

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

ALHATEL V. SMITHFIELD FOODS

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THURAIYA ALHATEL, APPELLANT,

v.

SMITHFIELD FOODS, INC., APPELLEE.

Filed September 22, 2026. No. A-25-831.

Appeal from the Workers' Compensation Court: THOMAS E. STINE, Judge. Affirmed.

Thuraiya Alhatel, pro se.

Kelsey J. Paumer, of Kuper, Block & Paumer, P.C., L.L.O., for appellee.

BISHOP, WELCH, and FREEMAN, Judges.

BISHOP, Judge.

I. INTRODUCTION

Thuraiya Alhatel filed an action in the Nebraska Workers' Compensation Court against Smithfield Foods, Inc. (Smithfield), claiming that she sustained injuries to both shoulders in an accident arising out of and in the course of her employment at Smithfield's food processing plant in Crete, Nebraska. During the pleading stage of the litigation, Smithfield admitted that Alhatel suffered a work-related injury to her right shoulder but denied any compensable injury to the left shoulder. After a trial, the compensation court entered an award, providing Alhatel with permanent partial disability and future medical costs for her right shoulder. However, the court concluded that Alhatel failed to prove that the injury to her left shoulder was causally related to her employment with Smithfield.

Alhatel, pro se, appeals the compensation court's determination that her left shoulder injury was noncompensable. She claims that the evidence presented at trial shows that the initial work-related injury to her right shoulder naturally led to overuse of her left shoulder, directly causing a

subsequent injury compensable under the Nebraska Workers' Compensation Act, see Neb. Rev. Stat. §§ 48-101 to 48-1,117 (Reissue 2021). She further claims that the court gave undue weight to certain expert opinions and ignored objective documentary evidence in fashioning its award. We affirm.

II. BACKGROUND

Alhatel moved from Jordan to the United States in November 2017. Her first language is Arabic, and she knows “just a little bit” of spoken English. Alhatel quickly made Lincoln, Nebraska, her permanent home, and in March 2019, she began working at Smithfield's food processing plant in Crete as an “[a]rranger” in the bacon department.

On June 22, 2023, Alhatel, represented by counsel at that time, filed a petition in the compensation court seeking compensation for injuries arising out of and in the course of her employment with Smithfield. The petition specifically alleged injuries to her “bilateral shoulders and right elbow” resulting from “repetitive use.” She sought temporary and permanent disability benefits, payment of past and future medical expenses, vocational rehabilitation, waiting time payments, interest, and attorney fees. In its answer, Smithfield admitted that Alhatel suffered a work-related injury to “her right upper extremity.” It denied any other compensable injuries.

Prior to trial, the parties filed an amended joint pretrial memorandum. Pursuant to the memorandum, the issues submitted to the compensation court for disposition were:

1. The nature and extent of [Alhatel's] alleged injuries, including whether [she] suffered a left upper extremity injury as a result of her employment with [Smithfield].
2. The extent and duration of temporary disability benefits to which [Alhatel] may be entitled.
3. The extent and duration of permanent disability benefits to which [Alhatel] may be entitled.
4. The nature and extent of [Alhatel's] loss of earning capacity in light of [her] allegations of bilateral upper extremity injuries.
5. [Alhatel's] entitlement to past and future medical care and costs.

1. TRIAL

A trial on Alhatel's petition was conducted on July 8, 2025. Witnesses testified and voluminous documents were received as evidence. Alhatel remained represented by counsel at trial. We set forth the relevant evidence below.

(a) Bacon Arranger Job

In March 2019, Alhatel began work as a bacon arranger at Smithfield's food processing plant in Crete. An official Smithfield job description describes a bacon arranger's duties as follows: “Arrange bacon pieces so they match and line up.” According to the job description, a bacon arranger must “continuously” stand, grasp, and engage in “[f]ine [m]anipulation.” The job also involves “frequent[]” lifting of “11-20 lbs.”

Alhatel, 50 years old, testified at trial via a court-certified interpreter. Alhatel explained that as a bacon arranger, she was tasked with grabbing meat from a conveyor system positioned at

head height (she is 4 feet, 9 inches tall), twisting her torso to transfer each piece of meat to a tub of spices, pressing all sides of the meat into the spice mixture, moving the meat onto a table, manually folding the meat, and placing the meat on a second conveyor system positioned at waist level. Alhatel indicated that she would process “at least” “[t]en pallets” of bacon per day. She described the pace of work as “very fast,” agreeing with her counsel that it took around 3 seconds to complete the above sequence for each piece of meat. In a physical therapy note offered at trial, it was recorded that Alhatel conducted “2500 repetitions per shift.”

Smithfield’s medical manager, Tami Kunc, was the only other witness called at trial, and she disputed Alhatel’s description of the bacon arranger job. Kunc testified that the meat moved down a single conveyor line and “nobody” “reach[ed] above their head to grab bacon.” However, she did acknowledge that Alhatel was “shorter.” Kunc stated that each piece of meat on the line weighed “a pound or two.”

