

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEAN BRADLEY, Claimant, vs. QUICK FLIGHTS, Employer, STARR INDEMNITY & LIABILITY CO., Insurance Carrier, Defendants.	File No. 20700791.01 ARBITRATION DECISION Headnotes: 1803
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STATEMENT OF THE CASE

Claimant Dean Bradley seeks workers' compensation benefits from the defendants, employer Quick Flights and insurance carrier Starr Indemnity & Liability Co. (Starr). The undersigned presided over an arbitration hearing on February 3, 2022, held using internet-based video by order of the Commissioner. Bradley participated personally and through attorney Channing L. Dutton. The defendants participated by and through attorney Abigail A. Wenninghoff.

ISSUES

Under rule 876 IAC 4.19(3)(f), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

- 1) What is the extent of industrial disability caused by the stipulated work injury?
- 2) What is the commencement date for permanent partial disability benefits, if any are awarded?
- 3) Is Bradley entitled to recover the cost of an independent medical examination (IME) under Iowa Code section 85.39?
- 4) Is Bradley entitled to taxation of the costs against the defendants?

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

- 1) An employer-employee relationship existed between Bradley and Quick Flights at the time of the alleged injury.
- 2) Bradley sustained an injury on May 22, 2019, which arose out of and in the course of his employment with Quick Flights.
- 3) The stipulated injury is a cause of temporary disability during a period of recovery, but Bradley's entitlement to temporary or healing period benefits is no longer in dispute.
- 4) At the time of the stipulated injury:
 - a) Bradley's gross earnings were six hundred eighty-six and 90/100 dollars (\$686.90) per week.
 - b) Bradley was single.
 - c) Bradley was entitled to three exemptions.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

FINDINGS OF FACTS

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 6;
- Claimant's Exhibits (Cl. Ex.) 7 through 10;
- Defendants' Exhibits (Def. Ex.) A through G; and
- Hearing testimony by Bradley.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

At the time of hearing, Bradley was thirty-three years of age. (Hrg. Tr. p. 12) A Des Moines native, Bradley graduated from Abraham Lincoln High School in 2007. (Hrg. Tr. p. 14) After graduating, Bradley took classes at Des Moines Area Community College for about a year but did not obtain a postsecondary degree or credential. (Hrg. Tr. pp. 14, 20)

Northwest Airlines hired Bradley to work at the Des Moines International Airport as a ramp agent and in customer service. (Hrg. Tr. p. 21) Bradley worked as a ramp agent most often during his employment with Northwest. (Hrg. Tr. p. 23) His duties as a ramp agent included loading and unloading luggage. (Hrg. Tr. p. 22) The luggage Bradley lifted in the job typically weighed about fifty pounds and could weigh as much as seventy-five pounds. (Hrg. Tr. p. 24) When Bradley worked in customer service, he checked passengers in, weighed bags, distributed boarding passes, and worked as a gate agent responsible for scanning boarding passes when passengers boarded the plane. (Hrg. Tr. p. 22) He did not sustain an injury at Northwest. (Hrg. Tr. p. 28)

Bradley next worked at the airport for Mesa Air Group performing almost identical duties to those he had at Northwest. (Hrg. Tr. p. 29) He left that job to work at Prairie Meadows Racetrack and Casino as a games dealer. (Hrg. Tr. p. 29) After two or three weeks of training, he worked on the floor of the casino, primarily dealing black jack and poker. (Hrg. Tr. p. 29). Bradley stood for nearly the entirety of his shift when working as a dealer at Prairie Meadows. (Hrg. Tr. p. 30) Otherwise, the work was not physically strenuous. (Hrg. Tr. p. 30)

Bradley left Prairie Meadows to sell mobile phones. (Hrg. Tr. p. 30) He worked in sales for Phones Plus, U.S. Cellular, Cellular Only, and Verizon between 2014 and 2017. (Hrg. Tr. p. 30) At Phones Plus and Verizon, he worked in management. (Hrg. Tr. p. 31) In 2016, Bradley returned to airport work at Allegiant Air. (Hrg. Tr. p. 34)

