

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAWRENCE SCROGGINS,

Claimant,

vs.

BRIDGESTONE AMERICAS, INC.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED
JUN 28 2019
WORKERS' COMPENSATION

File No. 5058901

ARBITRATION

DECISION

Head Notes: 1100, 1108, 1402, 1700, 1802,
1803, 3000, 3002, 3800,

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Lawrence Scroggins, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on May 18, 2017. Claimant alleged he sustained work-related injuries on November 18, 2016. (Original notice and petition)

For purposes of workers' compensation, Bridgestone Americas, Inc., is insured by Old Republic Insurance Co. Defendants filed their answer on May 31, 2017. The defendants denied the occurrence of the work injuries on November 18, 2016. A First Report of Injury was filed on April 6, 2017.

The hearing administrator scheduled the case for hearing on July 26, 2018. The hearing took place at 150 Des Moines Street in Des Moines, Iowa. The undersigned appointed Ms. Amy Rose-Coenen, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Defendants called Dean Erickson, M.D., as their witness. Joint Exhibits 1 through 8 were admitted. Claimant offered Exhibits 1 through 8. Defendants offered Exhibits A through L. The aforementioned exhibits were admitted as evidence. The parties also submitted post-hearing briefs on August 27, 2018. The case was deemed fully submitted on that date. The original transcript of the proceedings was filed on August 30, 2018.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;
2. If defendants are liable for any healing period benefits, the period would be from November 19, 2016 through April 24, 2017;
3. Although entitlement cannot be stipulated, claimant was off work during this period of time;
4. If permanency is found, the parties agree the method of calculation is by the industrial manner;
5. The commencement date for any permanent partial disability benefits that may be due is April 25, 2017.
6. At the time of the alleged work injury, claimant's weekly benefit rate would be \$661.74;
7. Defendants are entitled to a credit for disability income paid to claimant in the net amount of \$12,525.63;
8. The parties agree the last date claimant worked was November 18, 2016; and,
9. The parties agree the costs detailed in Claimant's Exhibit 8 have been paid by claimant.

ISSUES

The issues presented are:

1. Whether claimant sustained an injury on or about November 18, 2016 which arose out of and in the course of his employment;
2. Whether the alleged injury is a cause of temporary and/or permanent disability;
3. Whether claimant is entitled to healing period benefits for the period from November 19, 2016 through April 24, 2017;
4. Whether claimant is entitled to permanency benefits for the alleged work injury of November 18, 2016;

5. If claimant is entitled to permanency benefits, what is the extent of those permanency benefits?
6. Whether claimant provided timely notice pursuant to Iowa Code section 85.23;
7. Whether claimant complied with Iowa Code section 85.26;
8. Whether claimant is entitled to the cost of an independent medical examination pursuant to Iowa Code section 85.39;
9. Whether defendants are liable for the costs to litigate this claim.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and the expert testimony of Dr. Erickson, and after judging the credibility of the witnesses, plus after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is presently 46 years old and separated from his spouse. He has both minor children and children who have reached adulthood. His 20-year-old daughter assists claimant with transportation issues, as claimant does not hold a valid license to drive a vehicle in Iowa. Claimant has been medically classified as "super morbidly obese". It is difficult to weigh claimant, as many of the scales stop at 450 pounds.

Claimant graduated from North High School in Des Moines, Iowa in 1992. As a high school student, claimant worked for Kentucky Fried Chicken as a cook from 1988 until 1990. He worked three part-time jobs between 1990 and 1995. The jobs were: a technician for Jiffy Lube; a cashier for Git 'N Go; and loader for UPS. In 1994, claimant worked for a short time at Monfort in Des Moines.

