

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KELVIN WILLFORM,

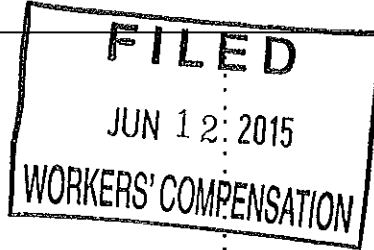
Claimant,

vs.

NEWTON CORRECTIONAL FACILITY,

STATE OF IOWA,

Self-Insured,
Employer,
Defendant.



File No. 5031107

ARBITRATION
DECISION

Head Note Nos.: 1402.40, 1802, 1803,
2500, 3000

STATEMENT OF THE CASE

Kelvin Willform, claimant, filed a petition in arbitration seeking workers' compensation benefits from Newton Correctional Facility and the State of Iowa, self-insured, as a result of an injury he sustained on August 6, 2009 that arose out of and in the course of his employment as a prisoner at Newton Correctional Facility while on a work assignment outside of the correctional facility. This case was heard at the Iowa State Penitentiary at Fort Madison and fully submitted after briefs were received on December 22, 2014.

The evidence in this case consists of the testimony of claimant and claimants exhibits 1 – 3. Claimant is self-represented. His exhibits are: Exhibit 1, consisting of 33 pages. Exhibit 2 is the May 5, 2010 independent medical examination (IME) report of Charles Eddingfield, consisting of 33 pages. Defendant provided a complete copy of this report. Exhibit 3 includes health service reports from Newton Correctional Facility, discovery responses, the March 14, 2011 original notice and petition, X-ray reports from Great River Medical Center, part of a November 16, 2011 letter from the Ombudsman's office, the last page of Dr. Eddingfield's report and medical bills, consisting of 31 pages. For clarity purposes, a copy of claimant's exhibits will be sent to the parties by regular/local mail.

Defendants Exhibits A – F were admitted. The evidence presented at the hearing, testimony and briefs were all considered in this case. The certified court reporter in this case was Jane Weingart of MJW reporting, Burlington Iowa.

The claimant filed an application for a stay of agency action. The application for a stay was resisted by the defendant. This matter was originally filed on October 28, 2009. It was dismissed and re-filed on March 14, 2011. This matter has been scheduled and rescheduled numerous times. The application for a stay is denied.

Claimant submitted an "Affidavit of Statements" on December 15, 2015. Iowa Administrative Code 876 IAC 4.31 states, "Completion of contested case record. No evidence shall be taken after the hearing." The evidence is not considered as it was submitted after the record was closed.

Claimant filed a motion for temporary and long term benefits on April 17, 2015. This motion request the commencement of benefits as the claimant asserts he is no longer an inmate and has been discharged from custody. The motion for temporary and long term benefits is denied. Permanent benefits are being awarded with this decision. The decision below provides the award of the benefits claimant is entitled to receive.

ISSUES

The parties identified the following issues in dispute:

1. Whether the alleged injury is a cause of temporary disability and, if so, can an inmate receive temporary benefits.
2. The extent of any temporary benefits.
3. The extent of any permanent disability.
4. Whether the alleged disability is a scheduled member disability or an unscheduled disability.
5. Whether claimant has a work-related injury to his back.
6. Whether claimant may amend his petition to include his original petition.
7. The claimant's gross earnings, number of exemptions and weekly rate.
8. The extent of claimant's disability.
9. Assessment of costs

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Kelvin Willform, claimant, was 47 years old at the time of the arbitration hearing. Claimant graduated from high school and attended college for about one and one half years. Claimant attempted to obtain a degree in drafting. He has no other formal education. Claimant has worked construction. Claimant also worked for his uncle in

construction. Claimant also worked at McDonalds¹. Claimant testified that it was his plan to develop a construction/remolding company that employed ex-offenders when he was released from prison.

