BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



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| DARRELL RAY REDDING,<br><br>Claimant,<br><br>vs.<br><br>FERGUSON ENTERPRISES, INC.,<br><br>Employer,<br><br>and<br><br>NATIONAL UNION FIRE INSURANCE CARRIER COMPANY OF PITTSBURG,<br><br>Insurance Carrier,<br>Defendants. | File Nos. 5056336, 5056337, 5056338<br><br>A P P E A L<br><br>D E C I S I O N<br><br>Head Note Nos: 1803, 2507, 3000, 3002 |

Claimant Darrell Redding timely appeals from an arbitration decision filed on August 23, 2018. Defendants Ferguson Enterprises, Inc., employer and its insurer, National Union Fire Insurance Carrier Company of Pittsburg, respond to the appeal. The case was heard in two sessions on August 29, 2017, and on October 18, 2017 and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 14, 2017.

The arbitration decision addressed three alleged dates of injury: May 1, 2012 (File No. 5056336), August 5, 2014 (File No. 5056337), and November 3, 2015 (File No. 5056338). In the decision, the deputy commissioner determined claimant failed to prove he sustained any permanent disability to his lower back due to the May 1, 2012, date of injury or that his back condition was caused or materially aggravated by either of the subsequent dates of injury. The deputy commissioner also determined claimant failed to satisfy his burden to prove his left shoulder and neck conditions were caused or materially aggravated by any of the alleged dates of injury. As such, claimant took nothing from the arbitration decision.

On appeal, claimant asserts the deputy commissioner erred in her determination that claimant did not sustain any industrial disability as a result of the May 1, 2012, injury. Claimant also asserts the deputy commissioner erred in her determination that claimant failed to prove he sustained a work-related injury on August 5, 2014, to his neck, lower back, left shoulder, and hips. Finally, claimant asserts the deputy

commissioner erred in her determination that claimant failed to prove he sustained a cumulative injury to his neck, lower back, and left shoulder on or about November 3, 2015.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the proposed arbitration decision filed on August 23, 2018, is affirmed in its entirety with additional findings, analysis, and conclusions.

## FINDINGS OF FACT

The deputy commissioner's fact findings from pages 4 through 46 of the arbitration decision are affirmed in their entirety. I make the following additional findings:

**May 1, 2012, Date of Injury (File No. 5056336)**

The parties agree claimant sustained a work-related injury on May 1, 2012. (Hearing Report, page 1) The issue on appeal is whether the deputy commissioner erred in her determination that claimant sustained no permanent disability as a result of the May 1, 2012, injury. Notably, claimant does not argue on appeal that he sustained any permanent disability to his left shoulder or neck as a result of the May 1, 2012, injury; his appeal is limited to his lower back and/or left hip conditions. (See Claimant's Appeal Brief, p. 13)

With respect to his low back, claimant relies on the opinion of his independent medical examination physician, Farid Manshadi, M.D., who opined claimant sustained a five percent whole person impairment to his low back. (Claimant's Exhibit 1, p. 5) There are several problems with Dr. Manshadi's opinion, however.

First, Dr. Manshadi's opinions are vague and unspecific. For example, he never explains whether the five percent whole person impairment is attributable to the May 1, 2012, date of injury or the alleged August 5, 2014, date of injury. (See Cl. Ex. 1, pp. 4-5) His causation opinion is equally ambiguous. He states only that claimant's pre-existing symptoms got significantly worse after his work injuries on May 1, 2014, and August 5, 2014. (Cl. Ex. 1, p. 4)

Further, even assuming Dr. Manshadi attributes the five percent whole person impairment to claimant's back to the May 1, 2014, date of injury, the medical records do not support that opinion.

