BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES BROWNFIELD,

Claimant,

vs.

CARGILL, INC.,

Employer,

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.

File No. 5040483

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

James Brownfield, claimant, has filed a petition in arbitration and seeks workers' compensation from Cargill, Incorporated, employer, and Insurance Company of the State of Pennsylvania, insurance carrier, defendants.

This matter came on for hearing before deputy workers' compensation commissioner, Jon E. Heitland, on April 16, 2015 in Cedar Rapids, Iowa. The record in the case consists of claimant's exhibits 1 through 10; defense exhibits A through Q; as well as the testimony of the claimant.

ISSUES

The parties presented the following issues for determination:

1. Whether the alleged injury is a cause of permanent disability.

2. The extent of the claimant's entitlement to permanent partial disability benefits.

3. The commencement date for any permanent partial disability benefits awarded.

FINDINGS OF FACT

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

James Brownfield, claimant, stated he is 45 years old. He attended high school and graduated. He later enlisted in the U.S. Navy, where he served in a position involving radar and communications. He was in the Navy four years and was honorably discharged.

He then moved to Iowa and began classes at Kirkwood Community College, studying physical therapy, but he did not obtain a degree or certificate. He went into the workforce, and worked at a plant in Ohio that made television tubes. His job was to operate a forklift. He had no injuries there. He next worked for a pallet company. He later worked for Midland Forge, a company that made metal products, screws, etc., for construction companies. His work there required him to stand much of the day, and lift items weighing up to 35 pounds every 30 to 45 seconds. The company closed, and claimant then worked at Proctor and Gamble in about 2008 or 2009, in Iowa City, Iowa. His job was to monitor machines during shift changeovers, among other duties. He would have to stack boxes of shampoo or conditioner weighing 15 to 20 pounds. That job ended in 2010, and he went to work for Cargill, defendant employer.

He had to undergo a pre-employment physical, which required him to show an ability to lift various weights of boxes as required by his job description. He passed the physical. He had various jobs there. One job, "A Operator Flour", involved checking rail cars, operating a computer, identifying pressure readings, etc. The "A Operator Extrusion" job was more of a monitoring job, where he would relieve other operators who needed a break, conduct pressure checks, as well as keeping certain areas clean. It was mostly a seated job. The room contained several large machines that grind flour. He had to walk up three or four flights of stairs to document the pressure gauges. As the flour is put into bags, sometimes the bags do not function correctly or have a hole, and it was his job to remove those bags.

Cargill was his highest paying job. When he left there, he was earning a little over $23.00 per hour. There was some overtime available, which was paid at time and a half, or double on weekends.

This injury involves claimant's back. Before his injury at Cargill, claimant had a left upper back burning and pressure sensation, right below the shoulder blade. This was diagnosed as back strain. Claimant attributed this to lifting weights for exercise. He had only one doctor visit for this, and after receiving a muscle relaxer, it resolved. (Exhibit H, page 1) On February 26, 2003, records indicate claimant was lifting weights and felt back discomfort. It was diagnosed as low back strain. Again, muscle relaxers, heat and ice, and pain medications resolved the strain. (Ex. H, p. 2) A year later, again he had low back pain during the period of time he was lifting weights. It also resolved.

(Ex. H, p. 3) In 2006, while working at Midland Forge, where he had to stand most of the day and lifted up to 100 pounds on occasion, he had increased pain in his low back following work. Pain medications and muscle relaxers again resolved the pain. (Ex. H, p. 4) Again while working at Midland Forge, while lifting boxes up to 200 pounds of content, he had back pain. Once more, medications resolved the back pain. He may have taken a couple of days off work. (Ex. H, p. 5)

On March 11, 2008, it was noted claimant had pain in the right upper back and shoulder blade area, not the low back. (Ex. H, p. 6) He eventually had surgery by Darren Smith, M.D. It was noted claimant had a history of neck and right upper back and shoulder blade pain. The surgery was to the neck, and resulted in a metal plate being inserted. He experienced loss of strength in his right arm. He stopped his hobby of lifting weights as a result. His low back was not involved.