(b) Right Shoulder Injury

On September 18, 2020, Alhatel sought medical treatment at “Urgent Care” for pain in her right shoulder, arm, elbow, and wrist. During the visit, Alhatel reported that she had been working “extra hours and additional days” at the plant due to “worker shortage[s]” resulting from the COVID-19 pandemic. Medical records received at trial show that Alhatel “exhibit[ed] tenderness” in her right shoulder during this initial visit and was ultimately diagnosed with “[o]veruse syndrome.” Alhatel was advised to “slow[] down at work” and limit the use of her “upper extremities” for a week. Alhatel testified that she promptly informed her supervisor of these recommendations. She was subsequently assigned to different jobs at the plant, including assembling boxes.

On September 28, 2020, Alhatel visited physician assistant Penni Jackson of Company Care for “worsening pain in her right arm.” Medical records from this visit reflect September 23 as the date of injury, and describe Alhatel as being “unable to make a fist” or “grip her coffee mug.” X-rays of Alhatel’s cervical spine and right shoulder were taken, and Jackson made diagnoses of “[c]ervical radiculopathy” and “[r]ight arm tendonitis.” Jackson wrote in her records that Alhatel’s injury was “probably work related” but noted that her “conclusion [was] subject to change.” Alhatel was cleared to return to work with restrictions, which included avoiding the use of her right arm, no over-the-shoulder reaching, and no lifting over 10 pounds. A treatment plan consisting of medications and physical therapy was developed.

At a follow-up appointment with Jackson on October 6, 2020, Alhatel continued to complain of “pain in her right shoulder,” “tingling and weakness in her hand,” and “limited range of motion of her shoulder and wrist.” According to medical records, Alhatel told Jackson that “her supervisor [was] making her work outside of her restrictions.” As a result, Jackson temporarily removed Alhatel from all work and ordered an MRI of her “cervical spine.” The MRI revealed “[m]inimal degenerative changes” and was “otherwise negative.” Seven days later, Alhatel visited Jackson for another appointment and reported “some improvement.” However, she still experienced pain in her right shoulder. Jackson lifted the no-work moratorium but gave Alhatel instructions to avoid use of her right arm, over-the-shoulder reaching, and “looking down.”

Alhatel continued treatment with Jackson into early November 2020. However, due to worsening symptoms, Jackson ordered another MRI on November 2, this time of Alhatel's right shoulder. The MRI showed:

1. Mild-to-moderate supraspinous and infraspinatus tendinosis, there is moderate grade insertional possibly concealed tear involving the anterior supraspinous measuring approximately 5.6 mm transverse x 4 mm AP. Minimal interstitial tear of the distal infraspinatus.
2. Blunting and frayed along the superior and posterior superior labrum which may be chronic and degenerative, there is no acute-appearing labral tear or paralabral cyst.
3. Mild biceps tendinosis without tendinosis or tear.

After reviewing these findings with Alhatel on November 6, Jackson made a referral to Dr. Robert Dugas, an orthopedic specialist.

Dr. Dugas first met with Alhatel on November 13, 2020, and recommended "arthroscopic surgery" because of the "significance" of Alhatel's pain and her difficulty in performing daily activities. A few days after this initial assessment, Dr. Dugas authored a letter, stating Alhatel was "unable to return to work at this time." Alhatel testified that Dr. Dugas removed her from work because she disclosed that Smithfield was not accommodating her medical restrictions. Surgery on Alhatel's right shoulder was conducted on January 28, 2021. In a post-operation report, Dr. Dugas diagnosed Alhatel with a "[f]ull thickness rotator cuff tear" in her "right shoulder," "biceps tendonitis, acromioclavicular arthralgia, subacromial impingement, [and] partial biceps tendon tear." After surgery, Alhatel attended physical therapy and met with Dr. Dugas on a frequent basis. On June 28, Dr. Dugas cleared Alhatel to return to work with "modified duties." Medical restrictions included, among other things, "[n]o firm gripping," "[n]o repetitive motion," "[n]o overhead work," and "[n]o lifting over 2-3 lbs." On a "Work Capacity" form dated June 28, Dr. Dugas advised: "Office duty only – no production line!"

The parties' amended joint pretrial memorandum reflects that Smithfield paid Alhatel a total of \$20,443.34 in temporary total disability benefits (\$659.36 per week) from November 17, 2020, to June 27, 2021. Upon cross-examination by Smithfield's counsel, Alhatel agreed that she received compensation benefits during her surgical leave.

(c) Alhatel's Accommodations

On June 29, 2021, Alhatel returned to work at the plant. A June 29 "Transitional Duty Assignment and Offer" document signed by Alhatel was received at trial. An attached job description shows that Alhatel was assigned to "[o]ffice duty/light duty room." Duties consisted of "a variety of tasks," including, among other things, "[l]abeling," "[f]olding gloves in pairs for production employees," "handing out frocks to employees," and "[w]iping down table top surfaces and door handles with sanitizing wipes." Alhatel testified that she cleaned tables in the cafeteria and handed out protective equipment until the end of July.

On August 10, 2021, Dr. Dugas modified Alhatel's work restrictions. Alhatel was permitted to split time between office duties and production line work. She was subsequently moved to the plant's smoked meats department, where she "stamp[ed] labels" on pieces of meat. According to Alhatel, she would use her left hand to take labels from a machine and use her right

hand to affix the labels to the meat. Alhatel testified that she labeled “[a] lot” of meat and was forced to flip “very big” pieces with her left arm to ensure each slab was properly labeled. During her testimony, Kunc stated that the product on the smoked meats line was “under 20 pounds.”

