

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GREG FINTEL,

Claimant,

vs.

WHEELS UNLIMITED LLC,

Employer,

and

MIDWEST FAMILY MUTUAL
INSURANCE,Insurance Carrier,
Defendants.

File No. 20002632.01

ARBITRATION DECISION

Head Note Nos.: 1108.50, 1402.40,
1803, 2502

STATEMENT OF THE CASE

Greg Fintel, claimant, filed a petition in arbitration seeking workers' compensation benefits from Wheels Unlimited LLC., employer and Midwest Family Mutual Insurance, insurance carrier, as defendants. Hearing was held via Zoom on January 11, 2023.

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. The parties are now bound by their stipulations.

Claimant, Greg Fintel, was the only witness to testify live at trial. The evidentiary record also includes claimant's exhibit 1 and defendant's exhibits A-C. There are no joint exhibits. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on January 16, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained any permanent partial disability to his left lower extremity as the result of the stipulated February 22, 2020 work injury. If so, the extent.
2. Whether claimant is entitled to reimbursement of the independent medical examination pursuant to Iowa Code section 85.39.

FINDINGS OF FACT

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

Claimant, Greg Fintel, sustained a work-related injury to his left lower extremity on February 22, 2020. Mr. Fintel sought medical treatment that same day at Wheaton Franciscan Healthcare in Waterloo. He presented to the emergency room with left leg pain. He fell from a 6 foot height, landing straight down on his left leg. The impression was small minimally displaced intra-articular fracture of the posterior medial tibial plateau accompanied by large joint effusion. He was given a knee immobilizer, given crutches, and told to be nonweightbearing. He was referred to Jason Stanford, D.O. for orthopedic care. (Testimony; Def. Ex. A; Def. Ex. B, p. 1)

On February 24, 2020, Mr. Fintel saw Dr. Stanford at Mercy One in Cedar Falls to follow-up on his left leg injury. Mr. Fintel reported that his left leg was his strong leg. He knows he has degenerative osteoarthritis of his right knee. He has never had any significant problems with his left leg. Dr. Stanford's impression was small mildly displaced posterior medial tibial plateau fracture. Given the nature and size of the fracture, Dr. Stanford recommended a trial of conservative treatment. He recommended continuation for the knee immobilizer for two weeks. He also recommended continued nonweightbearing. He was to return in two weeks. (Def. Ex. B, pp. 6-8)

Mr. Fintel returned to Dr. Stanford on March 9, 2020. He reported he was doing well. He does have some pain that radiates up into the thigh and then down into the lower leg at times; this pain comes and goes. Dr. Stanford recommended continuing nonweightbearing in his immobilizer for an additional two weeks. (Def. Ex. B, pp. 9-12)

On April 6, 2020, Mr. Fintel reported he was doing well and ambulating without difficulty. He occasionally has pain when getting up and down from a chair or getting off the toilet. He does not have pain going up or down stairs. He occasionally has pain with twisting motion when getting in and out of his car. Dr. Stanford's assessment was posterior medial tibial plateau fracture. He was to continue activities as tolerated. He was to continue with strengthening and range of motion exercises at home. He was to return in four weeks for one final x-ray. He was given one last pain medication refill of hydrocodone. (Def. Ex. B, pp. 13-16)

On May 4, 2020, Mr. Fintel returned to Dr. Stanford's office and saw Thomas Veiseth, ARNP. Mr. Fintel reported he was doing great. He had no pain or tenderness with palpation or range of motion. Mr. Fintel was noted to have full range of motion with flexion extension. He was ambulating without any assistance or difficulty. The x-rays showed satisfactory alignment and bone callus formation. The assessment was left tibial plateau fracture. The plan was for Mr. Fintel to get back to activities as tolerated without any restrictions. He was to follow-up as needed. (Def. Ex. B, pp. 17-20)

On March 22, 2022, Dr. Stanford opined that based on his last office consultation Mr. Fintel was at maximum medical improvement (MMI). He noted Mr. Fintel had a good outcome. He released him to return to work without restriction. Dr. Stanford stated, “[u]tilizing the guidelines to evaluation of permanent impairment AMA fifth edition he has no permanent partial impairment of permanent work restriction.” (Def. Ex. B, p. 21) Based on this document, it is not known what method of impairment and/or which section of The Guides Dr. Stanford utilized to reach his conclusion.

On July 15, 2022, at the request of his attorney, Mr. Fintel saw Sunil Bansal, M.D., for an independent medical evaluation (IME). As the result of his examination and review of the records provided to him, Dr. Bansal issued a report on July 25, 2022. Dr. Bansal diagnosed left knee tibial plateau fracture and lumbar strain. Dr. Bansal stated that the mechanism of the work injury was consistent with the tibial plateau fracture. Dr. Bansal felt that the mechanism of falling was consistent with his lumbar back pain. He opined that Mr. Fintel had no ratable impairment for his back. He assigned 5 percent lower extremity impairment for his tibial plateau fracture. In assigning this impairment he cited to the AMA Guides of Evaluation for Permanent Impairment, Fifth Edition, Table 17-33. (Cl. Ex. 1) According to The Guides, Table 17-33 provides impairment for diagnosis-based impairments. (The Guides, p. 545-547)

