BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH SCHMIDT, Claimant, vs. HOFFMANN, INC., Employer, and UNITED HEARTLAND, INC., Insurance Carrier, Defendants.	:	File No. 5025702 A R B I T R A T I O N D E C I S I O N Head Note No.: 1400

STATEMENT OF THE CASE

This is a contested case proceeding in arbitration under Iowa Code chapters 85 and 17A. Claimant, Joseph Schmidt, claims to have sustained a work injury (carpal tunnel syndrome) through cumulative trauma in the employ of defendant Hoffmann, Inc., on June 12, 2008, and now seeks benefits under the Iowa Workers' Compensation Act from that employer and its insurance carrier, defendant United Heartland, Inc.

The claim was heard in Des Moines, Iowa, on May 4, 2000, but the record was held upon until June 17, 2009, for receipt of additional evidence. The record consists of Schmidt's exhibits 1-4, defendants' exhibits A-L and supplemental exhibits M-O (which are hereby received), and the testimony of Schmidt, Brandon Ziegenhorn, and Scott Lee.

ISSUES

STIPULATIONS:

1. An employment relationship existed between Schmidt and Hoffmann, Inc., on June 12, 2008.

2. Issues pertaining to permanent disability are not presently ripe for determination.

3. The correct rate of weekly compensation is $492.72.

4. Disputed medical treatment was reasonable and necessary and, if called, providers would testify that the costs were reasonable; defendants offer no contrary proof.

ISSUES FOR RESOLUTION:

1. Whether Schmidt sustained injury arising out of and in the course of employment.

2. Whether the injury caused temporary disability.

3. Extent of temporary disability.

4. Whether Schmidt is entitled to an award of alternate medical care.

5. Whether Schmidt is entitled to an independent medical evaluation under Iowa Code section 85.39.

6. Entitlement to medical benefits under Iowa Code section 85.27.

FINDINGS OF FACT

Joseph Schmidt, age 33, is a right-handed man who underwent right carpal tunnel surgery in 2004 at the hands of Thomas L. VonGillern, M.D. Although Schmidt denies having experienced left-sided symptoms at the time, Dr. VonGillern's notes of November 18, 2004 show an impression of bilateral carpal tunnel syndromes and bilateral flexor tenosynovitis and EMG and nerve conduction studies had been performed on both sides (but with no changes on the left). (Exhibit A, page 1, Exhibit 2, page 5) Neurologist Bakkiam Subbiah, M.D., in consultation with Dr. VonGillern, noted this history:

> History: This patient works for Golden Harvest Co. This is a company that clones seeds and provides hybrid seeds for farmers. The patient tells me he works in side elevators, climbing and also shoveling and moving objects on a consistent basis throughout the day. Over the last year, he has had symptoms of persistent aching and tingling in the hands. It has become much worse over the past 2 weeks. He awakens at night with fingers tingling. He also has significant pain, aching and swelling in the hands. The forearm bothers him. The elbow bothers him.

(Ex. 2, p. 7)

Dr. VonGillern accomplished a surgical right median nerve lysis on February 3, 2005. (Ex. 2, p. 13) On February 16, 2005, Schmidt returned with "excellent" relief of pain and was released to return to one-handed duty effective February 21, full duty without restriction effective March 7, 2005. (Ex. 2, p. 12)

On March 2, 2007, Schmidt was injured in a rollover motor vehicle accident. He did not experience severe pain immediately, but sought emergency room care the next day with significant pain in the rib cage, hip pain, headache and left wrist pain associated with extension. (Ex. C, p. 5)

In late 2007, Schmidt took work as a construction laborer for Hoffmann, Inc. His job involved tying iron reinforcement rods ("rebar"), holding bunches of ties in the left hand, and using a vibrating machine to settle newly poured concrete. Schmidt testified that bilateral discomfort began approximately three to six months later and were similar to those he experienced in 2004. On June 12, 2008, Schmidt returned to Dr. VonGillern with complaints of bilateral numbness in the hands, and further nerve conduction and EMG studies were recommended. These demonstrated severe left carpal tunnel syndrome on the left and further surgery was recommended. (Ex. 3, p. 15)

Defendants, however, are skeptical of Schmidt's credibility, noting among other inconsistencies the following questionable history given at Mercy Hospital on June 16, 2008:

> The patient cannot recall any specific incident that is related with the development of his symptoms and he specifically denies any bleeding from his left hand, falling, motor vehicle accident, chemical exposures, or use of pesticides.

