BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
FEB 20 2019
WORKERS COMPENSATION

RANDALL L. DORR, Claimant, vs. QUALITY MANUFACTURING CORPORATION, Employer, and EMCASCO INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5060535 ARBITRATION DECISION Head Note No.: 1402.40, 1803, 2907

STATEMENT OF THE CASE

Randall Dorr, claimant, filed a petition for arbitration against Quality Manufacturing Corporation, as the employer, and EMCASCO Insurance Company, as the insurance carrier. This contested case proceeded to an in-person hearing in Des Moines on December 17, 2018.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 10, Claimant's Exhibits 1 through 3, and Defendants' Exhibits A through H. All exhibits were received without objection.

Claimant testified on his own behalf. No other witnesses were called to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. All parties served their post-hearing briefs on January 18, 2019, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's right shoulder condition is causally related to, or a sequela of, the March 10, 2017 work injury.

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

3. Whether claimant is entitled to future medical care for his right shoulder condition.

4. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

Randall Dorr is a 49-year-old man, who sustained a stipulated left shoulder injury as a result of his work as a painter for Quality Manufacturing Corporation on March 10, 2017. Mr. Dorr has a high school diploma, but no advance degrees. He did obtain ASE certification in painting and refinishing. (Claimant's testimony)

Mr. Dorr's primary employment has been as a painter. He worked for MAACO painting cars. In 2013, he took employment with Quality Manufacturing, but left that employment in 2014 to become a manager of a detailing department at Interstate Motors. When that business sold out in 2015, claimant returned to Quality Manufacturing. All of claimant's prior employment included manual labor. Claimant testified that he does not have experience in office work and that he is not technologically savvy. Mr. Dorr has not considered pursuing a college education because he cannot afford the expense. (Claimant's testimony)

On and during the week leading up to March 10, 2017, claimant was doing paint prep work, which required him to do a significant amount of lifting of parts and sanding of parts as opposed to painting. He developed left shoulders symptoms after his shift on March 10, 2017. He went to the emergency room over the weekend on March 12, 2017, and reported his injury to the employer the following Monday. (Claimant's testimony; Joint Exhibit 1)

The employer admitted the left shoulder injury and directed care. The occupational medicine physician obtained an MRI of claimant's left shoulder and referred claimant to an orthopaedic surgeon, Steven A. Aviles, M.D., for evaluation. Dr. Aviles first evaluated Mr. Dorr on April 12, 2017 and recommended surgical intervention on the left shoulder. (Joint Ex. 4, pages 1-2)

On May 11, 2017, Dr. Aviles took claimant to surgery and performed a left shoulder arthroscopy glenohumeral debridement, subacromial decompression and an open biceps tenodesis. (Joint Ex. 5) Following surgery, claimant was placed into physical therapy. He struggled with regaining range of motion in the left shoulder and had significant symptoms in the left shoulder. (Joint Ex. 6) Dr. Aviles continued conservative care for claimant's left shoulder for approximately six months. During this period of recuperation, Dr. Aviles obtained a repeat MRI to verify that claimant had no objective pathology in his shoulder that could require further invasive treatment. The repeat MRI demonstrated no abnormalities. (Joint Ex. 4, p. 12)

On October 11, 2017, Dr. Aviles declared claimant at maximum medical improvement. He opined that claimant could return to work without medical restrictions and released claimant to return for further care only as needed. (Joint Ex. 4, p. 13) Mr. Dorr has not returned for further medical care for his left shoulder since October 2017. (Claimant's testimony)

Mr. Dorr returned to work within a week of his surgery date. He continued working for the employer through the date of the arbitration hearing. Claimant testified that he has ongoing symptoms in both of his shoulders, but he continues to perform his job without restriction or accommodation since October 2017. In fact, Mr. Dorr testified that he works more hours now than he did immediately before the March 2017 injury. He now earns more per hour and performs the same job duties he performed prior to March 2017. (Claimant's testimony)

The parties submit two primary disputed issues in this case. The first is whether Mr. Dorr sustained a sequela injury to his right shoulder due to overuse while his left arm and shoulder were recuperating. The second significant disputed issue is the extent of Mr. Dorr's entitlement to permanent disability benefits.

With respect to the right shoulder claim, claimant reported right shoulder symptoms to Dr. Aviles and to his physical therapist in July 2017. (Joint Ex. 4, p. 7; Joint Ex. 6, p. 23) Defendants denied liability for the right shoulder claim. Mr. Dorr has not obtained an MRI of the right shoulder or ongoing medical treatment. He testified that he cannot afford that care despite having health insurance through the employer.