In January 1995, claimant commenced employment with Bridgestone Americas, Inc. He began working as a 620 Banbury Compounder (Banbury) in department 412. Except for one year, claimant remained working in department 412. A description for a 620 operator/compounder is detailed in Defendants' Exhibit I. The job description is incorporated by reference as though fully set out herein. Some of the most important aspects of the job are:

Manually load all necessary rubber and pigments on weigh belt for a batch. Read formula specification for information regarding formula, weights and loading procedure. Load all required rubbers, synthetics, reclaim and workaway as specified on belt in proper sequence, weighing

out each prescribed amount according to specification. Remove all foreign material. Use air operated guillotine cutter or knife to cut part weighs to obtain proper weights. . .

(Defendants' Exhibit I)

During his hearing, claimant testified about the various tasks involved in his job. He described those tasks:

Q. (By Mr. Neal) So what did your job consist of as a 620 compounder?

A. Loading - - loading and unloading our belts, loading and unloading the robots, operating the control panels.

Q. So did you do pretty much all of those things every shift?

A. Yes.

Q. Okay. So if you broke it down, what would you - - how would your typical day start, I suppose?

A. We'd come in and get a formula or a schedule from our supervisor in the office, as far as what we're going to run that night, and then we would split up into two teams for - - one for the 621, one for the 22, as far as - - my part on the back end. We would decide who's going to do what, as far as operate, strip or load the belt.

Q. So if we - - So let's just take operate; what does that consist of?

A. Running the computers; operating the robots; basically watching all the formulas as far as times, temps; running and control panels.

Q. And did you have to do any physical labor with that part of the job?

A. Yes.

Q. And what did that consist of?

A. Helping the belt loader load the belt.

Q. And what would you put on the belt when you're loading?

A. Carbon black and rubber.

Q. What's carbon black?

A. We were always told it was ground rubber that was ground up real fine into a powdery form.

Q. This powder, was it out in the open, or was it in bags, or how - - how was it handled?

A. It was in bags, but there would be some on top of the bags as well.

Q. Some what?

A. Carbon black.

Q. Are you talking about the powder substance?

A. The powder substance.

Q. Then you mentioned rubber, what is the rubber?

A. Ground. We were told the rubber chunks that we would have to throw on the belt were 75 to 78 pounds each.

Q. How much did the bags of carbon black weigh?

A. Usually 25 pounds, but there were 50-pound bags also.

Q. And did you have to lift those bags by yourself?

A. Yes.

Q. And then what about the rubber, did you have to lift those?

A. Sometimes we would, and sometimes we'd - - certain formulas we have where we can use the robot to help us assist where, say, if it took ten blocks of rubber, the robot may throw five, and then we would throw the other five on the belt ourselves. Between me and the belt loader, I might throw two blocks, and he would throw three as far as rubber to make the full ten.

Q. At any point during this process as an operator, did you open the bags of carbon black?

A. No.

Q. Was - - The job as an operator, did you consider it a dusty job?

A. Yes.

Q. And how did you know that?

A. Because we always went home with dirt or stuff in our nose or hacked up stuff, or you would just have dust or dirt on you, period.

Q. Do you know what carbon black is?

A. I just know it's like a ground rubber, or it's a silica as far as I know.

Q. Did Bridgestone always have it in a powder form in these bags as far as you know?

A. Yes.

Q. And then what about your stripper job, what does that consist of?

A. Stripping the rubber out, making sure that we have all the rubber, because there's, like, 20 different rubbers, and each - - run takes a different type of rubber, and the stripper would make sure that if the robot took five blocks, he would make sure that that type of rubber was set up to go to the robot, and then also that we would have the rubber that we were going to throw on the belt and/or carbon black that we would have to throw.

Q. So as a stripper, you were also dealing with these bags of carbon black?

A. Yes, and he's the relief guy for both the operator and the belt loader.

Q. Did you consider the stripper job a dusty job?

A. Yes.

Q. And so if you had to lift these bags and rubber, would you have had to have lifted the same amount as you testified before as an operator?

A. The same, yeah.

Q. And then I think the last one you said was belt loader; is that correct?

A. The belt loader.

Q. What does that job consist of?

A. Throwing the rubber on the belt. He stands there basically just to throw the rubber on the belt and put the pigments on. There's also maybe pigments at the end of the belt that he may have to put on also.

