

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERRY ALVIS,

Claimant,

vs.

AMERICAN ORDNANCE,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 20701111.01

ARBITRATION DECISION

Head Notes: 1100

STATEMENT OF THE CASE

The claimant, Terry Alvis, filed a petition for arbitration and seeks workers' compensation benefits from American Ordnance, employer, and New Hampshire Insurance Company, insurance carrier. The claimant was represented by James Hoffman. The defendants were represented by Jean Dickson.

The matter came on for hearing on October 13, 2021, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via CourtCall videoconferencing system. The record in the case consists of Joint Exhibit 1; Claimant's Exhibits 1 and 2; and Defense Exhibits A through K. The claimant testified under oath at hearing, as did five witnesses for the defendants: Joel Davis, Jacob Burch, Cody Jackson, Randy Grisham and Stacie Scully. Gina Castro served as the court reporter. The matter was fully submitted on November 15, 2021.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury which arose out of and in the course of his employment on September 22, 2020. During the course of the hearing, the undersigned amended the alleged injury date to September 2, 2020 based upon the evidence submitted.
2. Whether the alleged injury is a cause of any temporary or permanent disability.

3. Whether claimant is entitled to any permanency benefits.
4. Whether claimant is entitled to an independent medical evaluation (IME) under Iowa Code Section 85.39.
5. Defendants assert affirmative defense under Section 85.23.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship at all relevant times.
2. Temporary disability/healing period and medical benefits are no longer in dispute.
3. The elements comprising the rate of compensation have all been stipulated and the weekly rate of compensation is \$549.80.
4. Credit is not an issue.
5. Relevant affirmative defenses have been waived.

FINDINGS OF FACT

Terry Alvis was 34 years old on the date of hearing. He completed high school, but testified that he was in special education classes because of poor math, reading and spelling. He resides in the Keokuk area. He testified live and under oath at this video hearing and his credibility is a key issue in the case. I find the claimant is not credible. He appeared confused and unprepared throughout his testimony. He repeatedly looked to his attorney as though he did not understand the questions he was being asked, or he did not know how to answer them. His testimony does not comport, in numerous significant aspects with the other credible evidence in the record. He was a terrible historian. In some instances, his testimony changed during the course of the hearing. His testimony cannot be relied upon.

Mr. Alvis did, in fact, work for American Ordnance in September 2020. He was hired in June 2020. American Ordnance manufactures ammunition. He testified that on September 2, 2020, he had to unplug a loader.¹ (Transcript, page 11) He stuck a rod in the loader and unjammed it. He testified that in this process, his right hand was burned badly by hot water (280 degrees). (Tr., pp. 11-12; Cl. Ex. 2) He testified that he immediately told his foreman, Jake. (Tr., p. 12) He originally testified that he went to the burn unit in Iowa City for treatment and was given “cream and stuff” for treatment and then returned to work the following day. (Tr., pp. 12-13) He testified that he was

¹ The petition injury date is September 22, 2020. The petition is hereby amended to conform to the evidence at hearing.

never off work for the injury. He testified that the employer never provided any other treatment for him. (Tr., p. 14) He testified that this condition healed to some degree, however, the burn area on the top of his right hand still turns purple in the cold and the circulation is bad. He testified that he has to keep his hand out of the heat or sunlight. He also testified that he was eventually evaluated by Sunil Bansal, M.D., in Iowa City, for an independent medical examination. (Tr., pp. 21-22)

On cross-examination, Mr. Alvis admitted that he did not go to a burn unit in Iowa City after the accident, but rather he went to Wal-Mart and bought some medicine over the counter. (Tr., pp. 17-19) It is noted that Mr. Alvis was very confused at this point in his testimony. He appeared nervous and anxious, repeatedly looking to his attorney for guidance. In any event, this testimony looks bad. Dr. Bansal's IME report is undated, however, it indicates that he interviewed Mr. Alvis by telephone on March 8, 2021. (Claimant's Exhibit 1, p.2)

Dr. Bansal prepared an expert report, basing his opinions from a photograph of claimant's burn and the statement of the claimant. (Cl. Ex. 1, pp. 1-2) He also reviewed various statements from claimant's co-workers and supervisors. He assigned a 3 percent whole body impairment rating using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Cl. Ex. 1 p. 3)

Defendants secured an independent medical examination from James Milani, D.O. He prepared a report dated August 17, 2021. It appears from the record that this is the only time he was actually personally evaluated by any physician in relation to the burn on his hand. Dr. Milani examined Mr. Alvis, reviewed witness statements and prepared a thorough report. (Def. Ex. J) He opined that the claimant's symptoms were "out of proportion with the mechanism and objective findings" at the evaluation. (Def. Ex. J, p. 25) He went on to assign a zero impairment rating. (Def. Ex. J, p. 26)

Employment records reveal that Mr. Alvis was terminated from employment on September 22, 2020 for "unsatisfactory probation period." (Def. Ex. F, p. 9) Five witnesses testified live and under oath for the defendants: Joel Davis, Jacob Burch, Cody Jackson, Randy Grisham and Stacie Scully. (Tr., pp. 35-59) I will not recite the entirety of each witness's testimony here, however, I find each of these witnesses to be generally credible.²

Jacob Burch testified that he was the production supervisor for Mr. Alvis in September 2020 in the melt area. He testified that Mr. Alvis never told him that he was burned at work at any time in September 2020. (Tr., pp. 43-44) He did learn at some point during that timeframe that Mr. Alvis had been burned at home. He testified he first learned that Mr. Alvis was claiming a work injury from Stacie Scully, the safety and health manager.

