

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIKE RUBY,

Claimant,

vs.

GANNETT PUBLISHING SERVICES,  
d/b/a DES MOINES REGISTER,

Employer,

and

NEW HAMPSHIRE INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

NOV 15 2018

WORKERS COMPENSATION

File No. 5058620

RULING ON LIMITED APPLICATION  
FOR REHEARING REGARDING  
DENIAL OF MEDICAL EXPENSES

Head Note No.: 2500

On November 5, 2018, claimant filed an application for rehearing regarding the denial of medical expenses in the arbitration decision issued October 17, 2018. On November 9, 2018, defendant filed their response to the application for rehearing.

The application is granted and the issue is now reviewed.

Claimant alleges that the undersigned erred by not ordering payment of the medical expenses listed in the attachment to the hearing report.

At the time of the hearing, there was a discussion held prior to going on the record concerning the medical expenses. The undersigned referred to this conversation and stated, "It's my understanding that there may be some discussion between counsel perhaps after the hearing. And if any of those [expenses] are admitted and the defendant intends to pay those, Mr. Oliver, you'll set that out in a brief." (Tr. p. 6) Defense counsel replied in the affirmative and after additional discussion concerning other issues unrelated to claimant's medical expenses, neither party had anything more to add or clarify concerning the issues, including the issue of medical expenses. (Tr. pp. 6, 7)

The Hearing Report indicates that the parties stipulated that the medical providers would testify as to the reasonableness of their fees and/or the treatment in the listed expenses. (Hearing Report, p. 2)

However, defendants disputed that the treatment represented by the medical bills was causally related to the work injury or that the expenses were causally related to the medical condition upon which the claim of injury was based. (Id.)

I disagree with claimant's argument in his application for rehearing that the only issue concerning the medical bills was whether or not some or all of them have been paid by defendants. (Claimant's Application for Rehearing, p. 2, November 5, 2018; Tr. p. 6) The statement in the transcript concerning defendants intent to review the medical expenses after the hearing and alert the undersigned in their post-hearing brief if any of the bills have been paid by defendants, does not override or eliminate the dispute stated in the hearing report of causal connection to the claimed injury. The issue of a causal connection remained.

The undersigned found in the arbitration decision that claimant "had an exacerbation of a pre-existing low back condition on November 23, 2015 when he slipped and fell at work." (Arb. p. 7, October 17, 2018) It is this low back condition that is the work injury/condition upon which the claim was based. Therefore, from the stipulation in the hearing report, the reasonableness of the treatment and fees associated therewith was not the issue. The issue that claimant needed to prove was the causal relationship between the medical expenses/treatment and the condition upon which the claim was based.

Claimant attached to the hearing report a list of claimed medical expenses which included: the name of the medication or provider; the date of service; and, the amount charged. There was no reference in the list to the actual service provided or its relationship to the low back condition. The fact that the low back condition was found to be compensable, does not eliminate the need to prove a causal connection between the listed expenses and the low back condition.

Claimant alleges that submission of the medical bills would not resolve the issue of causal connection. Although I may disagree with this assertion believing that the medical bill would likely have some reference to the service provided, it remained claimant's obligation to prove the causal connection.

Claimant makes the argument that the medical records introduced at hearing are sufficient to make the causal connection. I now review the listed medical bills submitted and the medical records received into evidence at the hearing and find as follows:

The following medical bills can be connected to the medical records by provider and date of service:

<u>Provider</u>	<u>Date of Service</u>	<u>Amount Charged</u>	<u>Medical Record</u>
Scott Fackrel, D.O.	3/14/2017	\$190.00	JE1, p. 31
Shawn Spooner, M.D.	3/16/2017	\$190.00	JE10, p. 137
Shawn Spooner, M.D.	5/8/2017	\$125.00	JE10, p. 144
Medical Center Anesthesia	5/10/2017	\$393.00	JE12, p. 157
Medical Center Anesthesia	5/12/2017	\$3,832.00	JE12, p. 160
West Lakes Surgery Center	5/12/2017	\$5,817.00	JE12, p. 160
Gabapentin	5/26/2017	\$13.38	JE12, p. 162
Medical Center Anesthesia	5/26/2017	\$3,832.00	JE12, p. 162
West Lakes Surgery Center	5/26/2017	\$5,817.00	JE12, p. 162
<b>Total</b>		<b>\$20,209.38</b>	

I find that that claimant testified that he received treatment from Dr. Fackrell, Dr. Spooner, and Dr. Moyse related to this work injury. (Tr. p. 29)

Upon further review and reconsideration I find that claimant has met his burden of proof to a preponderance of the evidence that the above medical bills in the sum of \$20,209.38 are causally related to the work injury upon which the claim is based.

I make this finding based on the claimant's testimony concerning his treatment, the date of service of the medical bills, and their correlation to the medical records.

I find that the medical bills from Medical Center Anesthesia are causally related to the work injury despite the medical records not appearing to reference the specific medical provider name of "Medical Center Anesthesia." (Ex. JE12, pp. 157, 160, 162) This finding is based on the fact that the dates of service relate to injections and/or treatment with Dr. Moyse, including bilateral lumbar medial branch blocks and the reasonable conclusion that it is highly unlikely that claimant would have had a different unrelated treatment requiring anesthesia on the same day.

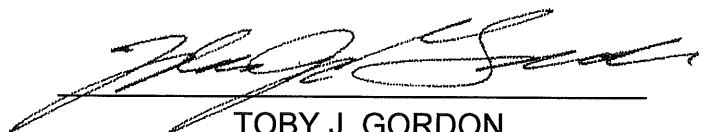
I find that claimant has failed to carry his burden of proof that the remaining listed medical bills are causally related to the work injury upon which the claim is based. This is based on my inability to correlate the remaining medical bills to the medical records received in evidence due to differences in dates of service. For example, claimant argues that the bill from West Lakes Surgery Center for date of service of July 3, 2017 in the amount of \$2,830.00 is supported by the medical record found at Exhibit JE12, p. 165. However, this medical record is for date of service of July 5, 2017.

### ORDER

**IT IS THEREFORE ORDERED** that the arbitration decision is modified consistent with the above findings. Defendants are ordered to reimburse claimant for his out-of-pocket medical expenses and shall pay, reimburse, and or otherwise satisfy all remaining medical expenses as set forth and described above in the sum of twenty thousand two hundred nine and 38/100 dollars (\$20,209.38).

All other findings, conclusions and aspects of the arbitration shall remain in full force and effect.

Signed and filed this 15<sup>th</sup> day of November, 2018.



TOBY J. GORDON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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