BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TYLER WELTER, Claimant, vs. TRANSCO RAILWAY PRODUCTS, INC., Employer, and INDEMNITY INSURANCE CO. OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 21700338.02 ARBITRATION DECISION Headnotes: 1402.30

STATEMENT OF THE CASE

Claimant, Tyler Welter, filed a petition in arbitration seeking workers' compensation benefits from Transco Railway Products, Inc. (Transco), employer, and Indemnity Insurance Company of North America, insurer, both as defendants. This case was heard on July 13, 2022, with a final submission date of August 10, 2022.

The record in this case consists of Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 5, Defendants' Exhibits A through E, and the testimony of claimant and Chad Berry and Jacob Ball.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether the injury resulted in a temporary disability.

3. Whether the injury resulted in a permanent disability; and if so,

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

5. Whether there is a causal connection between the injury and the claimed medical expenses.

6. Costs.

FINDINGS OF FACT

Claimant was 26 years old at the time of hearing. Claimant graduated from high school. Claimant has a welding certificate obtained through Transco. (Hearing Transcript, pages 9-10, 51)

He has worked in a factory making field tile. He has poured concrete and helped remodel houses. Claimant has built grain bins. (Claimant's Exhibit 1, pages 2-3)

Claimant began employment with Transco in November 2019. Transco repairs railroad cars. Claimant worked at Transco as a carman helper. Claimant said his job required him to do a number of jobs to fix railroad cars. (Tr., pp. 10-12)

On July 9, 2020, claimant was shimming a railroad car coupler to raise it up. The shim is a fabricated piece of metal. Claimant said that in order to put the shim in the coupler, he had to pull a cross key out of the coupler. He said that the cross key is shaped like a T and weighs approximately 45-50 pounds. (Tr., pp. 12-14)

Claimant said the cross key was stuck in the coupler. He said that as he pulled on the cross key, it suddenly came out. Claimant said that as the cross key came out, the weight pulled him down to his knees and he felt instant burning pain in his lower back. (Tr., pp. 14-15) Claimant said his back pain was ". . . probably a 14 out of a 10." (Tr., p. 16)

Claimant said he did not complete the shimming job. He said he spoke to his supervisor, Chad Berry. Claimant said that he told Mr. Berry he hurt his back and wanted to go home. Claimant said Mr. Berry told him he had to complete a slip indicating he was leaving due to a headache. Claimant testified Mr. Berry told him to lie regarding the accident report. Claimant said he went home, took ibuprofen, and went to bed. Claimant said he had a difficult time sleeping due to back pain. (Tr., pp. 18-20, 37-38)

Exhibit A is an off-work slip from Transco indicating claimant left work on July 9, 2020, due to a headache. (Defendants' Exhibit A)

Chad Berry testified he is a supervisor for Transco. He said that he was claimant's supervisor on the date of the alleged injury. (Tr., pp. 58-60)

Mr. Berry testified that, on July 9, 2020, claimant told him he had a headache and was going to go home early that night. Mr. Berry told claimant he would have to complete a time-off slip. Mr. Berry testified claimant had taken time off work several

times due to headaches. (Tr., pp. 59-60) Mr. Berry testified that claimant did not tell him he had sustained a work injury on July 9, 2020, or say his back was hurting him. (Tr., pp. 59-60)

Mr. Berry testified he did not tell claimant to lie regarding completion of the off-work slip. (Tr., p. 61)

Jacob Ball testified he is a supervisor at Transco. On the date of the alleged injury, Mr. Ball was a lead man and claimant worked under his supervision. (Tr., pp. 68-69)

Mr. Ball testified that on July 9, 2020, he asked claimant to put running board bolts on the top of a railroad car. The job would have required claimant to climb up on the top of a railroad car and perform a lot of bending. Mr. Ball testified that claimant told him that he wanted to stay on the ground, as his back was hurting from helping his mother lift a couch. Mr. Ball said claimant did not attribute his sore back to working on a coupler at work. (Tr., pp. 69-70)

Mr. Berry testified he prepared a statement dated December 1, 2020, at the request of his employer. The statement reads,

> In conversation with Tyler Welter on what I remember to be his last day in the shop, he stated his back was hurting. I asked what happed [*sic*] and he told me that he had hurt his back moving a couch for his mom the night before. Later that night he left work with a headache.

(Ex. D)

Claimant testified at hearing that he never injured his back lifting a couch and never told Mr. Ball he injured his back while lifting a couch. (Tr., pp. 32-33)

On July 10, 2020, claimant was evaluated at Fairbank Chiropractic by Nathan Steinbronn, D.C. In the "history" section of the exam notes, it indicates claimant had an acute sacroiliac complaint after a poor night's sleep on July 9, 2020. Claimant was diagnosed as having lower back pain, somatic dysfunction of the lumbar area, muscle spasms of the back, somatic dysfunction of the pelvic area, pain in the thoracic spine, somatic dysfunction of the cervical area, pain in the right hip, and somatic dysfunction of the lower extremity. Claimant was given chiropractic manipulations. He was told to ice his back. (Joint Exhibit 1, pages 1-3)

In deposition, claimant testified the following:

Q: And so, when you went to Dr. Steinbronn, what did you tell him about what the cause of your injury was?

