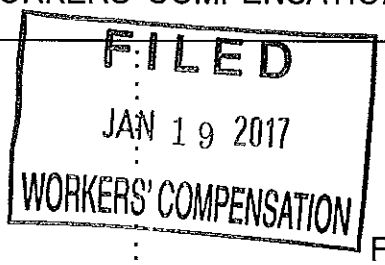
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



TERRY GOULD,

Claimant,

vs.

SPECIALIZED EQUIPMENT RENTALS,

Employer,

and

THE HARTFORD INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5051400

ARBITRATION

DECISION

Head Note Nos.: 1108.50, 1402.20, 1402.40, 1803, 1403.10

STATEMENT OF THE CASE

Terry Gould, claimant, filed a petition in arbitration seeking workers' compensation benefits from Specialized Equipment Rentals, employer and The Hartford, insurance carrier, both as defendants. Hearing was held on September 23, 2016 in Des Moines, Iowa.

Claimant, Terry Gould, and Tim Wright both testified live at trial. The evidentiary record also includes claimant's exhibits 1-17 and defendant's exhibits A-F. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs which were submitted on October 21, 2016.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury on January 7, 2014, which arose out of and in the course of employment?
2. Whether the alleged injury was the cause of permanent disability? If so, the extent of disability to the left lower extremity.

3. Whether claimant is entitled to past medical benefits?
4. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Terry Gould, resides in Strawberry Point, Iowa. He alleges that he sustained a compensable injury to his left knee on January 7, 2014. He contends that he slipped on a forklift at work and the injury resulted in a tear of his meniscus which required surgical treatment. As a result of the alleged injury Terry contends he has sustained permanent disability. Defendants deny that Terry's injury arose out of and in the course of his employment. Defendants further dispute any compensable permanent disability. (Testimony)

Terry began working for Specialized Equipment Rentals (SER) in 1978. In 1978 he was hired as a forklift mechanic and operator; he also filled in where needed as a truck driver. He continued working there for 36 years until he was laid off on March 28, 2014. Terry was told he was laid-off due to budget cuts; he was the only employee laid off at that time. At the time he was laid-off he was earning $18.00 per hour, plus benefits. (Ex. 7, p. 69)

On January 7, 2014, Terry was stepping onto a forklift when he slipped downward off of the step. He felt pain in his left knee. This occurred around 4:45 p.m., about 15 minutes before his shift ended. His foreman was gone so Terry did not report the injury. He cleaned up and went home. That evening his knee grew tighter and once he made it home he could not bend his knee because it was so swollen. Terry tried icing his knee but the swelling became worse overnight. He was not able to sleep. The next morning Terry went to work so that he could report the injury. A foreman, Dale Cartman instructed Terry to go to the doctor. (Testimony)

Terry was not told to go to any particular doctor so he went to his primary care physician, David Tinker, D.O. He was diagnosed with left knee pain and given work restrictions. (Ex. 6a, pp. 31-35) This appointment was paid for by the defendants. Terry gave the light duty card to Dale. He was told to work on the bench but according to Terry that was not really light duty work. (Testimony)

The notes from Dr. Tinker's office indicate that on January 16, 2014 the defendants authorized a new knee brace for Terry. (Ex. 6a, p. 36)

Terry returned to see Dr. Tinker on January 23, 2014. The intake note states that his knee "may be a little better." However, this is not consistent with Dr. Tinker's objective observations. Dr. Tinker noted that Terry feels "no pain whatsoever, just some stiffness...slow to getting better." (Ex. 6a, p. 37) Terry testified at hearing that the

correct statement was noted in the intake note where he stated that his knee "may be a little better." Dr. Tinker returned Terry to full-duty work. Terry testified that he disagreed with Dr. Tinker's statement that he was pain free at that time. Rather, Terry said he was not pain free as demonstrated by the fact that he was wearing his brace and taking pain medications. (Testimony)