Q. So that job primarily consists of just throwing this substance on the belt?

A. Yeah.

Q. In that capacity did you have to handle the bags and the rubber?

A. Yes.

Q. Do you consider that job dusty?

A. Yes, I do.

Q. Were there any times in your department where you considered it dustier than other times?

A. When we - - when the machine would break down, if we had to go down to the basement and put on a poor mixed batch in the basement because it didn't mix right, it would be a lot of carbon black that wouldn't be in the bag, because the bag would be melted, so we'd have to shovel it out and put it in 55-gallon barrels.

Q. And that would be the exposed powder?

A. Yes.

Q. Would there be other times during the year that it would be dustier as well in there?

A. Usually in the wintertime every now and then the carbon black tower plugs up, and there might be a blow-out on the third - - on the third floor that we may have to go and shovel up.

Q. What do you mean by that?

A. A bunch of carbon black.

Q. What do you mean by blow-out?

A. For some reason it's - - it blows too much carbon black over that's been backed up in the system, and the bins that take it up on the third floor that hold the carbon black inside overflow, and so there's a lot of black that ends up on the floor, and we have to go and shovel it into 55-gallon barrels again.

Q. During these times that you mentioned, do you feel like there is particulate up in the air?

A. There's a lot of particulate up in the air. Anyone that's shovelling [sic] the carbon black can come out as dark as - - like almost like you were working in a coal mine.

Claimant testified about working with carbon black while he was employed at Bridgestone Americas, Inc. In defendants' Exhibit C, carbon black is defined in the 2013 article, "Carbon black vs. black carbon and other airborne materials containing elemental carbon: Physical and chemical distinctions", by Christopher M. Long, Marc A. Nascarella, and Peter A. Valberg. The authors defined carbon black as:

Carbon black (CB) is a manufactured product that has been in commerce for over a century. Consisting of a fine black powder of nearly pure elemental carbon (EC), it has numerous applications in a variety of commercial and consumer products. Its single largest use is as a reinforcing agent in vehicle tires and rubber automotive products, while other common, everyday products that often contain CB include inks, paints, plastics, and coatings. It is manufactured by either partial combustion or thermal decomposition of gaseous or liquid hydrocarbons under controlled conditions optimized to yield a variety of CB grades having specified ranges of properties (e.g., specific surface area, particle size and structure, conductivity, and color).

As discussed in a previous paper (Watson and Valberg, 2001), the terms carbon black and soot have often been used interchangeably despite the fact that soot by definition is an undesired byproduct of incomplete combustion of fossil fuels and biomass.

Id.

Carbon black is often mistaken for black carbon. In the same article as listed above, the authors defined black carbon as:

Black carbon (BC) is a collective term that describes a range of carbonaceous substances from partly charred plant residues to highly graphitized (i.e., highly ordered molecular carbon structures as found in graphite) soot that are generated as products of incomplete combustion (Shrestha et al., 2010). In contrast to CB, there is no universally accepted chemical definition of the term "black carbon", and it is oftentimes referred to as soot, graphitic carbon, and/or elemental carbon. Some definitions proposed for black carbon have focused on its chemical and/or physical properties (e.g., its light-absorbing properties), while others are operationally based and reflect the results of measurement and estimation approaches (Janssen et al., 2012; Kupianen and Kilmont, 2004; US EPA 2012). For example, Andreae and Gelencse'r (2006) define BC as "soot carbon" and "an impure form of near-elemental carbon with a graphite-like structure, which is formed in flaming combustion and in internal combustion engines". Andreae and Gelencse'r (2006) further define "Equivalent Black Carbon (BC_e)" as "the amount of strongly light-absorbing carbon with the approximate optical properties of soot carbon that would give the same signal in an optical instrument (e.g., the aethalometer) as the sample". In

its recently finalized Report to Congress on Black Carbon, US EPA (2012) defines BC as the “carbonaceous component of PM that absorbs all wavelengths of solar radiation” (hence, the appropriateness of the term “black”). In its 2012 report, the Joint World Health Organization (WHO)/Convention Task Force on Health Aspects of Air Pollution similarly describes BC as “an operationally defined term which describes carbon as measured by light absorption.” (Janssen et al., 2012).