Among Bradley's duties were loading and unloading luggage and on occasion, he would have to help load an electronic wheelchair while handling luggage. (Hrg. Tr. pp. 24–25) These devices weigh approximately four hundred pounds, so moving them requires multiple workers. (Hrg. Tr. pp. 24–25) In 2017, Bradley sustained a herniated disc in his low back while helping to lift an electric wheelchair and required a laminectomy. (Hrg. Tr. p. 35; Jt. Ex. 2, pp. 13–22) Bradley recovered completely after the surgery and received no permanent work restrictions. (Hrg. Tr. pp. 35, 40)

Quick Flights is a company that performs operations for airlines. (Hrg. Tr. p. 37) On April 5, 2018, Quick Flights hired Bradley as a customer service/ramp agent. (Hrg. Tr. p. 37) A couple of months later, Quick Flights promoted Bradley to manager. (Hrg. Tr. p. 37) As manager, he continued to perform some of the duties he performed as a customer service/ramp agent and was also expected to complete reports, perform human resources duties, and supervise operations. (Hrg. Tr. p. 37–39) During periods when Quick Flights was short-staffed, Bradley had to perform more of the customer service/ramp agent duties. (Hrg. Tr. p. 38–39)

Bradley was helping to load luggage onto a plane on May 22, 2019. (Hrg. Tr. p. 40) He felt immediate sharp pain in his lower back after he lifted a piece of luggage, turned, and threw it onto a conveyor belt. (Hrg. Tr. p. 40; Jt. Ex. 4, p. 38) The pain radiated from his lower back into his legs. (Hrg. Tr. p. 41) He reported the injury and the defendants provided care for it.

On May 23, 2019, Bradley went to the emergency department at Iowa Methodist Hospital. (Jt. Ex. 4, p. 38) He complained of left-sided low back pain similar to that he experienced after his previous back injury. (Jt. Ex. 4, p. 38) Bradley reported no symptoms in his legs. (Jt. Ex. 4, p. 38)

X-rays showed mild multilevel endplate degenerative changes, no evidence of acute fracture or subluxation, and vertebral body heights and intervertebral disc spaces were maintained. (Jt. Ex. 4, p. 40) Chelsey Ballard, PA-C, prescribed medication for Bradley's back pain and advised him to follow up with his primary care physician. (Jt. Ex. 4, p. 41) She discharged him "in good condition." (Jt. Ex. 4, p. 41)

Bradley's pain continued, so he scheduled an appointment with his primary care physician and telephoned the Methodist emergency department on June 1, 2019. (Jt. Ex. 4, p. 42) On June 3, 2019, he saw Julia Harvey, A.R.N.P., who noted his May 23 x-rays were "normal." (Jt. Ex. 5, p. 47) She also noted his pain was ongoing and changing positions helped alleviate it. (Jt. Ex. 5, p. 47) Harvey diagnosed acute left-sided low back pain with left-sided sciatica and requested magnetic resonance imaging (MRI). (Jt. Ex. 5, pp. 48–49)

Mitchell Erickson, M.D., interpreted the MRI in comparison to a 2017 MRI of Bradley's back. (Jt. Ex. 5, pp. 49–50) He found:

At L3-L4, a shallow broad-based central disc herniation is seen asymmetric to the left superimposed upon disc bulge and endplate osteophyte. This is greater than on the previous study. Mild prominence of epidural fat contributes to mild to moderate thecal sac effacement, less than at the L1-L2 level. Mild to moderate degenerative facet changes are seen. The neural foramina are mild to moderately narrowed.

(Jt. Ex. 5, p. 49) Dr. Erickson's impression after comparing the MRIs was:

1. Interval changes status post decompressive laminectomy at L2-L3.
2. Findings of mild epidural lipomatosis contributing to multilevel spinal canal narrowing. Multilevel degenerative disc change contributes to spinal canal narrowing at multiple levels, moderate at L1-L2.
3. Broad-based shallow central disc herniations at multiple levels throughout the mid and lower lumbar spine as discussed above.

(Jt. Ex. 5, p. 50)

Harvey referred Bradley to Joseph Sherrill II, M.D., who saw him on June 25, 2019. (Jt. Ex. 2, pp. 23–25) Dr. Sherrill opined in a letter to Harvey:

"[I]t sounds as though he has been lifting heavy bags and hurt himself again, but this time without much of anything other than groin pain and mainly on the left and no deficits for power or sensibility. MRI of the lumbar spine was done to see if he had reherniated another disk. That

does not appear to be the case. He has regional spinal stenosis, or at least congenital spinal stenosis, which is outlined and highlighted by the fact that he has an abnormally large spinal canal after his decompression at L2-3, and therefore, L1-2, L3-4, and L4-5 look relatively small, which I think is anatomically his life.

