declared to have reached maximum medical improvement for his left arm issues by treating physician Dr. Bartelt as of April 19, 2022. As noted above, the law allows for healing period benefits to be intermittent. This is precisely the type of case where intermittent healing period benefits are appropriate. Based upon the record, healing period benefits should resume as of November 29, 2020, and then cease as of April 19, 2022, when Dr. Bartelt and Dr. Gorsche opined that the claimant achieved maximum medical improvement.

There also is an issue as to the amount of benefits paid from June 19, 2019, to August 4, 2019. The defendants' exhibits indicate that they paid three thousand seven hundred twenty-nine and 25/100 dollars ($3,729.25) in temporary disability benefits. The claimant does not make an explicit argument as to the amount owed for benefits from June 19, 2019, to August 4, 2019, in their post-hearing brief. However, the claimant presented evidence that they received three thousand seven hundred seventy-six and 86/100 dollars ($3,776.86) for temporary disability compensation during this period of time. The period between June 19, 2019, and August 4, 2019, is 6.571 weeks, and the stipulated rate is five hundred fifty-five and 42/100 dollars ($555.42) per week. See 876 Iowa Administrative Code 8.6. Therefore, the claimant would be owed three thousand six hundred forty-nine and 88/100 dollars ($3,649.88) in temporary disability benefits. As such, the defendants paid seventy-nine and 36/100 dollars

($79.36) more than required during this time period and would be entitled to a credit for their overpayment. This credit may be applied to the healing period benefits as awarded above.

Permanent Disability

The parties stipulated that the claimant's injury is a cause of permanent disability. There is a dispute whether the claimant's issues should be evaluated as a scheduled member disability to the left upper extremity, or an industrial disability.

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of

the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "[i]t 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).

Where an injury is limited to a scheduled member, the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983). The right of a worker to receive compensation for injuries sustained which arose out of and in the course of employment is statutory. The statute conferring this right can also fix the amount of compensation to be paid for different specific injuries, and the employee is not entitled to compensation except as provided by statute. Soukup v Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Iowa Courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code 85.34(2)(a)-(u), this agency must only consider the functional loss of the particular scheduled member involved, and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably language, Soukup, 222 Iowa at 277, 268 N.W. at 601, which states:

> The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries … and that, regardless of the education or qualifications or nature of the particular individual, or of his inability … to engage in employment … the compensation payable … is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Iowa Code 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use of a member is equivalent to "loss" of the member. Moses v. National Union C.M. Co., 194 Iowa 819, 184 N.W. 746 (1921).

Iowa Code section 85.34(2)(x) requires the undersigned to determine the extent of loss or percentage of permanent impairment solely by using the AMA Guides to the Evaluation of Permanent Impairment, and not lay testimony or agency expertise. The Agency has since adopted the Fifth Edition of the Guides. See 876 Iowa Administrative Code 2.4.

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (App. Feb. 15, 2012). A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154 (Arb. Sept. 11, 1989). One form of sequela of a work injury is an adverse effect from medical treatment for the original injury. Thomas v. Archer Daniels Midland Co., File No. 5064599.01 (Arb. Nov. 2, 2021). Where treatment rendered with respect to a compensable injury itself causes further injury, the subsequent injury is also compensable. Yount v. United Fire & Casualty Co., 256 Iowa 813, 129 N.W.2d 75 (1964). For example, the death of a claimant who died on the operating table during surgery for a work injury may be compensable, since the injury caused the need for surgery. Breeden v. Firestone Tire, File No. 966020 (Arb. Feb. 27, 1992). As another example, a claimant who fell as a result of dizziness from medication he was taking to treat a work injury is to be compensated for both the original injury and the resulting fall as a sequela of the first injury. Hamilton v. Combined Ins. of America, File No. 854465, 877068 (Arb. Feb. 21, 1991).

A sequela can also take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788758 (Arb. Nov. 15, 1991).

