BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DALE LINDLE,

Claimant,

vs.

NORTHWEST MECHANICAL, INC.,

Employer,

and

THE HARTFORD,

Insurance Carrier,
Defendants.

FILED

JUL 14 2015

WORKERS' COMPENSATION

File No. 5048549

ARBITRATION

DECISION

Head Note Nos.: 1402.40, 1803, 2501

STATEMENT OF THE CASE

Dale Lindle, claimant, filed a petition in arbitration seeking worker's compensation benefits from Northwest Mechanical, Inc., as his employer, and The Hartford, as the insurance carrier. This case proceeded to an arbitration hearing on April 29, 2015, in Davenport, Iowa.

Claimant testified on his own behalf and called his wife, Mirian Lindle, to testify. Defendants called Bill Stropes, claimant's supervisor for a period of time, to testify. Claimant offered exhibits 1 through 8 at the time of hearing. All of claimant's exhibits submitted at the time of hearing were received without objection.

In addition, claimant requested the opportunity at hearing to supplement exhibit 6 with an additional medical bill that had been inadvertently excluded. Defendants consented to the addition of an additional medical bill. The undersigned suspended the evidentiary record at the conclusion of the arbitration hearing pending receipt of exhibit 6, page 3. Claimant forwarded the undersigned page 3 of exhibit 6 on April 30, 2015. Exhibit 6, page 3, is received and will be considered.

After hearing, claimant also forwarded another document labeled as exhibit 7, pages 3 through 5. This document is a report from Winthrop S. Risk II, M.D., dated February 5, 2015. Defendants objected to the introduction of exhibit 7, pages 3 through 5. Defense counsel asserted that he had not seen this document prior to hearing and

also asserted that the evidentiary record was only suspended at the time of hearing for receipt of exhibit 6, page 3. Indeed, the verbal ruling of the undersigned at hearing was only to suspend the evidentiary record for purposes of receiving one additional medical bill, which has now been received as exhibit 6, page 3. Defendants' objection to the introduction of exhibit 7, pages 3 through 5, is sustained, as this record does not appear to have been exchanged prior to hearing and introduction after the completion of all testimonial evidence and receipt of all documentary evidence (except the stipulated receipt of one additional medical bill) is prejudicial. Exhibit 7, pages 3 through 5, are excluded and will not be considered in this decision.

Defendants offered exhibits A through J. Defendants' exhibits were received into the evidentiary record without objection.

The parties also submitted a hearing report, which contains stipulations. The parties' stipulations are accepted and relied upon in entering this decision. No findings or conclusions will be entered with respect to the parties' stipulations and the parties are bound by those agreements.

This case was considered fully submitted to the undersigned upon receipt of exhibit 6, page 3, on April 30, 2015.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant has proven a causal connection between his alleged dizziness, headaches, hearing loss and tinnitus and the work injury he sustained on July 30, 2013.

2. The extent of claimant's entitlement to permanent disability benefits, if any.

3. Whether claimant is entitled to an award of past medical expenses.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Dale Lindle is a 57 year old man, who has a tenth grade education and a GED. Mr. Lindle has worked since he was 13 years of age, starting employment in his father's auto body shop. He joined the military in 1986 and served in the Army until he was Honorably Discharged in 1989. While in the Army, Mr. Lindle sustained an injury to his knee, which has had no long-term adverse effects. He also suffered a broken right ear drum, which continues to cause difficulties for Mr. Lindle, including a loss of hearing in his right ear. (Claimant's testimony)

After leaving the military, Mr. Lindle obtained work as a non-union plumber. After a couple of years, he was approached and agreed to join the union. Mr. Lindle worked as a union plumber from 1994 through October 16, 2013. He was laid off from a position with John Deere in October 2013, did not obtain additional assignments through his union hall, and formally retired from the plumbers' union on May 1, 2014. Mr. Lindle speculates, but cannot prove, that he was "black-balled" by Northwest Mechanical and, as a result, could not obtain any additional assignments through his union hall. (Claimant's testimony)

Mr. Lindle received unemployment benefits after his lay-off and continued to receive unemployment benefits after his formal retirement from the plumbers' union. He has made no efforts to obtain employment since his lay-off in October 2013. (Claimant's testimony)