(d) Dispute Over Work Restrictions

Alhatel visited Dr. Dugas for a final appointment on October 5, 2021. Dr. Dugas noted in his records that Alhatel was “improving” and that her work in the smoked meat department “seem[ed] to be working out.”

The parties had a series of meetings in early October 2021 to discuss Alhatel’s future at the plant. During these meetings, however, a dispute arose regarding the extent of Alhatel’s work restrictions. The controversy was exacerbated by three separate return-to-work forms completed by Dr. Dugas, each containing different lifting restrictions. In an October 19 note, a Smithfield insurance claim adjuster provided a timeline of the dispute, which we set forth below without editing (other than Alhatel’s name in brackets):

[Alhatel] had her f/u with Dr Dugas on 10/5/2021. She was given restrictions on the RTW auth and then it stated return to full duty 10-11-2021. [Alhatel]’s husband stated that she was given permanent restrictions. We clarified with Dugas’s office and they sent us a new order with permanent restrictions to begin 10-11-2021. The husband was not happy with them so we made an apt for them to talk Dugas office. We then received word from Dugas office that they would not see [Alhatel] anymore, the apt was canceled and a new form was sent for us with permanent restrictions. The husband was still unhappy stating that she cant lift 30 lbs. The interactive process was started yesterday with HR, myself and the union. [Alhatel] refused to take part in the job search because she doesn’t agree with the permanent restrictions. [Alhatel] was told she could go out on a[n] unpaid medical leave and [Alhatel] and husband are requesting a second opinion.

Only two of Dr. Dugas’ return-to-work forms appear in our record. The first is a Smithfield “Work Capacity” form dated October 5. In that form, Dr. Dugas indicated that Alhatel was permitted to “[f]requently” lift “01-10 lbs.” and “[o]ccasionally” lift “11-20 lbs.”; any lifting over 20 pounds was prohibited. Dr. Dugas designated these restrictions as temporary, writing that Alhatel was “[p]rojected” to “return to full work” on October 11. However, a “Work Status” form dated October 7 provides for “permanent” restrictions of “[n]o lifting over 50lbs.” and “[n]o overhead work.” At trial, Kunc testified that a third form was received, calling for a permanent 30-pound lifting limit. This was the last note sent by Dr. Dugas.

Despite being offered a full-time position in the smoked meats department, Alhatel opted to take unpaid medical leave beginning on October 14, 2021. She eventually “resigned” from her employment at the plant on December 3. A “Separation Notification” received at trial lists the reason for Alhatel’s “termination” as “shoulder pain.”

(e) Functional Capacity Evaluation

Alhatel disagreed with Dr. Dugas’ permanent 30-pound lifting restriction and requested a second opinion. Smithfield approved her request, and Alhatel briefly saw Dr. Daniel Gaffney beginning on November 2, 2021. Another MRI of Alhatel’s right shoulder was taken. Dr. Gaffney

described the results of the MRI in his records as “reassuring,” but he noted that Alhatel was still experiencing “persistent pain and dysfunction.” During a follow-up visit on November 16, Alhatel’s husband reportedly requested “permanent work duty restrictions.” Dr. Gaffney declined, writing in his records, “[M]y policy with healed intact rotator cuff repair would be full unrestricted activity.” Dr. Gaffney did, however, refer Alhatel for a functional capacity evaluation (FCE), due to “persistent requests” made by Alhatel’s husband.

An FCE was performed on January 19, 2022, and a copy of the report was received without objection at trial. According to the report, FCE results are “a valid representation of [a] client’s functional abilities based on [a] client demonstrating consistent effort.” The report noted that Alhatel’s effort was “[c]onsistent” throughout the evaluation. Alhatel was found to have the ability to perform work activities within the “Light-Medium Physical Demand Level.” The following recommendations were made:

1. Lifting of objects to shoulder level should be restricted to 15 pounds on an occasional basis and 5 pounds on a frequent basis.
2. Overhead lifting should be [a]voided with the right arm.
3. No prolonged or repetitive work above shoulder level with right arm. [Alhatel] is capable of forward reaching on a frequent basis with both arms.
4. Pushing and pulling should be restricted to 20# on an occasional basis.

(f) Left Shoulder Injury

Dr. Dugas prepared a report in January 2021 causally relating Alhatel’s right shoulder injury “to [her] work duties at Smithfield.” In a subsequent letter dated November 3, Dr. Dugas opined that Alhatel’s right shoulder had reached maximum medical improvement (MMI) on October 5, the date of her last appointment with him. He assigned an 8 percent permanent partial impairment rating to her “right upper extremity.”

While Smithfield did not dispute the compensability of the right shoulder injury at trial, Alhatel’s petition also sought compensation for an alleged injury to her left shoulder. Alhatel first reported discomfort in her left shoulder to her physical therapist on October 8, 2020. The therapist wrote in their report: “[Alhatel] [s]tates her L side of neck and in her shoulder are hurting today too but is because she has had to only use L UE so getting sore from that.”

