

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BILL J. GROUETTE SR.,

Claimant,

vs.

GILBANE BUILDING COMPANY
OCIP/MIDWEST STEEL, INC.,

Employer,

and

ZURICH NA INSURANCE,

Insurance Carrier,
Defendants.

FILED

SEP 18 2017

WORKERS' COMPENSATION

File No. 5044473

REHEARING

DECISION

Head Note No: 1803

Claimant filed a motion for reconsideration/rehearing (application). Defendants resist the application. The application is considered.

Claimant raises several grounds for rehearing. First claimant contends the "uncontroverted" record indicates claimant never returned to his regular job duties after the August 31, 2012, incident. Claimant suggests claimant had an accommodated job following his fall at work.

Claimant testified that between August 31, 2012, and his first doctor's appointment on October 8, 2012, a period of over six weeks, he worked his regular job without accommodations. (Transcript pages 107-108) Claimant continued to work at his job until December 2012. There is no documentation in the record that between October 8, 2012, and December 2012 claimant worked an accommodated job. The only evidence claimant had any job accommodations is his own self-serving testimony. (Tr. pp. 38, 113) Claimant offers no rationale why he would work full duty from August 31, 2012, to October 8, 2012, but for some unknown reason was given accommodations

from October 8, 2012, until December of 2012. Given this record, it is found claimant's testimony regarding alleged job accommodations is not credible.

The record indicates claimant returned to his regular job duties with no job accommodations from the date of injury until the December 2012 layoff. Claimant's application is denied as to this ground.

Claimant contends his initial treating physician, Mark Haganman, tried to give him work restrictions on October 8, 2012, but defendant-employer's safety manager, Jim Free, specifically instructed the doctor to not give restrictions. Claimant suggests that, but for Mr. Free's instructions to the treating doctor, claimant would have had job restrictions. (Tr. pp. 37, 111)

On October 8, 2012, claimant was evaluated by Dr. Haganman. At that visit claimant was told he did not have a significant neuromuscular injury from the fall five weeks prior. A follow up exam was not found necessary at that time. (Exhibit 5, p. 1)

The record indicates claimant returned to Dr. Haganman on November 7, 2012. Claimant was not given any job restrictions at that visit. Claimant was also evaluated by Jeffrey Nasstrom, D.O., on November 12, 2012, November 15, 2012, and December 3, 2012. There is no indication Mr. Free was with claimant on any of the visits to Dr. Nasstrom. Claimant was not given restrictions at any of those visits. (Ex. 6, pp 1-6) In a November 20, 2012, note, Dr. Nasstrom specifically indicated claimant did not require any job restrictions (Ex. 6, p. 7)

On October 8, 2012, Dr. Haganman found claimant did not have a significant injury and that follow-up was not required. In three visits with Dr. Nasstrom, claimant was not given any work restrictions. In a November 20, 2012, note Dr. Nasstrom specifically indicated claimant did not have any job restrictions. Based on this record, it is found claimant's testimony that Mr. Free prohibited Dr. Haganman from giving work restrictions, is not credible. The record indicates claimant had no work restrictions from the date of injury until December 2012 when claimant was laid off. Claimant's application is denied as to this ground.

Claimant contends in his application the appeal decision indicated claimant waited several weeks before he reported his work injury (Claimant's application, page 2) This is not true. The appeal decision, in the findings of fact, noted claimant alleged he reported his injury to a safety manager for defendant-employer, and the safety manager allegedly refused to document the injury. The appeal decision notes in the findings of

fact, the safety manager for defendant-employer did document the injury (Appeal Decision page 4) The application is denied as to this ground.

The application suggests it was error to not give weight to the opinions of David Sneller, M.D, Jeffrey Nasstrom, D.O., and Marc Hines, M.D. regarding claimant's alleged permanent impairment.

The record suggests Dr. Sneller saw claimant once. Dr. Sneller indicated claimant could do regular work. He offered no opinion regarding claimant's permanent impairment. He only noted he believed claimant's neck, shoulder problems and "CTS" were work-related. He gave no analysis regarding his causation opinion. He gave no response to the opinions of Charles Mooney, M.D. and Douglas Martin M.D., that claimant had no permanent impairment. (Ex. 9) Based on this, Dr. Sneller's opinion is not evidence claimant sustained any permanent impairment from the August 31, 2012, injury.

Dr. Nasstrom indicated, in a form letter, claimant had permanent impairment. He did not indicate the extent of permanency, or the basis for that finding. In the same note Dr. Nasstrom indicated claimant had permanent impairment, but had not reached maximum medical improvement (MMI). In the same form letter, Dr. Nasstrom indicated claimant had no permanent restrictions. (Ex. 6, p. 7) Dr. Nasstrom offered no response to the reports of Dr. Mooney and Dr. Martin that claimant had no permanent impairment. Given these inconsistencies, Dr. Nasstrom's opinions regarding claimant's alleged permanent impairment are not convincing.

Dr. Hines opined claimant had permanent impairment based on an alleged sacroiliac (SI) joint impairment. (Ex. 12, pp. 6-7) Dr. Hines gives no rationale for this rating under the AMA Guides to the Evaluation of Permanent Impairment (5th Ed.) None of claimant's other treating physicians assessed claimant as having an SI joint condition. Dr. Hines found claimant's neck injury exacerbated claimant's cervical radiculopathy. (Ex. 12, p. 6) Dr. Nasstrom noted diagnostic testing showed claimant had no radiculopathy (Ex. 6, pp. 11-12) Given these inconsistencies, Dr. Hines' opinions regarding permanent impairment are found unconvincing.

Dr. Sneller gave no opinion regarding permanent impairment. Dr. Nasstrom suggests claimant may have permanent impairment, but in the same report indicates claimant had not reached MMI and had no restrictions. Dr. Hine' opinions regarding permanent impairment are found not convincing given the inconsistencies detailed

above. Based on this record, claimant failed to carry his burden of proof his injury of August 31, 2012, resulted in permanent disability.

The application also notes the appeal decision erred in stating the arbitration decision awarded claimant permanent total disability benefits under the odd-lot doctrine. Claimant is correct. The arbitration decision in this matter found claimant permanently and totally disabled based on "principles of disability and not on the odd-lot doctrine." (Arbitration Dec., p. 12) Page 1 of the appeal decision should be changed to correct this misstatement. As noted, it is found claimant failed to carry his burden of proof he sustained any permanent impairment resulting from the August 31, 2012, incident. This change, regarding the history of the case, is akin to a correction of a scrivener's error and does not change the appeal decision.

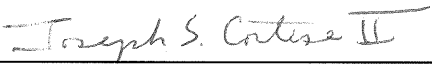
Claimant fell at work. He returned to work for six weeks without any restrictions performing his regular job duties. The record reflects that from October 2012 until December 2012 claimant continued to work with no restrictions at his regular job duties. The opinions of Drs. Sneller, Nasstrom, and Hines are found not convincing evidence that claimant had any permanent impairment from the August 31, 2012, work incident. As detailed in the appeal decision, claimant has failed to carry his burden of proof he sustained any permanent impairment from the August 31, 2012, work incident.

ORDER

It is ordered the second sentence, second paragraph of the first page of the appeal decision is changed to reflect the arbitration decision found claimant was permanently and totally disabled under "principles of disability".

Claimant's application for rehearing is denied as to all other grounds.

Signed and filed on this 18th day of September, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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