(Ex. D, p. 6)

Two physicians have offered opinions as to whether Schmidt's work at Hoffmann, Inc., caused or aggravated his left carpal tunnel syndrome, in both cases after having been advised by defense counsel of the motor vehicle rollover in 2007. On June 1, 2009, physiatrist Theodore A. Koerner, M.D., reported:

> 1. I performed a thorough physical examination of Mr. Schmidt's left hand and arm in my evaluation of June 16, 2008.
>
> 2. Mr. Schmidt did not report to me his history of a motor vehicle accident on March 2, 2007.
>
> 3. The effect of direct trauma to the left wrist as the result of a motor vehicle accident is potentially the cause of the patient's carpal tunnel symptoms. The effect of blunt trauma to the left wrist could certainly have caused some permanent deformity of the bones that form

> the carpal tunnel and could have resulted in compression to the median nerve as it passes through the carpal tunnel.
>
> 4. I do not feel that the work done at Hoffman caused the patient's carpal tunnel syndrome, and thus with respect to causation, I am in agreement with Dr. Von Gillern.
>
> 5. I do not feel that the patient has suffered any permanent aggravation of his underlying carpal tunnel syndrome problem as a result of working at Hoffman. [sic]
>
> 6. I do not believe that the recommended left carpal tunnel release surgery for the patient was either caused by or brought about through a permanent aggravation resulting from Mr. Schmidt's work activities at Hoffman [sic] Incorporated.

(Ex. N, p. 32)

On June 2, Dr. VonGillern signed his agreement with a statement drafted by defense counsel, and containing the following excerpts:

> 1. You rendered a diagnosis of bilateral carpal tunnel for Mr. Schmidt in 2004.
>
> 2. You would not have ordered an EMG for Mr. Schmidt's left hand/upper extremity in 2004 unless he reported symptoms in that hand.
>
> 3. A direct trauma to the left wrist as a result of a motor vehicle accident is a potential cause of carpal tunnel.
>
> . . . .
>
> 7. You confirm your prior opinion that the work performed at Hoffmann, Inc., did not cause Mr. Schmidt's left carpal tunnel syndrome.
>
> 8. Dr. Koerner, the treating occupational medicine physician, has indicated verbally (I am awaiting his formal report at this time) to me that the work duties performed at Hoffmann, Inc. may have resulted in a transient increase in Mr. Schmidt's left carpal tunnel symptoms but that the work performed for Hoffmann, Inc. did not permanently alter, accelerated or aggravate Mr. Schmidt's left carpal tunnel condition. I understand that you can concur with that medical opinion.

(Ex. O, pp. 34, 35)

CONCLUSIONS OF LAW

Claimant has the burden of proving by a preponderance of the evidence that the alleged injury occurred and that it arose out of and in the course of employment, McDowell v. Town of Clarksville, 241 N.W.2d 904 (Iowa 1976); Musselman v. Central Telephone Co., 261 Iowa 352, 154 N.W.2d 128 (1967). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place and circumstances of injury, Sheerin v. Holin Co., 380 N.W.2d 415 (Iowa 1986); McClure v. Union, et al., Counties, 188 N.W.2d 283 (Iowa 1971). The requirement is satisfied by proof of a causal relationship between the employment and the injury, Id.

Claimant has the burden of proving by a preponderance of the evidence 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. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

Where claimant has a preexisting condition or disability that is aggravated, accelerated, worsened or "lighted up" by employment, the condition is compensable. See, Nicks v. Davenport Produce Co., 254 Iowa, 130, 134-135, 115 N.W.2d 812 (1962), and citations. However, a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under the Workers' Compensation Act merely because it reaches a point of disablement while work for an employer is pursued. It is only when there is a direct causal connection between the exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause. Musselman v. Central Telephone Company, 261 Iowa 352, 154 N.W.2d 128 (1967), citing Littell v. Lagomarcino Grupe Co., 235 Iowa 523, 17 N.W.2d 120 (1945). Whether an injury or disease has a direct causal connection with the employment, or arises independently thereof, is essentially within the domain of expert testimony, and the weight to be given such an opinion is for the finder of facts. When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed together with the other facts and circumstances, the ultimate conclusion being for the finder of fact. Musselman, supra; Bodish v. Fischer, Inc., 257 Iowa 516, 133 N.W.2d 867 (1965).

The expert opinion in this claim clearly favors a defense perspective. Both Dr. Koerner, the treating occupational physician, and Dr. VonGillern, who performed Schmidt's carpal tunnel surgery in 2004, agree that Schmidt's work at Hoffmann, Inc., did not cause or permanent aggravate his left carpal tunnel condition. As Schmidt fails to meet his burden of proof, defendants accordingly prevail.

ORDER

THEREFORE, IT IS ORDERED:

Schmidt takes nothing.

Costs are taxed to Schmidt.

Signed and filed this ____27th_____ day of July, 2009.

_____
DAVID RASEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.