Id.

Claimant alleges he sustained a cumulative injury to his lungs, airways, cardiovascular system, various internal organs, and to his body as a whole as a result of carbon black and other dust particulates in the work environment. Claimant lists November 18, 2016 as the date of injury. This was the last day claimant worked at Bridgestone. Claimant was escorted to the plant medical department by a co-worker. Claimant was sitting down with dyspnea.

Because claimant was required to use oxygen, he could no longer work in the plant. Claimant testified he enjoyed his job as a tire builder.

At the time of the hearing, claimant was receiving \$1,200.00 in retirement benefits from Bridgestone Americas, Inc., health insurance through his former employer, and Social Security Disability benefits at the rate of \$2,200.00 per month. All of claimant’s medical bills have been paid by group health coverage.

Defendants deny the claim. They maintain claimant suffers from right and left-sided congestive heart failure, chronic lymphedema, moderate chronic kidney failure, sleep apnea, and super morbid obesity. Defendants argue claimant’s various problems are the result of his obesity, and there is no evidence in the record to establish there was any workplace exposure which caused or was a substantial or material aggravation of claimant’s condition.

Claimant treated with a myriad of physicians and specialists for a variety of conditions. As of December 14, 2016, claimant’s then personal physician, Jenna Ridlen, D.O., diagnosed claimant with:

1. Acute bronchitis
2. Acute conjunctivitis
3. Acute pharyngitis
4. Acute sinusitis
5. Acute upper respiratory infection
6. Cardiomegaly

7. Congestive heart failure
8. Cough
9. Dilated cardiomyopathy
10. Edema
11. Exposure to influenza
12. Fibrosis of skin
13. Gout
14. Hypertension
15. Hypoxia
16. Inability to attain erection
17. Joint pain, knee
18. Knee pain
19. Left ventricle hypertrophy
20. Limb swelling
21. Lymphedema
22. Malignant hypertensive heart disease with congestive heart failure
23. Microalbuminuria
24. Obesity
25. Pain, lower leg
26. Proteinuria
27. Right ankle pain
28. Streptococcal sore throat
29. Upper respiratory infection.

(Jt. Ex. 7, pp. 220, 221)

Claimant was also diagnosed with chronic renal disease stage 3 by Prem Chandran, M.D. (Jt. Ex. 6, p. 205) Dr. Chandran did not causally relate claimant's medical condition to any alleged occupational exposure at work. (Jt. Ex. 6, p. 215) Claimant had also suffered from sleep apnea for which a C-PAP machine had been prescribed. He estimated the C-PAP machine had been prescribed around 2010. (Tr. p. 60) Claimant was not always compliant. He did not wear the C-PAP machine every night.

There is no evidence in the record to establish there was black carbon in the Bridgestone Americas, Inc. plant in Des Moines. All parties agree claimant worked with carbon black. Dean Erickson, M.D., testified as an independent medical examiner on behalf of defendants. Dr. Erickson reviewed various medical records belonging to claimant. The physician visited the plant. Dr. Erickson reviewed various air sampling results, and he performed a physical examination of claimant.

During the physical examination of claimant, Dr. Erickson found claimant had a variety of health conditions. Dr. Erickson testified about those conditions during his direct examination as follows:

Q. (By Mr. Wegman) Did you come to a diagnosis of what Mr. Scroggins' present health condition consists of?

A. Yes. I would say overall Mr. Scroggins -- and this is certainly consistent with the medical records -- is in fair health. He does have many medical conditions, including hypertension or high blood pressure. He also has what is referred to as congestive heart failure, and oftentimes congestive heart failure is broken down into what we call right-sided failure. That is the right side of the heart that pumps the blood from the body into the lungs to get the oxygen, and Mr. Scroggins also has left-sided heart failure, and that's where the left side of the heart pumps blood to the body, you know, for nourishment and presenting the oxygenated blood to -- to all of the blood -- or all the tissues of the body. Mr. Scroggins, based on the medical record and everything I reviewed, did have the condition of congestive heart failure, both right-sided and left-sided.

