BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DOUGLAS SPENCER,

Claimant,

vs.

ANNETT HOLDINGS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5023311

APPEAL

DECISION

Head Note No. 1803

On February 25, 2015, the Iowa Workers' Compensation Commissioner, Joseph S. Cortese II, delegated authority to the undersigned to enter a final agency decision in this case pursuant to Iowa Code section 86.3. The undersigned performed a de novo review of the evidentiary record and reviewed the detailed arguments of the parties in their intra-agency appeal briefs.

Defendant, Annett Holdings, Inc., appeals from a ruling on partial summary judgment entered on April 5, 2012, and a supplemental ruling filed on remand for that same motion for partial summary judgment filed on January 18, 2013. In addition, Annett Holdings, Inc., appeals from a review-reopening decision filed March 12, 2014. Claimant contends that the rulings on partial summary judgment and the review-reopening decision should be affirmed.

On December 8, 2008, the parties entered into a combination settlement pursuant to Iowa Code section 85.35(4). As part of that combination settlement, the parties entered into an agreement for settlement. In that agreement for settlement, the parties stipulate that claimant sustained a left knee injury on January 2, 2007, which arose out of and in the course of claimant's employment with Annett Holdings, Inc. Under the terms of that agreement for settlement, Mr. Spencer retained all future medical rights for medical treatment causally related to the stipulated left knee injury. (Exhibit S, page 3)

After claimant filed a petition for review-reopening, he filed a motion for partial summary judgment. In his motion for partial summary judgment, claimant sought to preclude defendants from attempting to deny liability for the January 2, 2007, left knee injury. Both rulings on claimant's partial motion for summary judgment held that the principles of judicial estoppel apply and that defendants were not permitted to re-litigate the issue of whether claimant sustained a work related left knee injury on January 2, 2007.

In the March 12, 2014, review-reopening decision, the presiding deputy commissioner concluded that principles of judicial estoppel apply and preclude any further litigation on the issue of whether claimant sustained an injury to his left knee as a result of his work duties at Annett Holdings, Inc., on January 2, 2007. The review-reopening decision found that claimant's current need for left total knee replacement is causally related to the January 2, 2007 work injury. The presiding deputy commissioner concluded that defendant is liable for the left total knee replacement that is sought by claimant.

The factual background and the factual findings of the presiding deputy commissioner are comprehensive and well-supported in the record. Therefore, the factual findings of the presiding deputy commissioner are incorporated herein by this reference to the findings in the arbitration decision.

Pursuant to Iowa Code sections 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on March 12, 2014, that relate to issues properly raised on intra-agency appeal with the following additional analysis:

Annett Holdings, Inc., initially urges error in the rulings on claimant's motion for partial summary judgment. As noted above, another deputy commissioner concluded that defendant was judicially, or administratively, estopped from denying liability for a left knee work injury sustained by Mr. Spencer on January 2, 2007.

Annett Holdings, Inc., urges that the agency should not have entertained or entered a ruling on claimant's motion for partial summary judgment. Defendant asserts in its intra-agency appeal brief that it "very clearly stated in its answer that it acknowledged a review-reopening proceeding did not provide it an avenue to re-litigate liability." (Defendant's Appeal Brief, page 19) It appears that defendant filed a federal court proceeding which sought to set aside the settlement approved by this agency under a theory that claimant obtained that settlement via fraud.

Defendant appears to concede that, at least as of the time the review-reopening proceeding was tried, it had no right before this agency to challenge whether claimant sustained a left knee injury that arose out of and in the course of his employment on January 2, 2007. Rather, it appears that defendant essentially seeks to maintain the possibility that it may prevail in a federal lawsuit and obtain a judgment from a federal tribunal setting aside the settlement agreement approved by this agency on December 18, 2008.

Defendant essentially contends that it obtained and developed evidence subsequent to an alternate medical care proceeding in which it admitted liability and presumably subsequent to entering into the agreement for settlement. Annett Holdings,

Inc., urges that it should be permitted to challenge (at least in federal court) whether the January 2, 2007 work injury occurred. Therefore, Annett Holdings, Inc., argues that it was error for this agency to enter any ruling on the partial summary judgment motion.

