BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTOPHER WILSON,

Claimant,

vs.

CLARKLIFT OF DES MOINES, INC.,

Employer,

and

TECHNOLOGY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5057351

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

The claimant, Christopher WIlson, filed a petition for arbitration and seeks workers' compensation benefits from Clarklift of Des Moines, Inc., employer, and Technology Insurance Company, the insurance carrier. The claimant was represented by Richard Schmidt. The defendants were represented by Andrew Tice.

The matter came on for hearing on May 24, 2018, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa. The record in the case consists of Joint Exhibits 1 through 5; Claimant's Exhibit 1; and Defense Exhibits A through F. The claimant testified under oath at hearing. In addition, administrative notice was taken of File No. 5061994. Jane Weingart was appointed to serve as the court reporter for the proceeding. The matter was fully submitted on June 11, 2018, after helpful briefing by the parties.

ISSUES

The parties did an excellent job of narrowing the issues for hearing.

They submitted the following issues for determination:

1. Whether the claimant is entitled to healing period benefits from January 25, 2018 through June 4, 2018.

2. The nature and extent of claimant's industrial disability.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury which arose out of and in the course of employment on July 6, 2015, which is a cause of some industrial disability.
3. The commencement date for any permanent disability benefits is February 26, 2015.
4. The weekly rate of compensation is $676.20.
5. Defendants have paid and are entitled to a credit of 25 weeks of compensation (permanent partial disability).
6. Affirmative defenses have been waived.
7. Medical expenses are not in dispute.

FINDINGS OF FACT

Claimant was 39 years old as of the date of hearing. He testified live and under oath at hearing. His hearing testimony was marginally credible at best. In particular, there were some discrepancies between his hearing testimony and his deposition testimony. To the extent this is significant, I find his deposition testimony was generally more accurate.

Mr. Wilson graduated from high school in 1998. He was an above average student. He has not earned any degrees beyond high school. After high school, he eventually became a truck driver and mechanic mostly learning his skills through on-the-job training. (Defendants' Exhibit A, page 3) He worked for a variety of different employers doing both driving and various mechanical jobs. Mr. Wilson is a skilled mechanic. He began working for Clarklift of Des Moines (hereafter "Clarklift") as a service technician in September 2007. Mr. Wilson described the position of service technician as follows. "I have a service van or service truck with my tools in it, and I just get dispatched to customer locations to work on forklifts, do service calls. It could be anything, like, go to Walmart for an electric pallet jack that's not working, to go out of town for a hydraulic leak. It's everything. I do everything –oil changes, everything on site." (Def. Ex. F, pp. 20-21)

The parties have stipulated claimant sustained an injury to his low back when he was transferring repaired forklift tires off the forklift to his service van. A tire slipped and when he tried to catch it he felt a pop and sharp pain in his back which went down his

leg. (Def. Ex. F, pp. 31-33) Based upon the record before the agency, it appears Mr. Wilson was temporarily treated for back spasms in 2009, but has no other history of disability or impairment in his low back. (Joint Exhibit 1) The employer directed him to medical care with Concentra. On July 29, 2015, he underwent an MRI which showed an L3-4 disc herniation and bulges at L4-5 and L5-S1. (Jt. Ex. 3) He was referred to Todd Harbach, M.D.

In August 2015, Dr. Harbach documented the nature of the injury and his specific symptoms which included sharp pain going down the left leg and a dull ache. (Jt. Ex. 4, p. 1) Dr. Harbach documented Mr. Wilson was in too much pain to continue physical therapy. He treated Mr. Wilson conservatively referring him to pain management in late August 2015. (Jt. Ex. 4, p. 3) He was referred to J. Wesley Rayburn, M.D., a pain management physician who performed an SI joint injection in September 2015. (Jt. Ex. 4, pp. 8-9) Shortly thereafter, Dr. Rayburn performed a nerve block/radiofrequency ablation. (Jt. Ex. 4, p. 14) The working diagnosis at that time was left sacroiliac joint dysfunction, lumbar spondylosis with some questionable radicular component. In late October 2015, Dr. Rayburn attempted another injection, this time a left L2-L5 medial branch block injection. (Jt. Ex. 4, p. 16) This was repeated on November 2, 2015. Dr. Rayburn then performed another radiofrequency ablation on November 10, 2015. (Jt. Ex. 4, p. 20)

