BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTOPHER DAVIS,	:	File No. 20700989.01
Claimant,	:	A P P E A L
vs.	:	D E C I S I O N
JOHN DEERE DAVENPORT WORKS,	:	
Employer, Self-Insured, Defendant.	: : Head Notes:	1402.20; 1402.30; 1402.40; 1802; 1803; 2907; 5-9999

Claimant Christopher Davis appeals from an arbitration decision filed on February 23, 2022. Defendant John Deere Davenport Works responds to the appeal. The case was heard on September 21, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 27, 2021.

In the arbitration decision, the deputy commissioner found claimant failed to meet his burden of proof to establish his bilateral carpal tunnel syndrome arose out of and in the course of his employment with defendant. Based on this finding, the deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to recover the cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D. The deputy commissioner assessed the costs of the arbitration proceeding to claimant, and the deputy commissioner found the remaining issues raised in this matter are moot.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove his bilateral carpal tunnel syndrome arose out of and in the course of his employment with defendant. Claimant asserts his claim is timely under Iowa Code sections 85.23 and 85.26. Claimant asserts he is entitled to permanent partial disability benefits, and claimant asserts defendant should be assessed the medical charges itemized in Exhibit 6, and claimant's costs of the arbitration proceeding.

Defendant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, the arbitration decision filed on February 23, 2022, is affirmed as modified.

Without further analysis, I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to recover the cost of Dr. Bansal's IME. I affirm the deputy commissioner's finding that the costs of the arbitration proceeding should be assessed to claimant.

With the following additional and substituted analysis, I affirm the deputy commissioner's finding that claimant failed to prove his bilateral carpal tunnel syndrome was caused by his employment with defendant.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). 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, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> . . . it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

An injury to one part of the body can later cause an injury to another. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16-17 (Iowa 1993) (holding a psychological condition can be caused or aggravated by a scheduled injury). The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is

insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). When considering the weight of an expert opinion, the factfinder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

In the arbitration decision in this case, the deputy commissioner found claimant did not prove his bilateral carpal tunnel syndrome was caused by his employment, as follows:

> [t]he basis of each medical opinion could be easily critiqued. It is unclear what information Dr. Collins possessed regarding the details of claimant's job duties, as claimant testified the two only briefly discussed his work as a welder. Dr. Collins did not author the content of his own report; however, Dr. Collins signed off on the content of the summary as accurate. Dr. Collins is an orthopedic surgeon with experience treating carpal tunnel syndrome; claimant selected Dr. Collins as his treating surgeon and expressed no complaints regarding his care. Dr. Deignan offered only conclusory opinions with respect to causal connection and did not explain her rationale. Her notes mirror legal conclusions and recommendations, as opposed to remaining in the medical realm. However, Dr. Deignan is uniquely situated in the best position to offer an opinion regarding claimant's work duties, as she personally observed performance of the duties and interviewed claimant onsite. Dr. Bansal's opinion is somewhat equivocal in nature and importantly, he does not specifically state claimant's work activities more likely than not caused or were a substantial, contributing factor in development of bilateral carpal tunnel syndrome. Rather, Dr. Bansal opined the duties were capable of increasing carpal tunnel pressures and had a strong potential to cause bilateral carpal tunnel syndrome.
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> It is ultimately claimant who bears the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of employment. Although I find claimant's claim plausible, the medical opinions do not support a determination that claimant has met his burden. Dr. Bansal fell short of opining claimant's bilateral carpal tunnel syndrome was causally related to his work activities and instead offered a more

> abstract opinion that claimant's duties had a strong potential to cause bilateral carpal tunnel syndrome. This equivocal opinion is insufficient to allow claimant to prevail when compared to the concrete, contrary opinions of Drs. Collins and Deignan, who served as treating physician and onsite evaluator, respectively.