A record dated May 7, 2009, shows claimant was playing with his son and while lifting him, experienced low back pain. He was treated by his family doctor. (Ex. H, p. 7) He was required to take a few days off under company rules prohibiting working with machinery while on narcotic pain medication.

None of these incidents resulted in any MRI testing, any referral to a specialist, or any permanent work restrictions. Claimant was never told prior to this date of injury he had a bulging disc in his back.

On the date of injury, claimant was checking a rail car to make sure it was properly sealed. He bent down with a flashlight, and the car was covered with snow. When he stood up, he slipped on ice and landed on his back. He tried to sit up and realized he had injured his back. The "B operator" helped him to the office, and his supervisor took him to an emergency room. He was told to apply ice at home and to see Ann McKinstry, M.D. When his pain had not improved after a week, claimant was given injections in January and April, at the L5-S1 level. During this time claimant continued to work under restrictions not to lift the 50-pound bags and to be careful working with rail cars.

In July, 2011, Dr. McKinstry released claimant, noting he felt 100 percent improved. Claimant states the second injection did work wonders, but he was not one hundred percent returned to his pre-injury condition. Claimant was transferred to the A operator extrusion job due to being bumped by someone with more seniority. In the summer of 2011, his back did feel better, but in August or September, his back began to tingle. There were ice packs available at work, and claimant began using them. Much of his work was monitoring computers. Otherwise he would sit in the control room. He would also take Aleve for pain.

In his personal life, claimant was cautious not to aggravate his back. He played with his children less. If he went to the gym to exercise, he would spend the rest of the day in his recliner. His work was physical when he had to do a changeover in extrusion. This required use of a hoist as well as some heavy lifting.

In December, 2011, claimant had an increase in back pain while using a forklift. He later feared he would be transferred to a B operator position, which would require regular lifting of 50-pound bags, and he knew he could not do that.

Dr. McKinstry put claimant on weight restrictions, medications, and physical therapy. Claimant was given more injections. Of five injections, only two have helped.

Claimant also saw Chad Abernathey, M.D., for a consultation set up by Cargill. Surgery was discussed but claimant's weight prevented this. Mary Hlavin, M.D., also felt he needed to lose 140 pounds, or weigh 215 pounds, to undergo the surgery. He has not weighed that since 1993. He saw Dr. Hlavin only one time. She never told him his weight was causing his back pain, but the surgery would be done from the front and his body fat would prevent that.

Claimant was sent by Cargill to Sergio Mendoza, M.D., at the University of Iowa. Claimant was physically examined by Dr. Mendoza only twice. The other times it was done by a nurse practitioner. Dr. Mendoza also told claimant he needed to lose weight, not just for the surgery but for diabetes, his heart, etc. Dr. Mendoza also never said claimant's back pain would resolve if he lost weight. The weight loss would be to facilitate the surgery.

Claimant was taken off work by Cargill. Claimant had been put on a 7 to 10-pound weight limit. His supervisor could not find tasks for claimant to do within his restrictions, so they were violated. Claimant returned to Dr. McKinstry and had his restrictions modified to 25 or 30 pounds so he could keep his job. However, he was told a B operator had to be able to lift 50 pounds. Claimant used up his long-term disability benefits and his job was terminated.

Claimant's attorney sent him to see Craig Dove, D.O. He conducted various tests. Claimant also saw Richard Neiman, M.D. Brian Lindo, M.D., claimant's family doctor, still treats claimant's back pain.

After his job at Cargill ended, claimant found he could not do many of the physical activities he could before. Mowing the lawn or using the snow blower causes him pain. He can no longer play tennis with his son. He cannot walk on trails. Walking is actually what aggravates his back pain the most. He can no longer lift weights. Physical activity causes his back pain to worsen.

Claimant decided since he could not work, he would return to school. He is studying accounting. He hopes to find employment in that field after completing his studies. He does not feel he learned any skills at Cargill that would transfer to another employer. Nothing from his Navy experience would transfer to civilian life except possibly air traffic control. He did learn to operate a forklift at Cargill. His job at Cargill paid $4.00 to $5.00 per hour more than his prior jobs.