A: I can't remember what I said to him right off the top of my head.

Q: Did you report a work incident to him?

A: I don't think I did because of . . . because I didn't have no workman comp paperwork or anything, you know, given to me. So I think he said not to, just to cover it for insurance.

(Ex. E, p. 40)

Claimant testified at hearing that Dr. Steinbronn told him not to report his back condition as a work injury so he could submit it to his health insurer. (Tr., p. 39)

On July 13, 2020, claimant was evaluated by Matthew Sowle, PA-C, for back pain occurring over the past 7 days. Claimant was assessed a having a herniated lumbar disc. He was taken off work from July 10 through July 20, 2020. (JE 2, pp. 14-17)

Claimant returned to see Dr. Steinbronn on July 14, 2020. Claimant's complaints were the same as at the prior visit. He was again assessed as having lower back pain. Claimant was given chiropractic manipulation and told to ice at home. (JE 1, pp. 4-6)

Claimant returned to Dr. Steinbronn on July 20, 2020, with unchanged complaints. Claimant was again given chiropractic manipulations and told to ice at home. (JE 1, pp. 7-9)

On July 21, 2020, claimant returned in follow-up with physician's assistant Sowle. Claimant was assessed as having chronic bilateral lower back pain. An MRI was recommended. Claimant was taken off work for two weeks. (JE 2, pp. 18-21)

In a disability claim form, dated July 24, 2020, claimant applied for short-term disability benefits. Claimant indicated on the form he had chronic bilateral back pain that was not related to his employment. (JE 2, p. 22)

On July 28, 2020, claimant underwent an MRI of the lumbar spine. It showed mild degenerative disc changes at L3 through L5 and a small central disc protrusion at L4-5 without significant central or foraminal stenosis. (JE 3; JE 4, p. 36)

On August 12, 2020, claimant was evaluated by Gregory Bedynek, D.O., for a one-month history of lower back pain. Claimant worked on railroad cars and did heavy lifting. Claimant had no radiation into his extremities. Chiropractic care had improved claimant's symptoms significantly. Dr. Bedynek recommended claimant seek physical therapy and potentially epidural steroid injections if symptoms worsened. Claimant was assessed as having a herniated lumbar disc. (JE 4, pp. 33-37)

Claimant returned to physician's assistant Sowle on August 31, 2020, for follow-up care of chronic back pain. Claimant was assessed as having a herniated lumbar disc. He was set up for physical therapy. (JE 2, pp. 23-25)

On October 20, 2020, claimant returned to PA Sowle. Claimant wanted a referral to see Dr. Buchanan, as per his attorney. Notes indicate, "Patient reports he had a [*sic*] injury at work and is trying to get workmans [*sic*] comp. Claimant did not start physical therapy as per his lawyer's request. Claimant was referred to Dr. Buchanan as per his lawyer's request. (JE 2, pp. 26-28)

Claimant was seen by Russell Buchanan, M.D., on November 18, 2020. Claimant indicated lower back pain after a July 9, 2020, work injury. Claimant did not have radiation to the lower extremities. He was referred to the Allen Pain Clinic for

evaluation and treatment. Claimant was also recommended to have physical therapy. (JE 5, pp. 39-40)

On January 12, 2021, claimant was evaluated by Gayathry Inamdar, M.D., with Northern Iowa Pain Management. Claimant was assessed as having lower back pain with radiculopathy. Dr. Inamdar recommended an epidural steroid injection at the L4-5 level. (JE 6)

In a September 20, 2021, report, Farid Manshadi, M.D., gave his opinions of claimant's condition following an IME. Claimant indicated he was pulling a cross key out of a coupler on July 9, 2020, when it broke loose, causing immediate lower back pain. Claimant sought chiropractic care after the injury and reported to the chiropractor his injury was work related. (JE 7, p. 43)

Dr. Manshadi found that claimant had sacroiliac joint dysfunction with no clinical evidence of nerve root irritation. Dr. Manshadi opined that the sacroiliac joint dysfunction was a result of the July 9, 2020, work injury. Dr. Manshadi found that claimant had a 6 percent permanent impairment to the body as a whole based on a finding that claimant fell in the DRE Lumbar Category 2. Dr. Manshadi restricted claimant to no lifting more than 30 pounds, that claimant be allowed to sit, stand, or walk as needed, and that he avoid repetitious bending, stooping or twisting at the waist. (JE 7, p. 45)

