

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES SHIPLEY,

Claimant,

vs.

CROELL, INC., d/b/a CROELL REDI-MIX, INC.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5068405

ARBITRATION DECISION

Head Notes: 1108.50, 1402.20, 2200,
2907

STATEMENT OF THE CASE

James Raymond Shipley, claimant, filed a petition in arbitration seeking workers' compensation benefits from Croell, Inc. d/b/a Croell Redi-Mix Inc., employer, and Old Republic Insurance Company, insurance carrier, as defendants. Hearing was held on June 7, 2021. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. At the onset of the hearing there were technical problems with CourtCall. All parties agreed to proceed to hearing via Zoom. Accordingly, this case proceeded to a live video hearing via Zoom with all parties and the court reporter appearing remotely.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

James Shipley, Brad Babcock, Chuck Stockdale, and Tim Herold all testified live at trial. The evidentiary record also includes Joint Exhibits JE1-JE10, Claimant's Exhibits 1-7, and Defendants' Exhibits A-J. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on July 23, 2021, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury, which arose out of and in the course of employment on August 1, 2018.
2. Whether claimant sustained permanent disability as the result of the alleged August 1, 2018 injury, and if so, the extent of industrial disability he sustained.
3. Whether claimant's claim is barred by operation of Iowa Code section 85.23, for lack of timely notice.
4. Whether claimant is entitled to payment of past medical expenses.
5. Whether claimant is entitled to reimbursement for an IME pursuant to Iowa Code section 85.39.
6. Assessment of costs.

FINDINGS OF FACT

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

Claimant, James Shipley, was 38 years old at the time of the hearing. He graduated from high school. Mr. Shipley has ADD and ADHD. During high school he attended special education classes. Mr. Shipley does have a CDL (commercial driver's license) certification. (Testimony)

Mr. Shipley began working for Croell as a delivery driver on May 8, 2018. Mr. Shipley worked 12 and 14 hours per day. He delivered concrete to job sites. Mr. Shipley alleged that he sustained cumulative injury to his left leg, left hip, and low back as the result of his work with Croell. When he was first hired at Croell, he was assigned to truck 780 which had a manual transmission, with a "stiff" clutch. The seat in truck 780 was basically falling apart and did not have any padding on the left side of the seat. The seat caused a rough ride for Mr. Shipley, especially on bumpy terrain. (Testimony)

Because Mr. Shipley was a newer employee, he was given the more strenuous job of sidewalks. Pouring concrete for sidewalks required him to "feather the clutch" of the vehicle. This required Mr. Shipley to use his left leg to hold down the clutch while holding the shifter with his right hand, the steering wheel with the other hand, while also checking both side mirrors to ensure the truck did not hit anything. He estimated that he feathered his truck 75 percent of his workday. (Testimony)

Mr. Shipley testified that the stiff clutch and the worn down seat of truck 780 caused him to "feather the clutch" in an awkward position. He had to angle his body

sideways on his left side because the seat lacked padding; this caused pain and pressure in his hip. (Testimony)

Mr. Shipley has a history of gout, including in his left foot. Shortly before he was hired by Croell he sought treatment at the emergency room on March 13, 2018. He reported a history of diabetes and gout. He presented with lateral foot pain on the left. He went to the emergency room on crutches, his pain radiated up the lateral aspect of his IT band up to his hip. The doctor recommended remaining on crutches to give his joint a rest. He was also instructed to monitor his back pain, buttock pain, and groin numbness. He was given prescriptions for gout treatment. The clinical impression was left foot pain and left leg pain. (JE3, pp. 15-20)

Mr. Shipley began working at Croell on May 8, 2018. In the summer of 2018, Mr. Shipley began having bad pain in his left hip that radiated down his leg. He also had pain consistently across his back. He had to walk sideways with his leg split out and making more of a shuffle than a walk. Mr. Shipley connected his pain to the way he was sitting and moving at work because his pain was worse while he was at work. (Testimony)

Mr. Shipley told his supervisor Chuck Stockdale that his truck was causing him pain. Mr. Shipley told him his leg was sore from holding the clutch and he requested an automatic truck. Mr. Stockdale denied the request for an automatic truck. Instead, he recommended the use of a pedal extender. The extender was installed on truck 780 on July 30, 2018. (Testimony; Def. Ex. B, p. 15)