On cross examination, he stated when he told his doctor he felt 100 percent better, he meant better than he had been feeling. In the Navy, he worked with radar for both air and surface monitoring. At Cargill he did mostly computer monitoring. He agreed he has always been heavy but always active. Today he weighs 346 pounds. At the time of the injury, he weighed 315 or 320. He has had meniscus problems with both knees. He feels this was from playing basketball a lot. He has had surgery on both knees.

The prior back pain incident set forth at Exhibit H, page 1, was attributed by claimant to weight lifting. He stated he went to lift weights five or six times per week, with both free weights and machines. He only used a weight belt when doing squats. For one of the prior incidents, in addition to the back pain he also had right leg pain which affected his walking. The April 1, 2004, incident also involved low back pain, not upper back or neck pain. This pain had been building for four or five days before. Claimant at that time reported radiating pain in both legs. For the March 21, 2006, incident, when claimant was working at Midland Forge, he visited Dr. Lindo for low back pain, which also radiated into his legs. Claimant was unable to complete his shift, and Dr. Lindo took him off work for a week. The August, 2006, incident again involved reporting to Dr. Lindo low back pain radiating into his legs. Again, he was working at Midland Forge at that time, lifting up to 200-pound boxes. He was off work under FMLA for three or four days for his back pain. Exhibit H, page 7, the May 2009 visit again involved back pain, after lifting his son, who was eight years old and weighed about 100 pounds at the time, which became more intense over the next few days and again radiated into his legs, the hamstring and calf area. Claimant was taken off work again for a week, and claimant requested an extension for another week. Claimant returned to work but found he could not do his work duties due to back pain, and he asked for more time off.

In 2008, claimant had surgery on his neck, with a two-level fusion. This was due to pain in claimant's right shoulder. It was not caused by acute trauma. In late 2009 and early 2010, claimant had some problems at work dealing with co-workers. He had an altercation with his boss. Claimant had treated with Dr. Lindo for depression previously. Dr. Lindo prescribed medication.

Claimant was "written up" for failing to change over to the correct tank. On March 22, 2011, he received another written warning when product was not done to the right specs. (Ex. K, p. 26) In September 2011, he was written up again. (Ex. K, p. 27) Claimant was put on a performance improvement plan. Claimant stated when Cargill let him go in 2013 the employer tried to "write him up" for the work injury, citing safety issues. He refused to sign the form. However, the form does not refer to the work injury. They also said he was not communicating properly with his supervisor, Matt Linderer.

Claimant agreed the injections did help for a time, and he again told Dr. McKinstry in July 2011 he was no longer having back pain, had improved

100 percent, and was working without any problems. (Ex. 4, p. 52) Claimant did not return to her for any further treatment in the fall of 2011.

In the fall of 2012, claimant was scheduled to do work hardening. Claimant missed many of those appointments when he called in and said he was on medication for a flare-up of his pain. The work hardening program was not successful. Claimant had some back pain problems after a long car drive to Ohio to see his father. In December 2012, claimant and his family attended a family weekend in Dubuque at a waterpark. Claimant injured his leg calf muscle playing water basketball with his son there. He felt a sharp pain in his calf. Claimant agreed Dr. Abernathey felt claimant was too heavy for surgery. So did Dr. Mendoza.

He attends Kirkwood Community College and hopes to obtain a two-year degree in accounting in about a year and a half. He currently has Bs and Cs for grades. He exercises on an elliptical machine. He only does a few free weights, such as bench pressing.

From January 2012 to May 24, 2012, claimant had restrictions in place, and claimant was working light duty. His discussion with Matt Linderer was about claimant's work restrictions. Linderer still had claimant as being able to lift 50 pounds, whereas claimant had work restrictions against lifting over 7 to 10 pounds. It was not until May 2012 when claimant went to Dr. McKinstry and got permanent restrictions that his employment was terminated.

On re-direct examination, claimant stated he was asked to sign a PIP (Performance Improvement Plan) regarding safety. That form is not in the record. The form referred to claimant's work injury a year and a half before, so claimant declined to sign it. He was then given a PIP based on communication problems where an improper mixture was done, which claimant explained was actually caused by someone else. Claimant refused to sign this one also. (Ex. K, p. 28)

Further facts are set forth below.