(Arb. Dec., p. 12)

Claimant asserts the deputy commissioner erred in finding Dr. Bansal did not opine claimant's bilateral carpal tunnel syndrome was causally related to his work activities. In his March 30, 2021, report, Dr. Bansal answered a question posed by claimant's counsel, as follows:

> ***2. Did the work that Mr. Davis performed at John Deere represent a substantial causal, contributing, or aggravating factor in the impairments mentioned above?***
>
> *At the time of his injuries, Mr. Davis had been employed by John Deere Davenport Works for a little more than 10 years. As a result of his repetitive and physically demanding work activities, he developed bilateral carpal tunnel syndrome.*
>
> *He works as a welder, working on dump trucks and the beds of the dump trucks. When he was welding, he was exposed to lot [sic] of vibration all day long. He worked with a robotic welder to fabricate portions of the dump trucks. The robotic welder ran continually, and often welded joints incorrectly. It would weld in the wrong place, so Mr. Davis spent the first three to four hours of his day using a seven-inch grinder to remove the incorrect welds. He worked on his hands and knees and overhead to reach all of the welds. He worked from one to six hours per day using the welding tools.*
>
> *Once he was ready to assemble a part, which was the size of a one-car garage, he had to pound things so that they fit together. He used his hands all day long. He started to develop numbness and tingling in both hands six years ago. He reported this to the company doctor, who told him that it did not happen with his job and to get back to work. The pain began to wake him up at night, and a year ago he developed excruciating pain. He woke up with paralysis of his right arm in February 2020, and it was the worse pain he had ever experienced. He decided to seek treatment.*
>
> <u>RIGHT WRIST/HAND/LEFT WRIST/HAND:</u>
>
> Mr. Davis was engaged in job tasks at John Deer that are capable of increasing carpal tunnel pressures. The job tasks would place significant pressure on the wrists based on repetition and the angle in which he would

> position his wrists while operating a heavy and powerful grinder for several hours per day, as well as grabbing, turning, and gripping while performing his welding duties and using a mallet to pound parts into place. Moreover, his hands were exposed to frequent vibration.

(Ex. 5, p. 26)

Dr. Bansal did, in fact, opine that claimant's work caused claimant to develop bilateral carpal tunnel syndrome. Dr. Bansal's opinion provides a summary conclusion without addressing the opinions of Scott Collins, M.D., the treating physician, and Christine Deignan, M.D., who performed an onsite evaluation of claimant performing his work duties. I do not find Dr. Bansal's opinion persuasive.

Claimant sought care with Dr. Collins, an orthopedic surgeon with superior training compared to Dr. Bansal, an occupational medicine physician. Dr. Collins treated claimant for many months, performed right and left carpal tunnel release surgeries on claimant, and provided follow-up care to claimant following the surgeries. Dr. Bansal examined claimant on one occasion.

After a conference with defendant's counsel, Dr. Collins signed a letter prepared by defendant's counsel on January 12, 2021, addressing causation as follows:

> You cannot state that Mr. Davis' welding job at John Deere Davenport Works caused Mr. Davis' bilateral carpal tunnel syndrome. It is your opinion that it is more likely than not that Mr. Davis' welding job at John Deere Davenport Works did not cause Mr. Davis' bilateral carpal tunnel syndrome. You hold this opinion based upon Mr. Davis' relatively young age (he is 31 years old) and the fact that Mr. Davis had carpal tunnel syndrome bilaterally – on both sides. It is your opinion that based on Mr. Davis' relatively young age, it would have taken longer for Mr. Davis' bilateral carpal tunnel syndrome to develop had it actually been caused by his job at John Deere Davenport Works. It is also your opinion that the presence of carpal tunnel syndrome bilaterally – on both sides – makes it less likely that Mr. Davis' bilateral carpal tunnel syndrome was actually caused by Mr. Davis' job at John Deere Davenport Works given a manual laborer typically does not use his non-dominant arm as frequent as he does his dominant arm. If a job actually causes carpal tunnel syndrome, it typically does not cause it on the non-dominant arm/non-dominant side.

(Ex. I, p. 21)

Dr. Bansal conducted his examination of claimant on January 29, 2021, and issued his report on March 30, 2021, after Dr. Collins issued his opinion in this case. Dr. Bansal did not address claimant's age or the bilateral nature of his condition in reaching his summary conclusions. Dr. Bansal did not observe claimant performing his job duties in the plant, unlike Dr. Deignan, who opined claimant's work duties did not cause him to develop carpal tunnel syndrome. (Ex. F) For those reasons, I do not find

Dr. Bansal's opinion persuasive. I find claimant did not meet his burden of proof to establish his bilateral carpal tunnel syndrome arose out of and in the course of his employment with defendant. Given this finding, I affirm the deputy commissioner's finding that the remaining issues raised in this case are moot.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 23, 2022, is affirmed as modified with the above additional and substituted analysis.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 11th day of August, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

MaKayla Augustine (via WCES)

Troy Howell (via WCES)