On August 6, 2009, claimant was confined to the minimum security unit of the Newton Correction Facility and assigned a work at Jester Park, in Polk County, Iowa. Claimant was operating a wood splitting machine. His right index finger got caught in the machine and claimant had to forcefully pull it out. Claimant pulled some of the skin off his finger when he extricated himself from the machine. (Exhibit 1, page1, Exhibit A, page. 1) He was seen at the University of Iowa Hospital and Clinics (UIHC) emergency room. (Ex. A, p. 55) On August 8, 2009, claimant was complaining of pain in his hand radiating to his arm and through the back. (Ex. 3, p. 10) His diagnoses was an open wound to the hand. (Ex. 3, p. 7, Ex. A, p. 3) On August 8, 2009, claimant was complaining of pain in his right shoulder. (Ex. A, p. 38) On August 11, 2009, claimant had an x-ray of his right shoulder. The impression was,

IMPRESSION:

1. Post traumatic or degenerative callus along the coracoclavicular ligament insertion at the clavicle without remarkable shoulder deformity otherwise.

(Ex. A, p. 2; Ex. D, p. 72)

On August 13, 2009 notes Sherrie Bullis, RN, of from Newton Correctional Facility Health Services (hereinafter Health Services) stated, "Reports that his shoulder is still hurting and lower back. Explained that this is probably due to trauma." (Ex. A, p. 18)

On August 14, 2009, Health Services noted that claimant was to continue his finger and shoulder range of motion exercises and that an evaluation for the right shoulder was being arranged. Claimant has sutures to his finger, which were removed on August 20, 2009 and August 24. (Ex. A, p. 9) On November 5, 2009, Health Services noted his finger had healed well, but claimant was unable to bend it well. Claimant was also complaining of shoulder and back pain. (Ex. A, p. 48)

On November 11, 2010, claimant had a MRI of the upper extremity due to shoulder pain. (Ex. B, p. 57; Ex. 3, p. 11) The impression was:

¹ Claimant's reply brief refers to a Pre-sentence Investigations Report (PSI) for more information about his work history. I can only review evidence that was submitted at the hearing. As it was not submitted as an exhibit it cannot be considered.

IMPRESSION:

1. There is reasonably extensive undersurface/intrasubstance tear involving the distal aspect of the supraspinatus tendon.
2. Mild tendinopathy within the infraspinatus tendon.
3. Questionable tear involving the anterior superior labrum.
4. Probable calcification in the coracoclavicular ligament suggesting prior injury.

(Ex. B, p. 57; Ex. 3, p. 11)

Claimant had an MRI of his spine on January 8, 2010. The impression was,

IMPRESSION:

1. 1.5 x 1.1 CM cystic lesion near the left L4-5 facet joint with moderately severe mass effect along the filum terminale at L4-5 as well as moderately severe encroachment of the exiting left-sided nerve root at L4-5 correlation with patient's symptoms is recommended in light of this finding. Again, these constellation of findings are highly suggestive of a benign synovial type cyst.
2. Multilevel degenerative changes throughout the lumbar spine most notable at L5-S1 as described.

(Ex. B, p. 59; Ex. 3, p. 13)

X-rays on that same date showed degenerative changes at the L5-S1 level. (Ex. B, p. 60)

On November 30, 2009, claimant was seen at Community Health Centers of Southeast Iowa. The notes of that visit stated, "Had an injury of the @ 2nd finger about 8 months ago. Also injured shoulder. Now developing back pain..." (Ex. C, p. 67)

He was diagnosed with right shoulder and back pain. (Ex. C, p. 68)

On March 5, 2010, Michael Hendricks, M.D., reviewed claimant's MRI of his shoulder. His assessment was:

ASSESSMENT:

1. Complete Rupture Of Rotator Cuff/Right, New

(Ex. C, p. 63)

On May 5, 2010, Dr. Eddingfield performed an independent medical examination (IME). Dr. Eddingfield noted claimant was complaining of lower back pain especially if claimant was bending over and lifting. (Ex. 2, p. 3) Dr. Eddingfield provided a 13 percent whole person rating for the right upper extremity, an 8 percent whole person rating for the right index finger, a 6 percent rating for claimant's facial fractures and a 5 percent loss to the whole body due to claimant's lumbosacral spine. (Ex. 2, p. 4) Dr. Eddingfield provided a 24 percent whole person impairment rating. (Ex. 2, p. 5)

Dr. Eddingfield did not discuss causation in his IME. His exam and ratings appear to assume causation for claimant's finger, right shoulder, facial fractures and lower back.