Terry returned to full duty work at SER but the work increased the pain in his knee. He returned to see Dr. Tinker on February 6, 2014. Once again there are inconsistencies in Dr. Tinker's notes. The intake portion of the note indicates that his knee was "improving greatly." He reported he could take the brace off and bend his knee pretty well now. However the objective observations state that Terry said his knee felt about the same as prior to the injury and that he did not really have any significant pain. He was using the brace regularly, but he took it off most of the time when he was at home not doing anything. Terry was released from care and told to return as needed. (Ex. B, p. 4)

The following day, February 7, 2014, Terry sought treatment with Roland Evans, D.C., for pain, including left knee pain. Terry reported that the immobilizer for his left knee had been throwing off his stance and gait causing lower back symptoms. Because of this he recently changed to a soft knee brace. (Ex. 6e, pp. 61-62)

On March 28, 2014, Terry was the only employee laid off from SER. (Testimony)

On April 15, 2014, Terry returned to Dr. Evans. He reported that while performing his chores his boot caught in the mud and he fell forward but caught himself. He had pain in his right knee. There is no evidence that he hurt his left knee in this incident. (Ex. B, pp. 9-10)

Terry's left knee continued to bother him. On April 25, 2014, he saw Sandeep Munjal, M.D., for left knee pain. Terry reported that his knee would also "catch" during movement. Dr. Munjal requested an MRI to rule out a meniscal tear. (Ex. 6c, pp. 44-46) The doctor reviewed the MRI results on May 23, 2014. The MRI revealed a medial meniscus tear which the doctor felt was directly related to his January 2014 work injury. (Ex. 6c, p. 47) The doctor recommended arthroscopic surgery for the left knee. However, SER verbally denied payment of the MRI exam. Thus, Terry testified he was forced to run the MRI and surgery through is private health insurance. (Ex. 6c, p. 47; testimony)

Dr. Munjal performed the knee surgery on June 10, 2014. (Ex. 6g, pp. 64-65) Terry continued to follow the recommendation of Dr. Munjal including physical therapy and home strengthening exercises. (Testimony)

On June 17, 2015, claimant's counsel sent a letter to defendants regarding Terry's ongoing knee problems and requested authorization for him to see Dr. Munjal. (Ex. 13, p. 103) Defendants did not authorize Terry's visit with Dr. Munjal; he had to continue to seek treatment on his own. Terry's pain was severe enough that it was

affecting his ability to sleep. He also had joint swelling around his left knee. Additionally, he was taking over-the-counter medications for pain on a regular basis. Dr. Munjal provided Terry with an injection. (Ex. 6c, p. 56) Terry testified that the doctor told him that once his pain became too severe then he would require a left knee replacement.

On February 26, 2015, Dr. Munjal indicated that Terry did not have any permanent restrictions per his last clinical note on June 18, 2014. (Ex. 5, p. 20a)

On April 28, 2015, Terry saw Mark C. Taylor, M.D., for an independent medical evaluation; this was done at the claimant's attorney's request. Terry reported constant pain in his left knee for which he took medication almost daily. He wore his brace as needed. In addition to examining Terry, Dr. Taylor also reviewed the medical records provided to him. Dr. Taylor opined that Terry's left knee injury and meniscal tear was directly and causally related to the January 2014 work incident. The doctor noted that Terry still had not returned to baseline status, which was basically an asymptomatic left knee, and his knee still popped. Dr. Taylor stated that all treatment related to the left knee injury and his current symptoms were also related to the work injury. He placed Terry at maximum medical improvement (MMI) as of July 10, 2014. Dr. Taylor assigned 10 percent functional impairment of the left lower extremity as a result of the work injury. Dr. Taylor felt permanent restrictions due to the work injury were necessary. He restricted Terry to 50-60 pound lifting limit. He noted Terry might be able to handle more than that at or above knee level but it was difficult to predict. Dr. Taylor recommended that whenever possible, Terry lift items at or above knee level because it was difficult for him to squat. Dr. Taylor also recommended that Terry alternate sitting, standing, and walking as needed. He was to rarely squat and only partway down. He noted Terry could bend and kneel occasionally and would likely benefit from some type of kneepad to kneel on. Terry is restricted to rarely crawling. He is only to climb stairs occasionally and ladders rarely to occasionally. If at all possible he should only use stepladders. (Ex. 2, pp. 3-15)