In December 2015, Dr. Rayburn noted some improvement. "Severity level is mild. The problem is improving. It occurs occasionally. Location of pain is middle back. There is no radiation of pain. The patient describes the pain as an ache. Symptoms are aggravated by bending, changing positions, standing and twisting." (Jt. Ex. 4, p. 21) He noted that the pain was getting better each day, but he was having general muscle aches following the procedure. In February 2016, he underwent a trigger point injection. (Jt. Ex. 4, p. 28)

After the trigger point injections, Mr. Wilson returned to Dr. Harbach on February 25, 2016. At that time, he reported his symptoms as being "mild" and that while he was sore, the injections had helped. Dr. Harbach noted Mr. Wilson still had ongoing symptoms but placed him at maximum medical improvement (MMI) and returned him to work without restrictions. (Jt. Ex. 4, p. 33)

Mr. Wilson returned to his regular job and worked without restrictions and without incident until October 26, 2017. In the meantime, Dr. Harbach and Dr. Rayburn provided expert medical opinions regarding the nature of claimant's low back condition. On June 28, 2016, Dr. Harbach opined that Mr. Wilson suffered a 5 percent body as a whole impairment from his low back injury. (Jt. Ex. 4, p. 35) On January 17, 2017, Dr. Rayburn prepared a "check box" report for claimant's counsel wherein he opined that claimant's low back condition was causally connected to his work injury. He further opined Mr. Wilson would have flare-ups and need additional treatment from time to time in the future. (Jt. Ex. 4, pp. 36-37) In March 2017, Dr. Rayburn prepared a report for defense counsel wherein he answered specific questions. He opined that when he finished treatment, Mr. Wilson no longer had any radicular complaints. He also opined

the following: "I do believe that Mr. Wilson may experience lower back flare-ups in the future as a result of the type of work he performs. However, I wound [sic] not causally relate the future flare-ups to the alleged July 6, 2015, incident." (Jt. Ex. 4, p. 42)

On October 26, 2017, Mr. Wilson's symptoms returned. Mr. Wilson testified he was merely taking a step when the pain returned, although he had apparently bent to pick up some tools as well. He testified he had the exact same type of pain that he felt back in July 2015. This is confirmed in the contemporaneous medical records from Iowa Ortho.

> Christopher returns back today for re-evaluation of his low back pain. He is under Workers' Compensation. States last week he bent down and twisted to pick up some tools when he got a shooting pain in his left low back. Points to his left sacroiliac joint for his pain.
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> . . .
>
> The patient returns with an acute flareup of his LEFT sacroiliac joint pain. This is very similar to what he has had in the past and even radiates down his LEFT leg.

(Jt. Ex. 4, p. 43) Dr. Harbach evaluated claimant in December 2017 and recommended another MRI. He underwent another MRI in January 2018 which showed results very similar to the 2015 MRI. (*Compare* Jt. Ex. 4, p. 50 *with* Jt. Ex. 3) The parties stipulated that claimant went off work as a result of this condition on January 25, 2018. At that time, he was given restrictions that the employer could not accommodate. Claimant testified that he was to be returned to work in June 2018.