On December 18, 2012, James Nepola, M.D., of UIHC evaluated the claimant. (Ex. E, pp. 81 – 85) He noted that claimant's shoulder had not been worked up properly. He also noted that claimant had been diagnosed with a degenerative cyst in his spine, although Patrick Hitchon, M.D., who saw the claimant a year or two ago did not recommend surgery. (Ex. E, p. 81) Dr. Nepola's plan was:

ASSESSMENT AND PLAN:

A 45-year-old male with significant right shoulder pain after a work-related injury on 08/06/2009. He may have had a distal clavicle fracture. He has developed some AC arthropathy. There is a report of an MRI from 2010 with possible partial rotator cuff tear. Given his extreme pain and difficulty to get an adequate exam at this juncture, we would recommend a repeat MRI. We would also like to obtain his old MRI, as well as to determine if cuff tear truly is there, and/or if it has progressed. Based on this advanced imaging, we will make recommendations as clinical followup.

(Ex. E, p. 82)

Claimant was provided non-surgical treatment for a while, but on June 28, 2013 he had surgery on his shoulder. (Ex. E, p. 103) The post-surgery diagnosis was:

Post-procedure Diagnoses

1. AC joint arthropathy [719.91]
2. Shoulder impingement [726.2]
3. Glenoid labral tear [840.8]

(Ex. E. p. 103)

On September 3, 2014, Dr. Nepola wrote to the third party administrator in this case, Sedgwick concerning the claimant. He found that claimant reached maximum medical improvement on May 19, 2014. This is the date that I find that permanent

partial disability benefits commence. Dr. Nepola provided a 14 percent impairment to the whole body for the shoulder injury to the claimant. He also stated:

This is intended to be an assessment of his functional loss on May 19, 2014 and not intended to be combined with any previously assigned impairment rating. Mr. Willform was released with restrictions including no lifting more than 25 pounds with both arms, 10 pounds with the right arm alone, no lifting any weight with the right arm with the arm away from his body or above shoulder height, (lifting to be done with right elbow at his side only), no repetitive reaching away from his body or above shoulder height with the right arm, although these were not intended to be permanent restrictions. I would recommend a Functional Capacity Evaluation in order to determine if permanent restrictions are required. Future treatment for this injury may include non-steroidal anti-inflammatory medications, physical therapy corticosteroid injections, and possibly revision surgery.

(Ex. E, p. 151)

While Dr. Nepola recommended a functional capacity examination to further refine permanent restriction, none were provided in the record and these are the only post-surgery restrictions in the record. I find that the restrictions set forth by Dr. Nepola are claimant's restrictions in evaluating his industrial disability.

Claimant had a fall while in jail in Burlington Iowa. Claimant had a CAT scan of his face due to right facial pain. The physicians found:

He does have pain in his back especially if he is bending over and lifting. He states that lifting 20 pounds is generally about all that he can lift. If he does lift 20 pounds, and tries to go up steps carrying it on his right side, this does have a large amount of pain. Repetitively lifting 20 pounds does bother his lumbosacral spine. He does have difficulty sitting for any length of time and this will give him pain in his back. He does have pain when he rides in a car up to 80-100 miles. He does become depressed with all of this pain. He does have tingling in both legs and states that the tingling is getting worse.

He did recently fall in the County Jail and was taken to Great River Medical Center emergency room and they did a CAT scan of his face because of right facial pain. They did find that he has as follows. (1) Segmented right zygomatic arch fractures. Nondisplaced right nasal bone fractures. No other facial fractures identified. Paranasal sinuses all appear to be adequately aerated. (2) Findings conveyed to the emergency room when he was seen there.

(Ex. 2, p. 3)

According to the billing records the treatment for this at Great River Medical Center occurred on March 28, 2010. (Ex.3, pp. 17) There is no evidence that the claimant injured his right finger, right shoulder and lower back due to this fall. The fall was not related to the August 6, 2009 work injury and is not compensable under workers' compensation statutes. Medical care due to this fall is also not compensable.