On July 30, 2013, while working for Northwest Mechanical, Inc., claimant sustained a very serious injury to his left ear. He was attempting to assist an apprentice, who got a scissors lift stuck. Mr. Lindle looked over the side of the lift to check the direction of the wheels. At that same time, the lift broke free and moved. When the lift moved, Mr. Lindle's head was pinned between the lift and a large industrial drier. (Claimant's testimony) As a result, he suffered a very serious laceration and partial amputation of his left ear. He required significant surgical reattachment efforts in the emergency room. (Ex. 1)

Mr. Lindle was able to retain his left ear, though it has deformity. However, he now alleges he sustained loss of hearing in his left ear, tinnitus, headaches, and dizziness as a result of the July 30, 2013, work accident. Although they acknowledge the work accident and left ear injury occurred, defendants dispute whether there is a causal connection between the July 30, 2013, work accident and claimant's hearing loss, tinnitus, headaches, and dizziness.

Two physicians have addressed causal connection of claimant's headaches and dizziness or lightheadedness. Douglas Dvorak, M.D., works at ENT Professional Services, P.C. and served as claimant's treating otolaryngologist. (Ex. 4) Dr. Dvorak noted in his initial consultation note that claimant was "struck on the left side of the head and lost consciousness for seconds." (Claimant's Exhibit 4, p. 1) This is not an accurate history.

Claimant's head was pinned but he did not lose consciousness as a result of this accident. In fact, he specifically denied any loss of consciousness when evaluated at the emergency room immediately after the accident. (Ex. 1, p.1) I find that claimant did not lose consciousness after this accident and that Dr. Dvorak's understanding of the injury is not entirely accurate in this regard.

It does not appear that Dr. Dvorak had pre-existing medical records available for his review. However, after evaluating claimant, Dr. Dvorak indicated, "I suspect that his headaches, lightheadedness, and left sided hearing loss are all related to his head trauma." (Ex. 4, p 3; Ex. A, p. 6) However, Dr. Dvorak recommended claimant be evaluated by a neurologist for the headaches and lightheadedness he reported. (Ex. 4, p. 3; Ex. A, p. 6)

Michael L. Cullen, M.D., a board certified neurologist, evaluated claimant on April 2, 2015. Dr. Cullen was provided pre-existing medical records and accurately notes claimant's history with respect to the July 30, 2013, work injury. After reviewing the prior medical records and personally evaluating claimant, Dr. Cullen opined, "Within a degree of medical certainty, the headaches and dizziness are not related to the incident of July 30, 2013. A more likely explanation is that of a cervicogenic source and his history of a cervical surgical procedure." (Ex. 5, p. 4) Indeed, claimant did have a neck surgery performed in 2010. (Claimant's testimony; Ex. 5, p. 3)

When considering these competing medical opinions, I consider the expert's credentials. In this instance, I find that Dr. Cullen is more qualified to offer causation opinions on headache and lightheadedness issues as a board certified neurologist. In fact, Dr. Dvorak specifically recommended evaluation by a neurologist, implicitly acknowledging that a neurologist would be the appropriate specialist to address these issues.

I also consider the accuracy of the experts' histories. In this instance, Dr. Cullen appears to have had more information available to him and to have a more accurate understanding of the July 30, 2013, events. Dr. Dvorak was in error when he noted claimant lost consciousness as a result of this work accident. Moreover, Dr. Dvorak does not appear to have received a history that included mention of the 2010 neck surgery. Dr. Cullen was aware of and considered both of these facts.

Similarly, Dr. Dvorak notes that claimant has no significant medical history and that his "past medical history is noncontributory." (Ex. 4, p. 1) Dr. Dvorak makes no mention of claimant's history of monthly headaches prior to the work injury. By contrast, Dr. Cullen noted, "There were no pre-injury reports of dizziness, he did experience headaches approximately once per month with associated left sided neck pain." (Ex. 5, p. 3) Dr. Cullen clearly took a much more thorough history and had more information available upon which to base his medical causation opinion.

Finally, when weighing these experts' causation opinions, I consider the relative strength and rationale behind the medical opinions. Dr. Dvorak "suspects" that the headaches and lightheadedness are related to the work injury

in July 2013. This is not a definitive statement or even a relatively strong medical statement of opinion.

