

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA MOORE,

Claimant,

vs.

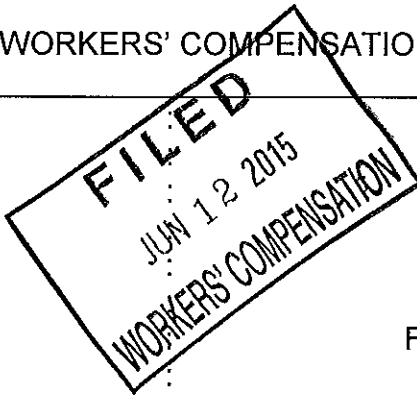
TITAN TIRE CORPORATION,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5044892

ARBITRATION

DECISION

Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Teresa Moore, has filed a petition in arbitration and seeks workers' compensation benefits from Titan Tire Corporation, employer, and Zurich American Insurance Company, defendants.

Deputy Workers' Compensation Commissioner, Stan McElderry, heard this matter in Des Moines, Iowa.

ISSUES

The parties have submitted the following issues for determination:

1. Whether the claimant suffered an injury arising out of and in the course of employment on October 26, 2011.
2. Whether the alleged injury is the cause of any temporary disability;
3. Whether the alleged injury is the cause of any permanency, and if so, the extent;
4. Medical benefits;
5. Independent medical evaluation (IME) pursuant to Iowa Code section 85.39; and

6. Alternate care.

FINDINGS OF FACT

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

The claimant was 57 years old at the time of hearing. She began at Titan Tire Corporation (hereinafter Titan or employer) on July 6, 1998 and worked there until October 26, 2011. She was a lab technician with the primary duty of testing rubber beginning in about 2004. Testing consisted of cutting out a circle of rubber using her left hand while using a lever with the right hand to stamp the rubber into a rheometer. She then would remove the rubber sample with a screwdriver-like tool and then start the next test. Claimant testified that she was unaware of exactly how many samples she would do per day, but believed it was well over 200. She developed bilateral carpal tunnel in 2006. She later developed left lateral epicondylitis and cubital tunnel syndrome for which surgery was performed on August 21, 2008. (Exhibit B, page 7) She then suffered a left wrist injury in 2010.

The essence of this claim is that the claimant also hurt her right wrist during the course of her employment with the last day of exposure or manifestation being the last day of work, October 26, 2011. First treatment for the right wrist was on January 4, 2012 at Broadlawns. (Ex. 3, p. 4) It was believed to be tendinitis. (Ex. 5, p. 6) An MRI was performed on the right wrist on March 8, 2012. (Ex. 3, p. 8) It showed marked thickening most consistent with underlying erosive arthritis except the classical appearance for other erosive arthritides was not present. (Ex. 3, p. 8) Follow-up testing of uric acid levels and rheumatoid factor was recommended. (Ex. 3, p. 8) The claimant saw Frank Butera, D.O., on May 7, 2012. (Ex. 3, p. 13) Dr. Butera diagnosed possible gouty tophus and/or rheumatoid arthritis. *Id.* He referred the claimant to the University of Iowa Hospitals and Clinics for further care.

The claimant was seen by Joseph A. Buckwalter, M.D., at University Hospitals on July 3, 2012. (Ex. 4, p. 31) Dr. Buckwalter assessed rheumatoid arthritis as the most likely problem. (Ex. 4, p. 32) At an October 15, 2012 rheumatology workup rheumatoid arthritis was the diagnosis. (Ex. 4, pp. 39-40)

David T. Berg, D.O., performed a records review of the claimant's medical records and issued a report on May 31, 2014. (Ex. B) Dr. Berg spent much of his time on the bilateral carpal tunnel, but did opine that the claimant's right wrist complaints were the result of rheumatoid arthritis and not work related. (Ex. B, p. 11)

Sunil Bansal, M.D., performed an IME on the claimant on August 8, 2014. (Ex. 6) He issued his report on November 11, 2014. (Ex. 6, p. 91) Dr. Bansal opined that the claimant's right wrist problems were the result of the work at Titan. He opined that the work was a significant contributory factor in the aggravation/worsening of claimant's right wrist arthritis. (Ex. 6, p. 89) He further opined a six percent impairment of the right

upper extremity and restrictions of no lifting over ten pounds, and only five pounds frequently with the right hand. (Ex.6, p. 90) His rationale for opining the condition was work-related was primarily due to the fact that the right wrist was worse than the left. This is circular logic. The opinions of Dr. Berg and the other doctors that the condition is not a result of work are accepted. Claimant seeks payment of Dr. Bansal's IME report in the amount of \$2,975.00. Dr. Bansal's report also addresses the left hand, left wrist, and left elbow, which are not a part of this claim.

On the October 26, 2011 date of injury plead the claimant was married, entitled to four exemptions, and had gross earnings of \$721.63 per week. The weekly rate is therefore \$491.79. The claimant seeks \$14,814.82 in medical bills relating to treatment of her right wrist. (Ex. 17)

REASONING AND CONCLUSIONS OF LAW

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 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 Elec. 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.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact-based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

It was found that the claimant's right upper extremity injury/disease did not arise out and in the course of her employment with Titan but is a rheumatoid arthritis not related to work. All other issues other than the IME fee are therefore moot.

IME

Iowa Code section 85.39 provides, in part:

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination.

An evaluation was made by a physician retained by the employer, and the claimant was thus entitled to an independent medical evaluation. She chose that evaluation to be performed by Dr. Bansal. He charged \$2,975.00 for the IME, but half or more was regarding conditions not at issue here. The fact that the claimant does ultimately prevail does not affect her right to an IME. Fifteen hundred dollars of the IME fee of Dr. Bansal is to be reimbursed by the defendants.

ORDER

Therefore it is ordered:

The defendants shall pay/reimburse one thousand five hundred and 00/100 dollars (\$1,500.00) of the IME fee of Dr. Bansal as detailed above.

That the claimant takes nothing further.

Defendants shall receive credit for all benefits previously paid.

Costs are taxed to the defendants pursuant to 876 IAC 4.33.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Signed and filed this 12th day of June, 2015.



STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Matthew Milligan
Attorney at Law
6611 University Ave., Ste. 200
Des Moines, IA 50324-1655
mmilligan@smalaw.net

Jason P. Wiltfang
Attorney at Law
P.O. Box 36
Cedar Rapids, IA 52406-0036
jwiltfang@scheldruplaw.com

SRM/sam

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.