(Jt. Ex. 2, pp. 24–25)

On July 3, 2019, Bradley returned to see Harvey because of “pain in the right groin and testicle and stiffness in low back.” (Jt. Ex. 5, p. 51) He first noted the pain after lifting. (Jt. Ex. 5, p. 51) Bradley had tenderness of the lumbar paraspinal muscles on palpation. (Jt. Ex. 5, p. 52)

The defendants arranged for Bradley to undergo an independent medical examination (IME) with William Boulden, M.D. (Def. Ex. F) For the IME, Dr. Boulden reviewed Bradley’s medical records and performed an examination. (Def. Ex. F, pp. 33–35) Dr. Boulden characterized the findings of Bradley’s June 5, 2019 MRI as showing, “At L3-4 there was a disc bulge slightly to the left, but it was not really causing any nerve entrapment or compression.” (Def. Ex. F, p. 34) He further opined:

I would have to state in comparing the two MRIs I see there were minimal changes, other than the fact of significant laminectomy-decompression at L2-3. In other words, the herniated disc had really not changed much. The L4-5 disc was now more central than it was before, which was mainly central to the right. I do not see any new pathology on this MRI in comparison to the old MRI, other than the fact of decompression.

(Def. Ex. F, p. 34)

On the question of causation, Dr. Boulden opined:

I believe the patient had an aggravation of pre-existing pathology in the spine on May 22, 2019. I do not believe this incident caused any new pathology in the lumbar spine based on reviewing the actual MRIs of 2017 and now 2019. There is nothing objective showing any neurological deficit or new pathology based on the MRI. He has subjective complaints that have been improved with the epidural injection.

. . . [T]he diagnosis is aggravation, as I previously stated, of pre-existing pathological changes of degenerative disc disease and chronic herniated discs at L4-5 and L5-S1 with some degenerative bulges noted at other levels, as well as facet disease. None of these were caused by the injury of May 22, 2019. I do not see very significant changes at all from 2017 to 2019, even though the radiologist said there was some increase. I feel that it is at least the same. He had pre-existing degenerative problems in his back, but I do not see any significant natural progression of this pre-existing condition from 2017.

. . . I do not believe this is a material aggravation since it has been improved with an epidural injection. This is based on the fact that nothing acute was seen on his new MRI and there is nothing neurologically abnormal based on other doctors' and clinicians' evaluations, as well as my own examination.

(Def. Ex. F, p. 36)

Dr. Boulden opined Bradley had achieved maximum medical improvement (MMI) from his injury. (Def. Ex. F, p. 37) He did not feel Bradley required any permanent work restrictions other than to use proper mechanical technique when using his back. (Def. Ex. F, p. 37) Dr. Boulden opined the 2019 work injury did not cause Bradley to sustain any permanent functional impairment. (Def. Ex. F, p. 37)

Claimant's counsel arranged for Bradley to undergo an IME with Sunil Bansal, M.D., on June 23, 2021. (Cl. Ex. 7, pp. 66–67) As part of the IME, Dr. Bansal reviewed medical records and examined Bradley. (Cl. Ex. 7, pp. 68–78) Dr. Bansal diagnosed Bradley with an “[a]ggravation of L3-L4 disc herniation,” explaining:

In my medical opinion, Mr. Bradley aggravated his lumbar spine pathology from lifting a heavy bag on May 22, 2019, specially to the L3-L4 disc level. The mechanism of bending and lifting heavy luggage, coupled with his acute clinical presentation, is consistent with the aggravation of his L3-L4 disc herniation.

(Cl. Ex. 7, p. 78–79) He specifically compared the description in Bradley's medical records from the 2017 MRI at L3-L4 to the description of the 2019 MRI, highlighting Dr. Erickson's observation of “central disc herniation . . . asymmetric to the left” that “is greater than on the previous study.” (Cl. Ex. 7, p. 80)

The question of causation comes down to the reading of Bradley's MRIs. Dr. Erickson noted greater central disc herniation asymmetric to the left in 2019 than Bradley had in 2017. Dr. Bansal relies on Dr. Erickson's interpretation of the MRIs to support his opinion on causation. However, Dr. Sherrill, Bradley's treating physician for his 2017 back injury, opined the herniated disc “had not really changed much” and attributed Bradley's symptoms to anatomical changes caused by his previous surgery. Dr. Boulden agreed, reading the 2019 MRI to show no increase in disc herniation at L3-4.