On May 6, 2013, after roughly a year of conservative treatment that included injections, physical therapy, and work restrictions, claimant received a final injection in his lower back from Ashar Afzal, M.D. (Jt. Ex. 6, p. 241) Dr. Afzal noted claimant had received "appropriate treatment" for his lower back complaints to date, and claimant was released from Dr. Afzal's care. (Jt. Ex. 6, p. 242) Claimant then returned to his occupational medicine clinic on May 21, 2013, where he was given modified restrictions for an additional two weeks. (Jt. Ex. 7, p. 245) Then, on June 4, 2013, claimant was released from the occupational medicine clinic with no restrictions. (Jt. Ex. 5, p. 210) Claimant's provider, James Haag, PA-C, also opined claimant had no permanent impairment. (Jt. Ex. 5, p. 211)

After claimant's full-duty release, he was reassigned to a new position: DC UPS Associate. (Hearing Transcript, p. 52) In that job, claimant was required to lift up to 20 pounds constantly, 50 pounds frequently, and 100 pounds occasionally. (Tr. p. 26; Cl. Ex. 5, p. 19) He was also expected to be able to continually bend, squat, twist, and reach and repetitively lift, carry, push, and pull. (Tr., p. 27; Cl. Ex. 5, p. 19) Claimant maintained the production level required to pass out of the probationary period for this position. (Tr. p. 53)

While claimant saw Jonathon Hennings, ARNP, a handful of times in the months after he started his new position, these visits were for general management of his chronic pain and left shoulder but never specifically for lower back complaints. (See Jt. Ex. 3, pp. 169-177) It should also be noted that the records from claimant's appointment with Mr. Hennings on July 25, 2013, which was claimant's first appointment after starting his new position, indicate claimant "presents with c/o [c]hronic pain management at patient's baseline." (Jt. Ex. 3, p. 168) (emphasis added). As set forth in the deputy commissioner's findings of fact, claimant's pre-existing back condition is significant and well-documented. Thus, the greater weight of the medical evidence indicates claimant was back to his baseline with respect to his lower back complaints by the summer of 2013, and that his continued lower back complaints, if any, were not significantly interfering with his ability to perform the duties of a DC UPC Associate. For these reasons, I do not find Dr. Manshadi's opinion that claimant sustained a five percent whole person impairment to his lower back due to the May 1, 2012, injury to be credible.

With these additional findings, I affirm the deputy commissioner and find claimant did not provide sufficient evidence of a permanent disability to his lower back as a result of the May 1, 2012, date of injury.

Regarding claimant's left hip, no doctor assigned any permanent impairment specific to claimant's hips. As such, there is insufficient evidence for me to find claimant sustained any permanent disability to his left hip.

With these additional findings, I therefore affirm the deputy commissioner and find claimant provided insufficient evidence of any permanent disability due to the May 1, 2012, date of injury.

**August 5, 2014, Date of Injury (File No. 5056337)**

Unlike the May 1, 2012, date of injury, defendants dispute whether claimant sustained an injury that arose out of and in the course of his employment on August 5, 2014. More specifically, while defendants do not dispute that claimant tripped backwards over a box while at work on August 5, 2014, they dispute whether claimant was injured as a result of this incident. Thus, the issue on appeal is whether claimant sustained injuries to his neck, lower back, left shoulder, and/or hips as a result of the August 5, 2014, incident. Claimant also argues he is entitled to healing period benefits from August 24, 2014, through September 3, 2014.

I will first address claimant's lower back and/or hips. Claimant declined medical treatment after he tripped and fell on August 5, 2014, and no incident report was completed. (Tr., p. 122) An incident report was eventually completed on August 19, 2014, after claimant's supervisor gave claimant a "productivity coaching form" and claimant told his supervisor his productivity was suffering because of his fall. (Tr., p. 123) On the August 19, 2014, incident report, claimant indicated his back and hip had been affected by his fall, but he again declined medical treatment. (Ex. 12, pp. 29-30; Tr., p. 124)

While claimant subsequently received treatment for his neck, which will be addressed below, he sought no specific treatment for his lower back or hips until April of 2016. (Jt. Ex. 2, p. 75) This appointment in April of 2016 was nearly two years after claimant allegedly injured his low back and hips and roughly five months after his last day of work with defendant-employer. Further, the records from claimant's appointment on April 20, 2016, do not reference claimant's trip and fall. (See Jt. Ex. 2, pp. 75-85) Based on the absence of medical treatment for claimant's low back or hips after the August 5, 2014, incident, I affirm the deputy commissioner and find there is insufficient

evidence to support claimant's assertion that his lower back or hip complaints were caused, or aggravated, by the August 5, 2014, incident. Likewise, there is insufficient evidence to attribute Dr. Manshadi's five percent whole body impairment for claimant's back to the August 5, 2014, incident.