On July 20, 2016, Dr. Tinker signed a statement. By signing the statement he indicated that he had been Terry's primary care physician for several years, including before the January 7, 2014 injury. He felt the mechanism of injury reported by Terry was consistent with his symptoms. Dr. Tinker opined that Terry suffered a material aggravation of the underlying condition in his left knee as a result of the January 7, 2014 injury. He noted that Terry showed no signs of malingering. (Ex. 4, p. 19)

On July 22, 2016, Dr. Manjal signed a statement. He indicated that he had treated Terry for his right and left knee conditions. It was Dr. Manjal's belief that Terry experienced a material aggravation of his underlying degenerative condition in his left knee on January 7, 2014. Because Terry remained symptomatic even after treatment Dr. Manjal opined that the aggravation was permanent. (Ex. 5, p. 20)

On August 13, 2015, Barron Bremner, D.O., authored a letter to defense counsel. He had reviewed all of the record that defense counsel had provided to him. Dr. Bremner opined that Terry's pain symptoms are much more likely to be from his underlying osteoarthritis and to have nothing or little to do with the meniscus tear. Dr. Bremner did not relate the temporary osteoarthritis exacerbation with the need for the June 10, 2014 surgery. He stated that Terry had reached MMI for the left knee temporary aggravation sometime in February or March. He did not assign any permanent impairment as a result of the temporary aggravation of his preexisting severe bone-on-bone osteoarthritis. Terry testified that he never saw or even talked to Dr. Bremner. (Ex. D)

On September 10, 2015, Dr. Taylor authored a missive to claimant's counsel. He stated that he had reviewed the report from Dr. Bremner. Dr. Taylor stated that he did not disagree with Dr. Bremner in that Terry had pre-existing osteoarthritis. However, Terry did not have knee pain prior to the injury. He had a brief incident in late 2010 but that resolved quickly. Dr. Taylor stood by his opinion causally connecting Terry's current problems and medical treatment to the work injury. (Ex. 2, pp. 15-16)

Terry credibly testified that although the medical treatment he received was beneficial he still has problems with his left knee. Terry continues to have constant knee pain. He wears his brace as needed and takes over-the-counter pain medications on a regular basis for his left knee pain. He also ices his knee as needed. He continues to perform his home exercises for his knee. He is also careful to limit his activities as much as possible in order to avoid aggravating his left knee. Unfortunately, his left knee pain still interferes with his ability to sleep at times. (Testimony)

Tim Wright also testified at the hearing. Tim has been the Risk Manager for the defendant employer since 2000. His duties include worker's compensation injuries. Tim testified that Terry's foreman's account of the injury was consistent with what Terry had reported. With regard to the medical treatment sought by Terry following the injury, Tim testified that the employer took care of the first few doctor visits because they were not a big deal. However, at one point another employee said something to the foreman that raised doubts about whether the injury actually occurred at work. Tim recalled that during one summer in 2012 or 2013 (he was uncertain as to which) he recalled Terry limping. Tim assumed the requested treatment was not related to work and the defendants denied the treatment. At hearing, when Tim was questioned about his verbal denial of additional treatment for Terry he admitted that he did not consult with an orthopedic doctor prior to denying the continued treatment. He simply assumed that something else must have happened that caused the need for the additional treatment because there was a time gap. He admitted he never talked to Terry about his request for additional treatment. (Testimony)

It is noted that Terry owns 500 acres of farmland. He has farmed the land himself, he has also rented some of the land out, and he has put some land into the conservation program. He also raises beef cattle and performed crop farming duties.