In this case, the opinions of Dr. Sherrill and Dr. Boulden are most persuasive. Both Dr. Sherrill and Dr. Boulden reviewed Bradley's MRIs and performed their own interpretation, as opposed to Dr. Bansal, who relies on Dr. Sherrill's interpretation. Both arrived at similar conclusions regarding what the MRI showed and how that relates to causation. Further, as Bradley's treating physician in 2017, Dr. Sherrill has familiarity with both injuries. Both do not believe that the work injury at issue here caused a disc herniation. The weight of the evidence therefore does not support Dr. Bansal's opinion that Bradley aggravated a disc herniation at L3-L4 on May 22, 2019, while working for Quick Flights.

CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers' Compensation Act, as amended in 2017, applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

1. Causation.

An employer covered by the Iowa Workers' Compensation Act must “provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.” Iowa Code § 85.3(1).

“A claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability.” Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)). “Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed.” Id. The same standards apply to expert opinions on causation and disability. Id.

“Medical causation presents a question of fact.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844 (Iowa 2011). The answer to this question lies “essentially within the domain of expert testimony.” Id. at 845 (quoting Dunlavey v. Econ. Fire. & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)). The agency may accept or reject an expert opinion in whole or in part. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)). In doing so, the agency “has the duty to determine 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, 526 N.W.2d at 853.

The agency determines the weight to give an expert opinion based on consideration of:

- 1) “[T]he accuracy of the facts relied upon by the expert,” Schutjer, 780 N.W.2d at 560 (quoting Grundmeyer, 649 N.W.2d at 752);
- 2) “[T]he completeness of the premise with which the expert is given,” Dunlavey, 526 N.W.2d at 853; and
- 3) “[O]ther disclosed facts and circumstances,” id.

Medical causation disputes can take two forms under the Iowa Workers' Compensation Act. One is whether the injury arises out of an actual risk of the claimant's employment. See Bluml v. Dee Jay's Inc., 920 N.W.2d 85, 85–86 (Iowa 2018); see also Lakeside Casino v. Blue, 743 N.W.2d 169, 173–74 (Iowa 2007); Meyer

v. IBP, Inc., 710 N.W.2d 213, 223 (Iowa 2006); Almquist v. Shenandoah Nurseries, 254 N.W. 35 (Iowa 1934). The other is whether the injury caused a compensable disability. See Schutjer, 780 N.W.2d at 560 (quoting Grundmeyer, 649 N.W.2d at 752).

Here, the parties stipulated that Bradley sustained a work injury on May 22, 2019, and dispute whether that injury caused disability that entitles him to benefits under Iowa Code section 85.34(2). As discussed above, the opinions of Dr. Sherrill and Dr. Boulden are most persuasive on whether Bradley sustained an injury of May 22, 2019, that caused permanent disability. Therefore, Bradley has failed to meet his burden of proof on causation and is not entitled to permanent disability benefits under the Iowa Workers' Compensation Act.

2. IME.

The defendants arranged for an IME with Dr. Boulden, who issued a report dated July 13, 2020, in which he opined the work injury did not cause permanent disability. Claimant's counsel arranged an IME with Dr. Bansal that took place on June 23, 2021. Under the pre-2017 amendments version of the Iowa Workers' Compensation Act, the IME would be reimbursable. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008); see also Miracle v. UFP Tech., Inc., File No. 5056559 (App. Mar. 13, 2019). However, after the amendments, Iowa Code section 85.39(2) provides in pertinent part, "An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury." Because Bradley has failed to show the work injury is compensable, he is not entitled to an award of the cost of Dr. Bansal's IME under the statute as amended.

ORDER

Based on the above findings of fact and conclusions of law, it is ordered:

- 1) Bradley shall take nothing from this case.
- 2) The parties shall be responsible for paying their own hearing costs.

Signed and filed this 28th day of July, 2022.



BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Channing L. Dutton (via WCES)

Abigail A. Wenninghoff (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.