Defendants appropriately point out that Mr. Dorr had right shoulder symptoms before the March 2017 injury date. In fact, in his deposition, claimant admitted that he sustained an injury to the right shoulder in 2013. Mr. Dorr admitted that he has had pain and symptoms in the right shoulder ever since 2013. (Defendants' Ex. H, pp. 9-10) Nevertheless, he asserts that his condition worsened when he used his right arm and shoulder to compensate while his left shoulder was in a sling and recuperating.

Dr. Aviles acknowledged that claimant had pre-existing glenohumeral osteoarthritis in his right shoulder. (Joint Ex. 4, p. 8) He addressed causation of the right shoulder condition and opined:

> I can say very clearly that there is absolutely no data to suggest chronic repetitive overuse of the right shoulder that would result in biceps injury or SLAP tearing, and I believe with a reasonable degree of medical certainty that clinical findings and diagnostic tests recommended are not consistent with a work-related injury. I do believe that it is a personal condition and once again not related to a work-related injury.

(Defendants' Ex. A, p. 1)

Claimant sought an independent medical evaluation, performed by Sunil Bansal, M.D., on March 23, 2018. (Claimant's Ex. 1) Dr. Bansal opined:

> Mr. Dorr developed right shoulder pathology as overuse and overcompensation from his left shoulder pathology.... In these situations it is common to have contralateral arm rotator cuff pathology, as there will be excessive overreaching, abduction, and shoulder rotation forces, stressing the rotator cuff.

(Claimant's Ex. 1, p. 9) Of particular importance, Dr. Bansal bases his opinion regarding overuse and overcompensation upon the fact that Mr. Dorr "was not experiencing the right shoulder discomfort prior to the convalescence associated with the left arm pathology. Therefore, both mechanistically and temporally, his right shoulder pathology is a sequela of the March 10, 2017 injury." (Claimant's Ex. 1, p. 9)

Dr. Bansal's understanding of claimant's history is simply inaccurate. Claimant conceded in his deposition that his right shoulder symptoms had been continuously ongoing since 2013. (Defendants' Ex. H, p. 10) Dr. Bansal's logic fails when the proper history is considered. This significantly damages Dr. Bansal's credibility and renders his opinion unconvincing in this case.

Defendants also obtained an independent medical evaluation performed by Jamey J. Hawk, M.D., on October 30, 2018. (Defendants' Ex. C) Dr. Hawk concurred with Dr. Aviles and opined, "the right shoulder is not related to work at Quality Manufacturing." (Defendants' Ex. C, p. 3) Dr. Hawk is a one-time evaluator; he is a family physician, though certified as an independent medical evaluator. Dr. Hawk did not offer significant analysis of his rationale or medical support for his conclusion.

Interestingly, none of the physicians offering causation opinions addresses the pre-existing right shoulder symptoms. Dr. Aviles at least acknowledges some pre-existing right shoulder arthritis and his credentials as the only orthopaedic surgeon offering an opinion certainly give his opinion credibility. Dr. Bansal appears to have assumed exactly the opposite of the truth with respect to the onset of claimant's right shoulder symptoms.

As I ponder the competing medical opinions, Dr. Hawk offers almost no analysis of why he does not believe the right shoulder is a sequela. Dr. Bansal offers no specific explanation or medical research to reach his conclusion. His history is flawed and his logic assumes, erroneously, that claimant had no right shoulder symptoms before the March 2017 injury date. Dr. Aviles specifically opines that there is no data supporting a conclusion that the right shoulder is a sequela. Neither claimant nor Dr. Bansal refute this claim directly or produce any research or literature to support that overuse or overcompensation is likely to cause the right shoulder symptoms claimant now alleges.

The most likely explanation for claimant's current right shoulder symptoms is that claimant sustained a right shoulder injury in 2013. Mr. Dorr has experienced right shoulder symptoms since 2013. The only physician supporting causation of the right shoulder misunderstands claimant's ongoing and pre-existing right shoulder symptoms.

Based upon this evidentiary record, claimant cannot establish that the current right shoulder symptoms were materially aggravated by, caused by, or a sequela of the March 2017 injury or overuse following that injury. I specifically find Dr. Aviles' opinion to be most credible and convincing in this evidentiary record. Therefore, I find that claimant failed to carry the burden to establish that the right shoulder is a sequela of the March 10, 2017 work injury.