CONCLUSIONS OF LAW

The first issue in this case is whether the alleged injury is a cause of permanent disability.

Claimant had a history of back pain prior to this work injury. However, he was not being treated for back pain when he began working for Cargill. When he was hired there, he underwent a physical, which found him capable of doing the work, including lifting up to 50 pounds. (Ex. E, pp. 1-3; Ex. K, pp. 2, 8, 14) He was cleared for unrestricted work on March 3, 2010. Claimant then began working, and had no problems performing his job duties.

On January 5, 2011, claimant suffered his stipulated work injury. Claimant asserts the work injury has caused an increase in his back pain and his disability. Defendants dispute claimant's current back complaints are caused by the work injury.

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

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

Since the work injury, claimant has required extensive medical treatment for his back pain. This has included epidural steroid injections, trigger point injections, and physical therapy. A fusion surgery at L5-S1 has been recommended, but claimant's obesity has postponed that procedure. Claimant received permanent work restrictions of not lifting over 25 to 30 pounds on July 10, 2013. (Ex. 8, p. 126)

Dr. Lindo, claimant's personal doctor, opined claimant's past incidents of back pain were temporary muscle strains. (Ex. 3, pp. 14-15) He felt these were isolated, temporary low back strains caused by specific incidents such as lifting a child. He felt claimant did not need permanent work restrictions until this work injury, and that his current condition was caused by the work injury.

Dr. Dove conducted an independent medical examination (IME). He noted claimant had prior neurogenic examinations that were normal in 2008 and 2009, as well as the pre-employment physical. He also concluded claimant's degenerative condition was asymptomatic until the new injury at Cargill. He felt the January 5, 2011, work injury was a substantial contributing factor in claimant's low back pain and radicular symptoms. He stated "Based on the extensive record review and objective evidence on his physical examination, I again feel that this would be considered a new injury that directly correlates to his injury of January 5, 2011." (Ex. 1, p. 8)

Dr. Neiman, a neurologist, also performed an IME on October 25, 2013. He found acute disc herniation at L5-S1, which was not indicated before the work injury. He felt claimant's past intermittent back pain was of less severity and did not indicate his current condition was caused by a prior condition. He felt claimant's current back pain was caused by his work injury at Cargill. (Ex. 3, pp. 15-16)

On June 21, 2012, Dr. Hlavin, examined claimant. She found a disc collapse at L5, which she felt was causing his back pain. She felt that although his weight was contributing to his symptoms, she believed his symptoms were at least in part related to his occupational injury. (Ex. C, p. 1) However, she later changed her opinion, without again seeing claimant, and stated the injury was not a significant or material factor in claimant's low back pain. (Ex. C, p. 7)

Dr. Mendoza examined claimant on November 21, 2012. He found a disk herniation at L5-S1 on claimant's MRI, as well as possibly an S1 nerve root irritation. He cited seven instances of back pain prior to the work injury going back to 2003. However, some of these were for the upper back, not the low back, and were related to a neck condition not involved in this case. Other incidents followed specific incidents such as lifting a child or lifting weights for exercise. Claimant did not require any extensive medical treatment for these incidents. They did not prevent him from doing his job at Cargill. They did not result in any work restrictions or ratings of impairment. Nevertheless, Dr. Mendoza felt claimant's current condition was caused either by a pre-existing condition, or by his weight, or both. He stated "This could only be considered to be a work-related aggravation or 'lighting up' of an underlying condition if Mr. Brownfield had no previous complaints of back or radiating lower extremity symptoms, and this event incited his symptoms." (Ex. B, p. 12)

This indicates a flawed understanding of workers' compensation law. A claimant is not precluded from being entitled to disability benefits simply because he had a pre-existing condition. Claimant's burden of proof is to show the work injury was a substantial factor in aggravating that condition or causing a new condition. Dr. Mendoza appears to feel if claimant had any history of prior back problems, no matter how slight and no matter if they were asymptomatic for years, that would prevent a conclusion his current symptoms are caused by the stipulated work injury. That is not the law and it is not a proper criterion for forming his medical conclusion on causation. For these reasons, less weight will be given to the opinion of Dr. Mendoza and greater weight will be given to the opinions of Dr. Lindo, Dr. Dove, and Dr. Neiman.