On January 29, 2018, Dr. Harbach provided medical opinions in a "check box" report which stated that Mr. Wilson had no permanent impairment from his July 2015 work injury, rather he only suffered a temporary flare-up of his preexisting condition. (Jt. Ex. 4, pp. 51-52) He further opined that Mr. Wilson's July 2015, work injury was not a cause of his October 26, 2017, flare up. (Jt. Ex. 4, p. 52) In response, claimant's counsel obtained a "check box" report from Dr. Harbach, wherein he seemed to provide the opposite opinion. (Jt. Ex. 4, pp. 55-56) On February 28, 2018, he specifically opined that claimant suffered a permanent condition from the July 6, 2015, work injury, and that a permanency rating was assigned. (Jt. Ex. 4, p. 56)

John Kuhnlein, D.O., evaluated claimant in February 2018, and prepared an expert medical report dated February 19, 2018. He prepared a thorough report wherein he reviewed all of the medical records and took a detailed history from the claimant. He also examined Mr. Wilson. After diagnosing chronic facet-mediated left-sided low back pain with intermittent radiculitis and chronic left sacroiliitis, he opined the following:

> Mr. Wilson denies low back pain prior to the July 6, 2015, injury and describes left sided low back pain radiating down the left posterior leg

> immediately thereafter, and were documented in the medical record. Dr. Harbach felt that the sacroiliac joints were arthritic based on plain x-rays. The left leg symptoms resolved, with a very good response from a radiofrequency ablation, strongly suggesting that the facets are at least part of the pain generator. Subsequently, Mr. Wilson was able to function at work with chronic 2/10 low back pain, but no further lower extremity symptoms until he sustained the flare in October 2017. His symptoms have not yet returned to baseline, and he still has intermittent leg symptoms suggestive of radiculitis, and left sacroiliitis on examination. Further treatment is currently pending.
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> Despite Dr. Rayburn's March 16, 2017, letter that he would not causally relate any future flares to this July 6, 2015, incident, Mr. Wilson's symptoms exactly mirror those from the previous incident and there are no other incidents that would logically explain this spectrum of symptoms being exactly the same without being related to the injury as there were no prior symptoms. He had no back pain before, and he does now. When his symptoms flared, he was walking, and not under any significant lumbar load, so this would not represent a new acute injury. With no other logical cause for his current back pain and intermittent left leg symptoms, there is no other logical conclusion but that his current symptoms are related to the original injury. This is not a return to baseline situation or a natural consequence of the underlying condition, as Mr. Wilson's preinjury baseline was being pain-free where the underlying condition was not producing and pain, and he has had pain ever since.

(Cl. Ex. 1, pp. 7-8) Dr. Kuhnlein recommended further conservative treatment, assigned an 8 percent whole body impairment rating and recommended some very moderate permanent restrictions. (Cl. Ex. 1, pp. 8-9)

In March 2018, claimant filed an alternate medical care petition. Defendants denied liability and the hearing was dismissed. In April 2018, claimant filed a petition alleging a new injury for the October 2017 incident. The employer denied the claim.

I find that Dr. Kuhnlein has produced the most consistent and credible expert medical opinions in this record. I find that his opinion is easy to understand, it correlates with the facts in evidence and it does not contradict itself. The opinion letters from Dr. Harbach to the competing attorneys involved are contradictory. The opinion letters of Dr. Rayburn are also somewhat contradictory. More importantly, in his March 2017, opinion letter, Dr. Rayburn provided an opinion about flare ups which had not even occurred. I find his preemptive opinion to be speculative and not based upon the facts of the case. Unlike those opinions, Dr. Kuhnlein provided an expert opinion that is grounded in the actual facts of the case.

CONCLUSIONS OF LAW

The primary question submitted is whether the claimant's recent flare up causing his need for treatment is causally connected to his July 6, 2015, work injury.

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).

When an injury occurs in the course of employment, the employer is liable for all of the consequences that "naturally and proximately flow from the accident." Iowa Workers' Compensation Law and Practice, Lawyer and Higgs, section 4-4. The Supreme Court has stated the following. "If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable." Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936). The Oldham Court opined that a claimant must present sufficient evidence that the disability was naturally and proximately related to the original work injury.