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); BP, 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).

Defendant has admitted claimant has a permanent injury. Defendants admit that claimant suffered a permanent injury to his right finger. The defendant disputed that claimant has a right shoulder and low back permanent injury.

I find that claimant has met his burden of proof in this case to show a right finger and right shoulder permanent impairment. When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Comm'r. Report 281 (App. February 24, 1982), a torn rotator cuff was found to cause disability to the body as a whole.

The medical reports show that claimant complained of shoulder pain shortly after his August 6, 2009 injury. The claimant had a torn rotator cuff that was eventually repaired by Dr. Nepola. There is no other explanation for the claimant's torn rotator cuff, other than his work injury in evidence.

Claimant has also requested that his low back injury be considered as part of this claim. I find that claimant has not met his burden of proof in this issue. It is true that claimant complained of back pain shortly after his work injury. The records show that the claimant has a degenerative cyst that is likely causing his pain. The record also shows that claimant reported on November 30, 2009 to Community Health Centers of Southeast Iowa that he was developing back pain at that time. In this case no physician has opined that the incident of August 6, 2009 caused or permanently aggravated his low back condition. It is certainly possible, but possible is not sufficient to carry the burden of proof by a preponderance of the evidence.

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 shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

As I previously found, claimant has the restrictions imposed by Dr. Nepola of lifting 25 pounds with both arms and 10 pounds with his right arm. He is to do no repetitive reaching with his right arm or reaching above shoulder height with his right arm. Claimant has significantly less flexibility in his right index finger.

Claimant graduated from high school and has some college. Claimant has been incarcerated a number of times, but the number of years and for what offenses is not in the record. Certainly portions of the labor market are not available to claimant due to his ex-felon status and not related to his work injury. Working construction and remodeling are beyond his restriction. Some aspects of fast food work that would require lifting weights above his limitation and above his head would not be available to claimant. Considering all of the factors of industrial disability I find that claimant has lost 50 percent loss of earning capacity and a 50 percent industrial loss.

This entitles claimant to 250 weeks of permanent partial disability benefits commencing May 19, 2014.

Claimant has requested temporary benefits. Iowa Code section 85.59 provides in relevant part.

85.59 Benefits for inmates and offenders.

1. For the purposes of this section:

a. "Inmate" includes:

(1) A person confined in a reformatory, state penitentiary, release center, or other state penal or correctional institution while that person works in connection with the maintenance of the institution, in an industry maintained in the institution, or in an industry referred to in section 904.809, or while on detail to perform services on a public works project.

....

3. a. If an inmate is permanently incapacitated by injury in the performance of the inmate's work in connection with the maintenance of the institution, in an industry maintained in the institution, or in an industry referred to in section 904.809, while on detail to perform services on a public works project, or while performing services authorized pursuant to section 904.809, or is permanently or temporarily incapacitated in connection with the performance of unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232, that inmate shall be awarded only the benefits provided in section 85.27 and section 85.34, subsections 2 and 3. The weekly rate for such permanent disability is equal to the minimum rate as provided in this chapter.

b. Weekly compensation benefits under this section may be determined prior to the inmate's release from the institution, but payment of benefits to an inmate shall commence as of the time of the inmate's release from the institution either upon parole or final discharge. However, if the inmate is awarded benefits for an injury incurred in connection with the performance of unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232, weekly compensation benefits under this section shall be determined and paid as in other workers' compensation cases. (Emphasis added).

Sections 85.27 (medical benefits) and 85.34 (Permanent benefits) are the only workers' compensation benefits an inmate is entitled to receive. Temporary total disability is compensable under section 85.33, while healing period benefits are compensable under section 85.34(1). Accordingly, no award of temporary total or healing period benefits is available to an inmate under section 85.59. Claimant was confined at the Newton Correctional Facility and working on a public works project at the time of his injury. The law does not provide for temporary benefits to persons who are injured as inmates working on a public service project. No award of temporary benefits is made.

