BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHAWN GLENN, Claimant, vs. GENUINE PARTS COMPANY, Employer, and SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	:	File Nos. 5064429, 5067833 ARBITRATION DECISION Head Note Nos.: 1803, 2500

STATEMENT OF THE CASE

Shawn Glenn filed two petitions for arbitration seeking workers' compensation benefits from, the employer, Genuine Parts Company, and Safety National Casualty Corporation, the insurance carrier.

The matter came on for hearing on August 6, 2019, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of joint exhibits 1 through 5; claimant's exhibits 1 through 6; and defense exhibits A through M; as well the sworn testimony of claimant. Debra Hoadley was appointed court reporter. The parties argued this case and the matter was fully submitted on September 9, 2019. At the time of hearing, claimant moved to dismiss File No. 5067833. Defendants did not object. The motion was GRANTED.

ISSUES AND STIPULATIONS

Most of the issues have been stipulated prior to hearing. The parties stipulate that claimant sustained an injury to his low back on January 31, 2017, which arose out of and in the course of his employment. This injury was a cause of temporary disability during a period of recovery. Defendants deny that the injury is a cause of any permanency. Claimant is not seeking any temporary disability. He is seeking permanent partial disability benefits, although defendants deny he is entitled to any such benefits. If it is determined claimant is entitled to permanency benefits, the commencement date is April 7, 2017, and the disability is industrial. Elements comprising the rate of compensation are stipulated. Affirmative defenses have been waived. Claimant is not seeking past medical expenses and there is no credit issue. Claimant is seeking alternate medical care.

FINDINGS OF FACT

Shawn Glenn was born in March 1978. At the time of hearing he was 41 years old. He earned his high school diploma from ADM High School in Adel, Iowa, and later earned a Medical Assistant Certificate from Vatterott College in 2016. Mr. Glenn had a varied and interesting work history. He worked in the produce department of a grocery store, operated a kiln at a tile plant, operated a machine for a commercial printing service and worked in a warehouse for two different businesses. He has also worked as a cashier for a department store, a delivery person, a dietary aide, mailroom clerk and certified medical assistant. (Claimant's Exhibit 3, pages 30-32) He began working for the employer as a loader and stockroom associate at Genuine Parts Company, known as NAPA, in January 2017. The work was heavy. When he began at NAPA, he did not have any condition, limitations or restrictions in his low back.

On January 31, 2017, Mr. Glenn lifted a car battery and felt a sudden pop in his low back. The accident was witnessed by a co-worker. He testified that he immediately felt pain and numbness down his left leg. (Transcript, page 19) The same day the employer directed claimant to be seen for medical care at Mercy East Family Practice & Urgent Care. "Symptoms: unrelenting back pain, right sacroiliac joint pain, left sacroiliac joint pain, back muscle spasm, stiffness and radiating left leg." (Jt. Ex. 3, p. 14) It was noted that his symptoms were worsening throughout the day. Ultimately, "acute lumbar radiculopathy" was diagnosed, several medications were prescribed and Mr. Glenn was provided an injection for the pain. (Jt. Ex. 3, p. 15) He was taken off work until his follow up on February 3, 2017. On that date, he was rechecked, prescribed tramadol and given another injection. (Jt. Ex. 3, p. 18) He was taken off work for a week and physical therapy was ordered.

Mr. Glenn returned to the clinic on February 10, 2017. His pain and radicular symptoms had not improved. Unfortunately, the physical therapy had not been arranged. Hydrocodone was prescribed and an MRI was ordered. (Jt. Ex. 3, p. 24) He remained off work under doctor's care. He started physical therapy about a week later.

The MRI showed a disc bulge "which touches the traversing right L5 nerve root" at L4-L5 and a disc protrusion "which indents the midline thecal sac without any nerve root compromise." (Jt. Ex. 3, p. 26) On February 20, 2017, he returned to the clinic and reported continued constant low back pain with radiation. (Jt. Ex. 3, p. 27) At that time he was referred for an orthopedic consultation. He returned to work light-duty on February 21, 2017. (Jt. Ex. 3, p. 30)

On March 1, 2017, Mr. Glenn was evaluated by Trevor Schmitz, M.D., at Iowa Ortho. Dr. Schmitz documented that Mr. Glenn's pain was at a 2/10 with left leg pain down the posterior of his lateral thigh, which was improving. (Jt. Ex. 5, p. 55) Dr. Schmitz performed and documented a full examination which demonstrated numerous functional deficits. He reviewed the MRI. Dr. Schmitz diagnosed the following conditions: (1) dorsalgia, unspecified, (2) low back pain at multiple sites, and (3) sacroiliac pain. (Jt. Ex. 5, p. 57) Dr. Schmitz noted he did not see any obvious evidence of any left-sided disk bulging or nerve root impingement that could explain his

left-sided pain in his low back. Dr. Schmitz prescribed a Medrol Dosepack and ordered Mr. Glenn to continue physical therapy. He kept the restrictions in place. (Jt. Ex. 5, pp. 57-58)