In this case, there are competing expert medical opinions on causation. Having found that Dr. Kuhnlein's opinion is the most credible opinion in the record, I find that claimant has met his burden of proof on this issue. Specifically, the greater weight of evidence supports a finding that the July 6, 2015, work injury was a substantial aggravating factor in lighting up the diagnoses of chronic facet-mediated left-sided low back pain with intermittent radiculitis and chronic left sacroiliitis. While these conditions may have been present in Mr. Wilson, they had not been symptomatic prior to his July 2015 work injury. The work injury itself was acute and fairly significant, causing sudden

and immediate pain and symptoms which never fully resolved. Following his injury, Mr. Wilson experienced significant symptoms in his low back, including radicular symptoms down his left leg. Fortunately, with conservative injection therapy, including radiofrequency ablations, the radicular symptoms temporarily subsided. Mr. Wilson, however, was left with some residual permanent impairment from this aggravation of his underlying condition as evidenced by the impairment ratings of both Dr. Harbach and Dr. Kuhnlein. The record is quite clear that claimant did not have this impairment prior to the July 6, 2015, work injury. Importantly, while his radicular symptoms subsided, Mr. Wilson was never pain free. He continued to have manageable chronic low back pain even after the leg pain subsided.

The leg symptoms unfortunately returned from very minor functional activities in October 2017, either walking or bending, and led to a return of the exact same symptoms he had been suffering previously. All of the doctors opined that claimant would likely have flare ups from time to time as a result of his condition. The greater weight of evidence supports the finding that this flare up was a temporary aggravation of his chronic facet-mediated left-sided low back pain with intermittent radiculitis and chronic left sacroiliitis. These conditions are deemed causally connected to his July 6, 2015, work injury.

Defendants argue that claimant suffered a new, work-related injury on October 26, 2017, which essentially broke the chain of medical causation. Defendants argue herein that claimant's new injury is responsible for any temporary disability or healing period. Claimant has filed a petition for benefits for an October 26, 2017, work injury. Defendants, Clarklift and EMCASCO Insurance Company have denied the claim.

The Commissioner, however, has adopted the "natural result" analysis as set forth in Sloan v. Carl A. Nelson & Company, File No. 5039835 (Appeal, July 23, 2014); *affirmed on judicial review.*

It appears that claimant did suffer a very minor injury which arose out of and in the course of employment on October 26, 2017, however, the greater weight of evidence supports a finding that the new injury was not so severe as to break the chain of medical causation. Claimant's current condition is most likely a recurrence from his original July 2015, work injury.

The next, highly related issue, is whether claimant is entitled to healing period benefits from January 25, 2018, through June 4, 2018.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312

N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Having found that his diagnoses of chronic facet-mediated left-sided low back pain with intermittent radiculitis and chronic left sacroiliitis resulted in substantial part from his July 6, 2015, work injury, I conclude claimant is entitled to healing period benefits commencing on January 25, 2018, until he either returns to work, is capable of returning to substantially similar employment, or he reaches MMI. While claimant testified of his intent to return to work June 4, 2018, it would be speculative to award benefits up to a date which had not occurred as of the date of hearing. Hopefully, claimant was able to return to work at the time frame he speculated or even before. If so, his benefits would end upon his return to work. Otherwise, benefits would continue until one of the three elements set forth in Iowa Code section 85.34(1) are met.

The next issue is permanency. Claimant asks the agency to assess his permanent partial disability. Permanency benefits, however, cannot be assessed when an injured worker is not at MMI. If Mr. Wilson returned to work and reached MMI in June 2018, then this would not be an issue. Since the hearing record was closed in May 2018, however, it is impossible to assess his industrial disability. The issue of permanency is hereby bifurcated. A separate hearing will be held to assess claimant's permanent partial disability. Either party may file a new petition for arbitration for the purpose of assessing permanent disability, when appropriate.

ORDER

THEREFORE, IT IS ORDERED:

Claimant is entitled to a running award of benefits. Defendants shall pay the claimant a running award commencing on January 25, 2018, forward until such time as benefits may cease pursuant to Iowa Code section 85.34(1), at the rate of six hundred seventy-six and 20/100 dollars ($676.20) per week.

Either party may file a new petition for arbitration for the purpose of assessing permanent disability, when appropriate.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants.

Signed and filed this 29th day of April, 2019.

JOSEPH L. WALSH
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.