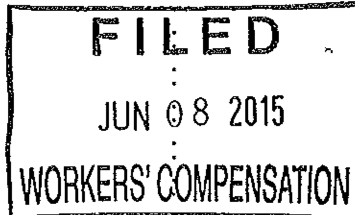
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM DUANE PARROTT,
Claimant,
vs.
CASE NEW HOLLAND,
Employer,
and
ACE AMERICAN INSURANCE
Insurance Carrier,
Defendants.



File No. 5046609

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

William Parrott, claimant, has filed a petition in arbitration and seeks workers' compensation from Case New Holland, employer and Ace American Insurance, insurance carrier, defendants.

This matter came on for hearing before deputy workers' compensation commissioner, Jon E. Heitland, on March 11, 2015 in Ottumwa, Iowa. The record in the case consists of Defense Exhibits A through I; Joint Exhibits 1 through 14, as well as the testimony of the claimant.

ISSUES

The parties presented the following issues for determination:

1. Whether the claimant is entitled to temporary total disability or healing period benefits during a period of recovery.

2. The extent of the claimant's entitlement to permanent partial disability benefits.

3. The commencement date for any permanent partial disability benefits awarded.

4. Whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

FINDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Claimant stated he is 39 years old, and lives in Burlington, Iowa. His education consists of graduating from high school. He was an average student. He later attended college at Kirkwood Community College, where he obtained certification as a welder.

His past health history includes chronic sinus infections, for which he had three surgeries. He also had knee problems with both knees, and surgeries on both knees. The knee problems are resolved. He also had back problems prior to working for the employer. He began working for Case New Holland in November, 2010. He was originally hired as a weld floater. He would float to different jobs. Most involved lifting materials off a cart, then kneeling, bending, stooping, working overhead, etc. He was on his feet 90 percent of the time or more. He sometimes used a hoist, but other times not. He normally lifted not more than 30 pounds, but one job was over 40 pounds. He earned over $15.00 per hour. He liked the job and he was good at it. Before his injury, he was able to perform all the functions of his job without difficulty.

While working at Case New Holland, he had two episodes of back pain. He had an incident on November 28, 2012. By December 6, 2012, he was released to full duty work. He has had muscle strains at different times. None of these resulted in any permanent restrictions, surgery, or limitations. They did not impact his work. He has had chiropractic care on occasion when his back "popped out". He had not been off work for more than a day due to his back other than perhaps one day while working for a moving company.

On August 15, 2013, the date of injury herein, claimant was working with a co-worker in a weld cell waiting for the robot device to finish its task. A third worker was operating a large floor cleaner at the time when the handle to steer the machine came off. The sweeper machine pinned claimant and the other employee against a table, at knee level. Claimant tried to push the machine off him when he experienced severe pain in his low back and shooting pain down his legs. The sweeper was very heavy, and as the operator did not let up on the throttle, the machine kept hitting claimant and the co-worker.

Claimant reported the injury, and was sent to see Robert Foster, M.D. He recommended an MRI as well as physical therapy. Eventually, claimant underwent a titanium disc surgery, a procedure Dr. Foster helped design. The surgery was in November, 2013. It provided some relief but claimant still had pain. Claimant was off work two to three weeks. He then returned to light-duty work.

When he reported continued pain to Dr. Foster, the doctor recommended a "Med-X" procedure, which did not help. Exhibit 2, page 23, shows claimant was still below normal in strength. Dr. Foster thought claimant did not put forth maximum effort, but claimant stated he did and was significantly sore after each session. Dr. Foster told claimant there was nothing further he could do for him. But claimant was still having back and leg pain on a constant basis. Dr. Foster told him he would have to live with the pain, and suggested he might change jobs.

When Dr. Foster released him, claimant returned to his same welding job. Claimant went back to full duty work, which was painful. The more he worked, the more he hurt. Bending, kneeling, and other duties of his job resulted in pain. There were times when he had to go to the emergency room. In March 2014, he had to go to the emergency room at 4:30 a.m., due to severe pain. He rated it as 8 or 9 out of 10, and he was "ready to pull my hair out" it was so bad. He received an injection for pain.

