

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HAROLD E. ENLOW,

Claimant,

vs.

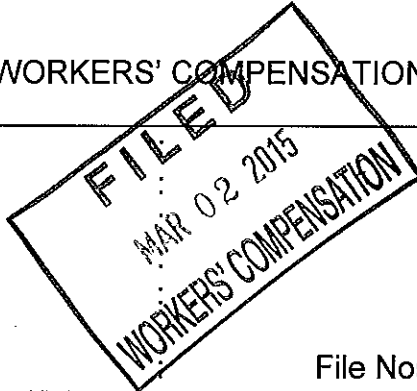
DIEOMATIC INCORPORATED d/b/a  
WILLIAMSBURG MANUFACTURING,

Employer,

and

ZURICH AMERICAN INSURANCE,

Insurance Carrier,  
Defendants.



File Nos. 5044086, 5047085

ARBITRATION  
DECISION

Head Note No.: 1100

STATEMENT OF THE CASE

Harold Enlow, the claimant, seeks workers' compensation benefits from defendants, Dieomatic Incorporated d/b/a Williamsburg Manufacturing, the alleged employer, and its insurer, Zurich American Insurance, as a result of alleged injuries on July 10, 2012 and July 11, 2012. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on January 30, 2015, but the matter was not fully submitted until the receipt of the parties' briefs and argument on February 16, 2015. Oral testimonies and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Only joint exhibits were received into evidence at hearing, and they were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit A, pages 2 through 4 will be cited as, "Exhibit A-2:4." References to a page of a transcript shall be to the actual page number of the original transcript, not to the page number of a copy containing multiple pages of the original transcript.

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. An employee-employer relationship existed between claimant and defendant employer at the time of the alleged injuries.

2. Claimant is seeking temporary total or healing period benefits beginning July 14, 2012, and defendants agree that he was off work after that time.

3. If the injury is found to have caused permanent disability, the type of disability is an industrial disability to the body as a whole.

4. At the time of the alleged injury, claimant's gross rate of weekly compensation was \$845.00. Also, at that time, he was single and entitled to one exemption for income tax purposes. Therefore, claimant's weekly rate of compensation is \$522.59, according to the workers' compensation commissioner's published rate booklet for this date of injury.

5. Defendants are entitled to credit under Iowa Code section 85.38(2) for short and long-term disability benefits paid to claimant after the alleged injuries.

### ISSUES

At hearing, the parties submitted the following issues for determination:

- I. Whether claimant suffered the work injuries asserted in these proceedings;
- II. Whether the claim is barred by Iowa Code section 85.23 for failure to provide timely notice to the employer.
- III. The extent of claimant's entitlement to weekly temporary total or healing period benefits and permanent disability benefits; and,
- IV. Claimant's entitlement to reimbursement for an examination by Sunil Bansal, M.D.

### FINDINGS OF FACT

In these findings, I will refer to the claimant by his first name, Harold, and to the defendant employer as Dieomatic.

In these proceedings, Harold is asserting injuries to his right shoulder and neck as a result of two falls occurring on July 10 and July 11, 2012 and permanent disability as a result of these injuries.

Harold, age 53, worked for Dieomatic, a manufacturer of auto parts, from December 1989 until July 12, 2012. Initially, he was a production laborer, but for about 1 ½ years before he left this employment he was a paint technician. As a paint tech, Harold and his co-workers did not apply paint to parts by spraying or brushing, but performed several tasks to electrostatically coat the auto parts. Paint techs periodically took samples from various coating tanks and tested the samples in a lab to ensure that the chemicals in the tanks met specifications. They also tested the parts to ensure the

correct thickness of the coatings was being applied. The testing results would be entered on a computer. They then would add chemicals to the tanks to achieve specifications. They also maintained and repaired equipment and machines when necessary and periodically cleaned the tanks. The testing and computer tasks were conducted in an air-conditioned lab, but the taking of samples, adding chemicals to tanks, and the maintenance and repair tasks were performed in a production plant area which was not air conditioned. Two other paint techs, Michael Schmuecker and Michael Denison, worked with Harold at the time of the alleged injuries in this case. They were supervised by Matthew Glandorf, a lead worker, and Nels Halvorson, the shift leader/supervisor. Harold stated that the repair and maintenance tasks at times involved handling heavy pumps. Adding chemicals to tanks required the carrying of five-gallon buckets full of chemical. Cleaning the tanks required shoveling out muck from the tanks.