On December 5, 2022, Dr. Stanford signed a letter authored by the attorney for defendants. By signing the letter Dr. Stanford confirmed that the statements in the letter accurately summarized the doctor’s opinions. Dr. Stanford confirmed that he had reviewed the IME report from Dr. Bansal dated July 25, 2022. Dr. Stanford disagreed with the impairment rating of Dr. Bansal. Dr. Stanford opined that the appropriate method of determining permanent impairment should be based on the physical exam findings. Dr. Stanford believed that the diagnosis-based impairment estimate as applied by Dr. Bansal was not appropriate. Dr. Stanford pointed out that pursuant to Table 17-10 Knee Impairment on p. 53 of The Guides, a range of motion of 110 degrees or higher does not support an impairment rating. In Dr. Bansal’s report he found that Mr. Fintel had knee flexion range of motion of 129 degrees. Furthermore, Dr. Stanford also clarified the basis for his prior zero percent impairment rating; he noted that at his last visit with Mr. Fintel he had no pain and full range of motion of his left knee and full strength. (Def. Ex. C, pp. 22-23)

The central dispute in this case is the extent of impairment Mr. Fintel sustained to his left lower extremity due to his work-related left tibial plateau fracture. Dr. Stanford assigned impairment based on physical exam findings. Dr. Bansal assigned impairment based on impairment based on diagnosis. According to The Guides, “[d]iagnosis-based estimates are used to evaluate impairments caused by specific fractures . . .” (The Guides, p. 525) Mr. Fintel sustained a specific fracture, a tibial plateau fracture. I find the impairment rating from Dr. Bansal complies with The Guides and carries greater weight in this case. Thus, I find Mr. Fintel has demonstrated by a preponderance of the evidence that he sustained 5 percent impairment of his left lower extremity as the result of the work injury.

Claimant is seeking reimbursement for the IME conducted by Dr. Bansal on July 15, 2022. I find that on March 22, 2022, at the request of the defendants, Dr. Stanford opined Mr. Fintel had no permanent partial impairment due to the work injury. (Def. Ex. B, p. 21) I find an evaluation of permanent disability was made by a physician retained by the employer prior to the date of Dr. Bansal's IME. Thus, I find Mr. Fintel has demonstrated entitlement to reimbursement for the IME of Dr. Bansal.

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. 6.904(3)(e).

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. 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).

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)-(u) or for loss of earning capacity under section 85.34(2)(v). 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).

In 2017, the legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts ch. 23. Before the 2017 amendments, the agency could use all evidence in the administrative record, as well as agency expertise, when determining the permanent disability of an injured worker. See, e.g., Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 421 (Iowa 1994). Under agency rules before the 2017 amendments, The Guides were considered a "useful tool in evaluating disability." Seaman v. City of

Des Moines, File Nos. 5053418, 5057973, 5057974 (App. Oct. 11, 2019) (quoting Bisenius v. Mercy Med. Ctr., File No. 5036055 (App. Apr. 1, 2013)); see also Westling, 810 N.W.2d at 252. However, in cases involving injuries on or after July 1, 2017, The Guides are now more than a tool; they are dispositive.

[W]hen determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code § 85.34(2)(x).

The Iowa Workers' Compensation Act now limits the determination of what, if any, permanent disability an injured employee has sustained to only the employee's functional impairment. In making that determination, the agency is prohibited from using lay testimony or agency expertise by Iowa Code section 85.34(2)(x). Under the statute, that determination must be made "solely by utilizing" the Fifth Edition of The Guides.

Based on the above findings of fact, I conclude Dr. Bansal's opinion regarding permanent disability to claimant's left knee carries the greatest weight. Thus, I conclude claimant has demonstrated entitlement to 5 percent impairment of his left lower extremity.

Under Iowa Code section 85.34(2)(p), entitlement to benefits is based on multiplying the percentage impairment by two hundred twenty weeks. Five multiplied by two hundred twenty equals eleven. Therefore, Mr. Fintel is entitled to eleven weeks of compensation for the permanent partial disability to his left leg caused by the work injury. These benefits shall commence on the stipulated date of March 22, 2022. (Hearing Report, numbered paragraph 5)

Claimant is seeking reimbursement under Iowa Code section 85.39 for the IME of Dr. Bansal. The Code states:

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.

Iowa Code § 85.39(2).

Based on the above findings of fact, I conclude the prerequisites of section 85.39 were met and claimant is entitled to reimbursement of the IME conducted by Dr. Bansal in the amount of one thousand three hundred seventy-eight and no/100 dollars (\$1,378.00). (Cl. Ex. 1, p. 7)

ORDER

THEREFORE, IT IS ORDERED:


All weekly benefits shall be paid at the stipulated rate of two hundred fifteen and 32/100 dollars (\$215.32).

Defendants shall pay eleven (11) weeks of permanent partial disability benefits commencing on March 22, 2022.

Defendants shall reimburse claimant for the IME of Dr. Bansal 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 9th day of February, 2023.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Jeff Margolin (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.