BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY HAWKINS,		
Claimant,	FILED	File No. 5056212
vs.	JAN 03 2019	ARBITRATION
CRST VAN EXPEDITED, INC.,	WORKERS COMPENSATION	DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1402.40, 1803, 1806

STATEMENT OF THE CASE

Gary Hawkins, claimant, filed a petition for arbitration against CRST Van Expedited, Inc., as the self-insured employer. An in-person hearing occurred in Des Moines on September 12, 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 9, Claimant's Exhibits 1-3, as well as Defendant's Exhibits A through B. All exhibits were received without objection.

Claimant testified on his own behalf but called no additional witnesses. Defendant called Deb Mentzer to testify.

Defendant also filed a motion to leave the record open to allow it to depose one of claimant's subsequent employers. The undersigned verbally granted defendant an opportunity to depose this witness within 30 days of the trial date. However, on September 21, 2018, defense counsel filed a letter with the agency waiving defendant's right to pursue or take this deposition. The evidentiary record closed on September 21, 2018, upon the filing of defense counsel's letter waiving further evidence.

However, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. The case was deemed fully submitted upon the filing of the post-hearing briefs by the parties on or before October 15, 2018.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the December 11, 2015 injury caused permanent disability.

2. If the work injury caused permanent disability, the extent of claimant's entitlement to permanent disability benefits.

FINDINGS OF FACT

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

Gary Hawkins, claimant, sustained work injuries on December 11, 2015 when a semi he was riding in jackknifed and rolled in icy conditions. Claimant was a passenger in the semi when his co-driver lost control on an icy road. (Hearing Report; Claimant's testimony) Claimant was transported from the scene of the accident to the emergency room via ambulance.

Medical records from the emergency room on December 11, 2015, indicate that claimant complained of an injury to his head. Mr. Hawkins reported a headache and mild confusion, which he attributed to being exposed to diesel fuel fumes. The emergency room record indicates no report of tenderness, muscle spasm, or limited range of motion in claimant's low back. There are no reports of low back pain on the date of injury. (Joint Exhibit 1)

On cross-examination, claimant was questioned about the lack of any low back symptoms in the emergency room records. Claimant immediately crossed his arms and his demeanor and testimony became evasive. Despite the contents of the emergency room record, claimant proclaims that he did report low back symptoms to the emergency room personnel. Claimant also testified that he does not recall denying low back and neck pain to the ambulance personnel, despite being shown and questioned about those records. I do not find claimant's testimony on this issue to be credible.

Mr. Hawkins' demeanor changed immediately upon being challenged about these issues. I find it hard to believe that the emergency room personnel would order a wide battery of testing for reported symptoms, including head and neck CT's, as well as abdominal studies, while simply ignoring low back complaints and conducting no testing and recording denial of any symptoms in the low back. Therefore, I find that claimant did not report low back symptoms on the date of accident.

CT scans were performed on claimant's head and neck on the date of injury. Neither demonstrated any obvious acute injuries. (Joint Ex. 1, page 3) Claimant's mental status was considered "entirely clear," he reported minimal muscle soreness in his neck, and his headache had resolved by the time he was discharged from the

emergency room on December 11, 2015. (Joint Ex. 1, p. 12) Claimant was discharged from the emergency room on December 11, 2015 with a diagnosis of an acute post-traumatic headache and an acute cervical strain. (Joint Ex. 1, p. 13)

Mr. Hawkins sought no additional treatment for his injuries over the next couple of months. On February 2, 2016, claimant was evaluated by a neurologist, Julian Bragg, M.D. in Georgia. Dr. Bragg took a history that included a closed head injury with claimant being "dazed" and experiencing a "possible brief loss of consciousness." Dr. Bragg noted that claimant reported multiple symptoms since the motor vehicle accident. (Joint Ex. 2, p. 1) Dr. Bragg diagnosed claimant with a closed head injury and symptoms consistent with post-concussive syndrome. (Joint Ex. 2, p. 2) He also recommended an MRI of claimant's lumbar spine. (Joint Ex. 2, p. 2)

Defendant agreed to provide medical care to claimant after Dr. Bragg's evaluation but brought claimant back to Cedar Rapids to work and obtain medical care. Patrick G. Hartley, M.B. evaluated claimant on April 1, 2016. (Joint Ex. 3) Claimant told Dr. Hartley that he did not think he lost consciousness in the motor vehicle accident. (Joint Ex. 3, p. 1) Dr. Hartley recommended physical therapy and then re-evaluated claimant on April 15, 2016. (Joint Ex. 3, pp. 2-3)

Dr. Hartley evaluated claimant again on May 5, 2016. Claimant reported ongoing, but less frequent, headaches at that evaluation. (Joint Ex. 3, p. 5) Dr. Hartley recommended evaluation by a physiatrist, or evaluation at a spine clinic. (Joint Ex. 3, p. 5) Defendant authorized an evaluation at the University of Iowa Hospitals and Clinics' spine clinic with Joseph J. Chen, M.D.