² For reasons which shall be explained in the next section, I have substantially discounted the testimony of Cody Jackson. This is not because I believe he was dishonest necessarily, but his witness statement which was signed on February 4, 2021, is inconsistent with other portions of the record.

Ms. Scully, for her part testified that she did not learn that Mr. Alvis was claiming a work injury until notified by counsel after the petition was filed and served. (Tr., p. 59) She testified that she and Randy Grisham, the production superintendent, then performed an investigation sometime in early 2021, after Mr. Alvis claimed a work injury. They took witness statements. (Def. Exs. B through E) Mr. Burch testified Mr. Alvis never reported a work injury to him. Two production supervisors, Cody Jackson and Joel Davis, provided statements that Mr. Alvis had told them he burned himself at home. These witnesses also testified live and under oath that this is what happened. Mr. Davis testified, "Well, when he showed me his wound, I said what did you do? He said, I hurt myself at home. And I said, doing what? And he said, dumb shit. And I asked him if he was okay to work like that, and he said yes." (Tr., p. 38) Mr. Jackson also testified that Mr. Alvis told him he burned himself at home during this timeframe. (Tr., p. 52) Again, for reasons set forth in the next section, I have discounted Mr. Jackson's testimony.

There are a number of medical records in evidence which having nothing to do with claimant's alleged work injury. (Jt. Ex. 1)

Weighing all of the evidence in the record, I find that claimant has failed to meet his burden of proof that he sustained an injury which arose out of and in the course of his employment. There are simply too many inconsistencies in this record.

CONCLUSIONS OF LAW

The first and primary question submitted is whether the claimant sustained an injury which arose out of and in the course of his employment on September 2, 2020.

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 Electric 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.

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.

For the reasons set forth in the Findings of Fact, I find that the claimant has failed to meet his burden of proof that he sustained an injury which arose out of and in the course of his employment. For the claimant to prevail in this case, I would have to find that several witnesses for the employer were untruthful in their sworn testimony. Essentially, I would have to find that the employer engaged in a criminal conspiracy to cover up a relatively insignificant burn injury. As described in my factual findings, there are several inconsistencies in Mr. Alvis's testimony separate and apart from the employer's evidence.

I feel compelled to note one suspicious inconsistency in the employer's evidence which is not explained to my satisfaction in the record.

Cody Jackson testified at hearing that he was the lead production supervisor. He testified that Mr. Alvis told him the burn to his hand occurred at home. (Tr., pp. 51-53) In his written statement dated February 4, 2021, he stated the following: "On 9-22-20 Randy Grisham asked me what I knew about Terry Alvis getting burned at work, I told him I had no know ledge [sic] of the incident ..." (Def. Ex. C, p. 4, *emphasis added*) This statement implies that Randy Grisham was aware that Mr. Alvis was making a work injury claim on September 22, 2020, which is the date Mr. Alvis was terminated. The defendants have alleged that they had no knowledge that Mr. Alvis was making any type of a work injury claim until after the claimant filed a petition.³ If Mr. Jackson's written statement is accurate, then Mr. Grisham knew contemporaneously in September 2020, that Mr. Alvis was claiming to be injured at work. Mr. Grisham, of course testified that he did not learn of the alleged work injury until Ms. Scully brought it to his attention. (Tr., p. 55) There was no cross-examination on this statement. (Tr., p. 55) There is no other explanation, anywhere in the record, to clarify this statement.

If correct, this would lend some credibility to the theory that the defense witnesses conspired to falsely deny this claim. This witness statement is perplexing, given the other evidence in the record. I find, however, that the most likely scenario is that Mr. Jackson's statement is simply poorly worded. It is most likely that Mr. Grisham approached Mr. Jackson in February 2020, after the petition was filed and he quickly wrote a statement which simply intended to reference the alleged September 22, 2020,

³ According to the agency file the petition in his matter was filed in November 2020 and answered in January 2021.

work injury. He most likely meant to include the prepositional phrase “On 9/22/20” at the end of his sentence rather than the beginning. Thus, the statement probably should have read: “Randy Grisham asked me what I knew about Terry Alvis getting burned at work on 9/22/20.” There are other explanations for this odd statement; however, given the remaining evidence in this record, this is the most likely explanation I can surmise. The fact that the statement specifically references a 9/22/20 injury date indicates that it most likely was written in response to the petition being filed and served, because that is the date claimant’s counsel mistakenly used in the petition. Nevertheless, because of this inconsistency, I have discounted the entirety of Mr. Jackson’s testimony.

Therefore, while I am concerned about this inconsistency, the burden of proof still rests squarely upon Mr. Alvis to prove that he was, in fact, injured at work. Even without any witness statements or testimony, I find the claimant has failed to meet this burden. This is based upon his own inconsistent and otherwise less-than-credible testimony combined with the lack of contemporaneous, corroborating evidence.

Since I have found that the claimant has failed to meet his burden of proof that he sustained a work injury, all other issues are moot.


ORDER

THEREFORE IT IS ORDERED

Claimant takes nothing.

Each party shall pay their own costs.

Signed and filed this 16th day of February, 2022.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Jean Zetta Dickson (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.