Claimant said that he has aching and throbbing in his lower back, but the pain does not radiate into his legs. Claimant takes over-the-counter medication for pain. He also uses a TENS unit for pain. (Tr., pp. 25-26) Claimant said he has difficulty sitting or walking for an extended period of time. (Tr., p. 28)

Claimant testified he does not believe he could return to work at Transco given his pain limitations. (Tr., pp. 28-29) He said since leaving Transco he has worked for 2-3 weeks for Hoefer's Farm. He said he also worked for Hoefer Pumping for 4-6 weeks pumping hog manure. Claimant said he also helped remodel a home and did some drywalling. (Tr., pp. 29-31)

Claimant testified that prior to the alleged July 9, 2020, date of injury, he had filed an accident report with Transco when he smashed his finger at work. (Tr., p. 37) Claimant testified he received approximately $7,800.00 in short-term disability benefits while off work from Transco. (Tr., p. 25)

CONCLUSION OF LAW

The first issue to be determined is whether claimant sustained an injury on July 9, 2020, that arose out of and in the course of his employment.

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. 6.904(3).

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" refer 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).

Claimant testified he injured his lower back while pulling a cross key from a railroad car coupler. He said that he told his supervisor, Mr. Berry, that he hurt his back and wanted to go home. Claimant testified Mr. Berry told him to fill out a leave slip, but to lie and indicate the reason for his early leave was due to a headache. (Tr., pp. 18-20, 37-38)

Mr. Berry testified that claimant left early from work on the evening of July 9, 2020, due to a headache. He said claimant had left several times prior due to headaches. He said he did not tell claimant to lie on the early leave slip. (Tr., pp. 59-61)

Mr. Ball testified claimant told him, on the night of July 9, 2020, he was not able to climb to the top of a railroad car as he injured his back when helping move a couch. (Tr., pp. 69-70; Ex. D)

Claimant first sought treatment for his back condition on July 10, 2020, with Dr. Steinbronn. There is no mention of a work-related back injury in the July 10, 2020, records. (JE 1, pp. 1-3)

Claimant initially testified at hearing that he did not recall if he reported a work injury to Dr. Steinbronn. He also testified in deposition and at hearing that Dr. Steinbronn told him not to report the back condition as a work injury so that Dr. Steinbronn could get paid through claimant's health insurance. (Ex. E, p. 40; Tr., p. 39)

Claimant saw Dr. Steinbronn a total of four times between July 10, 2020, and October 22, 2020. There is no mention of a work injury in any of these records. (JE 1, pp. 1-12)

Claimant saw his family health care provider, PA Sowle, on July 13, 2020, for lower back pain. There is no mention in the July 13, 2020, records of a work injury. Claimant saw physician's assistant Sowle three times between July 13, 2020, and August 31, 2020, for lower back pain. There is no mention of a work injury in any of these records. (JE 2, pp. 14-25)

Claimant had an MRI on July 28, 2020. There is no mention in the records from this visit that claimant had a work-related injury. (JE 3)

Claimant saw Dr. Bedynek on August 12, 2020, for lower back pain. There is no mention of a work-related injury in this record. (JE 4)

Claimant completed paperwork for short-term disability benefits with his employer. In the application for short-term disability benefits regarding his lower back, claimant indicated his condition was not work related. (JE 2, p. 22)

Dr. Manshadi evaluated claimant once for an IME. Dr. Manshadi opined that claimant's sacroiliac joint dysfunction on the right side was a result of claimant's July 9, 2020, work injury. Dr. Manshadi offers no rationale why there is no reference of a work injury in any medical records from July 9, 2020, through October 20, 2020, with four different providers who treated claimant's lower back condition. It also appears that Dr. Manshadi is unaware that claimant claimed his back condition was not work related on short-term disability paperwork. Given these discrepancies, it is found the opinions of Dr. Manshadi regarding causation and permanent impairment are found not convincing.

Claimant alleged he injured his lower back while at work while trying to repair a railroad car coupler. Mr. Berry testified claimant told him that he needed to leave work due to a headache. Mr. Ball testified that on the date of the alleged injury, claimant told him he hurt his back moving a couch. Claimant saw four different medical care providers on nine different occasions. There is no mention of a work-related incident in

any of these records. Claimant completed a short-term disability form indicating the reason for his disability was not work related. The first mention of a work accident is in the October 20, 2020, record with PA Sowle, after claimant met with his attorney. Dr. Manshadi's opinions regarding causation are found not convincing.

Given the record as detailed above, claimant has failed to carry his burden of proof he sustained an injury that arose out and in the course of employment on July 9, 2020.

As claimant has failed to carry his burden of proof he sustained an injury that arose out of and in the course of employment on July 9, 2020, all other issues are moot.

ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 19th day of September, 2022.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

John Pieters (via WCES)

James Ballard (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.