

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

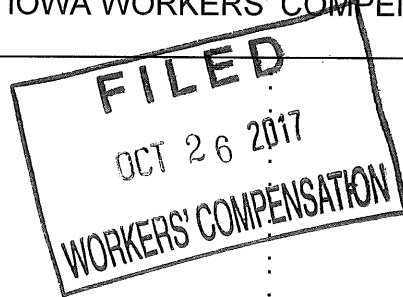
COLIN STOKES,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured,
Defendant.



File No. 5053968

ARBITRATION

DECISION

Head Note: 1803

STATEMENT OF THE CASE

Colin Stokes filed a petition in arbitration alleging he has a permanent impairment from an injury he incurred on August 4, 2012 while working for John Deere Davenport Works, defendant.

This case was heard in Davenport, Iowa and fully submitted on March 17, 2017. The record consists of Claimant's Exhibits 1 – 6, Defendant's Exhibits A – R, claimant's and Mark Eldridge's testimony, as well as the pleadings of the parties. Both parties submitted briefs.

ISSUES

1. Whether the alleged injury is a cause of permanent disability and, if so;
2. The extent of claimant's disability.
3. Assessment of costs.

STIPULATIONS

The parties filed hearing reports at the commencement of the arbitration hearing. On the hearing reports, 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.

FINDINGS OF FACT

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

Colin Stokes, claimant, was 33 years old at the time of the hearing. Claimant graduated from high school and took a couple post-high school classes. Claimant received a certificate for CNC Machine phases 1, 2, and 3. (Transcript, page 6)

Claimant began working for defendant in 2005. He was working for defendant at the time of the hearing. Prior to working for defendant claimant worked as a construction laborer and waterproofing basements. He also ran a vaping business for about two years that was not financially successful. (Tr. pp. 6, 7)

Claimant worked as an assembler for the defendant. On August 4, 2012 claimant was reaching from a ladder with a torque gun when he felt a snap and dropped his torque gun and fell to the ground. (Tr. p. 11) Claimant was taken to the medical department at defendant's that day and sent by ambulance to the emergency room at Trinity Terrace Park. (Tr. p. 11; Exhibit 1, p. 9; Ex. 3, p. 35) Claimant testified that since this injury he has had pain in his left lower abdomen and left testicle. (Tr. p. 12)

Claimant continued to work for defendant and had surgery in April 2013. (Tr. p. 15) James Schrier, M.D., performed the surgery. Claimant returned to his same job after his surgery. He returned to his regular duty on May 6, 2013. (Tr. p. 29; Ex. F, p. 27) Claimant's earnings for the defendant have increased since his injury in August 2012. (Tr. pp. 38, 39; Ex. B & C, pp. 5 – 9)

Claimant was able to perform his job, but said he was in pain. He has some pain that is always present and it intensifies as he becomes more active during the day. (Tr. p. 16)

Claimant testified that he told the medical department at defendant's and Dr. Schrier that he continued to have pain. Claimant said that Dr. Schrier could not find a hernia and told him he would have to live with the pain. (Tr. p. 19)

On November 24, claimant had a vasectomy after his abdominal surgery. (Ex. I, p. 59) The surgery did not decrease his left testicle pain. (Tr. p. 19)

Claimant said that he has limited some of his activities due to his pain. He is not able to play more than nine holes of golf, gave up his dirt and motocross bikes and cannot aggressively ride an ATV or Jet Ski. (Tr. p. 21) Claimant said that he stopped doing roofing and block work on patios. (Tr. p. 21) Claimant did not believe that he would be able to keep up a competitive pace if he was working for a construction company. (Tr. p. 22)

Claimant has not returned to Dr. Schrier since February 21, 2014. (Tr. p. 31)

Claimant was also diagnosed with a left lower inguinal hernia in 2004. (Tr. p. 28; Ex. A, p. 3) On April 7, 2014 claimant was assaulted. He did not recall trauma to his abdomen although medical reports note that he had trauma to his left abdomen as well as other injuries. (Tr. p. 34)

Mark Eldridge, a supervisor at the defendant's Davenport Works testified. He has been claimant's supervisor since August 2016. (Tr. p. 43) Claimant is not working with any restrictions and works full duty and puts in overtime. (Tr. pp. 45, 48) Mr. Eldridge has not noticed claimant having any difficulty performing his job and he has not heard complaints by other members of claimant's work team that he was not getting his work done. (Tr. p. 47)