A sequela can also take the form of a later injury that is caused by the original injury. For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury. Taylor v. Oscar Mayer & Co., III Iowa Ind. Comm. Rep. 257, 258 (1982).

Mr. Damjanovic suffered burns to his bilateral arms, face, and neck on June 18, 2019, when molten plastic splattered from a machine at Hawkeye. Mr. Damjanovic dressed his wounds and had wound care, including from his wife and mother. By July 30, 2019, Dr. Granchi, the claimant's treating physician at the University of Iowa, noted that the claimant was doing well despite some ulnar nerve irritation. At that time, the

claimant was released from care for his burn issues. In October of 2020, the claimant told Dr. Bartelt that his burns sometimes bothered him in the heat, but that "they do not specifically limit his activities." Mr. Damjanovic concedes in his posthearing brief that he is not seeking permanent disability for the scarring that is the result of the burns. Mr. Damjanovic also made no mention of these hot and cold sensitivity issues to Dr. Gorsche during his IME. Dr. Gorsche noted in his deposition that, if the claimant mentioned an ongoing symptom related to his left arm, the doctor would have recorded it. If the claimant has pain issues in his left arm due to exposures to heat or cold, that would be evaluated as part of a left arm, scheduled member, disability. There is no objective or medical documentation to support that this caused a permanent disability to the claimant's body as a whole. I also note some of my credibility concerns mentioned herein with regard to Mr. Damjanovic's testimony is a factor in this decision.

Mr. Damjanovic, his wife, and his mother testified to incidents where Mr. Damjanovic has pain in his left arm. According to Mr. Damjanovic, this pain moves into his neck and causes him to become sick to his stomach. He also claimed to require rest due to these issues. The issues were not relieved until he vomited. While I sympathize with Mr. Damjanovic's claims on this issue, the objective medical evidence is essentially silent as to these issues. There is one mention during work hardening therapy of the claimant being "wiped out for the entire day," following therapy appointments, but there is no mention of vomiting or pain radiating into his neck. This is not adequate to prove that the claimant's disability from his left arm extends to his body as a whole. Additionally, Mr. Damjanovic never sought medical care for these alleged additional issues. He also had an EMG which showed that his left arm issues did not extend into his cervical area. Mr. Damjanovic also did not complain about these issues to Dr. Gorsche during his IME exam. As noted above, Dr. Gorsche testified in his deposition that, if the claimant mentioned a left arm issue, he would have recorded it in his report.

The evidence in the record is insufficient to support the proposition that the claimant has a sequela injury extending into his body as a whole due to his sensitivity to heat and cold. There is also no impairment opinion provided by a physician regarding these issues. With regard to the alleged left arm pain extending into the claimant's neck causing him to become physically ill and vomit, I likewise find inadequate evidence to prove a sequela injury. As noted, the claimant has not sought medical care for this alleged condition. He also never mentioned it to a provider in sufficient detail for them to note it in a medical record. No medical provider has given an opinion indicating that there are issues such as those testified to by the claimant that were a cause of permanent disability. Due to the foregoing reasons, the claimant also has not met his burden of proof to show that the left arm injury extends to his body as a whole. Therefore, the claimant is not entitled to an industrial disability analysis. The claimant's left arm injury should be evaluated as a scheduled member injury.

A scheduled member disability to the upper extremity is compensated based upon 250 weeks. See Iowa Code section 85.34(2)(m). Pursuant to Iowa Code 85.34(2)(w), the workers' compensation commissioner may equitably prorate

compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

There are two competing impairment ratings in this case, provided by members of the same medical practice. Dr. Bartelt is the claimant's treating physician. He used the results of the FCE and the Guides to arrive at an impairment rating of 32 percent for the left upper extremity. Dr. Bartelt's evaluation with the Guides as it relates to the claimant argues for an award based upon the rating of Dr. Bartelt.