The next complaint of pain in her left shoulder was to physician assistant Kathryn Schulz on June 29, 2022. Alhatel began to see Schulz and Dr. David Samani, a physician specializing in orthopedic trauma, for “ongoing right shoulder pain” shortly before the FCE was performed. Schulz wrote in her records that Alhatel presented on June 29 for a “follow-up evaluation of her right shoulder pain” but observed that she exhibited “some pain in the left shoulder.” Schulz performed a physical examination of Alhatel’s “bilateral shoulders.” Although Alhatel experienced pain during the examination, Schulz reported “full range of motion.” By July 14, Alhatel advised that “her left shoulder [was] bothering her more than her right shoulder.”

Sometime in early 2023, Dr. Samani ordered MRIs of Alhatel’s right and left shoulders. The MRI of the right shoulder was “consistent with” “acute tendinosis versus partial thickness tear [of the] mid rotator cuff.” The left shoulder MRI showed a “full-thickness tear of the supraspinatus without fluid gap on and without significant retraction.” On February 22, Dr. Samani recommended “stage rotator cuff repair[]” surgery on both shoulders. At the time of trial, the

recommended surgeries had not been performed; Alhatel testified that the cost was too much. Alhatel continued to see Dr. Samani throughout 2023 and into 2024 for pain in both shoulders. The last recorded visit with Dr. Samani occurred on November 26, 2024.

It should be noted that Dr. Dugas performed several examinations of Alhatel's "Left Upper Extremity" both before and after he performed surgery on her right shoulder. On November 13, 2020, approximately 2 months before surgery on her right shoulder, Dr. Dugas wrote in his records: "Examination of the left upper extremity does not show any tenderness, deformity or injury. Range of motion is unremarkable. There is no gross instability. Strength and tone are normal." Similarly, on August 10, 2021, a little over a month after Alhatel returned to work after surgery, Dr. Dugas wrote: "[C]ontralateral extremity does not show any swelling or atrophy. Range of motion is unrestricted. There is no laxity. Strength is near full."

Conflicting opinions regarding the cause of Alhatel's left shoulder injury were received at trial. On April 23, 2023, Dr. Samani completed a "WORKERS' COMPENSATION MEDICAL REPORT," diagnosing Alhatel with a "partial tear" of her left and right rotator cuffs. In its brief, Smithfield claims that this report was prepared "in response to a letter from [Alhatel]'s counsel." Brief for appellee at 12. The report included Dr. Samani's hand-written responses to multiple questions, one of which asked: "Would you agree that [Alhatel] overcompensating with her left shoulder in response to her right shoulder was at least a contributing factor to [her] left shoulder injury?" Dr. Samani responded in the affirmative. On June 21, Dr. Samani prepared a similar report, reaffirming his opinion that overcompensation from the right shoulder injury was a contributing factor to Alhatel's left shoulder injury.

On October 7, 2023, Dr. Samani sent to Smithfield's counsel his responses to a questionnaire Smithfield had requested he complete. In these responses, Dr. Samani still maintained that it was "more likely than not" that Alhatel suffered an acute injury to her left shoulder, but he believed that such injury was not caused by "overuse and/or overcompensation as a result of her work duties." However, on that same day, Dr. Samani faxed a letter to Smithfield's counsel seemingly contradicting his questionnaire responses. The letter reads, in pertinent part:

While [Alhatel] did suffer an acute tear of the rotator cuff as documented by MRI, this certainly is more likely than not a work-related injury as this pain increased while she was at work using her left hand more frequently than the right.

She was lifting with the left shoulder more frequently because of the surgery on her right shoulder.

It is more likely than not that the left shoulder condition is aggravated by overuse and overcompensation. It is my expert medical opinion that [Alhatel]'s left shoulder [injury] is causally related to her September 23, 2020, work injury.

On November 12, 2024, Dr. Samani again changed his opinion, writing in an addendum sent to Smithfield's counsel:

After surgery on her shoulder, it was related to me through [] [Alhatel]'s husband that she had to work overtime and utilize her left upper extremity more frequently than the right. However, [] [Alhatel] had no work for 8 months post op and did office work from June 29, 2021, to October 5, 2021. She was given a restriction on lifting no more than 30 pounds permanently.

While [Alhatel] did suffer an acute tear of the Left rotator cuff as documented by MRI, the left rotator cuff is not a work-related injury as this pain increased while she was not at work.

It is more likely than not that her left shoulder condition was not aggravated by overuse and overcompensation at work.

To clarify these seemingly contradictory opinions, the parties deposed Dr. Samani on February 25, 2025. A full transcript of that deposition was received by the compensation court without objection. During the deposition, Dr. Samani confirmed that he and Schulz began treating Alhatel in January 2022. According to Dr. Samani, Alhatel did not report pain in her left shoulder until an appointment on June 9, 2022. Dr. Samani testified that he initially believed Alhatel's left shoulder injury was work related because of certain representations made by Alhatel and her husband. Dr. Samani was under the impression that Alhatel was still employed at the plant at the time of her disclosure and was working overtime on the plant's production lines. During direct examination by Smithfield's counsel, Dr. Samani offered the following opinion on Alhatel's left shoulder injury:

[Counsel:] You are now aware [Alhatel] was off work from November 2020 through June 2021, correct?

[Dr. Samani:] That's correct.