Notes from the health clinic at John Deere show the following treatment. On August 4, 2012 Cindy Sullivan, R.N. a nurse at the company clinic recorded that claimant was tightening a bolt in an overhead position when he felt a sharp pain in his left quadrant of his abdomen. Jack Luke, M.D. was notified and claimant was sent to the emergency department by ambulance. (Ex. 1, p. 9) On August 7, 2012 claimant was by Dr. Luke referred to Dr. Schrier. (Ex. 1, p. 8) On October 1, 2012 claimant was returned to work full duty. (Ex. 1, p. 6) On February 20, 2013 claimant complained to the company physician, Lester Kelly, M.D. that he had abdominal pain since August 2012 as well as left testicular pain. (Ex. 1, p. 6) Claimant had hernia surgery on April 1, 2013. He returned to work with restrictions. On August 1, 2013 claimant returned to work full duty. (Ex. 1, p. 4) On August 28, 2013 claimant informed Thersa Kauffman, N.P., of ongoing abdominal pain. Ms. Kauffman's assessment was, "Chronic lower abdominal pain, left sided intermittent testicle pain s/p left inguinal hernia repair with mesh placement." (Ex. 1, p. 4) She noted that claimant may not be pain free, and the goal at this time is to maintain the most optimal level of comfort. (Ex. 1, p. 4) On January 23, 2014 William Candler noted that claimant was having ongoing left abdominal and groin pain since his hernia repair. The claimant said he was able to do his work, but has increasing pain when he works. (Ex. 1, p. 3) Claimant was assaulted on April 7, 2014 (not related to his work at John Deere) and was evaluated at the clinic for a return to work. He was authorized to return to work on that date. (Ex. 1, p. 2) On May 5, 2015 claimant was seen at the company clinic to establish a maximum medical Improvement (MMI) following his hernia surgery. The note of that date found chronic mild abdominal tenderness, status/post left inguinal hernia repair. (Ex. 1, p. 1)

Dr. Schrier examined claimant on August 24, 2012. His impression was, "Probable left lower abdomen muscle strain." (Ex. 3, p. 14) On February 25, 2013 Dr. Schrier diagnosed claimant with, "Left inguinal hernia." (Ex. 3, p. 17) On April 1, 2013 Dr. Schrier performed a laparoscopic left inguinal hernia repair with mesh. (Ex. 3, p. 19; Ex D, p. 18) On June 7, 2013 claimant saw Dr. Schrier due to pain in his left groin and testicle. (Ex. 3, p. 23) On July 11, 2013 claimant reported he had just been on vacation and was 75 percent better although still had testicle pain. (Ex. 3, p. 24) On February 7, 2014 Dr. Schrier noted claimant's pain was worse with work although he was able to work. (Ex. 3, p. 28) On February 21, 2014 Dr. Schrier noted there was no

evidence of a left inguinal hernia. He had no other treatment to offer, except for symptomatic treatment. (Ex. 3, p. 39) Dr. Schrier provided no permanent restrictions.

On January 29, 2017 Dr. Schrier signed off on a letter prepared by defendant's counsel. Dr. Schrier agreed he had not seen claimant since February 21, 2014 and that at claimant's last visit he was unable to detect any hernia. He agreed that while claimant reported pain, claimant was able to perform the activities of daily living. Dr. Schrier said he had no permanent impairment based upon the AMA Guides. (Ex. Q, p. 81) Dr. Schrier did not recommend additional surgery due to the risks of such surgery. (Ex. Q, p. 82) Lastly, Dr. Schrier noted claimant had a vasectomy in November 2014, and claimant's pain could be explained by a post-vasectomy pain syndrome. (Ex. Q, p. 82)

On May 21, 2015 Christine Deignan, M.D., John Deere's Workers' Compensation Medical Director provided an evaluation for permanent partial impairment. (Ex. K, pp. 65 – 67) Dr. Deignan noted claimant had been placed at maximum medical improvement (MMI) as of May 15, 2015. Dr. Deignan's diagnosis was, "Left inguinal hernia repair with mesh placement, persistent postoperative pain." (Ex. K, p. 66) Dr. Deignan determined claimant has a zero impairment rating using the AMA Guides to the Evaluation of Permanent Impairment, 5th Ed. (Ex. 2, p. 3)

On November 10, 2016 James DeBord, M.D., examined claimant and reviewed medical records at the request of claimant's counsel. Dr. DeBord was not able to detect an obvious recurrent inguinal or scrotal hernia. He did find a tender spot. Dr. DeBord evaluated whether claimant should have additional surgery. His recommendation was,

In view of the chronic nature of his symptoms and the degree of symptoms and the temporal relationship of the symptoms to his left inguinal hernia repair, I would recommend left groin exploration, removal of all old mesh and repair of the resultant recurrent inguinal hernia as well as a 'triple Neurectomy' which would involve severing of the ilioinguinal, iliohypogastric and genital branch of the genitofemoral nerves. This would likely relieve pain and current symptoms but would leave him with sensory numbness in the groin, inner thigh and scrotum.