Exhibit 2, page 28, shows claimant returned to Dr. Foster on March 21, 2014 with complaints of back pain. He was again told he would have to live with the pain, and was given pain pills. Claimant returned to full duty work, and was still in pain. He would be in pain from the start of his shift to the end, and would also have pain on the weekends when he was not working. His average pain at work was a 7 or 8 on a scale of 10, on the weekends, 5 or 6. On April 3, 2014, claimant had to return to the emergency room again due to severe pain. (Exhibit 3, page 24) Again, he was given medications and advised to return to Dr. Foster.

Claimant also went to see his family medical provider, Kelly Samberg, A.R.N.P., on April 28, 2014, for a return to work slip. The employer told him this was needed. (Exhibit 2, page 30) On June 4 or 5, 2014, claimant had another flare-up of pain. He felt a pain or pop in his low back while at work and using a wrench. He was sent to Mary Bentler, M.D. (Ex. C) She gave claimant x-rays, medications, and restrictions. She advised him to return to Dr. Foster.

On June 20, 2014, claimant returned to Dr. Foster, and once again was told there was nothing he could do, claimant was at maximum medical improvement (MMI), and to try and relax. (Ex. 2, p. 33) When claimant came into the room, the doctor asked him what do you want from me? Claimant told him he wanted the pain to go away. Again he was told to live with it or change professions.

On May 29, 2014, claimant saw David Segal, M.D., for a second opinion. Claimant later went back to Dr. Segal for treatment in September 2014.

On July 3, 2014, claimant saw Dr. Foster again. He again told claimant the same things. Claimant told Dr. Foster he was going to get a second opinion from Dr. Segal, Dr. Foster asked why he would want to go there, in that a prior doctor, a Dr. Gupta, had worked there and left, and "that should tell you something".

When claimant returned to Dr. Segal in September 2014, he was referred to a pain clinic, where he received an injection. It did not help. Dr. Segal then told claimant a spinal fusion and spinal cord stimulator would be appropriate treatment.

June 20, 2014, was claimant's last day of work for the employer. Dr. Foster took him off work, reasoning if claimant was off work a couple of weeks and relaxed, the pain might dissipate. Claimant has been off work since then because the employer feels his condition is not work related and he cannot return to work with restrictions.

The fusion surgery took place October 14, 2014. Claimant felt relief immediately. Within an hour of the surgery he was walking around his hospital room without pain. He has been in physical therapy since then, and today he still has some pain but it is tolerable. He is on hydrocodone three or four times per day, depending on his activities. Exhibit 4, page 20, shows he is to be off until April 3, 2015, and decisions will be made where to go from there.

Claimant underwent an MRI on September 14, 2012, before the work injury. He had a second one on September 3, 2013, shortly after the injury. His third MRI was in July 2014, after Dr. Foster released him from care. This MRI was ordered by Dr. Segal, and led to the fusion surgery in October 2014.

Claimant had an appointment with Dr. Segal on April 3, 2015. Claimant understood Dr. Segal planned to release him to return to work. Dr. Segal assigned claimant a rating of permanent partial impairment of 13 percent of the body as a whole. Dr. Foster had previously assigned the same rating.

Today claimant still has constant back pain, varying with activities. It is usually a 3 or 4 on a scale of 10. It is higher when he is active. Whereas before he was unable to play with his children, now he can. His past jobs have always required him to lift heavy objects. Welding does not involve sitting in a chair, it always involves lifting items.

On cross examination, claimant agreed the incident of June 2014 was not a new injury, but rather his pain getting more intense. He has not had to visit the emergency room since the surgery by Dr. Segal. He agreed he told Dr. Foster the first surgery helped a little. He also agreed when Dr. Foster released him in March 2014, he still had symptoms but they had plateaued.

He agreed some of his MRIs were after he was released by Dr. Foster. In July 2014, he had an MRI. (Exhibit F) As far as claimant knows Dr. Segal had all prior MRIs when he did the surgery as they discussed his prior MRIs. Dr. Segal told him he was going to do a fusion surgery and fix anything abnormal that appeared. Claimant is currently receiving workers' compensation benefits. The emergency room visits resulted in him being sent back to work without restrictions.

The Zoloft medication he took for anxiety is not involved in this claim. He only takes hydrocodone for his back pain. He is able to drive a car and drove to the hearing from Burlington, Iowa to Ottumwa, Iowa. His complaints today are back pain that is tolerable.