Claimant's exhibit 12 discloses that defendant made a similar argument before the United States District Court for the Southern District of Iowa. The Honorable Robert W. Pratt considered defendant's argument and noted, "The case at bar fulfills all elements of judicial estoppel, and to allow Annett to move forward with its counterclaims, all founded on a denial of liability for Spencer's knee injury, would insult judicial integrity." (Ex. 12, p. 4) Therefore, Judge Pratt concluded that judicial estoppel was appropriate given defendant's prior admissions of liability. Judge Pratt held that Annett Holdings' attempts to dispute liability for the January 2, 2007 left knee injury, "are precisely the type of claims that judicial estoppel was created to prohibit. The record is clear that if this Court were to allow Annett's counterclaims to move forward, it would create the potential for inconsistent and misleading opinions—the specific outcome the Iowa Supreme Court sought to avoid by adopting judicial estoppel." (Ex. 12, p. 10)

Judge Pratt's reasoning is sound, appropriate, and binding in this situation. The undersigned has no authority to overrule, reconsider, or ignore Judge Pratt's findings or conclusions. Moreover, Judge Pratt's analysis and conclusions are also consistent with the reasoning applied by the deputy commissioner ruling on the motion for partial summary judgment and the reasoning used by the presiding deputy commissioner in the review-reopening decision. I find no error in the deputy commissioners' rulings entered on claimant's motions for partial summary judgment or in the arbitration decision applying judicial estoppel. Defendant is judicially estopped from now arguing that claimant did not sustain a work injury to his left knee on January 2, 2007. Tyson Foods, Inc. v. Hedlund, 740 N.W.2d 192 (Iowa 2007); Winnebago Industries, Inc. v. Haverly, 727 N.W.2d 567 (Iowa 2006).

In its appeal from the March 12, 2014, review-reopening decision, defendant asserts that claimant failed to prove by a preponderance of the evidence that his current need for a left total knee replacement is causally related to the January 2, 2007, work injury. In this respect, defendant attempts to bring in evidence that pertains to whether a work injury was actually sustained on January 2, 2007. For instance, defendant made an offer of proof of a deposition of an eyewitness that now disputes whether Mr. Spencer sustained a work injury as previously stipulated to in the agreement for settlement. For the reasons stated by the deputy commissioners in the motion for partial summary judgment, in the review-reopening decision, and by Judge Pratt in exhibit 12, judicial estoppel precludes such evidence and argument.

However, Annett Holdings, Inc., convincingly argues that even with the work injury established via the agreement for settlement and judicial estoppel, claimant "still must prove the current condition for which he seeks additional treatment is causally connected to the work injury." (Def. App. Brief, p. 27) The presiding deputy

commissioner recognized and acknowledged this argument. On pages six and seven of the review-reopening decision, the deputy commissioner stated:

> The parties in their arguments fail to distinguish between the arising out of issue and the causal connection issue, but instead simply dispute whether defendant can now "dispute liability." Since "liability" refers to both arising out of and in the course of employment, and a causal connection between the injury and the condition causing disability, the answer is both yes and no. Defendant cannot, in this review-reopening proceeding, dispute claimant's injury arose out of and in the course of his employment. They also cannot go back and now dispute whether claimant's left knee condition at the time of the agreement for settlement was causally connected to his work injury. Their agreement to settle the case established both of those things, and that is now res judicata. Defendant is administratively estopped from now trying to re-litigate those issues.
>
> Defendant can, however, dispute whether the condition he presently complains of is causally connected to that established work injury, as this action is in review-reopening. This is because a review-reopening proceeding addresses a different period of time than an arbitration proceeding. The agreement for settlement is res judicata as to claimant's original injury, and establishes a work injury occurred, and that claimant's condition at that point in time, the date of the settlement in this case, was caused by the work injury. Now, in this subsequent review-reopening proceeding, a different question is presented, and a different period of time is examined. A review-reopening proceeding does not re-litigate the issues already determined in the arbitration phase. Rather, a review-reopening proceeding examines the period of time since the prior award or settlement to determine if a change of condition has taken place, and whether that change has resulted in a change in claimant's disability. Thus, a defendant can never be bound by the prior determination of causal connection when, by definition, review-reopening looks to a different period of time and possibly a different cause for claimant's current symptoms. A determination that a claimant's medical condition was causally connected to the work injury prior to the award or settlement does not determine the question of whether claimant's medical condition now is caused by the work injury. The work injury itself determined that was established in arbitration cannot be re-litigated in review-reopening, but causal connection will always be a new and relevant issue in review-reopening because of the different time periods involved in each type of action. Claimant bears the burden of proof to show the condition he now claims causes increased disability is causally connected to his prior work injury.

The deputy's analysis mixes two concepts: res judicata and judicial estoppel. It would be debatable whether the principles of res judicata would apply in this situation. See Haverly, 727 N.W.2d 567. I do not rely upon or apply the principles of res judicata. However, judicial estoppel clearly does apply. Id. Therefore, I conclude that the deputy provided an accurate analysis that defendant may not re-litigate the issue of arising out of and in the course of employment.

