

KENNETH MEINERS,

Claimant,

**VS.**

KASPARBAUER CONSTRUCTION,

Employer,

and

STATE FARM INSURANCE,

Insurance Carrier,  
Defendants.

File No. 5027479

ARBITRATION  
DECISION

Head Note No.: 1803

## STATEMENT OF THE CASE

Claimant, Kenneth Meiners, filed a petition in arbitration seeking workers' compensation benefits from Kasparbauer Construction (Kasparbauer), employer, and State Farm Insurance, insurer, both as defendants. The record in this case consists of joint exhibits 1 through 9, and the testimony of claimant and Leo Kasparbauer.

## ISSUES

1. Whether the injury is the cause of permanent disability; and if so,
2. The extent of claimant's entitlement to permanent partial disability benefits.

## FINDINGS OF FACT

Claimant was 53 years old at the time of the hearing. Claimant graduated from high school. Claimant has worked as a painter and in the stock room of a department store. Claimant began with Kasparbauer in 2002. Kasparbauer is a company that does remodeling, and installs windows and cabinets. Claimant's job duties with Kasparbauer included painting, installing cabinets and windows, and general remodeling.

On November 2, 2002, claimant was helping a coworker sort through plywood sheeting, when a number of the plywood sheets fell on claimant and pinned him to the ground. Claimant was knocked unconscious. Claimant was taken to St. Anthony Regional Hospital Emergency Room by ambulance. He was assessed as having a pelvic fracture with bilateral rami fractures and lumbar pain. Claimant was admitted to the hospital. (Exhibit 1, pages 1-2)

On November 27, 2002, claimant underwent a CT scan. It showed claimant had multiple fractures and a distended bladder due to a urethral injury. Claimant was unable to void. Staff at St. Anthony's attempted to catheterize claimant several times but were unsuccessful. Claimant was transported to Mary Greeley Medical Center. (Ex. 8, pp. 113-114)

Claimant was evaluated by Thomas Dulaney, M.D., for orthopaedic care. Dr. Dulaney prescribed conservative treatment for the pelvis fracture. (Ex. 2, p. 9)

Claimant was also evaluated by Leo Milleman, M.D., a urologist. Testing revealed a transection of claimant's urethra. On November 28, 2002, Dr. Milleman performed a suprapubic cystostomy and drainage and placement of a catheter. (Ex. 3, pp. 12-17) Claimant testified the catheter was left in for several months.

Claimant underwent a cytogram on January 29, 2003. Dr. Milleman thought claimant had a complete occlusion of the urethra. Dr. Milleman referred claimant to Karl Kreder, M.D., at the University of Iowa Hospitals and Clinics for further evaluation. (Ex. 3, pp. 18-20)

In early February 2003, claimant was evaluated by Dr. Dulaney. Dr. Dulaney found claimant's pelvic fracture had healed. Claimant was released from care for the pelvic fracture. (Ex. 2, pp. 10-11)

Claimant was evaluated by Dr. Kreder in February 2003. Claimant was evaluated as having an inguinal hernia. Dr. Kreder recommended a hernia repair and a urethroplasty. (Ex. 5, pp. 29-30)

On April 21, 2003, claimant underwent a hernia repair on the left and a posterior urethroplasty. The urethroplasty was performed by Dr. Kreder. (Ex. 5, pp. 33-34)

Claimant testified that after the surgery he had continued problems with strictures in his urethra. He testified he had numerous dilations in an attempt to remedy this problem. He testified these procedures seemed to occur every two to three months. Records from the University of Iowa Hospitals and Clinics from 2003 through 2005 support this testimony. (Ex. 5, pp. 38-39; 45-46; 48; 50-51; 55; 61; 72; 76)

In a December 6, 2004 letter, Kimberly Rexroad, PA-C, indicated claimant had a 15 percent permanent impairment. There is no indication in the record what this permanency rating was for. (Ex. 5, p. 54)

In correspondence from February 2005 and March 2005, this rating appears to have been rescinded. Claimant was found not to be at maximum medical improvement (MMI). This was because Dr. Kreder wanted claimant to be stricture free for one to three years before he was found at MMI. (Ex. 5, pp. 63-64)

In October 2005, claimant was evaluated by Dr. Kreder. Surgery was discussed and chosen as an option. (Ex. 5, p. 71) On October 24, 2005, claimant underwent a pubectomy with transpubic urethroplasty, performed by Dr. Kreder. (Ex. 5, pp. 83-85)

Claimant testified that, including the dilations, he believes he had approximately 14 surgeries for his injury. He testified that following each surgery he was catheterized for approximately two weeks. He testified that following his last surgery, he has not had any urethral strictures.