Harold's medical history before these alleged work injuries, consisted of cardiovascular problems since a heart attack and installation of stents. He had chronic migraine headaches, chronic fluctuating blood pressure, chronic neck pain and several syncopal episodes (fainting) both at work and at home since 2009. The etiology of these episodes has yet to be determined. Harold also has had problems with mental depression and had been diagnosed prior to this injury with a Depressive Disorder and Antisocial Personality Disorder, which also lead to problems with anger management. (Ex. A-3; E-2; F-19:20) He had been hospitalized more than once due to suicidal ideation and suicide attempts. (Ex. E-2)

Harold testified in his deposition (Ex. K) and at hearing, his first injury occurred on July 10, 2012. At that time, Harold claims that he, Schmuecker and Denison were assigned to replace a 100-pound motor in an exhaust fan in the paint area. As the fan was located above their heads on the plant wall, use of two step ladders, about 2-2 ½ feet high, were required. A pipe was attached to the motor, and two techs, one on each end, held the pipe with one hand and climbed up and down the step ladders. A third tech was located above the two techs carrying the motor apparently on some platform near the exhaust fan to assist in handling the motor. Harold stated at hearing that the injury occurred when he and Schmuecker were climbing up the ladders holding the pole with the motor. Schmuecker lost grip and the motor slid down the pipe and struck Harold in the neck and shoulder. Harold states that he was knocked down the ladder onto the ground. (Ex. K-51:52) Harold states that he hurt from the incident, but did not report an injury to his supervisor that day because he thought he was not hurt that bad. He states that his co-workers witnessed this incident.

Harold states that the next day he reported for work, but after about an hour and a half, he began to feel bad. He testified that his neck and right shoulder pain worsened. He stated that he told Denison that his shoulder was "killing me" and inquired about where his supervisor was located, because he wanted to leave because he was not feeling good. (Ex. K-53) A few minutes later, after talking to his supervisor, Harold said that he passed out. Harold believes he passed out due to his pain and the

heat in the plant. Harold was then transported to the emergency department of the University of Iowa Hospitals and Clinics (UIHC).

ER physicians on July 11, 2012 reported that Harold began to feel lightheaded, dizzy and nauseated while sitting at his desk in the lab and subsequently passed out. Harold reported he had a headache that morning. At the ER, Harold denied any chest pain, shortness of breath, headaches or neck pain. A person who accompanied Harold in the ER reported to doctors that Harold was assisted to the ground and did not strike his head. After Harold received IV fluids he improved. Emergency staff felt that Harold became dehydrated from sitting in the heat at work. After testing indicated no other problems, Harold was released and told to take the rest of the day off from work. (Ex. A-1:7) The ER physicians returned Harold back to work the next day.

On July 12, 2012, Harold reported back to work and was immediately called into his supervisor's office. He met with his supervisor, the plant manager and the human resources manager. Harold was told at this time that due to his repeated fainting spells at the plant, management at Dieomatic was going to transfer him to the radiator support line for his safety where he could be monitored by other workers. (Ex J-4:5) Management was fearful of harm to Harold because of his working around tanks of chemicals. Also, as a paint tech, he worked alone in areas where other workers were not present, and a fainting spell could happen without anyone's knowledge. Harold disagreed that this production line was safer due to the presence of robotic equipment in that area. However, Harold agreed to the transfer, but asked for a few days off, and this was granted. Harold states that he reported his neck and shoulder injuries from both falls to management at this meeting on July 12<sup>th</sup>. Harold never returned to work at Dieomatic or anywhere else since July 12, 2012 and remains unemployed at the current time. Harold was eventually terminated by Dieomatic. (Ex. J-8)

On July 23, 2012, Harold was evaluated by David Katz, M.D. at the UIHC. At this time, Harold began complaining of right shoulder pain which developed after the July 11<sup>th</sup> fall. (Ex. A-9) This was the first time after the fall that Harold complained of right shoulder problems to a medical provider.