Mr. Scroggins also has other medical conditions, including sleep apnea, and that is a condition that may contribute to right-sided heart failure just based on the nature of oxygenation and what happens to the right side of the heart. Those were the main diagnoses that I gleaned from the medical record and would agree to.

Q. Did you note anything in your physical exam or review of the more recent medical records as to Mr. Scroggins' weight?

A. Yes, I believe when Mr. Scroggins began his work at Firestone some years ago the weight was in the 240-,245-pound range. The records most recently would indicate Mr. Scroggins' weight would have been in the 450-pound range, and in fact, we did weigh Mr. Scroggins on a digital scale at the Iowa Clinic where the examination took place, and as it were, the digital scale went up to 450 pounds, and it indicated that a weight could not be registered because it was some weight over 450 pounds.

Q. And what I'm interested in, Doc, is medically speaking to the Judge today at a weight of 450 pounds and a person that's 6-foot or 6-foot-1, is that considered morbidly obese pursuant to the AMA guidelines?

A. Yes, morbid obesity. All weight is determined by, what's called, body mass index, and that's basically a fairly simple formula where you take a person's weight and divide it by their height, and it's a little more complicated than that, but you come with [sic] up with a number. Normal weight is under 25, that ratio of weight to - - body weight to height. From 25 to 30 is referred to as being overweight. Above 30 is considered obese. Above 40 is considered morbidly obese, and I believe based on the calculations I saw in the medical record and my own calculation I did on the date of the examination, the BMI or body mass index was around 60, which is quite obese.

Q. Meaning 40 would be considered morbidly obese, and 60 would be much higher than that?

A. More than morbidly obese, yes.

Q. So, Doctor, can you explain to the Judge the impact that morbid obesity and hypertension has on the body?

A. Certainly. Starting with obesity, that has a direct effect on an individual's blood pressure and in and of itself does cause hypertension. Now, there's been a lot of research on that and certainly a lot since I was in medical school some years ago, but in - in looking at it, there's - there's many ways that obesity affects an individual's blood pressure. I think one of the simplest things to think about is that you have a heart trying to pump blood against a significant mass, and just the physics of that in and of itself does lead over time to hypertension or high blood pressure, but there are also many other factors that individuals that are obese have that will lead to high blood pressure. One of those is the fact that the fat cells themselves secrete a certain type of hormone that affects the brain that then affects an individual's blood pressure.

Individuals that are obese tend to have, what's called, insulin resistance. Now, insulin is what the body produces, you know, so that we don't have

diabetes. Mr. Scroggins has been described in the medical record as having prediabetes. That in and of itself would lead to higher insulin levels. Higher insulin levels also lead to high blood pressure.

There are other - - a couple other hormones within the body that tend to be quite a bit higher in obese individuals. For the record, aldosterone is one, renin is another, and they're secreted in different parts of the body, and they are higher in individuals that are obese, and those in in and of themselves also contribute to high blood pressure. And then finally I - individuals that are obese tend to eat more, they tend to eat less healthy food, more salty food, and salt intake in and of itself will lead to obesity, so - - I'm sorry - - will lead to hypertension.

So just looking at the factor of obesity and its relationship to hypertension, there's a significant relationship between individuals that are obese and have hypertension. If you just look at it from a numbers perspective, individuals that have mild obesity typically have a two times normal chance of developing blood pressure [sic], and then that tends to go up. Some studies show that individuals that are obese have a five times greater chance of developing hypertension or high blood pressure than the normal population.

Q. So can you tell us then if you have obesity - - morbidly obese and you have hypertension, controlled or uncontrolled, what that can lead to then for health complications?