On October 11, 2006, claimant returned in follow up with Dr. Dulaney. Claimant had full range of motion in both hips. Dr. Dulaney found claimant at MMI for his orthopedic problems. He opined claimant was probably going to have a significant impairment rating due to his urethral problems and loss of erectile function. Claimant was released to return to work with no restrictions. (Ex. 2, pp. 11-12)

In a December 8, 2006 letter, P.A. Rexroad indicated claimant had a 5 percent permanent impairment for his urethral problems and a 20 percent permanent impairment for loss of erectile function. (Ex. 5, p. 98)

In a February 2, 2007 letter, written by defendant insurer, Dr. Kreder indicated claimant had no permanent impairment, from a urology standpoint, and no permanent restrictions. (Ex. 5, pp. 99-100)

In August 2009, claimant underwent an independent medical evaluation (IME) with John Kuhnlein, D.O. Claimant did not have any pelvic symptoms. Claimant did not have any problems with his urethra. Claimant no longer had any sexual function. Claimant indicated problems with kneeling, getting up and down from kneeling, and walking. (Ex. 7)

Dr. Kuhnlein found claimant's bilateral pubic fracture and pubectomy were similar to a displaced pubis. Based on Table 15-19, page 428, Category IIIE of the AMA Guides to the Evaluation of Permanent Impairment, claimant was found to have a 15 percent permanent impairment to the body as a whole for the pubic fractures. He was also assigned a 5 percent permanent impairment to the body as a whole for an acetabular fracture. He also found claimant had a 20 percent permanent impairment for sexual dysfunction. Combining all impairments resulted in a 35 percent impairment to the body as a whole. Dr. Kuhnlein limited claimant to lifting up to 50 pounds occasionally from floor to waist. He also limited claimant to only occasionally squatting or kneeling. (Ex. 7)

Claimant testified Dr. Kuhnlein told him his pubectomy would cause him to have instability in walking and standing.

Claimant testified that after his injury he returned to work at Kasperbauer Construction for a short time. He indicated he had difficulty returning to work because of difficulties with his legs. He testified he later took a job at Carroll Painting because the job paid better.

Claimant testified that because of his injury and surgeries, his leg lacks strength and he has difficulty kneeling. He testified that because of his injury his walking gait is like that of a penguin.

Claimant testified he avoids heavy lifting, and is limited in kneeling, and climbing ladders and scaffolds. Claimant indicated he also has difficulty walking for extended periods of time.

At the time of hearing, claimant was temporarily laid off from Carroll Painting. He anticipated returning to work at Carroll Painting. Claimant also testified he works part time, as an independent contractor for Kasperbauer, doing painting.

Leo Kasperbauer testified he is the owner of defendant employer. He testified claimant is his wife's brother. Mr. Kasperbauer testified that when claimant returned to work at Kasperbauer, claimant had no permanent restrictions. He testified claimant was not terminated but left employment on his own. He testified claimant continues to work on projects, on the side, from Kasperbauer.

#### CONCLUSIONS OF LAW

The first issue to be determined is if claimant's injury is a cause of permanent disability.

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 R. App. P. 6.14(6).

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).

Claimant contends his fractures and pubectomy result in a permanent impairment. Defendants contend claimant has no permanent impairment.

Claimant fractured his pelvic area and severed his urethra. Claimant testified he underwent approximately 14 surgeries. Claimant ultimately underwent a pubectomy that resulted in removing a portion of his pubic bone. He testified that as a result of the

surgery, he has difficulty kneeling, climbing ladders, and is limited in walking. Claimant testified that as a result of his urethra problems, he needs to frequently use the bathroom.

P.A. Rexroad found claimant had a 15 percent permanent impairment. However, this rating was made before claimant's pubectomy. It is also unclear what this rating is based on. Dr. Kreder also indicated claimant had no permanent impairment regarding his urethra. Based on these facts, P.A. Rexroad's rating is not convincing.

As noted, Dr. Kreder indicated, in a letter written by defendant insurer that claimant had no permanent impairment regarding his urethra. This opinion is supported by Dr. Kuhnlein's IME evaluation.