The presiding deputy commissioner is also accurate that claimant must prove ongoing causal connection between the January 2, 2007 left knee work injury and the current condition and need for left total knee replacement. Nevertheless, defendant asserts that the presiding deputy "essentially disregarded Annett Holdings' experts' opinions, concluding that the substance of their opinions was not confined to the events or conditions subsequent to the agreement for settlement and therefore irrelevant." (Def. App. Brief, p. 28) Defendant requests a de novo review to weigh the respective credibility of the medical causation opinions within the review-reopening evidentiary record.

Defendant urges the adoption of the medical opinions of Kary R. Schulte, M.D., and Craig R. Mahoney, M.D. Dr. Schulte opines that an unrelated fall at home is the cause of claimant's left knee injury. (Ex. G, p. 1) Obviously, for the reasons noted above, defendants are judicially estopped from arguing that the initial injury is anything other than work related. However, Dr. Schulte also opines, "the more significant cause of the patient's complaints is his underlying left knee degenerative arthritis." (Ex. G, p.1)

During his deposition, Dr. Schulte reiterated his opinion that the fall at home was likely the cause of the initial 2007 injury. (Ex. F, pp. 13-18) Those opinions are rejected because they are contrary to the combination settlement terms entered into by the parties and defendant is judicially estopped from raising that issue at this juncture of the litigation.

In his deposition, Dr. Schulte expanded upon his medical opinions pertaining to the cause of claimant's current need for a total knee replacement. In this respect, Dr. Schulte testified:

> Q: So assuming that on January 2, 2007, Mr. Spencer suffered a meniscus tear, knowing the amount of degenerative arthritis he had in his knee at that time, what impact would you expect that meniscus tear to have on the degenerative condition of his knee going forward?
>
> A: The – with the degenerative change he already had in his knee, I would have expected that over time his knee would have continued to

have further wear and tear, develop further wear-and-tear arthritis irrespective of whether or not he had a meniscus tear.

Q: And, Doctor, is it possible to determine whether but for the meniscus tear his knee condition would have been the same?

A: In my opinion, more likely than not, he would have continued to progressively develop degenerative arthritis in his knee.

(Ex. F, p. 27)

On cross-examination, Dr. Schulte testified:

Q: Is it pretty common after a traumatic event for that pre-existing arthritis to become symptomatic?

A: Specific to this case, in my opinion, the reported cartilage tear would certainly be consistent with an injury to the knee. Treatment for the cartilage tear would be appropriate and related to the reported work injury to the knee. Further progressive wear-and-tear arthritis, in my opinion, would be more related to the baseline wear-and-tear arthritis he had rather than any specific injury either at work or at home or whatever it happened. I think it is more likely than not that someone with the amount of arthritis that he had was going to develop symptomatic wear-and-tear arthritis at some point.

(Ex. F, pp. 34-35)

It is noted that Dr. Schulte evaluated claimant once on January 11, 2007. (Ex. F, pp. 33-34) He reviewed an x-ray of claimant's left knee, but has never seen the intra-operative photographs taken during a meniscectomy performed on October 5, 2007. (Ex. F, p. 50) While a highly qualified orthopaedic surgeon, Dr. Schulte concedes that a physician with more information is able to give a more complete medical opinion. (Ex. F, p. 56) In this instance, Anthony P. Dalton, M.D., has more and superior information available to him in that he has evaluated Mr. Spencer multiple times and had the opportunity to inspect Mr. Spencer's knee joint intra-operatively.

Defendant also urges acceptance and reliance upon the medical opinions of Craig R. Mahoney, M.D. Dr. Mahoney is a highly qualified orthopaedic surgeon. (Ex. E) Dr. Mahoney opines "that arthroscopic knee surgery for meniscal tears as outlined by his April 6, 2007, MRI does not dramatically change the prognosis as it relates to degeneration of the knee." (Ex. D, p. 2)

During his deposition, Dr. Mahoney reiterated his opinions and testified:

Q: Assuming Mr. Spencer's condition does warrant a total knee replacement, your report does indicate that you believe the need for the total knee replacement is a result of his preexisting degenerative condition and the subsequent motor vehicle accident, correct?

A: Yeah. I think what I said in Question Number 1 on October 14th was the current knee condition is due to the preexisting degenerative change he had in his knee prior to his injury, as well as the injury of January 2nd of '07, but also the motor vehicle accident. But I think later we talked about the specifics.

And I do believe that the preexisting condition and the motor vehicle accident were likely more responsible for his current state than the injury of 2007.

(Ex. V, pp. 25-26)

In this respect, Dr. Mahoney's opinion suggests that the January 2, 2007, work injury was a cause of claimant's need for knee replacement but was not the most significant cause.

Interestingly, on cross-examination in his deposition, Dr. Mahoney testified:

Q: . . . Assuming that what Doctor Dalton found is exactly what he described in his deposition and these loose bodies are in there for this period of time, would you expect any damage to have been done within the joint space?