A. Certainly. The main considerations or - - of health complications from hypertension, including that related to obesity, would include cardiovascular disease. Hypertension, especially uncontrolled or less than well-treated hypertension, in and of itself will lead to heart problems. One of the big issues and complications of hypertension is congestive heart failure that I talked about a little bit earlier, which Mr. Scroggins does have. Hypertension also does lead to kidney disease. The constant high blood pressure affecting the arteries that go to the - carry the blood to the kidneys over time lead to some degree of kidney damage, which - - and I apologize. I should have mentioned Mr. Scroggins does have what's described as Grade 3 or Class 3 kidney failure, which certainly isn't at the level where you need a transplant or dialysis, but it does indicate that there is some degree of kidney failure.

Q. Not to interrupt you, but for us lay people, is the kidney issues or kidney - - partial kidney failure the same thing as the lymphedema issue?

A. No.

Q. Can you tell us the difference between those two?

A. Okay. The lymphedema issue, that's a sequelae or a consequence of the right-sided heart failure. Basically what happens is if the right side of the heart isn't pumping the blood efficiently, you know, to the lungs, you know, taking it from the body itself, just on the basis of gravity the blood tends to go, you know, in the lowest part of the body, which in this case led to lymphedema or swelling of the lower extremities, which Mr. Scroggins does have, and I noted that on exam.

Q. And have you noted that in addition to the lymphedema, on the other note that Mr. Scroggins has been treated with a kidney doctor, Dr. Chandran?

A. Yes, I did review those records.

Q. Okay. So, Doctor, taking, into account the obesity, the high blood pressure, the congestive heart failure, and the lymphedema, sleep apnea as well and prediabetic condition, did you have an opinion within a reasonable degree of medical certainty whether any exposure to carbon black played any role at all in causing or - - those particular medical condition?

A. Yes, I do have an opinion.

Q. What is your opinion?

A. It's my understanding to a reasonable degree of medical probability and certainty that any exposure to carbon black in the workplace would not lead to hypertension and the subsequent conditions of congestive heart failure as well as lymphedema as well as kidney failure.

(Tr. pp. 69-75)

During cross-examination, defense counsel asked claimant about air sampling as it related to carbon black. Claimant testified:

Q. (By Mr. Wegman) But I'm asking you is your claim to the Judge today is, "Judge, I was exposed to carbon black, and those aggravated my conditions"?

A. Yes.

Q. Okay. Are you aware - - and I'm just asking you specifically - - of any test, result, air sampling result at Firestone as it relates to carbon black that was deemed to be above any of the OSHA standards or any governmental agency standards?

A. Not that I know of, no. I know they do do tests, but I don't think we find out what the - - we never find out what those tests are.

Q. Okay. Are you aware of any that exist that you've seen or heard of - -

A. I don't believe the test is - - is sufficient.

(Tr. p. 55)

Counsel for claimant retained the services of Sunil Bansal, M.D., MPH, to perform an independent medical examination for claimant. (Claimant's Exhibit 1) The examination occurred on May 15, 2018. Dr. Bansal also reviewed a number of medical records, including the independent medical examination report from Dr. Erickson. (Cl. Ex. 1, p. 20)

Dr. Bansal was correct when he stated claimant worked around carbon black that was used in the making of tires. Claimant ran a mixing machine with carbon black and pigments. Claimant lifted bags of carbon black onto conveyor belts; often there was dust on the bags. If there was a bad batch of mixture, claimant would have to scoop the mixture into 55 gallon drums. At times, claimant reported he worked in a dusty environment.

Dr. Bansal found claimant suffered from the following conditions after the physician conducted a physical examination. The conditions were:

HEENT:

The tympanic membranes are pearly gray without erythema or exudates.

Extraocular movements are intact.

Pupils are equal, round, and reactive to light and accommodation,

External ear canals are normal.

No surrounding mastoid tenderness.

No temporomandibular joint tenderness.

CARDIOVASCULAR/PULMONARY:

BP: 140/98, R 18, pulse 88

Regular rate and rhythm without murmurs, gallops, or rubs.