Dr. Chen evaluated claimant on June 20, 2016. Dr. Chen opined that claimant's condition was primarily myofascial in nature. He identified no surgical nerve root impingements. Dr. Chen indicated that claimant had muscle inflexibility that caused pain and recommended performance of certain exercises to reduce claimant's symptoms. He recommended no invasive treatments. (Joint Ex. 4, p. 3)

Dr. Chen re-evaluated Mr. Hawkins on July 18, 2016 and maintained claimant on light duty work restrictions. (Joint Ex. 4, p. 9) After ongoing physical therapy efforts, Dr. Chen recommended a functional capacity evaluation (FCE) on August 22, 2016. (Joint Ex. 4, p. 17)

The FCE occurred on September 8, 2016. The therapist conducting the FCE opined that the results were valid and that claimant was capable of performing with a heavy physical demand category of work. Specifically, the FCE demonstrated claimant was capable of occasional lifting from floor to waist up to 75 pounds and was capable of lifting 25 pounds to shoulder height. The primary limitation identified by the FCE was on claimant's ability to sit more than one hour and two minutes during an 8-hour work shift. (Joint Ex. 5, p. 1)

Claimant followed up with Dr. Chen after the FCE on September 19, 2016. Dr. Chen reviewed the FCE results and opined that claimant was capable of returning to work without permanent restrictions, though he recommended claimant and the employer work together to increase claimant's sitting tolerance over the upcoming month after his evaluation. (Joint Ex. 4, pp. 20-21) Dr. Chen further opined that claimant's condition resulted in no ratable permanent impairment for claimant's cervical or lumbar spine conditions. (Joint Ex. 4, pp. 20-21)

After his release to return to work without restrictions from Dr. Chen, claimant returned to driving a semi for CRST. He made two cross-country runs after returning to employment. However, the employer ultimately terminated claimant for texting and driving. There was debate at the hearing about the accuracy of the basis for claimant's termination. The employer produced a photo of claimant using a phone while in the cab of his truck. Claimant proclaimed that he was parked and using the phone as a GPS device because he was lost. Regardless of how the termination came about, claimant demonstrated some ability to return to over-the-road driving and then was terminated by the employer.

After his discharge from CRST, claimant drove a taxicab for approximately one year. He has also worked for Iowa Express as a truck driver with a route between Cedar Rapids and Minneapolis. He would drive this route in one day and generally drove the route three days per week. Claimant testified that he took his time, was not under time constraints in this driving job, and could take breaks while driving to and from Minneapolis. Nevertheless, it is quite clear that claimant would have to sit more than one hour and two minutes during a workday while driving from Cedar Rapids to Minneapolis and back in a day. Claimant's work for Iowa Express clearly demonstrated he was capable of working beyond the limitations imposed or identified by the FCE.

After his discharge from care by Dr. Chen, claimant did not obtain any ongoing medical care for headaches, a closed head injury, his neck, or his low back. However, on October 3, 2016, claimant submitted to a medical evaluation for purposes of recertifying his commercial driver's license. The medical examiner released claimant to commercial driving with only a limitation on the use of corrective lenses, but no physical limitations or restrictions resulting from a prior head, neck, or low back injury. (Defendant's Ex. E)

On March 29, 2017, claimant obtained an independent medical evaluation, performed by Sunil Bansal, M.D. Dr. Bansal's history includes notation that claimant struck his head in the accident and "jerked" something in his back. Dr. Bansal records that claimant told him he "had immediate back pain" and was "dazed with a possible brief loss of consciousness." (Claimant's Ex. 1, p. 7) Claimant told Dr. Bansal that he has had difficulty sleeping since the motor vehicle accident and that "there are times when his legs will bother him." (Claimant's Ex. 1, p. 8) Claimant reported constant aching and pain in his back. (Claimant's Ex. 1, p. 8) He also reported numbness and tingling into both of his legs. (Claimant's Ex. 1, p. 8) Mr. Hawkins also reported daily

right shoulder pain to Dr. Bansal, as well as occasional headaches since the motor vehicle accident. (Joint Ex. 1, p. 8)

Mr. Hawkins reported to Dr. Bansal that he believes he is capable of lifting 35 to 40 pounds, despite the findings of the FCE. He reported being able to sit for only 30 to 40 minutes before needing to move about. Claimant also reported only being able to walk for 30 to 60 minutes and only being able to stand for 15 to 20 minutes at a time. (Claimant's Ex. 1, p. 8) None of these limitations were reported to prior physicians or documented in the FCE.

