

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

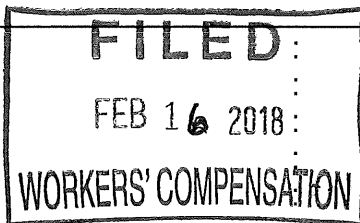
BRYAN HOOKS,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured,
Defendant.



File Nos. 5054678, 5054679

ARBITRATION

DECISION

Head Notes: 1108.50, 1402.20, 2907

STATEMENT OF THE CASE

Bryan Hooks, claimant, filed a petition in arbitration seeking workers' compensation benefits from John Deere Davenport Works, self-insured employer as defendant. Hearing was held on October 3, 2017 in Des Moines, Iowa.

Claimant, Bryan Hooks was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE12 and defendant's exhibits A-Y.

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.

The parties had the opportunity to submit briefs. No brief was received from the claimant. Defendant submitted a post-hearing brief on November 22, 2017.

ISSUES

File No: 5054678

The parties submitted the following issues for resolution:

1. Whether the claimant sustained an injury to his left arm on January 15, 2015, which arose out of and in the course of his employment?
2. Whether the alleged injury is the cause of temporary disability?

3. Whether the alleged injury is the cause of permanent disability? If so, the extent of permanent disability he sustained to his left upper extremity?
4. Whether claimant's claim is barred by operation of Iowa Code section 85.23?
5. Whether claimant's claim is barred by operation of Iowa Code section 85.26?
6. Assessment of costs.

File No: 5054679

The parties submitted the following issues for resolution:

1. Whether the claimant sustained an injury to his right arm on August 1, 2015, which arose out of and in the course of his employment?
2. Whether the alleged injury is the cause of temporary disability?
3. Whether the alleged injury is the cause of permanent disability? If so, the extent of permanent disability he sustained to his right upper extremity?
4. Whether claimant's claim is barred by operation of Iowa Code section 85.23?
5. Whether claimant's claim is barred by operation of Iowa Code section 85.26?
6. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Bryan Hooks, is alleging a January 15, 2015, cumulative injury to his left upper extremity and an August 1, 2015, cumulative injury to his right upper extremity. Defendant, John Deere Davenport Works (hereinafter "John Deere") has denied both injuries and raised notice and the statute of limitations as affirmative defenses on both claims.

Mr. Hooks has worked for John Deere for over twelve years. He has worked in welding and assembly. Leading up to the time of the January 15, 2015, left upper extremity alleged injury, Mr. Hooks worked welding bins and chaises. At hearing, he described the welding he performed as repetitive and strenuous. When working on a skidder he had to hook up air lines and hoses; this involved numerous bolts. He testified that he was constantly using a grinder on parts to make them fit. (Testimony)

Mr. Hooks has a prior history of neck fusions (C4 through C7) due to his involvement in a motor vehicle accident that occurred in the late 1990s. (Ex. O, p. 103) In February of 2010, Mr. Hooks was seen at ORA Bone & Joint Centers ("ORA") with right upper extremity numbness and tingling that he had been experiencing for two months. He noted that his symptoms were worse with certain positions of his neck. R. Scott Collins, M.D. felt that his right upper extremity symptoms sounded radicular in nature. His impression was cervical radiculopathy. Mr. Hooks returned to see Dr. Collins in March of 2010 and reported that this right upper extremity was tender, still mildly problematic and mildly disabling. Dr. Collins felt the MRI clearly demonstrated C6-7 degenerative changes. (JE1)

Mr. Hooks continued to experience bilateral upper extremity problems. In July of 2013, he saw Chad D. Abernathy, M.D. for chronic neck pain and bilateral upper extremity paresthesia. (JE3)

In August of 2013, Mr. Hooks saw John Dooley, M.D. of Pain Centers of Iowa for neck pain located diffusely in the cervical spine and posterior areas. There was aching and numbness intermittently from the left arm down to the hand. This was noted to resolve with arm movement and repositioning. The notes indicate that the symptoms were gradual in nature and started several years ago after a C4 to C6 fusion. (JE5)

Mr. Hooks was seen again at ORA in November of 2014. He reported that when his neck was in certain positions he would feel an increase in the numbness in his hands. The impression at that time was possible bilateral carpal tunnel syndrome and possible C-spine radiculopathy. An EMG was ordered. (JE1)