Dr. Dulaney released claimant from care in October 2006 and found claimant was at MMI from an orthopaedic standpoint. Dr. Dulaney returned claimant to work without any restrictions regarding his pelvic fracture. There is no indication Dr. Dulaney gave any opinion regarding permanent impairment claimant might have from his pelvic fractures or his pubectomy. (Ex. 2, p. 11)

Dr. Kuhnlein evaluated claimant on one occasion for an IME. He found that claimant had a 15 percent permanent impairment for the pubectomy and the bilateral pubic fracture. This was based upon reference to Table 15-19 of the Guides. No expert opinion disputes the finding of permanent impairment. No expert, other than Dr. Kuhnlein, has evaluated claimant for a rating regarding the pubectomy. Dr. Kuhnlein also found claimant had a 5 percent permanent impairment for the acetabular fracture. There is no expert opinion contradicting this finding of impairment.

Dr. Kuhnlein and Dr. Kreder agree claimant has no impairment for his urethra trauma. Dr. Dulaney did no rating on claimant at all. Dr. Kuhnlein opines claimant has a permanent impairment regarding the bilateral pubic fractures, the pubectomy, and the acetabular fracture. There is no expert opinion contradicting this finding of permanency. Claimant has had multiple surgeries, including a permanent removal of a portion of his pubic bone. Based on the above, claimant has proven his injury resulted in a permanent disability.

Both Dr. Dulaney and Dr. Kuhnlein also note that claimant has approximately 20 percent permanent impairment for loss of sexual function. I find no case law indicating a loss of sexual function is considered a factor in determining an industrial disability or loss of earning capacity. Because of that, I find that the permanent impairment rating given, regarding claimant's loss of sexual function, is not a factor in determining claimant has a permanent disability or an industrial disability under Iowa law.

The next issue to be determined is the extent of 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.2d 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.

Industrial disability can be equal to, less than, or greater than functional impairment. Taylor v. Hummel Insurance Agency, Inc., II-2, Iowa Industrial Comm'r Dec. 736 (1985); Kroll v. Iowa Utilities, I-4, Iowa Industrial Comm'r Dec. 937 (App. 1985); Birmingham v. Firestone Tire & Rubber Company, II, Iowa Industrial Comm'r Rep., 39, (App. 1981).

Claimant was 53 years old at the time of the hearing. He graduated from high school. Claimant has worked as a painter and also worked in the stock room of a department store.

Dr. Kuhnlein found claimant had a 15 percent permanent impairment for the bilateral pubic fracture and the pubectomy. He also found claimant had a 5 percent permanent impairment for the acetabular fracture. There is no opinion contradicting this finding. Based on the above, I found Dr. Kuhnlein's opinions regarding the extent of claimant's permanent impairment convincing.

Dr. Dulaney returned claimant to work on October 11, 2006 with no restrictions. (Ex. 2, pp. 11.5) Claimant testified he has difficulty walking, kneeling, and climbing ladders and scaffold. There is no evidence contradicting claimant's testimony regarding his limitations. Because of the extent of claimant's surgeries, especially the removal of a section of claimant's pubic bone, I find claimant's testimony regarding his limitations credible.

Dr. Kuhnlein limited claimant to no lifting over 50 pounds. He also limited claimant to only squatting and kneeling occasionally. Dr. Kuhnlein's restrictions are consistent with claimant's testimony regarding his limitations. For that reason, I find Dr. Kuhnlein's opinions regarding claimant's restrictions convincing.

Claimant has a combined permanent impairment of 20 percent to the body as a whole. He is able to return to work at Kasparbauer for a short period of time. Claimant testified that because of his injury, he had a difficult time returning to work at Kasparbauer. Claimant has limitations in walking, climbing, kneeling and lifting. Claimant testified he left Kasparbauers to earn more money as a painter. Claimant has also been able to return to work part time as an independent contractor with Kasparbauer.

When all relevant factors are taken into consideration, claimant has a 10 percent industrial disability and loss of earning capacity.

#### ORDER

THEREFORE, it is ordered:

That defendants shall pay claimant fifty (50) weeks of permanent partial disability benefits at the rate of three hundred fifteen and 79/100 dollars (\$315.79) per week commencing on October 3, 2006.

That defendants shall pay accrued benefits in a lump sum.

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

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

That defendants shall pay the costs of this matter under rule 876 IAC 4.33.

Signed and filed this 11<sup>th</sup> day of March, 2010.

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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
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