On March 20, 2017, Mr. Glenn was nearly in a motor vehicle accident while on his way to physical therapy. This caused a temporary flare up of his low back pain. He returned to Dr. Schmitz on March 22, 2017, where the flare up is documented. (Jt. Ex. 5, p. 61) There was no change to claimant's treatment plan, his diagnoses, or restrictions. Claimant filed a petition, alleging a work-related injury for this incident, which he dismissed at the time of hearing, stating that the medical evidence only suggested this was a temporary aggravation and did not result in any additional benefits.

NAPA began providing light-duty work for Mr. Glenn on April 7, 2017. On April 10, 2017, Mr. Glenn returned to Dr. Schmitz. At that time, Dr. Schmitz documented that the radicular pain had subsided and he was left with persistent left-sided low back pain. (Jt. Ex. 5, pp. 66-67) He reduced the medications and recommended work hardening. (Jt. Ex. 5, pp. 65-69) Mr. Glenn underwent work hardening from April 18, 2017, through May 2, 2017. (Jt. Ex. 4) At his last visit, Mr. Glenn could perform 17 out of 18 of his job functions for NAPA. He was still unable to carry heavy items for long distances. (Jt. Ex. 4, pp. 46-47) He also demonstrated difficulty standing in excess of 30 minutes. At his last visit on May 2, 2017, the evaluator also noted significant limitations in Mr. Glenn's lumbar range of motion. (Jt. Ex. 4, p. 50)

Dr. Schmitz evaluated Mr. Glenn for the final time on May 3, 2017. His notes document Mr. Glenn still had persistent pain, which was limited to a 1 of 10 on the pain scale. Dr. Schmitz released him to work on that date with no restrictions. (Jt. Ex 5, p. 74) Between March 1, 2017, and May 3, 2017, Dr. Schmitz evaluated Mr. Glenn on four occasions. On each occasion, Mr. Glenn completed an Oswestry (Low Back) Disability Questionnaire. (Jt. Ex. 5, pp. 54, 60, 65, 70) This questionnaire is "designed to give [the medical provider] information as to how your back or leg pain is affecting your ability to manage everyday life." (Jt. Ex. 5, p. 70; Def. Ex. M) "The Oswestry Disability Index … is an extremely important tool that researchers and disability evaluators use to measure a patient's permanent functional disability. The test is considered the 'gold standard' of low back functional outcome tools." (Def. Ex. M, internal citations omitted) At the time Dr. Schmitz released claimant he scored a 12 percent indicating a minimal disability. (Jt. Ex. 5, p. 70; Def. Ex. M)

Several weeks later, in June 2017, Dr. Schmitz assessed a zero impairment rating, citing to Table 15-3 of The AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Mr. Glenn has not seen a physician for treatment for his low back condition since May 3, 2017. He has had two independent medical evaluations arranged by claimant's counsel.

Robin Sassman, M.D., evaluated Mr. Glenn on November 14, 2017. (Cl. Ex. 1) At that time, she noted that Mr. Glenn continued to take the muscle relaxers prescribed by Dr. Schmitz. After reviewing numerous records, taking a full history and examining

the patient, she diagnosed low back pain with radiculopathy. She noted range of motion deficits in his lumbar spine and assigned a 14 percent whole body impairment rating. (Cl. Ex. 1, p. 7) She recommended permanent restrictions of rarely lifting 20 pounds from floor to waist, 30 pounds from waist to shoulder and 20 pounds above shoulder height. She also recommended he limit walking and standing and change positions frequently. (Cl. Ex. 1, p. 8)

Sunil Bansal, M.D., prepared a report in July 2018, as well. He also reviewed records, recorded a history from Mr. Glenn and performed a thorough evaluation, also documenting loss of range of motion in the lumbar spine. He diagnosed left sacroiliitis. (Cl. Ex. 2, p. 21) He assigned a 5 percent whole body rating for this condition and recommended Mr. Glenn not lift more than 20 pounds or frequently bend or twist. (Cl. Ex. 2, p. 23)

Later in 2018, Dr. Schmitz signed reports on defense counsel letterhead which responded to the reports of Dr. Sassman and Dr. Bansal. He disagreed with their assessments of Mr. Glenn's condition.