[Counsel:] You're also aware [Alhatel] was performing desk work from June 2021 through October 2021?

[Dr. Samani:] Correct.

....

[Counsel:] And you're also aware that [Alhatel] left her job at Smithfield on October 13, 2021?

[Dr. Samani:] I am aware.

[Counsel:] You're also aware that [Alhatel] did not complain of left shoulder pain until June of 2022, which [would have] been approximately eight months after she left her job at Smithfield, correct?

[Dr. Samani:] I'm aware of that now.

[Counsel:] Based on all of this information, what is your current diagnosis of [Alhatel]'s conditions, whether work-related or not?

[Dr. Samani:] The patient has bilateral rotator cuff tendinitis and bilateral interstitial tearing of the cuffs.

[Counsel:] Do you believe [Alhatel]'s left shoulder condition is causally related to her work duties at Smithfield?

....

[Dr. Samani:] In light of not working during that period of time, it would be difficult to assign the left shoulder as causally related to the right.

However, upon cross-examination by Alhatel's counsel, Dr. Samani offered the following clarification:

[Counsel:] Assuming Ms. Alhatel went back to some form of packing house work from June to October 2021, while she was healing from her left [sic] shoulder, would you agree that those work duties were her working on a -- in a packing house while still healing from her right shoulder, would you agree that those would at least contribute to some of her left shoulder issues?

[Dr. Samani:] It can. Based on conversations with her and her husband stating that they felt she was overusing her left to compensate for the right.

[Counsel:] Okay. And if she, in fact, was working something approximating her full-duty job when she was alleging working an office job, would you agree that that would at least contribute to -- that overuse would at least contribute to the left shoulder injury that you've treated for?

[Dr. Samani:] It is within reasonable medical probability.

[Counsel:] Is that a "yes"?

[Dr. Samani:] Yes.

2. COMPENSATION COURT'S DECISION

On October 6, 2025, the compensation court entered a 36-page award. It stated that following its "systematic review and comprehensive examination of the entire evidentiary record, the Court concludes that the preponderance of the credible medical and factual evidence overwhelmingly supports a finding that the injuries resulting from the September 23, 2020, incident are confined to [Alhatel's] right upper extremity." The court found that Alhatel sustained a "right full thickness rotator cuff tear, right biceps tendinitis, right acromioclavicular arthralgia, right subacromial impingement, and right partial biceps tendon tear" as a result of her employment with Smithfield. The court determined that Alhatel's right shoulder reached MMI on October 5, 2021; Smithfield was ordered to pay permanent partial disability and future medical expenses associated with that injury.

However, relying on Dr. Samani's deposition testimony, the compensation court concluded that Alhatel "did not sustain any injury to her left upper extremity as a consequence of the work-related incident." It pointed out that Alhatel "did not report any meaningful pain in her left upper extremity until June 29, 2022, and her last day of work for [Smithfield] was October 13, 2021, nearly eight months prior." While it noted a physical therapist's October 8, 2020, record reflecting Alhatel complaining of left upper extremity pain, there was no further complaint or medical treatment for the left upper extremity. It further observed that Alhatel "did not initially complain of left upper extremity pain while working on the production line, contrary to statements previously made to [Dr.] Samani."

We discuss additional factual findings of the compensation court as necessary in our analysis.

3. ALHATEL'S MOTION FOR NEW TRIAL

On October 22, 2025, Alhatel filed a pro se "motion to reopen [the] case based on new evidence." The motion alleged that medical documentation "not previously available" shows MMI for her right shoulder injury was not achieved in October 2021, contrary to Dr. Dugas' opinion.

The compensation court entered an order denying Alhatel's motion on November 3, 2025. The order indicates that a hearing on the motion was conducted on October 29 and several exhibits were offered in support of the motion. However, there is no bill of exceptions for that hearing in our record. The court noted that § 48-162.03(1) expressly prohibited it from entertaining motions for a new trial. The court concluded that Alhatel's motion was, "in essence," a request to retry the case, and it therefore had no authority to grant the motion. See *Bower v. Eaton Corp.*, 301 Neb. 311, 918 N.W.2d 249 (2018) (as statutorily created court, Workers' Compensation Court is tribunal of limited and special jurisdiction and has only such authority as conferred by statute).

Alhatel filed her appeal on November 4, 2025.

III. ASSIGNMENTS OF ERROR

Alhatel assigns, reordered and restated, that the compensation court erred in (1) failing to find her left shoulder injury compensable, (2) relying on Dr. Samani's modified expert opinion because it was influenced by ex parte communications with Smithfield, (3) disregarding certain portions of the FCE, and (4) finding that her right shoulder reached MMI on October 5, 2021.

IV. STANDARD OF REVIEW

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. *Mosher v. Whole Foods Market*, 317 Neb. 26, 8 N.W.3d 733 (2024).

On appellate review, the factual findings made by the trial judge of the Nebraska Workers' Compensation Court have the effect of a jury verdict and will not be disturbed unless clearly wrong. *Prinz v. Omaha Operations*, 317 Neb. 744, 11 N.W.3d 641 (2024).