On January 26, 2015, Thomas VonGillern, M.D., with ORA saw Mr. Hooks to go over the EMG studies. The bilateral studies showed compressive neuropathy of the left median nerve at the wrist. Dr. VonGillern's impression was left carpal tunnel syndrome. The doctor performed a left carpal tunnel release on February 6, 2015. Initially, Mr. Hooks reported some improvement in his numbness. He was released to return to work full-duty, no restrictions effective March 11, 2015. (JE1, JE8, Testimony)

Defense counsel deposed Mr. Hooks in October of 2016. At that time Mr. Hooks testified that he felt his symptoms were from his welding job in department 105 at John Deere. (Def. Ex. O)

The first issues that must be determined is whether claimant sustained a cumulative injury to his left upper extremity which arose out of and in the course of his employment with John Deere. We must also determine whether claimant sustained a cumulative injury to his right upper extremity which arose out of and in the course of his employment with John Deere. There are several physicians in this case who have rendered their opinions regarding causation.

At the request of his attorney, Mr. Hooks underwent an IME with Richard Neiman, M.D. on March 22, 2016. (JE12) Dr. Neiman does assign permanent

functional impairment to Mr. Hooks. For the operated left carpal tunnel syndrome he assigns 5 percent of the upper extremity. For the unoperated right carpal tunnel syndrome he assigned 5 percent of the right upper extremity. Dr. Neiman's report does not clearly address the issue of causation. One could argue that Dr. Neiman causally connects the upper extremity problems to Mr. Hooks' work at John Deere, but any causation opinion is vague, at best. Even if Dr. Neiman does causally connect the upper extremities to the work at John Deere the opinion would not be persuasive because the doctor fails to provide any rationale or support for a causation opinion. Furthermore, it is unclear to the undersigned whether Dr. Neiman reviewed all of Mr. Hooks' medical records prior to issuing his report. So, his opinions are likely based on an incomplete history. Additionally, based on a review of his report, it appears that Dr. Neiman was not aware of Mr. Hooks' work duties at John Deere. In Mr. Hooks' deposition he stated that he did not really have any conversations with Dr. Neiman about his job duties; Dr. Neiman just knew that Mr. Hooks was a welder. (Def. Ex. O, p. 103) For these reasons, I give no weight to any opinions provided by Dr. Neiman.

In September of 2016, the treating orthopaedic surgeon, Dr. VonGillern, stated that he was not familiar with the job duties or requirements of the Assembler job at John Deere or the CNC/Robotic Welder job that Mr. Hooks had been working. The doctor confirmed that the EMG study dated December 4, 2014 did not show carpal tunnel syndrome on Mr. Hooks' right side. Dr. VonGillern also indicated that he felt that Mr. Hooks did not sustain any permanent impairment to his left arm. (Ex. N)

Christine Deignan, M.D. is a board certified occupational health physician who also serves as an adjunct professor in occupational medicine at the University of Iowa. At the request of the defendant, she conducted an IME on Mr. Hooks in September of 2016. Mr. Hooks told Dr. Deignan that he felt his hand pain was caused by his welding in Department 105. He reported to the doctor that the left carpal tunnel release was of "NO HELP". (Def. Ex. M, p. 75) Dr. Deignan's September 9, 2016 examination revealed that the Tinel's sign was negative at both wrists and both elbows and the Phalen's sign was negative at both wrists and both elbows.

Dr. Deignan visited and reviewed Mr. Hooks' welding job at John Deere. Her report lists detailed information about the tasks performed by Mr. Hooks. Dr. Deignan opined that Mr. Hooks' welding job at John Deere was "low risk for producing repetitive motion injury of both hands." (Def. Ex. M, p. 81) She also noted that Mr. Hooks had a normal EMG study on his right upper extremity. He also had normal sensation and strength in his right upper extremity. She felt that his right upper extremity symptoms were not consistent with carpal tunnel syndrome. Dr. Deignan stated that the carpal tunnel release on the left was not successful in relieving Mr. Hooks' symptoms. Dr. Deignan noted that the median nerve is composed of portions of the cervical nerve roots from C5-C8 and "[b]ecause of anatomical relationship of the median nerve to the cervical nerve roots, it becomes clear why symptoms originating in the cervical nerve root may overlap with symptoms originating at the median nerve at the wrist." (Def. Ex. M, pp. 82-83)

Ultimately, Dr. Deignan opined that Mr. Hooks does not have carpal tunnel syndrome on either the right or left upper extremity. She stated the following reasons for her opinion:

1. Mr. Hooks gives pain as a chief complaint rather than numbness. Numbness as a chief complaint is typical of carpal tunnel syndrome.
2. Mr. Hooks' signs and symptoms, elicited during the physical examination of September 9, 2016, are not characteristic of carpal tunnel syndrome.
3. The EMG-NCV was consistent with mild carpal tunnel on the left but normal on the right.
4. Mr. Hooks reported to me during my examination the surgical treatment on the left was of "No Help". One would expect successful resolution of symptoms if the nerve is only mildly affected as evidenced by his EMG-NCV.
5. Mr. Hooks was treated for pain and numbness in the extremities prior to his work claim at ORA in 2010, John Deere Medical Group in 2013, Dr. Abernathy [sic] in 2013, Mississippi Valley Pain Clinic in 2013 and Pain Centers of Iowa in 2013. His personal treating physicians evaluated him based on his history of cervical spine pathology and their findings on physical examination and medical testing. Their conclusions were that the symptoms were likely due to cervical radiculopathy.
6. Mr. Hooks' work at John Deere Davenport Works was not repetitive in nature. In my medical opinion, his job duties would not produce bilateral carpal tunnel syndrome.

Dr. Deignan stated that Mr. Hooks does not have symptoms from carpal tunnel syndrome on either his right or left side. Rather, she opined that Mr. Hooks suffers from continued symptoms related to his cervical spine pathology and his complex and recalcitrant chronic pain syndrome. (Def. Ex. M, p. 84)

I find the opinions of Dr. Deignan to be persuasive. Her opinions appear to be based on an understanding of claimant's work duties and a complete medical history. Furthermore, her opinions are well-reasoned.

Lester Kelty, M.D., is an occupational health doctor employed by UnityPoint and works at the John Deere plant who has also offered his opinions in this case. Dr. Kelty visited and reviewed Mr. Hooks' welding job at John Deere in Department 105 on two separate occasions. Dr. Kelty opined the welding job neither caused nor significantly contributed to Mr. Hooks' alleged injuries to his right and/or left upper extremity. Dr. Kelty demonstrated a thorough knowledge of Mr. Hooks' job duties. Additionally,

Dr. Kelty explained that the job was not repetitive, did not require great force, and did not require awkward positioning, which is why he did not think that Mr. Hooks' upper extremity problems were related to the job. In reaching his opinions, Dr. Kelty relied in part on the AMA Guides to the Evaluation of Disease and Injury Causation. (Def. Exs. H & T) I find the opinions of Dr. Kelty to be based on an understanding of Mr. Hooks' job duties, on a complete medical history, and I find his opinions to be well-reasoned. For these reasons, I find the opinions of Dr. Kelty to be persuasive.

When all the expert opinions in this case are considered, I find that claimant has failed to prove by a preponderance of the evidence that he has sustained an injury to either his right or left upper extremity which arose out of or in the course of his employment with John Deere. The record lacks any persuasive expert medical opinion to support Mr. Hooks' allegations that he sustained any injury to either upper extremity which arose out of and in the course of his employment with John Deere.

Because the record is void of any persuasive evidence to support Mr. Hooks' claim that he sustained a compensable injury on either alleged date of injury, all other issues in this case, other than costs, are rendered moot.

Claimant is seeking an assessment of costs against the defendant. Costs are to be assessed at the discretion of the deputy hearing the case. Because claimant failed to prove he sustained a compensable injury on either alleged date of injury, I find that an assessment of costs against the defendant is not appropriate. As such, each party shall bear their own costs.

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. 6.14(6)(e).

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 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).

Based on the above findings of fact, I conclude that Mr. Hooks failed to carry his burden of proof to show by a preponderance of the evidence that he sustained an injury to his left upper extremity which arose out of and in the course of his employment with John Deere on January 15, 2015.

Based on the above findings of fact, I conclude that Mr. Hooks failed to carry his burden of proof to show by a preponderance of the evidence that he sustained an injury to his right upper extremity which arose out of and in the course of his employment with John Deere on August 1, 2015.

Costs are to be assessed at the discretion of the deputy commissioner hearing the case. Because claimant failed to carry his burden of proof to show he sustained a work-related injury on either alleged date, I conclude an assessment of costs against the defendant is not appropriate. Each party shall bear their own costs.

All other issues in this case are rendered moot by the conclusion that claimant failed to carry his burden of proof to demonstrate that he sustained a compensable injury on either alleged date.

ORDER

THEREFORE, IT IS ORDERED:

File No: 5054678

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

Defendant 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.

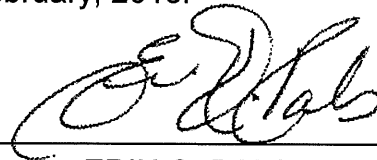
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Signed and filed this 16th day of February, 2018.



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DEPUTY WORKERS'
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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.