The defendants argue that the undersigned should adopt the opinions of Dr. Gorsche. Dr. Gorsche is a partner of Dr. Bartelt. Dr. Gorsche performed an IME of the claimant and issued a report. Dr. Gorsche used some of the same portions of the Guides as Dr. Bartelt to produce his impairment rating. Based upon sensory deficits and strength loss percentage, Dr. Gorsche opined that the claimant had a left upper extremity impairment of 24 percent. Dr. Gorsche also agreed with the restrictions from the FCE and placed the claimant at MMI as of April 19, 2022.

I find the opinions of Dr. Gorsche more persuasive. Both Drs. Bartelt and Gorsche considered sensitivity issues when coming to their impairment ratings. Dr. Bartelt was the claimant's treating physician, which normally holds some weight in a review of competing opinions; however, Dr. Bartelt appears to have based his opinions on unreliable grip strength measurements from the FCE. There were scant therapy records filed as exhibits; however, Synergy measured the claimant's grip strength on several occasions throughout his therapy appointments. The defendants questioned Dr. Gorsche as to these results during his deposition. Claimant's counsel was present at the deposition, and Dr. Gorsche reviewed Synergy's records during the deposition. Claimant's counsel did not object to the inclusion of any of the Synergy records or questions regarding the same during the deposition. Therefore, the results as discussed in Dr. Gorsche's deposition appear to be reliable despite most of the records not being included in the exhibits in this case. The claimant's grip strength was measured at various times as follows:

September 24, 2021 – 40 pounds

October 8, 2021 – 50 pounds

October 22, 2021 – 60 pounds

November 5, 2021 – 60 pounds

November 29, 2021 – 60 pounds, 50 pounds, 45 pounds

December 10, 2021 – 60 pounds

January 29, 2022 – 75 pounds

February 21, 2022 – 80 pounds, 65 pounds, 60 pounds

March 30, 2022 (FCE) – 36 pounds, 32 pounds, 20 pounds

May 25, 2022 (Gorsche IME) – 65 pounds, 75 pounds, 70 pounds

Dr. Gorsche testified in his deposition that strength measurements for things like someone's grip are dependent on the effort put forth by the claimant. While the FCE indicated that the claimant put forth a valid effort, the stark contrast between the FCE strength measurements and the Synergy measurements and IME measurements are difficult to ignore. The results of the strength testing during the IME with Dr. Gorsche are more consistent with the measurements found during therapy appointments. The measurements during the Synergy appointments also display continued improvement. The claimant offers no explanation for why the FCE measurements are so different when compared to the other, consistent, strength measurements. In light of this stark difference, Dr. Bartelt's reliance on the FCE grip strength measurements make his opinions slightly less reliable than those of Dr. Gorsche.

Based upon the foregoing, I find that the claimant has a 24 percent impairment to the left upper extremity. This is 60 weeks of permanent partial disability. (24 percent x 250 weeks = 60 weeks).

ORDER

THEREFORE, IT IS ORDERED:

That the claimant was off work and is entitled to healing period benefits from August 5, 2019, to August 26, 2019, and from November 29, 2020, to April 19, 2022, at the stipulated rate of five hundred fifty-five and 42/100 dollars ($555.42) per week.

That the defendants are entitled to a credit of seventy-nine and 36/100 dollars ($79.36) for an overpayment of benefits from June 19, 2019, to August 4, 2019.

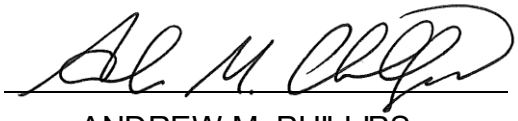
That the defendants shall pay the claimant sixty weeks of permanent partial disability benefits at the agreed upon rate of five hundred fifty-five and 42/100 dollars ($555.42) per week commencing on April 18, 2022.

That the defendants are entitled to credit for permanent partial disability benefits as stipulated.

That the defendants shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That the defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this __25th__ day of April, 2023.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Judith O'Donohoe (via WCES)

Rene Charles Lapierre (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.