(Ex. 6, p. 3) Dr. DeBord was aware that claimant has not missed work due to his hernia. Dr. DeBord said of claimant, "He is currently impaired by chronic groin and testicular pain consistent with 'chronic inguinodynia', a known complication of groin hernia repairs." (Ex. 6, p. 3.) Dr. DeBord was not familiar with the AMA Guides and said that claimant had an impairment of chronic pain. (Ex. 6, p. 3; Ex p, p. 3)

The medical records show that claimant complained of left abdomen pain in 2002, 2003, and 2004. (Ex. A, pp. 1 – 3) Claimant also reported abdominal pain to the emergency department after he was assaulted on April 7, 2014. (Ex. H, pp. 38, 40, 42, 48) However, no physician has attributed his current left abdominal and left testicle pain

to those incidents. I find that those incidents are not the cause of his current left abdomen and testicle pain.

I find that the work injury of August 4, 2012 has caused a permanent disability.

Claimant has requested costs in the amount of \$155.50. The claimant requests \$100.00 for the filing fee, \$6.73 for service costs and \$48.77 in medical record copy charges. (Attachment to Hearing Report)

The parties stipulated that the claimant's gross weekly earnings at the time of the work injury were \$1,070.11 per week, and that he was married, and entitled to three exemptions. As such, his weekly benefit rate is \$696.58.

Considering claimant's age, educational background, employment history, ability to return to work in a new position, ability to retrain or find alternate employment, permanent impairment, permanent work restrictions, motivation, as well as all other relevant industrial disability factors, I find that claimant has proven he sustained a 10 percent loss of future earning capacity as a result of the August 4, 2012 work injury.

CONCLUSIONS OF LAW

Defendant admits that claimant's hernia injury of August 4, 2012 arose out of and in the course of his employment at John Deere Davenport Works. Defendant asserts claimant has no industrial disability as a result of his work injury.

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).

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 State of Iowa Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 State of Iowa Industrial Commissioner Decisions, 654 (App. February 28, 1985).

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.

In this case the three physicians agree that claimant has lower left quadrant and pain in his testicle. Dr. Deignan noted persistent postoperative pain. Dr. DeBord noted chronic groin and testicular pain. The health records at the defendant's health clinic show that claimant was complaining of groin and testicular pain after his hernia surgery.

While it is true that Dr. Schrier said that claimant's pain could be a post-vasectomy surgery symptom, he does not explain as to why claimant had that pain before the vasectomy. I do not find his opinion on that matter convincing.

I find Dr. DeBord's opinion most convincing concerning claimant's symptoms. He has residual pain caused by the hernia surgery and mesh implant.

It is true that claimant is working for the defendant and has not missed work, other than a short time due to the surgery. He is able to perform his job. Claimant has no formal restrictions. Claimant earns more income now than at the time of his injury.

I found claimant's testimony that he had to stop patio work, roofing and other hobbies and that he is unable to maintain a competitive pace doing construction work to be credible. Dr. DeBord opined that claimant has a permanent impairment due to his chronic pain, although he did not use the AMA Guides.

I find claimant has proven a permanent impairment due to his August 4, 2012 work injury.

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 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.

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

I note that claimant is motivated to work and has continued to work for the defendant. He is performing similar work to what he was performing at the time of his work injury. In considering his impairment, I consider his loss of his earning capacity in the relevant labor market. That is broader than his loss of earning capacity as an employee at John Deere Davenport Works.

He is limited by his groin and testicular pain for sustained heavy work on a competitive basis. He has a modest education.

I previously found that claimant had a 10 percent loss of earning capacity. I find using all of the factors of industrial disability that claimant has an industrial disability of 10 percent entitling claimant to 50 weeks of permanent partial disability benefits.

Claimant has requested costs of \$155.50. In my discretion I award the filing fee and certified mail costs pursuant to 876 IAC 4.33. I decline to award the medical record costs, as they are not itemized in 876 IAC 4.33 as an allowable cost. Total cost awarded claimant is \$106.73.

ORDER

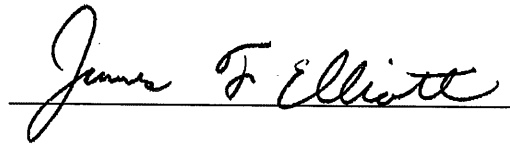
Defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits at the weekly rate of six hundred ninety-six and 58/100 dollars (\$696.58)

Defendant shall pay claimant costs of one hundred six and 73/100 dollars (\$106.73).

Defendant shall pay all past due amounts in a lump sum with interest.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 26th day of October, 2017.



JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Robert T. Rosenstiel
Attorney at Law
PO Box 4298
Rock Island, IL 61204-4298
rrosenstiel@wkclawfirm.com

Troy A. Howell
Attorney at Law
220 North Main St., Ste. 600
Davenport, IA 52801-1987
thowell@l-wlaw.com

JFE/sam

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.