Harold subsequently sought medical treatment on his own under his group insurance from Sherri Vesely, a nurse practitioner, beginning on July 25, 2012 for his shoulder and subsequent neck complaints. This nurse practitioner took Harold off work and made various referrals. Interestingly, there are no office notes or reports from this nurse practitioner in the record. Treatment by this provider is only documented in a decision by an administrative law judge denying Harold's application in August 2012 for Social Security benefits. (Ex. I-25:26) On referral by Vesely, an orthopedist, Daniel Fabiano, M.D. evaluated Harold in August 2012 and diagnosed right rotator cuff tendonitis and cervical spine radicular pain. (Ex. B) Also, on referral by Vesely, Harold was evaluated at the Mayo Clinic. Physicians at this clinic evaluated Harold's fainting spells, physical complaints, and mental difficulties. Mayo doctors felt the neck pain was mechanical with possible nerve root irritation, but surgery was not recommended. Only

continued medication and physical therapy was suggested as treatment for the physical complaints. (Ex. F)

There are a number of problems with Harold's claim of injuries to his shoulder and neck from the two falls. The first time in this record there is mention of an injury on July 10, 2012 while repairing the exhaust fan was in Harold's deposition on January 29, 2014. The only written evidence of any work injury in July 2012 in this record is a letter by Harold's attorney to defendants, dated September 25, 2012, in which the attorney set forth a claim of injury to his shoulder when he passed out on July 11, 2012. (J-13:14) There is no mention of any incident on July 10, 2012 in this letter. Harold's petition for benefits for the alleged July 10, 2012 injury was not filed with this agency until February 5, 2014. Harold did not explain the reasons for such the delay in asserting the July 10<sup>th</sup> injury. The only report of the July 10, 2012 injury to a physician in this record appears in the report from Harold's independent medical evaluator, Sunil Bansal, M.D. in December 2014. Dr. Bansal states that Harold told him that on July 10, 2012, he fell about 10 feet striking his head and shoulder onto a concrete floor. (Ex. L-6) In a report in August 2012 by a physical therapist who treated Harold on referral by Dr. Fabiano, the therapist states that Harold could not recall any specific injury that caused his shoulder pain, but he remembers having pain in his shoulder prior to July 11, 2012. (Ex. C-1)

Harold's co-workers, Schmuecker and Denison, and his supervisor, Glandorf, testified at hearing. Schmuecker testified that he could not recall any occasion when Harold was knocked off a step ladder. He stated that there was no record in their daily work log of any fan motor repair on July 10, 2012. He states that if the event occurred, the injury would have been reported. He stated that his only recollection of a fan motor repair was about a year before 2012. Denison testified that he does recall efforts to replace the exhaust fan motor the day before Harold passed out on July 11, 2012. He stated that he, not Schmuecker, was holding onto the pole attached to the motor and the only injury, albeit minor, was to him when the motor slid down the pole and hit his fingers. However, he did not recall Harold suffering any injury. Halverson, the supervisor, testified that he thought the fan motor was replaced in June 2012, but there was no such repair listed on July 10, 2012 in the paint tech's work log. He also stated that Harold did not report any injury to him or at the meeting with Harold on July 12, 2012. Had he received such a report, Halverson stated that he would have completed a written injury report.