Mr. Shipley testified that the extender did not change the angle of the stroke, but simply made the stroke shorter. Unfortunately, the pedal extender did not seem to help Mr. Shipley, so he spoke with Tim Herold who advised him to speak with Chuck. (Testimony)

On September 26, 2018, Mr. Shipley saw Dr. Andrew Patterson at MercyCare South. He reported pain in his left hip and low back for the past couple of months, worse in the past week. He was getting pain shooting down the left leg. Mr. Shipley reported that there was no specific trauma. The assessment was left hip and back pain, and sciatica of left side. Mr. Shipley specifically requested narcotics, but Dr. Patterson explained that he would not be providing narcotics. He was prescribed nabumetone and prednisone. He was told to follow-up with his primary care physician. (JE7) Mr. Shipley did not mention any work activities or conditions.

Mr. Shipley took time off of work from September 22, 2018 through October 8, 2018. (Cl. Ex. 6, p. 2) He sought chiropractic treatment during this time. (JE8)

On October 2, 2018, Mr. Shipley went to Care Chiropractic, P.C. where he saw Sean R. Dunkle, D.C. He reported low back pain, more on the left side with pain into the left butt and left leg; his pain went around to the front of the left thigh. He reported that the pain first started over 3 months ago and would come and go. He could not recall what caused the pain. He reported 3 weeks prior while he was driving at work his pain returned. He twisted to the side and felt a pop and since that time he had a lot of

pain in his low back. His pain was more on the left side with pain in the left butt and leg. His pain was much worse at this time. (JE8, pp. 1-10)

Mr. Shipley returned to Dr. Dunkle on October 4, 2018. He had improved a great deal. Dr. Dunkle saw Mr. Shipley again on October 8, 2018. He reported his hip was better, but he now had a new problem of pain with deep breaths since Saturday. His pain was now in the lower right posterior ribs. He had sharp pain with deep breaths and certain motions. He thought it was a good idea to go to work until he got there. He was sent home due to rain. (JE8, pp. 11-16)

Mr. Shipley returned to work at Croell in October 2018. When he returned to work he did not feel 100 percent, but well enough to get through his day. According to Mr. Shipley, he fought all week to get to the weekend just to get rested and feel better. His pain increased after he returned to work. (Testimony; JE 8)

On November 12, 2018, Mr. Shipley saw Casey DeVries, D.C. Mr. Shipley reported that his lower back was increasingly tense since last week and his hips felt off to him. He also reported that he thought he had a gout flare-up because his left ankle was swollen. (JE8, pp. 17-19)

On November 20, 2018, Mr. Shipley saw his primary care provider, Vincent A. Taeger, M.D., at Mercy Medical Center for follow-up of gout/hyperuricemia. The last time Mr. Shipley saw Dr. Taeger was on September 25, 2017. He reported an onset of an acute gout attack involving the knees and now in bilateral ankles and feet. His attacks occurred primarily in his bilateral feet and ankles. With regard to his gout, the note indicates he also reported that his chronic pain was worse, his joint stiffness was worse, and his joint swelling was worse. He reported difficulty with walking. The notes do not mention anything about difficulty with using a clutch or a broken seat. (JE5, p. 9)

Mr. Shipley continued working at Croell until December 18, 2018, when he was laid off for the season. Ms. Shipley collected unemployment during the winter of 2018-2019. He returned to work in the spring of 2019. Between December 2018 and April 2019, Mr. Shipley rested; he testified that this helped for a short time. (Testimony; Def. Ex. G, p. 38)

Mr. Shipley returned to Mercy Medical Center on December 20, 2018; this is the only treatment he received during the layoff. He reported bilateral knee pain. The onset of symptoms was 2 days prior. He did not know of any inciting event. His current symptoms included giving out, locking, pain located in knee, stiffness, and swelling. His pain was aggravated by weightbearing, going up and down stairs, inactivity, kneeling, lateral movements, pivoting, rising after sitting, running, squatting, standing and walking. He reported no prior knee problems. The assessment was gout, unspecified cause. (JE5, pp. 10-12)

Mr. Shipley returned to work on April 1, 2019. It was Mr. Shipley's understanding that the manual fleet was being replaced with automatic trucks and he was hopeful that he would have an automatic truck when he returned to work in the spring and that the automatic transmission would help with his physical issues. When Mr. Shipley returned to work, he did not receive an automatic truck. He was assigned to truck 777, not truck

780. Upon returning to work, his pain increased. Mr. Shipley reported his pain to Croell. Brad in HR advised him to make a doctor's appointment. Mr. Shipley scheduled a medical appointment scheduled for April 23, 2019. (Testimony)