By contrast, Dr. Cullen offers a more definitive explanation and provides his rationale for his conclusion that the current symptoms are more likely related to claimant's 2010 neck surgery. I find Dr. Cullen's causation opinion to be entitled to more weight in this case. Therefore, I find that claimant has not proven a causal connection between his lightheadedness and the July 30, 2013, work injury. Similarly, I find that claimant has not proven a causal connection between his headaches and the July 30, 2013, work injury.

With respect to claimant's alleged left ear hearing loss and tinnitus, Dr. Dvorak is the only physician who offered a causation opinion. Dr. Dvorak has opined that claimant sustained a 7.5 percent hearing loss in the left ear as well as a hearing loss in the right ear. Dr. Dvorak opined that "80% of the loss on the left is related to trauma at work." (Ex. A, p. 6) Dr. Dvorak opines that "none of the [hearing] loss on the right is related to the trauma at work." Given that this medical opinion is not rebutted, I find that claimant sustained a minor left ear hearing loss as a result of the July 30, 2013, work injury. However, I find that claimant has not proven any right ear hearing loss is related to his work injury of July 30, 2013.

Finally, claimant asserts a claim for tinnitus. Once again, only one physician offers a causation opinion on this injury claim. Dr. Dvorak opines, "Masking was discussed for tinnitus but I don't expect this will go away and is likely related to the trauma." (Ex. 4, p. 3; Ex. A, p. 6) Given Dr. Dvorak's medical specialty and given that his opinion is not rebutted, I find that claimant has proven he developed tinnitus as a result of the July 30, 2013, work accident. Although it is likely permanent in nature, no physician has offered a permanent impairment rating to quantify claimant's permanent functional loss as a result of the tinnitus.

Claimant's left ear hearing loss and his tinnitus appear to be permanent in nature and at maximum medical improvement. Claimant has been given no work restrictions for either of these conditions. (Claimant's testimony) He was able to return to work as a union plumber after the work injury in both a foreman position and as a plumber. (Claimant's testimony)

Defendants produced a large list of individuals laid off near the same time as claimant. (Ex. J) Claimant is suspicious and speculates that this employer made it impossible for him to obtain work after his worker's compensation claim was asserted. However, claimant has no definitive proof to substantiate his suspicions. Defendants' witness denies any such limitations or efforts by the employer. (Bill Stropes' testimony) Moreover, claimant was able to get a subsequent assignment through his union hall, working at John Deere after this

work injury. Claimant has not established that this injury has precluded his ability to work as a union or non-union plumber. He has no work restrictions that would preclude any other employment for which he is qualified and otherwise capable.

Yet, claimant has proven he has a permanent hearing loss in the left ear and tinnitus. Obviously, these conditions would have some minimal impact on claimant's future earning capacity. He would certainly be precluded from any occupation that required exceptional hearing or for which the use of a hearing aid would be impractical or dangerous. Any such effect would be minimal, however. Considering claimant's age, educational background, employment history, ability to retrain, lack of permanent work restrictions, lack of any efforts to secure alternate employment, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mr. Lindle has proven he sustained a 5 percent loss of future earning capacity as a result of his minor left ear hearing loss and tinnitus resulting from the July 30, 2013, work injury.

In addition to his claim for permanent disability, claimant asserts a claim for past medical expenses. The first medical expense claimant seeks is for $575.00 from Cedar Rapids Neurologists, P.C. (Ex. 7, p. 1) A corresponding medical record for this medical bill is not in evidence. However, Dr. Cullen references the treatment by Dr. Risk at Cedar Rapids Neurologists. It appears from Dr. Cullen's note that the treatment provided by Dr. Risk is for headaches. (Ex. B, p. 4) Having found that claimant did not prove the headaches to be related to his work injury, I similarly find that the $575.00 office charges contained at exhibit 7-1 are not causally related to the July 30, 2013, work injury.

The second medical expense claimant seeks is an audiology bill for services rendered on September 4, 2013, at Iowa Audiology totaling $87.00. (Ex. 2, p. 5) Corresponding records from this evaluation demonstrate that the charges are for an audiology examination, including an audiogram. (Ex. 2, pp. 1-4) Having found that claimant proved a left ear hearing loss as a result of his work injury, I find that an audiological evaluation was reasonable, necessary and appropriate to diagnose claimant's condition. The charges submitted are reasonable.