He agreed he continued to see Dr. Foster even after being released by him during the summer of 2014. Dr. Foster did not feel the pain claimant had at that time was related to his injury or surgery. Claimant had not yet begun treatment with Dr. Segal, only undergoing the IME with him at that point. (Ex. E, p. 16) Claimant has bid on other jobs at Case New Holland, such as team lead.

CONCLUSIONS OF LAW

The dispute between the parties centers on whether claimant reached maximum medical improvement on March 6, 2014? Claimant contends his medical treatment, including the surgery by Dr. Segal, after that date was also causally related to his work injury on August 15, 2013. Defendants assert claimant's need for treatment after that date is not compensable, and he has reached maximum medical improvement and a determination of his industrial disability is appropriate at this time.

The first issue in this case is whether the claimant is entitled to temporary total disability or healing period benefits during a period of recovery.

Claimant's work injury is admitted by defendants. Claimant injured his back when a floor cleaner rammed into him. He has suffered pain in his low back and extending into his right leg.

Claimant was initially treated by Dr. Foster. Eventually, Dr. Foster performed surgery on November 25, 2013. (Ex. 3, p. 2) Claimant was returned to work on light duty. However, claimant continued to have pain. Claimant has completed his physical therapy, but was found to have less than normal strength. His pain increased with activity. (Ex. 2, p. 23) The pain was rated by claimant as 6 to 8 on a scale of 1 to 10. However, Dr. Foster found claimant to be at MMI and released him to full duty work. (Ex. E, pp. 1-2) On March 25, 2014, Dr. Foster again found claimant to be at MMI, and again released him to return to work with no restrictions. Dr. Foster assigned a rating of permanent partial impairment of 13 percent of the body as a whole, for claimant's discectomy surgery. (Ex. E, p. 10) Dr. Foster then told claimant he had no further treatment options to offer claimant, and told claimant he would have to live with the pain.

Later in March claimant reported to the emergency room with extreme pain. (Jt. Ex. 3, p. 9) Dr. Foster again told claimant he had no further treatment to offer him, and again returned him to full duty. (Jt. Ex. 2, p. 29) Claimant returned to work, again experienced severe pain, and again had to visit the emergency room on April 3, 2014. (Jt. Ex. 3, p. 24) Claimant was released from Dr. Foster's care and referred to the plant nurse at Case New Holland for restrictions. (Jt. Ex. 3, p. 28)

In April and May 2014, claimant continued to have back pain. When he again saw Dr. Foster on June 20, 2014, Dr. Foster took him off work, and claimant has not returned to work since then. (Jt. Ex. 2, p. 33)

Claimant then went to Dr. Segal for an independent medical examination (IME) on May 29, 2014. Dr. Segal discussed claimant's prior MRIs with claimant. However, claimant later returned to see Dr. Segal, this time for treatment, on September 16, 2014, due to his ongoing pain and Dr. Foster's indication he had nothing further to offer. (Jt. Ex. 4, p. 9) Dr. Segal ordered another MRI, which was conducted on July 10, 2014. (Ex. F, p. 3) He recommended a fusion surgery at the L4-L5 level, which was conducted on October 14, 2014. (Jt. Ex. 4, pp. 12-13) Claimant experienced relief of the pain in his right leg after this surgery. (Jt. Ex. 4, p. 14) He was able to walk without pain in his right leg, although he continued to have pain in his low back.

Claimant continued to treat with Dr. Segal, who took him off work. At the time of the hearing, claimant was still off work but expected to return to work April 3, 2015. (Jt. Ex. 4, p. 20)

Dr. Segal has from the beginning felt claimant's ongoing symptoms were due to his work injury. After reviewing all of claimant's medical records, including the past MRIs, Dr. Segal concluded:

> Based on the history that I obtained from all the medical records as well as Mr. Parrott, is that the causal factor and the need for Mr. Parrott's surgery and the low back pain that he complains of today is from that injury. . . . .
>
> I do believe the surgery Mr. Parrott underwent was a direct result of the injury of August 15, 201
>
> I do believe that the chronic pain, discomfort, and limitations are related to the August 15, 2013, surgery.