The last day Mr. Shipley performed work for Croell was on April 18, 2019. That evening, at 7:41 p.m. he texted one of the dispatchers to complain about his schedule for Friday, April 19, 2019. Mr. Shipley expressed that his schedule was absolutely horse manure. He indicated that he would be at work the next day. On the morning of Friday, April 19, 2019, Mr. Shipley woke and was unable to stand or walk due to pain that ran from his back all the way down his left leg. He texted the dispatcher to advise that he would not be at work because of his knee and ankle being swollen and inflamed. According to Mr. Shipley, he was not able to stand over the weekend. On Monday he contacted dispatch again to advise that he could not work and that he needed to see a doctor. The dispatcher, Mr. Lawrence, authored a note which indicates that on Thursday, April 18, 2019, when Mr. Shipley checked his start time for Friday, he made the statement that maybe he was starting to feel sick. Mr. Stockdale also documented the incident. He stated the dispatcher had informed him that Mr. Shipley was saying he was going to call in sick because he was not getting the truck he wanted. Mr. Shipley was fired Monday for no call/no show on Friday and Monday. As previously noted, Mr. Shipley returned to work on April 1, 2019. He worked a total of 13 days in April 2019. (Testimony; Def. Ex. E, pp. 32-33; Def. Ex. G, p. 38)

After he was terminated, Mr. Shipley called Brad Babcock, the human resources director. Mr. Babcock testified that this was the first conversation he had with Mr. Shipley in 2019. Mr. Shipley told him he had low back complaints since 2018. According to Mr. Babcock, Mr. Shipley now wanted to contend that his symptoms were work related. (Testimony)

On April 23, 2019, Mr. Shipley saw Vincent Taeger, M.D. at Mercy Medical Center in Cedar Rapids. He presented with low back pain as the result of a work injury. He did not have prior back problems. Mr. Shipley reported that he was recently fired from his full-time job at Croell Redi-Mix. For the past two years he asked for accommodations at work. His truck seat was worn and the clutch was stiff, causing him pain/injury. Mr. Shipley advised the doctor that he did receive a clutch extender, which was somewhat effective, but he did not get to keep the truck with the clutch extender. He was also denied an automatic vehicle. The doctor's assessment was lumbar radiculopathy, anxiety, depressed mood. Mr. Shipley was prescribed gabapentin, physical therapy, Cymbalta, and an MRI of the lumbar spine if he failed to improve with physical therapy. (JE5, pp. 13-15)

Mr. Shipley saw Dr. Taeger again on April 30, 2019. He reported continued pain in his left lumbar area that radiated to his left buttock, hip, thigh, lower leg, and foot. He also reported that he now had neck pain, which was sharp, stabbing, and tension. The doctor's assessment included neck pain, bilateral low back pain with sciatica. (CI, Ex. 1, pp. 2-3)

On May 1, 2019, Mr. Shipley sent a letter to Chuck Stockdale which stated:

This will confirm that I reported my work-related injuries to neck, back, left leg, and left hip to you starting some months ago. Today I had a lengthy telephone conversation with Brad from human resources, finally was able to get Brad to agree to let me fill out a company accident report. I look forward to providing the accident report and in turn, you providing me proper medical care for my work injury.

(Def. Ex. F, p. 34)

On May 5, 2019, Mr. Shipley completed a written incident report. He indicated he reported the incident from August 2018 to the present, but he was denied any corrective actions by Chuck S., Tim H., and Brad B. He indicated that in August he began having pain in his left butt check down his left leg, and into his back and neck. He also stated he felt the pain began due to feathering the clutch in a work truck. He requested an automatic truck, but his request was denied, and he was given a pedal extender. Mr. Shipley testified that he selected August 1, 2018 because he believes that is the date of his first conversation with Mr. Stockdale. (Def. Ex. G, pp. 37-38; testimony)

On June 10, 2019, Mr. Shipley went to the emergency room with acute and chronic low back pain that radiated into his left buttock and hip. He reported that his pain was similar to sciatic pain. The assessment was acute left-sided low back pain with sciatica. He was prescribed medications, physical therapy, and was instructed to follow-up with his primary care physician. (JE5, pp. 17-20)