Dr. Bansal diagnosed claimant with an aggravation of lumbar spondylosis. Dr. Bansal opined that claimant's reported symptoms and mechanism of injury were consistent with post-concussive syndrome. However, Dr. Bansal offered no permanent impairment for claimant's neck, right shoulder, or head injuries. He did opine that claimant qualifies for a five percent permanent impairment of the whole person as a result of his low back injury, which Dr. Bansal causally related to the December 11, 2015 motor vehicle accident. (Claimant's Ex. 1, pp. 11-13) Dr. Bansal recommends permanent work restrictions consistent with the FCE findings, including the one-hour sitting restriction per eight-hour work shift. (Claimant's Ex. 1, p. 13)

Mr. Hawkins applied for employment with International Paper in early 2008. The company required claimant to submit to a pre-employment physical with its company medical provider, William Manely, PA-C. Mr. Manely administered physical testing to claimant, which demonstrated claimant was capable of lifting up to 55 pounds frequently. It demonstrated that claimant was capable of carrying up to 50 pounds and pushing or pulling a 200-pound sled on a frequent basis. The testing also demonstrated that claimant was capable of sitting or standing on a frequent basis. (Defendant's Ex. C, pp. 2-3) Nevertheless, it appears that International Paper required medical clearance for claimant from his personal physician before starting a job with their company. Therefore, on March 26, 2018, claimant presented to his personal physician, Malhar S. Gore, M.D. (Joint Ex. 6)

At Dr. Gore's March 26, 2018 evaluation, claimant denied "any further problems with his back." (Joint Ex. 6, p. 1) The medical note of that date identified a new motor vehicle accident as having occurred in September 2017. Nevertheless, claimant told Dr. Gore, "everything is back to normal." (Joint Ex. 6, p. 1) In fact, claimant conceded at trial that he told Dr. Gore he had no pain and had normal range of motion in his low back in March 2018. (Claimant's cross-examination testimony) Claimant did not seek any treatment for his head, neck or back between the March 26, 2018 evaluation and the date of trial.

When considering the competing medical evidence in this case, I find the pre-employment physical and the medical notes from claimant's personal physician to be the most credible pieces of evidence. They correspond with the full duty release by

Dr. Chen and the lack of any medical care between Dr. Chen's release from care and the pre-employment physicals.

Dr. Bansal's evaluation occurred between that period of time. Review of Dr. Bansal's report demonstrates some concerning issues. First, Dr. Bansal's report makes no mention of and may have occurred before claimant went to work for Iowa Express. Dr. Bansal's restriction, including the FCE limitations of one hour and two minute sitting per shift are clearly erroneous given claimant's ability to drive from Cedar Rapids to Minneapolis and back in a day's time and repeatedly during a week. Dr. Bansal's restrictions do not correspond with claimant's actual demonstrated, real-life abilities and are rejected.

Dr. Bansal also makes no comment of the discrepancy between his history and the emergency room records. Claimant reported to Dr. Bansal that he had immediate onset of low back pain. Clearly, the initial medical records do not demonstrate or document this. One would think this would be an important discrepancy that would have to be commented upon and rectified to establish causation. Dr. Bansal makes no comment and fails to convincingly explain away any of these discrepancies.

Dr. Bansal's evaluation is also contradicted by later medical evidence, including by claimant's personal physician. While Dr. Bansal records a history from claimant that includes ongoing low back pain, claimant later reports to his personal physician that his low back has returned to normal and that he does not have pain. Even if Dr. Bansal's report of symptoms, impairment rating, and restrictions were seen as accurate when issued, clearly claimant improved between Dr. Bansal's evaluation in March 2017 and claimant's subsequent pre-employment testing and evaluations in March 2018.

Dr. Bansal offers no permanent impairment for claimant's head, neck, or right shoulder. No other physician has opined that claimant sustained permanent injury or disability related to his head, neck, or right shoulder. Therefore, I find that claimant failed to prove permanent injury to the head, neck or right shoulder.

Dr. Bansal does offer permanent impairment and permanent restrictions as a result of claimant's low back condition. However, subsequent medical evidence, as well as subsequent employment duties, demonstrate that Dr. Bansal's restrictions are not accurate. I find that claimant's low back condition, whatever it was, resolved and that claimant had no low back symptoms as of March 2018. As Dr. Gore relayed, I find that claimant's low back "is back to normal" and accept claimant's denial of further problems with his low back as of March 26, 2018. (Joint Ex. 6, p. 1) Therefore, I find that claimant failed to prove the December 11, 2015 motor vehicle accident either caused or materially aggravated any low back condition. Specifically, I find that claimant failed to prove he sustained any loss of future earning capacity or any permanent disability as a result of the December 11, 2015 work injury at CRST.

CONCLUSIONS OF LAW

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. 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).

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).

In this case, I found that claimant failed to prove that he sustained permanent injuries or permanent disability as a result of the December 11, 2015 motor vehicle accident at CRST. I also found that claimant failed to prove a material aggravation of any underlying condition as a result of the December 11, 2015 motor vehicle accident at CRST. Accordingly, I conclude that claimant failed to carry his burden of proof to establish entitlement to any permanent disability benefits.

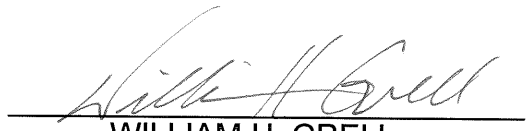
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall taking nothing further.

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 3rd day of January, 2019.



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WHG/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.