I also find insufficient evidence that the August 5, 2014, incident caused or aggravated claimant's left shoulder condition. As set forth in the deputy commissioner's findings of fact, claimant's pre-existing left shoulder condition is significant and well-documented. In fact, on June 27, 2014, roughly a month before the August 5, 2014, incident, claimant requested a left shoulder injection from Mr. Hennings. (Jt. Ex. 3, p. 176)

However, when claimant completed the incident report on August 19, 2014, he did not indicate his left shoulder had been injured. (Ex. 12, p. 29) Further, while the notes from claimant's visit to the emergency room on August 24, 2014, discuss right shoulder pain, there is no mention of claimant's left shoulder. (Jt. Ex. 8, pp. 269-270, 273-275) Claimant similarly did not mention any left shoulder complaints at his appointment with occupational medicine on September 4, 2014. (Jt. Ex. 7, p. 246)

While claimant reported left shoulder pain in October and December of 2014, he did not attribute the pain to the August 5, 2014, incident. (Jt. Ex. 3, pp. 184-186) Instead, he was given a medication refill for his "chronic rotator cuff syndrome." (Jt. Ex. 3, p. 186) Thus, the greater weight of the medical evidence indicates claimant did not injure his left shoulder on August 5, 2014, and his left shoulder complaints in the months after the August 5, 2014, incident were due to his pre-existing condition.

For those reasons, I affirm the deputy commissioner and I find there is insufficient evidence to support claimant's assertion that his left shoulder condition was caused, or aggravated, by the August 5, 2014, incident. Likewise, there is insufficient evidence to attribute Dr. Manshadi's 12 percent upper extremity impairment for claimant's left shoulder to the August 5, 2014, incident.

Lastly, I find insufficient evidence that the August 5, 2014, incident caused or aggravated claimant's neck condition. In the accident report filled out on August 19, 2014, claimant did not report his neck had been injured. (Ex. 12, p. 29) He sought no treatment for any neck complaints until he presented to the emergency room on August 24, 2014. (Jt. Ex. 8)

The triage chart from claimant's emergency room visit indicates claimant's neck pain started days before when claimant woke up "feeling like he had slept on his neck

wrong." (Jt. Ex. 8, p. 256) Similarly, the "Clinician History of Present Illness" section states claimant has "pain to the left side of his neck after sleeping on it wrong" with an onset date of "2 day(s) ago." (Jt. Ex. 8, p. 257) The notes from the attending physician provide that claimant fell at work on August 5, 2014, resulting in "neck stiffness and shoulder discomfort for a couple of weeks, which seem[ed] to subside spontaneously" before he woke up with severe stiffness in his neck. (Jt. Ex. 8, p. 270) (emphasis added)

Claimant was then evaluated by David Kirkle, D.O., at an occupational medicine clinic on September 4, 2014. (Jt. Ex. 7, p. 247) Based on the history given to the emergency room providers and claimant's pre-existing neck condition, Dr. Kirkle indicated he was unable to state that the August 5, 2014, incident was the cause of claimant's neck complaints. (Jt. Ex. 7, p. 255)

While Dr. Manshadi assigned a six percent whole person impairment for claimant's neck condition because claimant's symptoms got "significantly worse" after August 5, 2014, he failed to address the fact that claimant reported a spontaneous reduction of his symptoms after his fall and that the neck symptoms for which he went to the emergency room started roughly three weeks after the August 5, 2014, incident. Thus, I do not find Dr. Manshadi's opinion convincing.

Instead, I find Dr. Kirkle's opinion more persuasive. I therefore affirm the deputy commissioner and I find insufficient evidence that the August 5, 2014, incident caused or aggravated claimant's neck condition.

**November 3, 2015, Date of Injury (File No. 5056338)**

On appeal, claimant asserts the deputy commissioner erred in her determination that claimant did not sustain an injury to his neck, lower back, and/or left shoulder on or about November 3, 2015. Claimant also argues he is entitled to healing period benefits from November 4, 2015, through June 4, 2016, should the deputy commissioner be reversed on appeal.