After he was released by Dr. Schmitz, Mr. Glenn was unable to return to work for NAPA as a loader. On May 23, 2017, the Human Resources Manager wrote to Mr. Glenn outlining his options. (Cl. Ex. 4, p. 38) It was determined the only job available to him within his qualifications and physical capabilities was that of delivery driver. This entailed a pay cut from $12.25 per hour to $10.80 per hour. This represents an hourly earnings loss of approximately 17.5 percent. Mr. Glenn quit his job effective July 10, 2017. He described being sore at the end of each day, particularly from getting in and out of the truck. (Cl. Ex. 4, p. 54)

After quitting NAPA, Mr. Glenn obtained employment as a phlebotomist at Grifols, earning $12.00 per hour. (Def. Ex. F, p. 13) He has continued in this profession which he feels is more suitable given his back condition. At the time of hearing, he was earning $15.25 per hour. He is able to sit in this job at times, although he is on his feet a great deal. Mr. Glenn testified that he would no longer be able to perform many of his past jobs because of the lifting, standing and walking. He testified that he still has symptoms every day associated with his low back.

I find that Mr. Glenn sustained an injury on January 31, 2017, which arose out of and in the course of his employment. He was treated non-surgically after that date with relatively good results. At the time he was released on May 3, 2017, however, he still had an ongoing condition and associated symptoms. Based upon the evidence in the record, his condition is best described by Dr. Bansal as sacroiliitis. His impairment is approximately 6 percent of his whole body and while he does not work under formal restrictions observed by his current employer, he undoubtedly has to limit his heavy lifting, bending, twisting and standing. He is no longer a suitable worker in heavy labor, which he was prior to this injury.

CONCLUSIONS OF LAW

The first question is whether the admitted January 31, 2017, work injury is a cause of permanent disability, and if so, the extent of such disability. By a preponderance of evidence, I find that the January 31, 2017, injury is a proximate cause of disability in the claimant's low back.

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).

The expert opinions as to the medical impairment in this case are conflicted. Dr. Schmitz assessed that claimant suffered no permanent functional disability. Dr. Sassman and Dr. Bansal both opined that claimant did, in fact, suffer some permanent disability.

Having reviewed all of the evidence in the record, including the claimant's testimony, I find that he did suffer a permanent functional loss in his low back. The medical opinion in the record which is most consistent with the other evidence available is the opinion of Dr. Bansal. He opined claimant suffered a 6 percent whole body impairment as a result of sacroiliitis. His opinion was based upon muscle guarding/spasm and range of motion deficits. These symptoms are well documented in the record at the time claimant reached maximum medical improvement, as well as the time of his IMEs. I find Mr. Glenn to be a generally credible witness. I have no reason to disbelieve his testimony as it is consistent with the other evidence in the record, including the Oswestry Pain Questionnaires taken contemporaneously at his orthopedic evaluations.

For these reasons, I find the claimant has met his burden that his injury is a proximate cause of disability.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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.

I find that the claimant has suffered a 20 percent loss of earning capacity as a result of his work injury. Claimant was 41 years old at the time of hearing. He is a hard worker with a good work history. He is entering his prime earning years. As a result of the work injury he has the condition of sacroiliitis in his low back. He is no longer suited for heavy manual labor as he was before this injury.

He had a very short period of recovery and was released approximately three months after the injury occurred. His treatment of physical therapy, medications, injections, work hardening and restrictions worked relatively well, but he did not fully recover. He still had pain and symptoms. He was not able to return to the heavy lifting he had done previously and initially took a pay cut of 17.5 percent to remain employed with NAPA as a delivery driver. He quickly quit that job and moved back into the medical field as a phlebotomist. He now earns more per hour and is in a position which does not require heavy manual labor.

While his industrial disability is limited, in part because of claimant’s own motivation and skill level, he undoubtedly has some industrial loss resulting from the injury. Having reviewed all of the evidence in the record and considered all of the appropriate factors of industrial disability, I assess his loss of earning capacity at 20 percent.

Having found a 20 percent loss of earning capacity, I conclude this entitles claimant to 100 weeks of benefits commencing April 7, 2017.

The final issue is the claimant's need for alternate medical care.

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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Claimant has not sought treatment since being released by Dr. Schmitz. As such, his claim for alternate care is denied.

ORDER

THEREFORE IT IS ORDERED:

File No. 5067833 is DISMISSED WITHOUT PREJUDICE.

File No. 5064429:

Defendants shall pay the claimant one hundred (100) weeks of permanent partial disability benefits at the rate of three hundred twelve and 28/100 ($312.28) per week from April 7, 2017.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants.

Signed and filed this 18th day of June, 2020.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Neal (via WCES)

Aaron Oliver (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.