With respect to the left shoulder, I already entered findings as to claimant's age, educational and employment backgrounds. Claimant has returned to full-duty work for this employer. I find that claimant requires no permanent medical restrictions for his left shoulder. However, I also find that claimant continues to experience symptoms in his left shoulder with work duties. Dr. Bansal offered a permanent impairment rating, which is not refuted in this record. Therefore, I accept Dr. Bansal's permanent impairment rating and find that claimant sustained a four percent permanent impairment of the whole person as a result of his March 10, 2017 left shoulder injury at work. (Claimant's Ex. 1, pp. 9-10)

Mr. Dorr earns more per hour at the present time and works more hours than he did at the time of the March 2017 work injury. He desires to continue working at Quality Manufacturing and has relied upon the full-duty release from Dr. Aviles to continue working at the employer. Claimant concedes and I find that he could not continue working as a painter for this employer with the restrictions offered by Dr. Bansal. I specifically find that Dr. Bansal's restrictions are too restrictive and unnecessary given that claimant has continued working above those restrictions for over a year without further treatment, use of prescription pain medication, or further injury.

Mr. Dorr is a motivated employee. In spite of surgical intervention on his left shoulder, the difficulties he experienced with rehabilitation, and in spite of his ongoing left shoulder symptoms, Mr. Dorr has returned to work and continues to work without restrictions.

Considering claimant's age, educational background, employment history, ability to return to work without medical restrictions, his increased pay and hours, his motivation, permanent impairment, and considering the situs and severity of his injury, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mr. Dorr has proven a 15 percent loss of future earning capacity as a result of the March 10, 2017 left shoulder injury.

CONCLUSIONS OF LAW

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

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 (Appeal February 15, 2012).

The Iowa Supreme Court held long ago that "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Scofield & Welch, 222 Iowa 764, 266 N.W. 480, 482 (1936). The Court explained as follows:

> If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable. Where an employee suffers a compensable injury and thereafter returns to work and, as a result thereof, his first injury is aggravated and accelerated so that he is greater disabled than before, the entire disability may be compensated for."

Id. at 481.

A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). One form of sequela of a work injury is an adverse effect from medical treatment for the original injury. 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 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, File No. 966020, (Arb. February 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 Nos. 854465, 877068, (Arb. February 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. November 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).

Having found that claimant failed to prove his right shoulder condition is causally related to, or a sequela of, the March 10, 2017 work injury, I conclude that the right shoulder condition is not compensable. I further conclude that the right shoulder condition, impairment, and any limitations related to the right shoulder should not be considered in determining claimant's industrial disability.

Mr. Dorr also sought an award of future medical care for the right shoulder. An employer is obligated to provide medical care for work-related injuries. However, having found that the right shoulder condition was not caused by, nor a sequela of, the March 10, 2017 work injury, I conclude that claimant failed to prove entitlement to future treatment of the right shoulder.

Mr. Dorr seeks an award of permanent disability benefits. The parties stipulated that the March 10, 2017 left shoulder injury caused permanent disability and that it should be compensated industrially. (Hearing Report)

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.

Having considered claimant's age, educational background, employment history, likelihood of retraining, lack of work restrictions, permanent impairment, the situs and severity of his injuries, including the need for surgical intervention, his actual return to work and increase in wages since the date of injury, his motivation, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I found that Mr. Dorr proved he sustained a 15 percent loss of future earning capacity as a result of the March 10, 2017 work injury to his left shoulder. A 15 percent loss of earning capacity is equivalent to a 15 percent industrial disability. A 15 percent industrial disability entitles claimant to an award of 75 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u).

Finally, Mr. Dorr requests costs be assessed against defendants. Costs are assessed at the discretion of the agency. Iowa Code section 86.40.

Claimant prevailed in obtaining an industrial disability award in this case, but failed to prove his alleged right shoulder injury was causally related to, or a sequela of, the March 10, 2017 work injury. Claimant seeks assessment of his filing fee ($100.00) and the cost of obtaining his deposition transcript ($80.16). Both of these costs would be relevant to obtaining the industrial disability award. Claimant's deposition transcript was placed into evidence. Therefore, I conclude that is reasonable and appropriate to assess claimant's costs against defendants.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits commencing on October 11, 2017 at the rate of four hundred eighty-nine and 98/100 dollars ($489.98) per week.

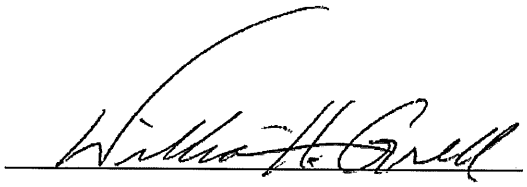
The employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, 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).

Defendants shall receive credit for all weekly benefits paid to date.

Defendants shall reimburse claimant one hundred eighty and 16/100 dollars ($180.16) as taxable costs of this action.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 20th day of February, 2019.



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WHG/kjw

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.