I find it highly unlikely that Harold would delay reporting the July 10<sup>th</sup> injury to his treating physicians or, apparently, even to his attorney prior to his deposition if such an injury actually occurred. Witnesses Schmuecker, Denison and Halverson, all deny such an injury occurred, and they appeared credible at hearing. Also, the mechanism of the injury as described by Harold does not appear plausible. If Denison lost grip or dropped his end of the pole, the motor would logically slide toward Denison, not toward Harold. Also, Harold stated at hearing that the primary injury occurred when he was struck by the motor after it slid down the pole, but in his deposition he stated that the injury occurred when he fell off the step ladder and landed on the floor. The report to

Dr. Bansal of a severe fall of "at least" ten feet is completely different from the earlier description of a fall of only about 2-2 ½ feet. Therefore, I am unable to find that Harold suffered any injury on July 10, 2012.

Harold did report shoulder pain to a treating physician after his July 11<sup>th</sup> incident, but not until July 23, 2012, almost two weeks later. Harold denied any shoulder or neck pain before July 10, 2012 at hearing, but admitted to prior pain to the physical therapist in August 2012 and admitted to prior chronic neck pain to the ER physicians on July 11, 2012. Also, Denison testified that he was present at the time Harold passed out on July 11, 2012. He was aware that Harold had passed out at work before. After Harold told him he was not feeling well that morning, Denison said that Harold told him he was going home. As Harold left the office, Denison said he observed Harold stumbling and knew something was wrong. He approached Harold and put his arms around him. He then observed Harold's eyes roll back and that Harold got heavy and he assisted Harold to the ground. Denison said that both of them were on the floor after the incident, but that Harold did not strike the floor in the fall. Apparently, 9-1-1 was called at that time. Denison said that he then helped Harold up after he regained consciousness. While walking to the door, Harold was wobbly on his feet, and Denison sat Harold down onto a stair step until the ambulance arrived. The lead worker, Glandorf, testified that he observed Harold's passing out incident on July 11, 2012 and he called 9-1-1. Glandorf states that Harold did not hit his head from the fall from his view.

Given the fact that he was assisted in the fall on July 11, 2012 and apparently did not strike anything, I am unable to find the fall a cause of the shoulder pain first reported to doctors on July 23, 2012 or the neck pain reported thereafter. Harold's lack of credibility in asserting the July 10<sup>th</sup> injury adversely impacts his credibility in asserting the July 11<sup>th</sup> injury. Harold admitted to shoulder pain prior to July 11<sup>th</sup> to the physical therapist. The causation opinion by Dr. Bansal causally relating the shoulder/neck pain to the July 11<sup>th</sup> fall is based on histories of injuries that are not supported by the record in this case.

There is no credible evidence that Harold reported the alleged work injury on July 10, 2012 to defendants within 90 days after the alleged injury. The letter to defendants by Harold's attorney that was dated September 25, 2012 only reported the July 11, 2012 alleged injury.

Further findings are unnecessary.

#### CONCLUSIONS OF LAW

I. The claimant has the burden of proving by of preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995).

An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309.

In this case, I was unable to find any injury arising out of or in the course of claimant's employment at the times alleged in the petitions.

Claimant seeks reimbursement for the evaluation by Dr. Bansal, a physician retained by claimant. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low.


In this case, no work injury was found. Although there is authority that entitlement to 85.39 exam is not dependent on an admission or adjudication of liability for the condition sought to be evaluated, Dodd v. Fleetguard, Inc., 759 N.W.2d 133 (Iowa App. 2008), claimant has not shown that there was a prior evaluation of claimant's permanent disability by an employer retained physician. The prior evaluations by Dr. Fabiano and the Mayo Clinic were by physicians retained by claimant and referred by claimant's personal medical provider who was not authorized by defendants to treat the alleged injuries. Reimbursement is therefore denied.

ORDER

Claimant shall take nothing further.

Claimant shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33.

Signed and filed this 2<sup>nd</sup> day of March, 2015.

  
LARRY WALSHIRE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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LPW/sam

**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.