There is mild expiratory wheezing, otherwise clear to auscultation bilaterally.

ABDOMEN:

No tenderness.

Normoactive bowel sounds.

No organomegaly or masses.

BILATERAL LOWER EXTREMITIES:

There is tenderness to palpation.

There is significant 4+ pitting edema of his bilateral legs.

Full range of motion.

Distal pulses are +1.

UPPER EXTREMITY REFLEXES:

RIGHT: +2 biceps, brachioradialis, and triceps.

LEFT: +2 biceps, brachioradialis, and triceps.

LOWER EXTREMITY REFLEXES:

Right: Patellar +2, Achilles +2, hamstring +2.

Left: Patellar +2, Achilles +2, hamstring +2.

(Cl. Ex. 1, pp. 24-25)

Dr. Bansal diagnosed claimant with: "Aggravation of hypertension with secondary dilated congestive cardiomyopathy, cardiomegaly, congestive heart failure." (Cl. Ex. 1, p. 25) The evaluating physician related claimant's work duties as a substantial contributing or a substantial aggravating factor in the development of the medical condition which claimant diagnosed. (Cl. Ex. 1, p. 26)

Dr. Bansal opined:

In my medical opinion, Mr. Scroggins aggravated his high blood pressure from his exposure to black or elemental carbon from his cumulative work at Bridgestone/Firestone. Most significantly, the exposure to black carbon was without the benefit of adequate respiratory protection, amplifying the significance of the exposure considerably. There were respirators available, however, due to the significantly high temperatures in the plant (130 degrees), wearing them was impractical and rather he wore paper

masks that are ineffectual. Several sampling studies for black carbon were taken and not one of them indicated no black carbon was present. Levels that are under permissible limits does [sic] not equate to lack of any exposure as Dr. Erickson suggests. Over a multi-year period without adequate protection, an exposure's significance is simply a function of an individual's particular response to that exposure.

Careful scrutiny of Mr. Scroggins' blood pressure history indicates that he actually started work in 1995 at Bridgestone with low blood pressure, hypotension. His blood pressure was 102/80 at that time indicated on his pre-employment physical. He started having progressive increases in blood pressure over the next 15 years, requiring blood pressure medication and spiking to a recorded high of 196/104 on August 7, 2011 at Bridgestone. Unfortunately, as Dr. Erickson pointed out, the hypertension was significant contributing factor towards his cardiovascular condition, including cardiomyopathy and congestive heart failure.

The association between black carbon and development of hypertension is well known in the medical literature. In fact, in a very recent journal article (February 2018) that studied thirty different journals, the following conclusion was reached" [sic]

"Existing evidence supports a positive association between BC/EC (Black carbon/elemental carbon) and blood pressure in adults."

(Citations omitted)

(Cl. Ex. 1, p. 26)

Dr. Bansal opined claimant reached maximum medical improvement on April 25, 2017. The evaluating physician determined claimant would need continued use of two liters of oxygen and medication for his cardiovascular condition. Additionally, Dr. Bansal opined claimant needed treatment for his lymphedema. (Cl. Ex. 1, p. 27) The independent medical examiner rated claimant as having a 10 percent permanent impairment rating according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth ed., Table 4-2.

Dr. Bansal acknowledged claimant had issues with endurance. The physician also imposed work restrictions. They included no frequent lifting, bending, squatting, and kneeling. Claimant was advised to limit his lifting to 25 pounds on an occasional basis. Dr. Bansal counseled claimant to elevate his legs for ten minutes every hour to avoid stasis and edema. Claimant was told not to walk for more than fifteen minutes at a time. (Cl. Ex. 1, pp. 27-28)

RATIONALE AND CONCLUSIONS OF LAW

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 908, 76 N.W.2d 756, 760-61 (1956). If the claimant had a preexisting condition or disability that is materially, aggravated, accelerated, worsened or lighted up so that it results in disability, claimant

is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 135, 115 N.W.2d 812, 815 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 375, 112 N.W.2d 299, 302 (1961).