The next day Mr. Shipley saw Dr. Taeger. He reported that his back pain worsened, and he was using crutches with walking. He was seen at the emergency room the day prior with pain that he described as 10 out of 10. Mr. Shipley requested Dr. Taeger prescribe him pain medication and if he did not give him some, then Mr. Shipley would not come back. He also requested an MRI be done that day. Dr. Taeger advised him they needed to go through insurance. Dr. Taeger offered to let Mr. Shipley pay for an MRI out of pocket, but he declined. Dr. Taeger noted that Mr. Shipley became agitated and complained about not being able to get pain medication in the past for his gout. The assessment was bilateral low back pain with sciatica, acute left knee pain. The doctor recommended an MRI of the left knee and hydrocodone. The clinical notes state that Mr. Shipley made a derogative remark about Dr. Taeger and stated he would find a different primary care physician. (JE5, pp. 21-23)

Mr. Shipley had an MRI of his left knee on June 21, 2019. The impression was intact menisci, cruciate and collateral ligaments and small joint effusion, small popliteal cyst. (Cl. Ex. 1, p. 3)

At the request of the defendants, Mr. Shipley underwent an independent medical examination (IME) with James Milani, D.O., on July 26, 2019. Mr. Shipley reported severe pain in the left low back and left leg. Dr. Milani noted the mechanism of injury was driving a cement/mixer truck that was a manual drive and having to "clutch" frequently. Mr. Shipley alleged that the clutch was not working correctly. Mr. Shipley's symptoms at the beginning of the injury were swelling left leg, pinch in the low back, pain down left leg and it would cause upper back and neck pain. Mr. Shipley reported

that at the time of the IME, his symptoms were severe pain left low back and left leg. His pain shot from the left low back down the leg to the ankle. He also reported a "pinch" feeling in the left low back. His pain could also go up his back and into his neck. He also reported that his hip felt like it needed to "pop." He found it helpful to walk with a cane or crutch for stability. He felt he had weakness of his left leg. His pain was 10 on a scale of 1 to 10. He also reported that he was currently having a flare of gout in his right big toe. Dr. Milani's potential differential diagnoses included mechanical low back pain, myofascial pain, lumbago, degenerative disc disease, discitis, gout with possible gouty arthritis, and internal hip pathology. Dr. Milani was asked if the work activities were a substantial factor in causing or materially aggravating any musculoskeletal conditions. He stated:

No – The mechanism/forces of driving/clutching would not cause damage. The forces of "clutching" are ergonomic in motion. I am very familiar with these type [sic] of vehicles. The type of clutching he is describing, is only performed a small portion of the day - "Riding the clutch". Manipulating the clutch for a short period of time, other than in and out for shifting, is performed when on the site to have the concrete "dumped". This is not unique to concrete manual dump trucks, this is found throughout the trucking and farming industry. Another way to put the mechanism of clutching into perspective: Going up and down stairs exerts your body weight or more. His body weight is 240 pounds, the pressure to apply the clutch is much less than he has to apply to his left leg for going up or down stairs.

(Def. Ex. A, p. 10) Dr. Milani further opined that because there is no work injury, he would not assign any work-related restrictions or permanent impairment. (Def. Ex. A)

On October 28, 2019, Mr. Shipley began working at the Cedar Rapids Community School District as a custodian. He was still employed there at the time of the hearing. He works five hours per day, five days per week. He is paid \$16.75 per hour; he earns approximately \$900 every two weeks. His job duties include cleaning, collecting trash, and light maintenance. Mr. Shipley testified that he is able to self-regulate his duties in order to try to control his symptoms. He frequently takes five to ten minute breaks throughout his shift without permission. He has requested accommodations for more breaks or even allotted time off of work to recuperate. (Testimony; Def. Ex. J, p. 54)

On March 5, 2021, at the request of his attorney, Mr. Shipley saw Sunil Bansal, M.D. for an IME. He reported that he continued to have back and left hip pain, and difficulty walking up and down stairs. He cannot walk long distances or sit or stand for prolonged periods of time. He had numbness and tingling radiating down his left leg. Bending forward aggravated his pain. He continued to work, but at markedly reduced hours than he worked in the past. Dr. Bansal's diagnosis for the back was symptoms compatible with lumbar discogenic pathology. He noted it was unfortunate that an MRI had not been performed. His diagnosis for the left hip was aggravation of femoroacetabular impingement. He placed Mr. Shipley at MMI as of the date of his examination, March 5, 2021. Dr. Bansal opined that Mr. Shipley aggravated a lumbar