V. ANALYSIS

1. COMPENSABILITY OF LEFT SHOULDER INJURY

Alhatel's primary argument on appeal is that the compensation court erred in its determination that her left shoulder injury was not causally related to her employment with Smithfield. She contends that "injuries caused by compensatory overuse or altered biomechanics following an initial injury" are compensable. Brief for appellant at 11. She argues that the record reflects that her left shoulder symptoms developed only after her right shoulder injury. However, the court treated her left shoulder injury as "an unrelated medical condition," and therefore "failed to properly apply the compensatory-injury doctrine recognized by Nebraska law." Brief for appellant at 13.

In order to recover under the Nebraska Workers' Compensation Act, a claimant has the burden of proving by the greater weight of the evidence that an accident or occupational disease arising out of and occurring in the course of employment proximately caused an injury which resulted in disability compensable under the act. *Prinz v. Omaha Operations, supra*. Causation is an essential element of a workers' compensation claim. See *id.*

We have been unable to find any direct reference in our case law to what Alhatel calls the “compensatory-injury doctrine.” However, we understand her to argue that a subsequent injury that is a direct and natural result of a prior work-related injury is, likewise, compensable under the Nebraska Workers’ Compensation Act. In its brief, Smithfield acknowledges that “a subsequent injury may be compensable if it is causally related to the original work injury,” citing to *Rosemann v. County of Sarpy*, 237 Neb. 252, 466 N.W.2d 59 (1991). Brief for appellee at 16. In that case, the Nebraska Supreme Court referenced the following proposition expressed in 1 A. Larson, *The Law of Workmen’s Compensation* § 13.00 at 3-502 (1990): “When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, likewise arises out of employment, unless it is the result of an independent intervening cause attributable to [the] claimant’s own intentional conduct.” *Rosemann v. County of Sarpy*, 237 Neb. at 258, 466 N.W.2d at 63. See, also, *Parks v. Hy-Vee*, 307 Neb. 927, 951 N.W.2d 504 (2020) (to be compensable, subsequent injury or aggravation related to primary injury must be direct and natural result of work accident).

This court has also stated that “even when ascertaining the compensability of natural consequences that follow from an injury, the claimant remains obligated to establish the causal connection of the subsequent condition.” *Homstad v. Block 21*, No. A-19-191, 2019 WL 5561407, at *6 (Neb. App. Oct. 29, 2019) (selected for posting to court website). A claimant must generally prove proximate causation through expert medical testimony. *Hastreiter v. Foltz Bros.*, 321 Neb. 469, 35 N.W.3d 423 (2026). The determination of causation is ordinarily a matter for the trier of fact. *Prinz v. Omaha Operations*, *supra*. Accordingly, Alhatel, as the claimant in this case, had the burden to prove by a greater weight of the evidence through expert medical testimony that her left shoulder injury was a direct and natural consequence of her work-related right shoulder injury.

In its award, the compensation court concluded that Alhatel failed to meet her “burden of presenting persuasive medical evidence demonstrating any injuries to [her] left upper extremity [were] a consequence of the September 23[, 2020,] incident.” The court noted that Dr. Samani was the only medical provider to offer opinions as to the cause of Alhatel’s left shoulder injury. While the court acknowledged that Dr. Samani initially provided opinions “connecting” Alhatel’s left shoulder injury to the original work-related right shoulder injury, it found his February 2025 deposition testimony to be “more credible and reliable.” The court determined that the opinions expressed in Dr. Samani’s deposition testimony were based upon “a more accurate timeline of [Alhatel]’s work history and a more precise description of [her] post-surgical job duties.” The court also called Alhatel’s credibility into question, noting that she falsely told Dr. Samani that she was working overtime shifts on the plant’s production lines. It concluded that Alhatel’s statements to Dr. Samani did “not align with the documented timeline of her employment or medical history.”

Alhatel challenges the above findings, arguing the compensation court “failed to evaluate the full character of the medical evidence contained in the record.” Brief for appellant at 14. She claims that “[r]ather than considering the progression of the injury as a whole, the court relied selectively on limited portions of the record while disregarding the broader medical context reflected in the evidence. *Id.* at 13. She contends that when the “record is considered in its entirety, the evidence demonstrates a consistent sequence” of “a compensable **right-shoulder work injury**,” “continuing functional limitations affecting the use of the right arm,” “increased reliance on the **left shoulder**,” and the “subsequent development of left-shoulder symptoms during the

recovery period.” *Id.* at 13-14 (emphasis in original). This sequence, Alhatel contends, is “precisely the type of compensatory progression recognized as compensable under Nebraska workers’ compensation law.” *Id.* at 14.

However, as noted previously, a claimant must generally prove proximate causation through expert medical testimony. *Hastreiter v. Foltz Bros.*, *supra*. Here, the only expert to provide an opinion on the cause of Alhatel’s left shoulder injury was Dr. Samani. While it is true that Dr. Samani provided contradictory opinions throughout this case, the compensation court accepted his deposition testimony as credible, finding his earlier opinions were based upon inaccurate disclosures made by Alhatel and her husband. Based upon our review of the record, we cannot say the court’s findings are clearly wrong. See *Prinz v. Omaha Operations*, *supra* (it is role of compensation court as trier of fact to determine which, if any, expert witnesses to believe). See, also, *Hynes v. Good Samaritan Hosp.*, 291 Neb. 757, 869 N.W.2d 78 (2015) (compensation court is sole judge of credibility of witnesses and weight to be given their testimony).