(Jt. Ex. 8, p. 5) It is clear Dr. Segal meant the August 15, 2013, injury and not surgery. The date of injury in this case is August 15, 2013, and there is no August 15, 2013 surgery.

Although Dr. Foster originally felt claimant's ongoing symptoms, and later medical treatment, were not causally related to the work injury, he changed his mind. In a report dated September 14, 2014, Dr. Foster expressed agreement with the opinions of Dr. Segal in the latter's July 7, 2014, IME report. Dr. Foster expressly stated he agreed with Dr. Segal's statement that claimant's chronic pain, discomfort, and limitations are related to the August 15, 2013, injury. (Jt. Ex. 7, p. 3) Dr. Foster felt claimant's ongoing symptoms might be the result of scarring from the surgery. (Id.)

Dr. Segal reiterated his causal connection opinions later, observing that the relief claimant experienced after the surgery reinforced those opinions, stating:

> My surgical intervention only further confirmed my prior opinion that Mr. Parrott's condition and need for this last surgical intervention was his work-related injury of August 15, 2013.
>
> It is my opinion, within a reasonable degree of medical certainty, that the treatment I have provided Mr. Parrott including surgical intervention was his work-related injury of August 15, 2013.

(Jt. Ex. 8, p. 6)

Defendants base their position on the fact claimant clearly had prior low back problems even before his injury. Claimant has a degenerative condition. Claimant had an incident where he bent to lift a handle and felt intense back pain.

However, both Dr. Segal and Dr. Foster, the physicians rendering causation opinions in this record, were aware of these facts and nevertheless concluded claimant's current low back condition is caused by his work injury. It is of course not necessary that his condition be caused only by his work injury. There can be other factors contributing as well. But it is clear from the record both doctors feel the work injury was a substantial cause of his current condition, and that is all that is required. Dr. Segal thought so at all times, and the surgery he performed did in fact help claimant. Dr. Foster initially did not think so, but later changed his mind and agreed with Dr. Segal. With both physicians agreeing the work injury is the cause of claimant's back condition and the need for treatment, and no contrary medical opinion in the record, it is concluded claimant's current back condition is caused by his stipulated work injury.

It is further concluded all of claimant's medical treatment, including treatment after March 6, 2014 visit with Dr. Foster, and the surgery by Dr. Segal, and the emergency room visits, are causally connected to the work injury. Although Dr. Foster has not agreed the fusion surgery by Dr. Segal was necessary, the greater weight of the evidence shows Dr. Foster prematurely discharged claimant from his care. Claimant was having severe pain, to the point of requiring emergency room visits. All Dr. Foster would offer was advising claimant to live with the pain. Obviously, claimant was not yet at maximum medical improvement, as shown by the success of the later fusion surgery by Dr. Segal. Here hindsight shows Dr. Foster was incorrect to conclude all that could be done for claimant had been done.

It is further concluded claimant has not reached maximum medical improvement. Although Dr. Foster found him to be at MMI, the above analysis shows that was in error. The parties indicated to the undersigned if claimant was found to have reached MMI March 6, 2014, a determination of extent of disability would need to be made in this decision. If claimant did not reach MMI, a running award of healing period benefits

would be appropriate. The parties attached to the hearing report a statement of issues which included:

> The primary question the parties need resolved is: Is the Claimant's need for care after March 6, 2014, including the surgical intervention by Dr. Segal, related to the injury of August 15, 2013? Based on the resolution of this question the parties will on their own determine the credits associated with health insurance payments, short term disability payments, prior permanent partial disability payments and any mileage expense owed.

Thus, all other issues listed as disputed in the hearing report are not yet ripe for determination.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay unto the claimant healing period benefits from June 20, 2014, and continuing until the claimant has met the requirements for termination of healing period benefits, at the rate of four hundred sixty-nine and 33/100 dollars ($469.33).

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for benefits previously paid.

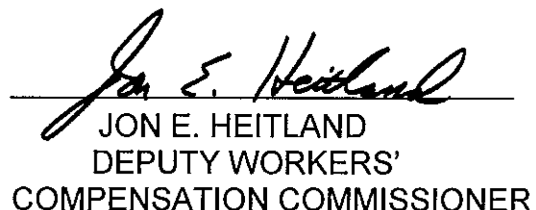
Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

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 8th day of June, 2015.



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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.