Claimant requested that he be allowed to amend his current petition to include his original petition. The original petition was filed on October 28, 2009 against the Newton Correctional Facility and included a claim for "Body as a whole – finger, arm shoulder and back." The current petition was filed on March 14, 2011 against the Newton Correctional Facility and State of Iowa and includes a claim for "Body-finger, arm shoulder and back." There is no substantive difference between these petitions. Both allege scheduled and unscheduled injuries against the Newton Correction facility. As there is no significant difference and it does not affect the award in this case. I decline to grant the motion to amend the petition.

Iowa Code section 85.59(3)(a) requires for inmates the weekly rate of compensation to equal to the minimum rate in chapter 85. To determine the weekly rate the minimum weekly gross earnings is used. For the date of injury of August 9, 2009 that amount is \$247.00. (See Iowa Workers' Compensation rate book July 2009 – June 2010, page IV. <http://www.iowaworkforce.org/wc/09ratebookallpages.pdf>). The parties stipulated that the claimant was married at the time of his injury. That allows him to use the rate table of married with two dependents. Applying the \$247.00 to married with two dependents, the rate in a weekly benefit amount of \$180.04. The claimant's weekly workers' compensation amount is \$180.04 per week.

Defendant submitted Exhibit F showing payment of \$38,859.10 in medical expenses. This exhibit shows payments to Advance Rehab & Sports for services from December 2, 2009 through January 15, 2010. (Ex. F, pp. 7 – 14) Five payments to Southeast Ortho and Sports from February 8, 2010 through August 26, 2010. (Ex. F, pp. 6, 7) A payment to Advanced Physical Therapy Services Ltd. For service on December 2 and 3, 2009. (Ex. F, p. 6) This exhibit also shows payment to the UIHC, the University of Iowa and UIHC physician's from November 23, 2010 through June 28, 2013. (Ex. F, pp. 1 – 7)

Claimant submitted a number of medical bills in Exhibit 3. Exhibit 3, pages 17, 18 and 20, 21 are bills for the fall in jail on his face and are not compensable in this workers' compensation case. Claimant submitted a bill of \$183.00 for services on February 8, 2010 from, Southeast Iowa Sports Medicine. (Ex. 3, p. 22) This has been paid by the defendant. (See. Ex. F, p. 7) Claimant has requested payment for a \$38.00 bill from Davis Radiology for a date of service of January 8, 2010 as well as other costs for the MRI of the spine. (Ex. 3, pp. 23, 26) I am not awarding these costs as they are


related to the claimant's lower back injury bill. Claimant's exhibit 3, page 24 appears to be a bill for the MRI of the shoulder for January 11, 2010. (See Ex. 2, p. 3) I approve payment of this cost. Exhibit 3, page 27 is a bill from Advanced Rehab and Sports Medicine. These appear to relate to the shoulder injury and I award claimant these costs. It also appears that defendant has made a number of payments to Advance Rehab and Sports medicine. (Ex. E, pp. 7 – 14) Exhibit 3, page 29 is a number of bills for MRI of the spine, upper extremity, CT of the face and wrist. These appear to be duplicative bills the claimant had already listed in Exhibit 3. The MRI of the upper extremity and shoulder x-rays are approved. Exhibit 3, page 30 is a bill for the Tri State Medical Group. I am unable to determine what this bill is for and deny payment by defendant.

The defendant is not obligated to pay again what they have paid in this case. The defendant is responsible for the right shoulder and right index finger injuries medical costs. Claimant submitted no out-of-pocket cost so no award is made for those medical expenses. Defendant shall pay any unpaid medical costs directly to the provided.

ORDER

1. Defendant shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing May 19, 2014 at the rate of one hundred eighty and 04/100 dollars (\$180.04) per week.
2. Defendant shall pay accrued weekly benefits in a lump sum and shall receive credit against this award for weekly benefits previously paid.
3. Defendant shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.
4. Defendant shall pay the medical costs as set forth in this decision.
5. Defendant shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter.
6. Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 12th day of June, 2015.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

WILLFORM NEWTON CORRECTIONAL FACILITY

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Copies to:

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JFE/kjw

Exhibits sent regular/local mail.

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.