A: It's possible. It's possible. If the loose bodies were interposed between the thigh—or the femur and the tibia, then it's possible that it could cause damage.

(Ex. V, p. 50)

The loose bodies described during his testimony were identified by Dr. Dalton intra-operatively and were photographed by Dr. Dalton.

Perhaps more importantly, Dr. Mahoney continued his explanation on cross-examination, testifying:

Q: Can the progression of arthritis be accelerated?

A: Yes.

Q: Can the progression of arthritis be accelerated by trauma?

A: Yes.

Q: Do you believe that the work injury—that trauma accelerated the arthritic progress?

A: Yes, on some level. Yes.

(Ex. V, p. 53)

I accept this testimony by Dr. Mahoney as accurate and find that the January 2, 2007 work injury caused some level of acceleration of the arthritic process in Mr. Spencer's left knee.

Dr. Mahoney also conceded that the best way to render a medical causation opinion is to evaluate the patient. (Ex. V, p. 35) In this situation, however, Dr. Mahoney has never evaluated claimant. He has seen claimant's x-rays, but has never seen Mr. Spencer's MRI films or the intra-operative photographs taken by Dr. Dalton. (Ex. V, pp. 34-35, 37)

In November 2008, Dr. Dalton opined, "As intraoperative photographs will demonstrate, however, the complicated tear of Mr. Spencer's left medial meniscus created an abrasive surface which caused erosion of the articular surfaces of the medial compartment." (Ex. 3, p. 30) Dr. Dalton explained that this abrasive surface:

> Superimposed on a mild case of degenerative arthropathy of the medial compartment of his left knee, dilatory treatment of Mr. Spencer's left medial meniscus tear greatly exacerbated his medical compartment symptoms and I believe to a reasonable degree of medical certainty that this will cause Mr. Spencer to experience post-traumatic arthropathy of the left knee at a much earlier age than anticipated and will likely require reconstructive surgery at some time in the future.

(Ex. 3, p. 30)

The other surgeons do not concur that the delay in treatment necessarily is a cause of the need for the current left knee replacement. Therefore, I do not find that claimant has proven the delay in treatment has caused the current need for a knee replacement. However, Dr. Dalton appears to concur with Dr. Mahoney that the meniscus tear and traumatic injury to the claimant's left knee accelerated the underlying degenerative joint disease and caused claimant to need a left knee replacement sooner than would otherwise be expected. Dr. Dalton's 2008 medical opinion and prediction

has now come to fruition. I accept Dr. Dalton's medical opinion that the 2007 work injury is a cause of acceleration of the need for the left total knee replacement. He has evaluated claimant several times as the treating surgeon and had a chance to inspect the claimant's left knee intra-operatively.

W. Blake Garside Jr., M.D., is the most recent treating orthopaedic surgeon. Dr. Garside was selected by defendant as the authorized medical provider. In fact, defendant's selection of Dr. Garside was upheld in an alternate medical care proceeding and on judicial review of that alternate medical care decision by the Iowa Court of Appeals. Dr. Garside opines that, "The work-related meniscal tear aggravated the pre-existing condition." (Ex. 7, p. 18) This opinion is quite similar to the opinions expressed by Dr. Mahoney and Dr. Dalton. Dr. Garside's opinion in this respect is also accepted as accurate.

Having performed a de novo review of the evidentiary record and having given particular attention to the competing medical causation opinions, I concur with the presiding deputy commissioner's ultimate conclusion and award. Specifically, I find that the opinions of Dr. Garside, Dr. Dalton, and Dr. Mahoney, as discussed herein, are the most convincing medical opinions in this record.

Therefore, I find that claimant proved the January 2, 2007, work injury accelerated or worsened his underlying degenerative joint disease in his left knee. I find that the January 2, 2007, work injury substantially aggravated that underlying degenerative joint disease and caused claimant to require a total left knee replacement sooner than would otherwise have been required. Therefore, I find that claimant has proven a causal connection between the January 2, 2007, work injury and the current need for a left total knee replacement.

Having found a causal connection between the January 2, 2007, work injury and the current need for a left total knee replacement, I conclude that defendant is obligated to pay for any medical expenses related to the total left knee replacement. Iowa Code section 85.27. Ultimately, I conclude that the presiding deputy commissioner reached the proper conclusion and entered the proper orders in this review-reopening proceeding.

ORDER

THEREFORE, IT IS ORDERED:

The rulings on partial summary judgment filed on April 5, 2012, and January 18, 2013, are AFFIRMED.

The March 12, 2014, review-reopening decision is AFFIRMED.

Defendant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 13th day of March, 2015.

WILLIAM H. GRELL
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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