It should be noted claimant is not alleging on appeal that he sustained a traumatic injury on November 3, 2015. Instead, he only asserts a cumulative injury. (See Cl. App. Brief, p. 20)

In her decision, the deputy commissioner states several times that claimant did not work on November 3, 2015, meaning he could not have sustained an injury on November 3, 2015. While the deputy commissioner is correct that claimant did not physically work on November 3, 2015, he was terminated as of that date. (Tr., pp. 174-

175) Thus, while the deputy commissioner is correct that November 3, 2015, is not a viable date of injury for a traumatic injury claim, it is arguably a viable date of injury for a cumulative injury claim.

Claimant argues defendant-employer's decision to allow claimant to return to his full-duty position as a DC UPS Associate in October of 2014 through his termination exacerbated his neck, left shoulder, and back conditions. Claimant, however, offers no expert medical opinion to support that assertion. Dr. Manshadi's report refers only to the May 1, 2012, and August 5, 2014, incidents; there is no discussion about a possible cumulative injury. (See Ex. 1, pp. 4-5) Thus, regardless of whether November 3, 2015, is the correct date of injury, I find insufficient evidence to support claimant's claim of a cumulative injury to any body part.

## CONCLUSIONS OF LAW

The deputy commissioner's rationale and conclusions of law from pages 46 through 59 of the arbitration decision are affirmed in their entirety with the following additional analysis and conclusions:

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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, 908, 76 N.W.2d 756, 760-61 (1956). It 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, 135, 115 N.W.2d 812, 815 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 375, 112 N.W.2d 299, 302 (1961).

**May 1, 2012, Date of Injury (File No. 5056336)**

Based on the fact findings of the deputy commissioner and my additional findings set forth above, I determined there was insufficient evidence to support claimant's assertion that he sustained any permanent disability to his lower back or left hip as a

result his May 1, 2012, injury. Dr. Manshadi's report was vague and unsupported by the greater weight of the medical evidence. I therefore affirm the deputy commissioner and conclude claimant did not satisfy his burden to prove he sustained any permanent disability from the May 1, 2012, work injury.

**August 5, 2014, Date of Injury (File No. 5056337)**

Based on the fact findings of the deputy commissioner and my additional findings set forth above, I determined there was insufficient evidence to find claimant's lower back or hip complaints were caused, or aggravated, by the August 5, 2014, incident. I therefore affirm the deputy commissioner and conclude claimant did not satisfy his burden to prove his lower back symptoms or his hip complaints were caused or materially aggravated by the August 5, 2014, incident.

I also determined there was insufficient evidence showing claimant injured his shoulder in the August 5, 2014, incident. Instead, the greater weight of the medical evidence indicates claimant's left shoulder complaints in the months following the August 5, 2014, incident were due to his pre-existing condition. I therefore affirm the deputy commissioner and conclude claimant did not satisfy his burden to prove his left shoulder condition was caused, or materially aggravated, by the August 5, 2014 incident.

Finally, I determined there was insufficient evidence supporting claimant's assertion that he injured his neck in the August 5, 2014, incident. I therefore affirm the deputy commissioner and conclude claimant did not satisfy his burden to prove his neck condition was caused or materially aggravated by the August 5, 2014, incident.

Having concluded the August 5, 2014, incident did not cause, or materially aggravate, any of claimant's alleged conditions, I therefore conclude claimant failed to satisfy his burden that he sustained an injury that arose out of or in the course of his employment on August 5, 2014. This conclusion renders claimant's claim for healing period benefits moot.

**November 3, 2015, Date of Injury (File No. 5056338)**

Based on the fact findings of the deputy commissioner and my additional findings set forth above, I found insufficient evidence to support claimant's claim of a cumulative injury to any body parts due to his work activities from October of 2014, through his termination. I therefore affirm the deputy commissioner and conclude claimant did not satisfy his burden to prove he sustained an injury that arose out of or in the course of

his employment on or about November 3, 2015. This conclusion renders claimant's claim for healing period benefits moot.

ORDER

THEREFORE, IT IS ORDERED that the arbitration decision filed on August 23, 2018, is affirmed in its entirety with my additional findings, conclusions, and analysis.

In File No. 5056336, claimant shall take nothing from these proceedings.

In File No. 5056337, claimant shall take nothing from these proceedings.

In File No. 5056338, claimant shall take nothing from these proceedings.

Claimant shall bear the cost of the appeal.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own 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), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 15th day of March, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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