When an expert's opinion is based upon an incomplete history, it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the facts. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

There is no question claimant has had a myriad of pre-existing conditions. For example, claimant's hypertension dates back to 2003. He has not faithfully taken his medications to control his high blood pressure. Claimant maintains he cannot afford to treat for his lymphedema. As claimant's weight increased, his various conditions deteriorated.

The undersigned deputy workers' compensation commissioner finds the testimony and opinions of Dr. Erickson to be more persuasive than the opinions of Dr. Bansal. The greater weight of the evidence establishes there is no causal connection

between claimant's health problems and any alleged work place exposure. Dr. Erickson was emphatic when he opined:

A. It's my understanding to a reasonable degree of medical probability and certainty that any exposure to carbon black in the workplace would not lead to hypertension and the subsequent conditions of congestive heart failure as well as lymphedema as well as kidney failure.

(Tr., p. 75)

Dr. Erickson opined he had no scientific data to support claimant's theory; carbon black causes or aggravates hypertension. (Tr. p. 81) Dr. Erickson testified obesity is one of the major factors contributing to hypertension. (Tr. p. 83)

Dr. Chandran, claimant's treating physician, submitted a statement corroborating the opinions of Dr. Erickson. Dr. Chandran found no causation between claimant's renal disease and any exposure to carbon black in the work place. Claimant's other treating physicians did not relate claimant's health problems to exposure to carbon black or to any other particulates in the work place. Many of the other treating physicians advised claimant to lose weight, take his prescribed medication and to follow through with all of the scheduled medical appointments. Clearly, claimant failed to heed the advice of his medical practitioners.

Dr. Bansal, on the other hand, based his opinions on the substance "Black carbon". It was not found within the Bridgestone plant. As indicated earlier in the body of this decision, "Black carbon" is the result of incombustible materials. It is similar to soot. It affects the quality of air in the environment, such as during a forest fire. Because, Dr. Bansal cited data for "Black carbon" and not "Carbon black", his opinions must all be discounted. Little weight is accorded to the opinions of Dr. Bansal. In addition, Dr. Bansal did not tour the tire plant as did Dr. Erickson. Therefore, Dr. Bansal did not have as much knowledge about the plant operations as did Dr. Erickson.

In light of the foregoing, it is the determination of the undersigned; claimant did not sustain an injury that arose out of and in the course of his employment. Moreover, the various health conditions claimant has sustained are not causally connected to claimant's employment at Bridgestone Americas, Inc. Claimant's health conditions are serious ones but they are personal to claimant and not in the least bit related to claimant's employment. Therefore, claimant takes nothing in the form of weekly workers' compensation benefits from defendants. It is acknowledged defendants paid claimant net disability income benefits in the amount of \$12,525.63. Those benefits were paid outside of the workers' compensation system.

Pursuant to Iowa Code section 85.39, claimant requests the cost of Dr. Bansal's independent medical report in the amount of \$3,886.00. Claimant is entitled to be reimbursed for the independent medical examination as claimant followed the correct procedures as detailed in the statute.

The final issue is the matter of costs.

Iowa Code section 86.40 states:

Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Claimant is requesting certain costs as detailed in Exhibit 8. Since claimant did not prevail on his claim, I determine each party shall pay his/its/their own costs to litigate.

ORDER

THEREFORE, IT IS ORDERED:

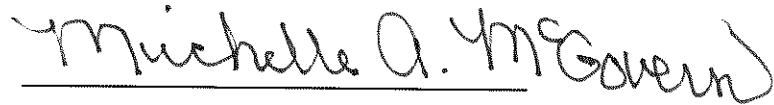
Claimant shall take nothing from these proceedings.

Defendants shall pay the cost of the independent medical exam performed by Dr. Bansal.

Each party shall pay his/its/their own costs to litigate the claim.

Defendants shall file all reports as required by law.

Signed and filed this 28th day of June, 2019.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.