Claimant did have prior low back pain complaints, but it is significant these did not cause any significant disability. He engaged in weight lifting, and he had degenerative disc disease. He was able to do his work. He did not require extensive medical treatment for those back pains. He did not require any work restrictions for them. He was basically asymptomatic except for isolated, minor incidents of back pain over a period of several years. He passed a pre-employment physical and was cleared to do unrestricted work, including lifting up to 50 pounds.

All that changed after his work injury on January 5, 2011. The work injury caused new, more intense pain. It required significant medical treatment, including injections and the need for a fusion surgery. He now has ratings of permanent impairment. He now has permanent work restrictions. The temporal relationship between the sudden increase in pain, symptoms, need for medical treatment, etc. and the work injury confirms that incident aggravated a pre-existing condition.

It is not necessary for claimant to show the work injury is the sole, or even the predominant, cause of his current condition. It is only necessary for him to show the work injury was a substantial cause. He has carried that burden of proof. It is concluded claimant's current low back condition and radicular symptoms are caused by his work injury.

The next issue is the extent of the claimant's entitlement to permanent partial disability benefits.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Dr. Dove assigned claimant a rating of permanent partial impairment of six percent of the body as a whole. He also imposed work restrictions of not lifting over 30 pounds, occasional bending, stooping and squatting, and alternating positions as needed. (Ex. 1, pp. 1-8)

Dr. Neiman assigned a rating of permanent partial impairment of 14 percent of the whole person, and imposed work restrictions of lifting up to 10 pounds on a frequent basis, and 25 pounds not more than 4 times per hour, as well as avoiding extensive twisting and bending, and alternating sitting and standing as needed. (Ex. 2, pp. 9-13)

Dr. Mendoza recommended weight loss and a work restriction of not lifting greater than 25 to 30 pounds. (Ex. B, p. 4) However, he felt this was based on claimant's degenerative condition.

Since his injury, claimant now has trouble standing and walking for very long. He has a disc herniation at L4-5, which makes lifting painful for him. For someone who has mostly worked doing physical labor, this is very disabling for him.

Claimant is 45 years old. His education is limited to a high school diploma. His work history has been in factory work, and includes operating a forklift, operating machines, and serving as crew leader. (Ex. M, p. 4) He was in the Navy for 20 years, as a radar operator. He is now, since his injury, commendably attending courses toward an Associate's Degree in accounting seeking to better equip himself for the job market.

Because of his work restrictions, he lost his job at Cargill. This has resulted in a substantial loss of earnings for claimant. Based on these and all other appropriate factors of industrial disability, it is concluded claimant has, as a result of his January 5, 2011, work injury an industrial disability of 60 percent.

The next issue is the commencement date for any permanent partial disability benefits awarded.

Claimant is a candidate for fusion surgery to address his back condition. However, he is obese, and this prevents the surgery from taking place until he loses enough weight. On January 19, 2013, Dr. Mendoza told claimant if he did not lose the weight in 4 to 6 months to permit the fusion surgery, he would be considered to be at maximum medical improvement (MMI). On July 7, 2013, Rhonda Dunn, ARNP, noted claimant had lost 22.5 pounds in 8 months. (Ex. 8, p. 126) However, he still was not down to the weight of 240 pounds needed for the surgery. As a result, he was found to be at MMI and released from further treatment.

Dr. McKinstry's conclusion of MMI occurring on July 21, 2011, is rejected as contrary to the above conclusions that claimant's disability from the work injury was permanent, and that the medical treatment after that date was necessitated by the work injury.

It is found claimant was at MMI on July 7, 2013, the date of his last medical treatment, and permanent partial disability benefits should commence on that date.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay unto the claimant three hundred (300) weeks of permanent partial disability benefits at the rate of seven-hundred nine and 49/100 dollars ($709.49) per week from July 7, 2013.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for benefits previously paid.

Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants.

Signed and filed this 26th day of June, 2015.

JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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