2. EX PARTE COMMUNICATIONS

In a somewhat related argument, Alhatel claims that the compensation court improperly relied on Dr. Samani’s modified opinion regarding the cause of her left shoulder injury because it was developed “following unilateral communications initiated during the litigation process.” Brief for appellant at 19. She argues that such ex parte communication renders Dr. Samani’s modified opinion inherently unreliable and raises “a significant risk” that the opinion was “influenced by incomplete or selectively presented information.” *Id.* at 18.

To the extent that Alhatel challenges the propriety of ex parte communications between employers and treating physicians in workers’ compensation cases generally, this court has already addressed the issue in *Scott v. Drivers Mgmt.*, 14 Neb. App. 630, 714 N.W.2d 23 (2006). In that case, the employer privately communicated with the employee’s treating psychologist after a workers’ compensation claim had been filed. During these communications, the employer discussed the employee’s treatment, supplied the psychologist with additional materials prepared by the employer’s retained expert, and asked the psychologist to formulate new opinions. Using the materials supplied by the employer, the psychologist prepared reports favorable to the employer. On appeal, the employee argued that the “‘physician/patient privilege precludes an employer or its legal representative from contacting [a] plaintiff’s treating health care provider *ex parte*.’” *Id.* at 646, 714 N.W.2d at 35. (Brackets and italics in original).

We concluded that the Nebraska Workers’ Compensation Act specifically contemplated and allowed for this type of ex parte communication. Section 48-120(4) provides, in relevant part: All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers’ compensation insurer, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers’ compensation claim.

Relying on this statutory language, we reasoned that “[w]hen an injured worker is seeking compensation for an injury from his [or her] employer and the employer seeks relevant information

from the injured worker's treating physician regarding that injury, that information is not privileged." *Scott v. Drivers Mgmt.*, 14 Neb. App. at 646, 714 N.W.2d at 35-36. Since § 48-120(4) explicitly allows an employer to initiate contact with an employee's treating physician, it was not improper for Smithfield to discuss Alhatel's treatment with Dr. Samani, supply additional context, and solicit a new opinion based upon a more accurate timeline of events.

We are also unpersuaded by Alhatel's assertion that Smithfield selectively presented information to Dr. Samani, which ultimately led him to change his opinion. First, as the compensation court explained in its award, there is evidence in the record to suggest that the initial causation opinions favorable to Alhatel were influenced by inaccurate statements provided by Alhatel and her husband. It was only after those misrepresentations were corrected by Smithfield that Dr. Samani changed his opinion. See *Mutual of Omaha v. Broussard*, 233 Neb. 916, 448 N.W.2d 600 (1989) (value of expert opinion is no stronger than facts upon which it is based). Further, Dr. Samani's most definitive and recent causation opinions were expressed during a February 2025 deposition. Dr. Samani was placed under oath at that time, and Alhatel had the opportunity to cross-examine him regarding the change in his opinion.

Accordingly, we cannot say that the compensation court clearly erred in relying on Dr. Samani's modified causation opinion, nor that any ex parte communication between Smithfield and Dr. Samani was improper under the Nebraska Workers' Compensation Act.

3. FCE RESULTS

Alhatel also claims that the compensation court erred by disregarding objective findings in the FCE.

It is not entirely clear from Alhatel's argument what she challenges on appeal. In her brief she asserts that the compensation court "relied selectively on portions of the evaluation" and ignored findings "documenting severe pain and functional impairment." Brief for appellant at 15. However, the court expressly considered and discussed the FCE in its award, going so far as to adopt its findings relating to Alhatel's functional limitations in her right shoulder:

The Court finds that the nature and extent of [Alhatel]'s alleged injuries is right full thickness rotator cuff tear, right biceps tendinitis, right acromioclavicular arthralgia, right subacromial impingement, and right partial biceps tendon tear, all as diagnosed by Dugas. . . . After reviewing the opinions of [Drs.] Dugas, Gaffney, Samani, and all other evidence at trial, the Court affirms that [Alhatel's] permanent limitations and restrictions associated with her right upper extremity injury are as set forth in the FCE. The Court concludes that [Alhatel] did not sustain any injury to her left upper extremity as a consequence of the work-related incident.

Alhatel also makes reference to a 56.82 "Quick DASH" score found in the FCE and a subjective report that she was experiencing pain rated at "9/10." According to the FCE, a "Quick DASH" score is the product of "a self-report questionnaire" where patients "rate difficulty and interference with daily life on a 5 point Likert scale." A higher score "indicate[s] a greater level of disability and severity, whereas lower scores indicate a lower level of disability." Alhatel appears to argue that the compensation court should have explicitly adopted these findings in its award. However, as noted above, the court did adopt "the permanent limitations and restrictions associated

with her right upper extremity injury . . . as set forth in the FCE.” These restrictions and limitations were formulated after the evaluator considered both objective testing and Alhatel’s subjective reporting. The court was not required to adopt every subjective questionnaire score or self-reported pain rating contained in the FCE. Rather, it was permitted to evaluate the FCE as a whole in determining the extent of Alhatel’s compensable right upper extremity disability.

