

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID AYARD,
Claimant,

vs.

MASTERBRAND CABINETS, INC. d/b/a
OMEGA CABINETS,

Employer,

and

ACE AMERICAN
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5054866

APPEAL
DECISION

Headnote No.: 1100

FILED

JUN 4 2018

WORKERS' COMPENSATION

Defendants appeal from an arbitration decision filed on January 27, 2017, on the issues of causation. Claimant resists and urges the arbitration decision be upheld in its entirety.

The presiding deputy determined claimant sustained a sequela injury to his left shoulder and assessed a running healing award commencing on August 19, 2015.

On February 16, 2017, defendants filed an appeal challenging the causation finding. On March 7, 2017, claimant filed a responsive brief arguing full affirmance of the underlying decision.

On May 3, 2018, this matter was delegated to the undersigned. The undersigned has reviewed the record of evidence de novo. The facts recited by the presiding deputy are detailed and exhaustive and are incorporated herein.

Defendants' primary complaint is that the expert opinion relied upon by the presiding deputy was flawed because it relied on the wrong facts and/or incomplete facts. John Kuhnlein, M.D. performed an IME for the claimant and after a review of the medical records and subjective complaints along with his own examination, Dr. Kuhnlein concluded that claimant's work stressors including his over the shoulder loading, preferentially using the left arm while the right arm was in a sling, and general overuse of the left arm because of the right shoulder injury led to the left shoulder injury.

Defendants argue that Dr. Kuhnlein was unaware of the specific tasks performed by claimant and that, in contrast, the defendants' experts reviewed claimant's light duty work in detail and dispute the factual basis for Dr. Kuhnlein's opinion.

The parties stipulated claimant sustained a right shoulder injury on March 20, 2015, when claimant was pulling down a large door. Claimant was initially treated conservatively but on April 13, 2015, claimant was placed on light duty. He remained on light duty until August 18, 2015.

On April 10, 2015, claimant was ordered to keep his right arm at his side. While his right arm was in a sling, claimant was to scan boxes with a hand held scanner weighing only a few pounds and mark the boxes with a crayon. He also made boxes to cover cabinets and pulled down boxes from overhead to make lids to cover the cabinets. Claimant testified he would do the scanning and marking for ten to thirteen hours a day.

Defendants argue that claimant's testimony is not credible and instead, the testimony of Jeffrey Orr is more reliable.

Jeffrey Orr is the environmental health and safety manager for defendants. He testified he saw claimant from "time to time." (Transcript page 93) Mr. Orr supervised between 900 and 920 people and oversaw 36 different programs including the workers' compensation claims for the defendant employer. (Tr. pp. 87, 111) During the times that Mr. Orr saw claimant, Mr. Orr did not observe claimant violating his work restrictions. However, it was brought to his attention that claimant would be grabbing pieces of cardboard, as claimant testified to. Mr. Orr brought claimant's niece over to clarify claimant's restrictions. After this discussion, Mr. Orr viewed claimant "in passing" and did not observe any violations of the restrictions at that time. (Tr. p. 96) Mr. Orr was convinced that claimant could not have aggravated his left shoulder from overuse because the weights claimant was using were light and because claimant did not need to reach over his head. Mr. Orr assisted the defendants' experts by providing weight limitations and instructions about claimant's light duty tasks. Those doctors chose to rely on Mr. Orr's testimony and descriptions rather than the testimony of the claimant. Contrary to Mr. Orr's testimony, claimant's supervisor testified that claimant was seen carrying cardboard from the stock area and that the racks that held the cardboard were placed at floor level and at chest level. (Tr. p. 116) Mr. Ryan also observed claimant folding the cardboard, corroborating claimant's testimony. (Tr. p. 118)

After the first week, however, Mr. Ryan did not observe claimant using his left arm to carry cardboard or fold it. (Tr. p. 119) Mr. Ryan was not claimant's supervisor while claimant was on light duty.

The presiding deputy found claimant to be credible and there is nothing in the transcript or the manner in which claimant conducted himself during his medical visits

which would suggest a finding to the contrary. Defendants' argument that claimant was untruthful about the way he used his left arm is not substantiated by the testimony. While Mr. Ryan and Mr. Orr did not view claimant using his left arm to reach at or above shoulder level or to carry cardboard, neither individual was claimant's supervisor during his light duty assignments. Neither individual observed claimant throughout the day.

Because claimant's version of how he conducted himself during the period of light duty is adopted both by the presiding deputy and by the undersigned after a de novo review of the evidence, Dr. Kuhnlein's opinion is also given greater weight as he is the only expert that relied on claimant's version of his physical conduct during the light duty time period.

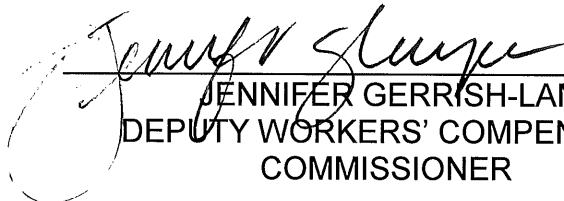
Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision the proposed arbitration decision filed on January 22, 2014.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed January 27, 2017 is AFFIRMED.

Defendants shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 4th day of June, 2018.



JENNIFER GERRISH-LAMPE
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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