While Terry was employed at SER he would work a full day at SER and then after work he would attend to his farming duties. (Cl. Ex. 7, p. 69, Ex. 2, p. 3) His son and nephew also help him with a lot of the chores. (Testimony)

First, it must be determined if claimant did sustain an injury to his left lower extremity which arose out of and in the course of his employment with SER on January 7, 2014. I find that the preponderance of the evidence demonstrates that Terry did sustain a compensable injury as alleged. I do not find the opinions of Dr. Bremner to be persuasive in this matter. Unfortunately, Dr. Bremner did not ever examine or speak with Terry regarding his knee condition. It is not known exactly what records were supplied to Dr. Bremner and therefore, it is not known if Dr. Bremner had a complete and accurate history of Terry's medical condition. I find the opinions of Dr. Taylor to be more persuasive. Dr. Taylor had the opportunity to both examine and interview Terry. This was in addition to the detailed records review as set forth in his report. Additionally, Dr. Taylor's opinions are more consistent with the record as a whole. Terry testified that in the timeframe immediately before the work injury his left knee was not symptomatic; this is consistent with the treatment records in evidence. Dr. Taylor's opinions are also consistent with the causation opinion of Dr. Manjal. Therefore, I find that Terry's left knee condition is causally connected to the January 7, 2014 work injury. I further find that as a result of that injury Terry sustained permanent disability. Specifically, he sustained 10 percent left lower extremity impairment as a result of the injury. Because of the work injury he has permanent restrictions as assigned by Dr. Taylor and as set forth above. Thus, I conclude defendants shall pay claimant 22 weeks of permanent partial disability benefits.

The next issue to address is whether defendants are responsible for past medical expenses as set forth in claimant's exhibit 11. I have found that claimant's left knee injury arose out of and in the course of his employment. Defendants have offered no argument that the expenses contained in exhibit 11 are not related to the left knee condition. Likewise, defendants have offered no argument that the treatment was not reasonable or necessary. Claimant has testified that the treatment was beneficial. I find that the treatment Terry received was reasonable and necessary because of the work injury. Likewise, I find that the treatment received by the claimant was beneficial. Thus, I find that the defendants are responsible for the medical expenses set forth in claimant's exhibit 11.

Finally, we turn to the issue of costs. Claimant is seeking an assessment of costs. I find that claimant was generally successful in his claim and that an assessment of costs is appropriate in this case. Defendants make no argument that these costs are not appropriate. Thus, I conclude defendants shall be assessed the costs sought by claimant as set forth on the hearing report.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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.

Based on the above findings of fact, I conclude that Terry's left knee condition is causally connected to the January 7, 2014 work injury. I further conclude that as a result of that injury Terry sustained permanent disability. Specifically, he sustained 10 percent left lower extremity impairment as a result of the injury. Because of the work injury he has permanent restrictions as assigned by Dr. Taylor and as set forth above.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994). Under section 85.34(2)(o), the loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefore shall be weekly compensation during two hundred twenty weeks. Thus, I concluded defendants shall pay claimant twenty-two (22) weeks of permanent partial disability benefits.

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).

I concluded Terry's left knee injury arose out of and in the course of his employment. I further conclude that the treatment Terry received was beneficial and reasonable and necessary to treat the injury. Thus, I conclude that the defendants are responsible for the medical expenses set forth in claimant's exhibit 11.

Costs are to be assessed at the discretion of the deputy commissioner hearing the case. 876 IAC 4.33. Claimant is seeking an assessment of costs. Because claimant was generally successful in his claim an assessment of costs is appropriate in this case. Thus, I conclude defendants shall be assessed the costs sought by claimant as set forth on the hearing report.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of five hundred twelve and 22/100 dollars ($512.22).

Defendants shall pay claimant twenty-two (22) weeks of permanent partial disability benefits commencing on the stipulated commencement date of July 10, 2014.

All past due weekly benefits shall be paid in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall be responsible for medical expenses as set forth above.

Defendants shall reimburse claimant's costs as set forth above.

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 19th day of January, 2017.

ERIN Q. PALS
DEPUTY WORKERS'
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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.