Accordingly, we find no clear error in the compensation court’s consideration of the FCE.

4. MMI DETERMINATION

Alhatel argues that the compensation court improperly adopted Dr. Dugas’ November 2021 opinion that her right shoulder reached MMI on October 5 of that same year. She claims that Dr. Dugas’ MMI determination was erroneous because it “was made without the benefit of [an FCE] or comprehensive functional testing at the time.” Brief for appellant at 16.

The date of MMI is important because it marks the point at which temporary disability benefits end and entitlement to permanent disability benefits can be ascertained. *Krause v. Five Star Quality Care*, 301 Neb. 612, 919 N.W.2d 514 (2018). See, also, § 48-121(3) (“compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable”). In Nebraska, a workers’ compensation claimant may receive permanent or temporary benefits for either partial or total disability. *Krause v. Five Star Quality Care*, *supra*. “Temporary” and “permanent” refer to the duration of the disability, while “total” and “partial” refer to the degree or extent of the diminished employability or loss of earning capacity. *Id.*

Temporary disability benefits under the Nebraska Workers’ Compensation Act are discontinued at the point of MMI, because a disability cannot be both temporary and permanent at the same time. *Id.* The date of MMI for purposes of ending a workers’ compensation claimant’s temporary disability is the date upon which the claimant has attained maximum medical recovery from all of the injuries sustained in a particular compensable accident. *Id.* When an injured employee has reached maximum medical improvement, any remaining disability is, as a matter of law, “permanent,” within the meaning of the Nebraska Workers’ Compensation Act. *Krause v. Five Star Quality Care*, *supra*. Generally, whether a workers’ compensation claimant has reached maximum medical improvement is a question of fact. *Id.*

In a November 3, 2021, letter, Dr. Dugas stated that Alhatel’s right shoulder reached MMI on October 5 of that same year and assigned an 8 percent permanent partial impairment rating. The compensation court adopted Dr. Dugas’ opinion, stating in its award: “[Alhatel] seeks temporary total disability benefits beginning on February 8, 2022, and continuing through the date of trial and continuing thereafter until reaching MMI. The Court finds [Alhatel] reached MMI on October 5, 2021, as opined by Dugas.” Accordingly, it concluded that Alhatel was “not entitled to temporary total disability benefits after October 5, 2021.”

While not mentioned in the parties’ appellate briefs, we do note that Dr. Samani offered a different MMI opinion during his February 2025 deposition testimony. Dr. Samani initially agreed with Dr. Dugas’ MMI determination. However, he testified that he no longer believed that Alhatel’s right shoulder was at MMI. Dr. Samani came to this conclusion “around the time” that Alhatel began seeing him for right shoulder pain.

Despite these conflicting MMI opinions, it is within the province of the compensation court, as the trier of fact, to accept one expert opinion over another. See *Prinz v. Omaha*

Operations, 317 Neb. 744, 11 N.W.3d 641 (2024). We cannot say that the court’s adoption of Dr. Dugas’ MMI opinion was clearly wrong, especially where it was implicitly supported by a subsequent medical professional. Dissatisfied with Dr. Dugas’ permanent 30-pound lifting restriction, Alhatel sought a second opinion from Dr. Gaffney in November 2021. An MRI of Alhatel’s right shoulder was ordered, and Dr. Gaffney described the results as “reassuring.” Dr. Gaffney wrote in his records that “no surgical intervention” was necessary, as he observed a “healed intact rotator cuff repair.” This second opinion supports Dr. Dugas’ previous MMI opinion.

We are also not persuaded by Alhatel’s argument that Dr. Dugas’ MMI opinion is unreliable because it was made without reference to the FCE. As Smithfield points out in its brief, the Nebraska Workers’ Compensation Act does not require a physician to consult any particular type of medical test or evaluation before he or she can offer an MMI opinion. Accordingly, we find no clear error in the compensation court’s MMI determination.

5. UNASSIGNED ERRORS

As a final matter, we note that in the argument section of her brief, Alhatel makes several claims related to the compensation court’s improper reliance in its award on several documentary exhibits offered at trial. She specifically challenges the court’s discussion of job offer documents (exhibits 33 and 34), a summary of benefits prepared by Smithfield (exhibit 39), and the parties’ amended joint pretrial memorandum (exhibit 42). Alhatel also argues that the court failed to consider “significant evidentiary materials” that were offered in connection with her pro se motion to reopen the case (exhibits 43-57). Brief for appellant at 23.

Alhatel, however, has failed to assign the above claims as error. The Nebraska Supreme Court has consistently stated that alleged errors of the lower court must be both specifically assigned and specifically argued in the brief of the party asserting the errors to be considered by an appellate court. *Ramaekers v. Creighton University*, 320 Neb. 478, 28 N.W.3d 57 (2025). See, also, *Charter West Bank v. Riddle*, 314 Neb. 263, 989 N.W.2d 428 (2023) (self-represented litigant will receive same consideration as if he or she had been represented by attorney, and, concurrently, that litigant is held to same standards as one who is represented by counsel). We therefore decline to address Alhatel’s unassigned errors.

VI. CONCLUSION

For the foregoing reasons, we affirm the compensation court’s October 6, 2025, award.

AFFIRMED.