Finally, claimant submitted exhibit 6, page 3, after the completion of the arbitration hearing. That exhibit has been received into the evidentiary record. Review of exhibit 6, page 3, reveals that it is for treatment rendered by John M. Searles, M.D., on September 26, 2013. The corresponding medical record is in evidence at exhibit 6, page 1. Claimant sought Dr. Searles' consultation because he was experiencing hearing loss and because he had abnormal thickening and scarring occurring in and on his left ear. (Ex. 6, p.1)

Both the hearing loss and the scarring have been found to be directly related to the July 30, 2013, work accident. Therefore, I find that the medical charges submitted as exhibit 6, page 3, are casually related to the work injury. Dr. Searles' charges for this

office visit total $138.00. (Ex. 6, p.3) I find the September 26, 2013, office visit with Dr. Searles to be reasonable and necessary medical care, and the corresponding billing statement to constitute reasonable medical charges.

CONCLUSIONS OF LAW AND REASONING

The initial dispute submitted by the parties for determination is whether claimant proved he sustained left ear hearing loss, tinnitus, headaches, and lightheadedness all as a result of the July 30, 2013, work accident. 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" referred 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 Electric 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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found that claimant has proven his left ear hearing loss and tinnitus are causally related to the July 30, 2013, work injury. I also found that those conditions were permanent in nature and that claimant was at maximum medical improvement for those conditions. Therefore, I conclude that claimant has proven entitlement to permanent partial disability benefits for his left ear hearing loss and tinnitus.

Having found that claimant failed to prove a causal connection between his headaches and the July 30, 2013, work injury, I conclude that claimant is not entitled to any worker's compensation benefits for his headaches. Similarly, I found that claimant failed to prove a causal connection between his lightheadedness and the July 30, 2013, work injury. Therefore, I conclude that claimant is not entitled to any worker's compensation benefits for his lightheadedness.

Hearing loss is compensated pursuant to Iowa Code Chapter 85B. However, tinnitus is considered an unscheduled injury that qualifies claimant for industrial disability benefits pursuant to Iowa Code section 85.34(2)(u). Ehteshamfar v. UTA Engineered Systems, 555 N.W.2d 450 (Iowa 1996). The combined effects of the left ear hearing loss and the tinnitus are used to determine claimant's loss of future earning capacity and industrial disability. Id.

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 this instance, no claim is asserted for healing period benefits. Therefore, claimant's entitlement to permanent partial disability benefits should commence on July 31, 2013.

In this case, I considered all of the relevant industrial disability factors and found that Mr. Lindle proved a five percent (5%) loss of future earning capacity as a result of his left ear hearing loss and tinnitus. I conclude this entitles claimant to five percent (5%) of 500 weeks of permanent partial disability benefits, or 25 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u).

Claimant also asserted a claim for past medical expenses. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Having found that the medical charges contained at exhibit 2, page 5, and exhibit 6, page 3, to be causally related to the July 30, 2013, work injury, to be reasonable and appropriate medical care and to constitute reasonable charges, I conclude that claimant has proven entitlement to reimbursement, payment or satisfaction of these past medical charges. Having found that the medical bill submitted at exhibit 7, page 1, to be not causally related to the July 30, 2013, work injury, I conclude claimant has failed to prove entitlement to reimbursement or satisfaction of this past medical expense.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant twenty-five (25) weeks of permanent partial disability benefits at the stipulated weekly rate of nine hundred fourteen and 18/100 dollars ($914.18), commencing on July 31, 2013.

Defendants shall pay all accrued weekly benefits in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall be entitled to credit for any weekly benefits paid to date, if any.

Defendants shall hold claimant harmless for all medical expenses from Iowa Audiology and Genesis Health Group contained in and itemized in exhibit 2, page 5, and exhibit 6, page 3, by reimbursing any third-party payor, directly paying those charges to claimant, or directly paying the charges to the medical provider.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2), and 876 IAC 11.7.

Signed and filed this 14th day of July, 2015.

William H. Grell

WILLIAM H. GRELL
DEPUTY WORKERS' COMPENSATION
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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.