BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HEDAYAT KHALDAR SAGHIR,

Claimant,

vs.

MENARDS,

Employer,

and

XL INSURANCE,

Insurance Carrier,
Defendants.

File No. 5052229

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Hedayat Khaldar Saghir, has filed a petition in arbitration and seeks workers' compensation benefits from Menards, employer, and XL Insurance, insurance carrier, defendants. Deputy Workers' Compensation Commissioner, Stan McElderry, heard this matter in Des Moines, Iowa.

ISSUE

The parties have submitted the following issue for determination:

Whether the claimant suffered any permanent disability from the injury arising out of and in the course of employment on January 1, 2015, and if so, the extent.

FINDINGS OF FACT

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

The claimant was 46 years old on the date of hearing. He graduated from college in Iran in 1996. He and his family moved to the United States in 2006. In the U.S., his work history consists of cleaning houses, driving a forklift, and as a pizza delivery driver. He began his employment at Menards June of 2013 in the lumberyard portion.

On January 1, 2015 the claimant sustained a stipulated injury arising out of and in the course of his employment when he was struck in the head with a board. The fighting issue is whether the injury caused any permanency or loss of earnings capacity. He was initially seen by Ernest Perea, M.D. CTs of the head, cervical spine, and low back were ordered. The CTs showed mild degenerative disease at C6-7 and were negative for the head and low back. (Exhibit F, pages 1-3) On January 28, 2015 the claimant reported that he was thinking of hanging himself. An MRI was taken and was normal. (Ex. 2, p. 8) On June 23 and 30, 2015 the claimant underwent neuropsychological evaluation with Jessica Rivera, a licensed psychologist. She concluded that the testing was invalid due to somatic complaints and opined that no further testing was necessary. (Ex. B) On August 27, 2015 E. Todd Ajax, M.D. opined that the claimant had reached maximum medical improvement (MMI).

The claimant saw Robert M. Mandelkorn, M.D., on October 24, 2015. He opined that the claimant had suffered a significant atrophy of both optic nerves and that claimant's eyes lacked the ability to converge and work together. He opined it was due to traumatic brain injury from the injury of January 1, 2015. He prescribed new eyeglasses which somewhat helped. Dr. Mandelkorn was not aware that the claimant had been in a motor vehicle accident (MVA) on July 3, 2010. He was diagnosed with headaches, neck pain/stiffness, post-concussive syndrome and muscular neck pain. (Ex. 9) On August 10, 2010 he was noted as exaggerating. (Ex. E, p. 17) Vision testing noted presbyopia. A diagnosed head injury from work at Proctor and Gamble also appears to have been unknown to Dr. Mandelkorn.

On November 11, 2013 the claimant was examined by Daniel Tranel, Ph.D., in connection with the MVA claim. Dr. Tranel found that the claimant in a profound and pervasive manner had made a deliberate effort to perform poorly on neuropsychological testing. (Ex. E, p. 61) This testing was conducted after the claimant had begun his employment with Menards.

The claimant had an independent medical evaluation (IME) with Sunil Bansal, M.D., on January 22, 2016. (Ex. 8) Dr. Bansal opined that the injury resulted in a traumatic brain injury with aggravation of cervical spondylosis with disc protrusion at C6-7. He also opined total vision impairment of 28 percent, 9 percent from gait, 8 percent from the neck, and no ratable impairment to the back. (Ex. 8, p. 48) Dr. Bansal's history contains no mention of the 2010 MVA and treatment. This is a critical omission.

On October 9, 2015 Dr. Ajax opined no further care or restrictions were necessary from the injury of January 1, 2015. On February 6, 2016 he opined that there was no permanent impairment. Dr. Ajax was aware of and noted the MVA accident and provided treatment to the claimant. The claimant was not a credible witness. Although it is possible that the claimant's demeanor was the result of brain injury it was very consistent with a deliberate effort to exaggerate and conceal. His memory appeared to get much, much worse on questions that cast doubt on his case on cross-examination, for example. As such, it is not possible to know what if any permanent impairment was

caused by the 2015 accident as opposed to 2008 and 2010, and what possible impairment does not even exist.

On the date of injury the claimant was married, entitled to four exemptions, and had gross weekly earnings of $533.99. As such, his weekly benefits rate is $368.44. The parties stipulated to an August 3, 2015 commencement date for permanent benefits.

REASONING AND CONCLUSIONS OF LAW

The first issue is whether the claimant suffered a permanent disability or loss of earnings capacity from the injury arising out of and in the course of employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 14(f).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually 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. Cent. Tel. 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 the injury. Sheerin v. Holin Co., 380 N.W.2d 415 (Iowa 1986); McClure v. Union County, 188 N.W.2d 283 (Iowa 1971).

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. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296 (Iowa 1974).

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. The weight to be given to any expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts relied upon by the expert as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974); Anderson v. Oscar Mayer & Co., 217 N.W.2d 531 (Iowa 1974); Bodish v. Fischer, Inc., 257 Iowa 516, 133 N.W.2d 867 (1965).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up, or acceleration of any prior condition has been viewed as a compensable event ever since initial

enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980)

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

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 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 143.

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

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, 76 N.W.2d 756 (1956). If 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, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961). Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

The claimant did not meet his burden of establishing any permanent impairment or loss of earnings capacity from the injury of January 1, 2015. As such, all other issues are moot.

ORDER

THEREFORE IT IS ORDERED:

That the claimant take nothing.

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.

Defendants shall receive credit for all benefits previously paid.

That the parties bear their own costs pursuant to rule 876 IAC 4.33.

Signed and filed this 22nd day of August, 2016.

STAN MCELDERRY
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.