BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TONY SIEMERING,

Claimant,

vs.

LADCO, INC.,

Employer,

and

SFM MUTUAL INSURANCE CO.,

Insurance Carrier,
Defendants.

File Nos. 5046773
5046774
5046775

ARBITRATION DECISION

Head Note Nos.: 1100; 1803; 2500

STATEMENT OF THE CASE

Claimant, Tony Siemering, has filed petitions in arbitration and seeks workers' compensation benefits from, Ladco, Inc., employer, and SFM Mutual Insurance Co., defendants.

Deputy workers' compensation commissioner, Stan McElderry, heard this matter in Cedar Rapids, Iowa.

ISSUES

The parties have submitted the following issues for determination:

For File No. 5046775:

1. Whether the claimant suffered an injury arising out of and in the course of employment on or about January 15, 2013;

2. Whether the alleged injury caused any permanent disability, and if so, the extent;

3. Medical benefits; and

4. Alternate care.

For File No. 5046773:

1. Whether the claimant suffered an injury arising out of and in the course of employment on or about November 13, 2013;

2. Whether the alleged injury caused any permanent disability, and if so, the extent;

3. Medical benefits; and

4. Alternate care.

For File No. 5046774:

1. Whether the claimant suffered an injury arising out of and in the course of employment on or about November 14, 2013;

2. Whether the alleged injury caused any permanent disability, and if so, the extent;

3. Medical benefits; and

4. Alternate care.

FINDINGS OF FACT

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

The claimant was 33 years old at the time of hearing. He is a high school graduate. He was hired by Ladco in August of 2010 and began working in their apprentice program in 2011.

The claimant claims he was hurt sometime between November of 2012 and January of 2013 when a clamp broke on one end of ductwork that was being installed. The ductwork fell about six to eight inches and fell onto the claimant's back, head, and left shoulder. The incident was so minor that no medical assistance was sought and no one remembers the exact day of the incident.

The claimant next claims he was injured on November 13, 2013 when pulling a curb adaptor at St. Patrick's church in Cedar Rapids. He testifies that he felt a burning and tearing in his left shoulder. He reported to work the next day. He did not seek medical treatment until November 17, 2013, when it appears he was seeking treatment for his back. (Exhibit 10, page 7) When he sought care again on November 19, 2013, he did not report a left shoulder injury. (Ex. K, p. 1) The claimant has reported that the pain was intense yet his co-workers observed no such signs. The claimant has a

lengthy history of left shoulder injuries. On June 17, 2013, before this alleged injury, the claimant was seen by David Hart, M.D. (Ex. N) Dr. Hart noted:

> Left shoulder: He's had multiple injuries related to rubgy and then falling off a ladder. He notes a crunching sensation near the left scapula and notes and [*sic*] anterior and lateral proximal arm pain described as sharp and sometimes aching. The left shoulder feels weak and feels as if it would give out at times. Pain is constant and burning. Aggravated by reaching behind his back, reaching across body, reaching overhead, lifting and pushing and pulling and throwing. He's tried Advil and Aleve. Left shoulder pain interferes with his work and interferes with his ability to exercise.

(Ex. N, p. 1)

Dr. Hart diagnosed a left shoulder bursitis and possible intra-articular pathology and recommended an MRI. (Ex. N, p. 3) When he saw Rebecca White, P.A., on November 22, 2013, he reported chronic left shoulder pain with an onset of about a month. (Ex. O, p. 9) The claimant's claim of a left shoulder injury occurring at work on November 13, 2013 is simply not credible.

The claimant next states that he was injured on November 14, 2013, when he misstepped and fell backwards onto his buttocks, and lower back. He first sought treatment on November 17, 2013 as addressed above. The claimant had an independent medical evaluation (IME) with John Kuhnlein, D.O. (Ex. N) Dr. Kuhnlein assigned a rating of 5 percent of the back based on some objective findings and giving the claimant the benefit of the doubt on the non-objective factors. (Ex. P, p. 20) A benefit of the doubt that the claimant established to the undersigned is not warranted. Claimant's medical histories are conflicting and inconsistent. He claims a head injury from on or about 2013 from an incident too minor to seek medical treatment for. Yet he denies or minimizes multiple concussions and head injuries from his over a decade as a rugby player with the Cedar Rapids Headhunters (well named it appears). Several of the head injuries and concussions resulted in hospital stays. He reported 10 concussions with prolonged loss of consciousness and at least 15 blackouts. (Ex. 5, p. 5) His live-in girlfriend, and mother of his daughter, testified to cognitive problems pre-dating any alleged injuries herein. His supervisor and co-workers reported cognitive problems pre-dating any alleged injury herein. He asked to see a neurologist on November 8, 2013, prior to the alleged November 2013 injuries, due to dementia issues he associated with rugby. (Ex. L, p. 3) Dan L. Rogers, Ph.D., performed an evaluation of the claimant on September 14, 2014. Mr. Rogers' opinions are based on inaccurate and perhaps a better word is, false, history. As such, his opinions are entitled to no weight.

Farid Manshadi, M.D., performed an IME on the claimant. (Ex. 1) He opined a 29 percent impairment. However, the IME is based on an inconsistent and, at times, false history. It therefore has no value in this case. Claimant's alleged November 2013

shoulder injury was reported 5 months prior as related to rugby. He is simply not believable on a third injury. The claimant suffered no work injury herein.

Claimant also seeks alternative medical care, and payment of medical bills.

REASONING AND CONCLUSIONS OF LAW

The first issue is whether the claimant suffered any injury arising out of and in the course of employment on or about January 15, 2013, November 13 and/or 14, 2013.

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 6.14(6).

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

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

The question of causal connection is essentially within the domain of expert testimony. Cedar Rapids Community School v. Pease, 807 N.W.2d 839, 845 (Iowa 2011). 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). The finder of fact must determine the credibility of the witnesses, weigh the evidence, and decide the facts at issue in a case. See Arndt v. City of LeClair, 728 N.W.2d 389, 394-395 (Iowa 2007). One factor the commissioner considers is whether an expert's opinion is based upon an incomplete medical history. Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995).

No evidence in the record is convincing enough to establish that it is probable that the claimant suffered an injury while working at Ladco. In fact, the evidence was clear that the claimant's subjective complaints regarding injuries at Ladco could not be believed. The evidence suggests that the claimant realized that his years playing rugby had damaged his body and mind to the point he would find it difficult or impossible to maintain gainful employment and that he attempted to use the workers' compensation system against Ladco to compensate. Since there were no work injuries, the issues of medical benefits and alternative care are moot.

ORDER

THEREFORE, IT IS ORDERED:

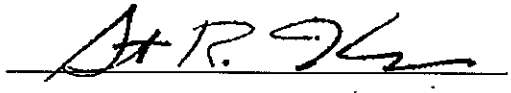
That the claimant take nothing.

Defendants shall receive credit for all benefits previously paid.

Costs are taxed to the claimant pursuant to 876 IAC 4.33.

Defendants shall file subsequent reports of injury as required by the agency.

Signed and filed this 31st day of August, 2015.



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SRM/srs

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.