discogenic condition from driving a truck with a worn seat and poor shocks, contributing to excessive motion and mechanical loading to his lumbar spine. With regard to the left hip, Dr. Bansal opined that the bouncing from the worn-out seat, coupled with the frequent clutch depression with his left leg, stressed his hip. He stated, "The clutch depression occurred while Mr. Shipley was sitting in the seat sideways, requiring rotation of the hip coupled with flexion and extension, aggravating the femoroacetabular impingement. I recommend an MRI to evaluate for a labral tear as well." (Cl. Ex. 1, p. 8) Dr. Bansal utilized the 5th Edition of the AMA Guides and assigned 5 percent impairment of the body as a whole for his back and 4 percent of the body as a whole for his left hip. Dr. Bansal permanently restricted Mr. Shipley to no prolonged sitting or standing greater than one hour at a time or walking greater than 30 minutes at a time. He was to avoid multiple stairs or climbing. Dr. Bansal restricted him to no frequent, kneeling, or squatting. No lifting greater than 30 pounds. Dr. Bansal recommended MRIs of the lumbar spine and left hip. (Cl. Ex. 1)

At the time of hearing, Mr. Shipley continued to have symptoms that he relates to his work injury. He testified that he cannot walk or sit for long periods without getting an ache. He has constant pain any time he goes for a walk and tries to exercise. He has a constant pain in his hip that runs from the lower back. Mr. Shipley testified that even sleeping has become a nightmare because his back and hip get extremely painful. Before the injury, Mr. Shipley would walk 8 miles on a trail by his home. However, now he can only walk about a fourth of a mile before his pain is really activated. He estimates that he can sit for two or three hours before he starts to seize up. Standing causes shooting pain from his hip into his left leg. He was performing custodial work for the Cedar Rapids Community School District. He works 5-hour shifts, 5 days a week, for a total of 25 hours per week. His duties include cleaning everything from the walls to trash to light maintenance. He also repairs sinks, toilets, and drinking fountains. The heaviest item he lifts is a bag of trash which he estimates weighs 50 pounds. (Testimony)

The first issue that must be addressed is whether Mr. Shipley sustained an injury that arose out of and in the course of his employment. The only physician in this case to causally relate Mr. Shipley's conditions to his work is Dr. Bansal. It is not known exactly what prior medical records were provided to Dr. Bansal to review. His report states that there were records of dates of service from March 22, 2003 through October 10, 2019 for unrelated medical issues. During this timeframe, Mr. Shipley was seen for gout in his lower extremities. It is not known if those records were not provided to Dr. Bansal or if he felt they were not relevant. Additionally, in his report Dr. Bansal states, "[at] the time of his injury, Mr. Shipley had been employed by Croell Redi-Mix for two years." (Cl. Ex. 1, p. 4) Dr. Bansal's understanding of the facts is incorrect. Mr. Shipley was hired by Croell in May of 2018, and the date of injury in this case is three months later. At the time of the August 1, 2018 date of injury, Mr. Shipley had been performing his job for three months, not twenty-four months as stated by Dr. Bansal. Dr. Bansal repeats this incorrect history again in the "Causation" section of his report. Thus, Dr. Bansal's opinions are based on an incorrect history. Because Dr. Bansal's opinions are based on an incorrect and possibly also incomplete history, I do not find his opinions to be persuasive in this case. I find the opinions of Dr. Milani to carry greater weight than

those of Dr. Bansal. Therefore, I find Mr. Shipley has failed to prove that his work activities in 2018 were a substantial factor in causing or permanently aggravating his left leg, left hip, or low back. I find claimant has failed to demonstrate that he sustained an injury that arose out of and in the course of his employment with Croell on August 1, 2018.

Because claimant failed to prove he sustained an injury that arose out of and in the course of his employment, all other issues, other than an assessment of costs, are rendered moot.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. I find that claimant was not successful in his claim and exercise my discretion to not assess costs against the defendants in this case. Each party shall bear their own costs.

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" refer 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).

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 other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Based on the above findings of fact, I conclude claimant failed to carry his burden of proof to demonstrate by a preponderance of the evidence, that he sustained an injury that arose out of and in the course of his employment. I conclude that the opinions of Dr. Milani carry greater weight than the opinions of Dr. Bansal. Because claimant failed to carry his burden to show he sustained a work-related injury, all other issues are rendered moot.

ORDER


THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

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 8th day of December, 2021.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dustin Mueller (via WCES)

Nicholas Adkins (via WCES)

James Peters (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.