BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NAZARIO RAMIREZ, Claimant, vs. HY-VEE, INC., Employer, and UNION INS. CO. OF PROVIDENCE, Insurance Carrier, Defendants.	:	File No. 21000110.01 ARBITRATION DECISION Head Note Nos.: 1402.40, 1803, 1803.1

STATEMENT OF THE CASE

Claimant Nazario Ramirez filed a petition in arbitration seeking workers' compensation benefits from defendants Hy-Vee, Inc., employer, and Union Insurance Company of Providence, insurer. The hearing occurred before the undersigned on October 5, 2021, via CourtCall video conference.

The parties filed a hearing report at the commencement of the arbitration hearing. In the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision, and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The evidentiary record consists of: Joint Exhibits 1 through 4; Claimant's Exhibits 1 through 6; and Defendants' Exhibits A through G. Claimant testified on his own behalf. The evidentiary record was closed on October 5, 2021, and the case was considered fully submitted upon receipt of the parties' briefs on November 1, 2021.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained any permanent disability as a result of his injury.

2. Whether claimant's permanent disability, if any is limited to a scheduled member or extends into his body as a whole.

3. Whether claimant is entitled to reimbursement for costs.

FINDINGS OF FACT

Claimant sustained a stipulated work-related injury on June 21, 2019 when he was walking next to a pallet jack and the pallet jack struck him in both heels. (Hearing Transcript, pp. 21-25) Claimant immediately felt pain, though the pain was worse in his right foot. (Tr., p. 25)

Defendant-employer sent claimant to the emergency room where x-rays of his right foot were negative. (Tr., p. 26; Joint Exhibit 1, p. 3) Claimant was then sent to Timothy G. Rice., D.O., for additional treatment. (Tr., p. 27)

Dr. Rice believed claimant had a stress fracture at the base of his 5th metatarsal in his right foot. (JE 2, p. 14) He gave claimant a hard sole shoe, instructed him to start physical therapy, and assigned work restrictions. (JE 2, p. 7) When claimant continued to have pain despite the therapy and light duty work, Dr. Rice ordered an MRI. (JE 2, p. 17)

Though the MRI was negative, claimant continued to experience pain in his right heel at the insertion of the Achilles tendon. (JE 2, p. 23) In response, Dr. Rice applied a cast to claimant's right leg and ordered him to be non-weight-bearing with crutches as of August 12, 2019. (JE 2, p. 25)

Claimant testified he began to notice pain in his low back around this time, which he attributed the pain to the use of the crutches: "I think that it was using the crutches, you know. Been using the crutches for walking, and jumping, limping." (Tr., 30)

Claimant testified he told both his physical therapist and Dr. Rice about his low back pain. (Tr., p. 31) There is one notation of back pain in claimant's physical therapy records on August 15, 2019, but this is the only reference in the physical therapy notes, and there is no mention of back pain in Dr. Rice's notes during this timeframe.

When claimant continued to have pain in his right foot despite the cast, Dr. Rice recommended a referral to an orthopedic surgeon. (JE 2, p. 29) That physician, David Rettedal, DPM, indicated there was "definitely nothing to do from a surgical standpoint."

(JE 4, p. 136) Dr. Rettedal recommended another short-leg cast and continued non-weight-bearing status. (JE 4, p. 136)

Though claimant testified he told Dr. Rettedal about his back pain, there are no notations of back pain in the records from this appointment. (JE 4, pp. 136) In fact, Dr. Rettedal specifically refuted claimant's testimony about reporting back pain: "If the claimant had reported back complaints to me, I would have included those in my medical reports. I would have likely given him a referral to a specialist if he had done that, but he did not." (Def. Ex. D, p. 18)

Claimant returned to Dr. Rice after his evaluation with Dr. Rettedal. On September 17, 2019, Dr. Rice ordered an x-ray that showed a healed fracture. (JE 2, p. 35) Dr. Rice instructed claimant to use crutches as needed, return to regular shoes, and go back to therapy to improve his strength. (JE 2, p. 35) Claimant, however, reported continued pain, so Dr. Rice requested another MRI and a referral to podiatry. (JE 2, p. 46)

Claimant was evaluated by podiatrist Emily M. Anzmann, DPM, on November 19, 2019. Dr. Anzmann, like Dr. Rice, noted that claimant's "previous fractures appear to be resolved as confirmed with both radiographic and magnetic resonance imaging." (JE 2, p. 51) Dr. Anzmann gave claimant a pair of insoles to wear while at work and asked him to return in four weeks. (JE 2, p. 51) When claimant returned in December of 2019 with continued pain complaints, Dr. Anzmann recommended "further immobilization" in the form of a CAM boot. (JE 2, p. 100, 103)

Claimant testified the CAM boot worsened his back pain from limping too much. (Tr., p. 36) This is reflected in Dr. Anzmann's record from January 2, 2020: "He does note however that he wore his boot at work yesterday and it caused him increased pain to his lower back." (JE 2, p. 103) As a result, Dr. Anzmann discontinued the CAM boot and instructed claimant to gradually increase his hours at work. (JE 2, p. 106)

When claimant returned to Dr. Anzmann in March of 2020 with worsening pain, Dr. Anzmann indicated she was "at a loss . . . for as to why the patient's condition fails to improve." (JE 2, p. 112) She referred claimant back to Dr. Rettedal for a second opinion. (JE 2, p. 112; Tr., p. 39)

Before being evaluated by Dr. Rettedal, claimant was discharged from physical therapy due to "minimal to no improvement in symptoms." (JE 3, p. 132) At his final appointment, claimant's therapist noted claimant's range of motion was "essentially normal at this time," yet the long-term goal of being able "to demonstrate full pain-free ROM through the right ankle" was marked as "not met." (JE 3, pp. 133-34)

Upon his discharge from physical therapy, claimant was evaluated by Dr. Rettedal on April 8, 2020. Dr. Rettedal provided as follows:

> His main area of pain is actually to the Achilles tendon, but I discussed with him that there are no abnormalities based on physical exam or MRI. I also discussed with him that the cuboid, 4th metatarsal and calcaneus findings that were present had also resolved based on the MRI from November of 2019. He has no instability or deformity to the right foot or ankle. There is definitely no need to do any surgical or invasive treatments. I do not believe any injections would be warranted or helpful. He has exhausted all of the typical nonsurgical treatment options including rest, immobilization, anti-inflammatories, topical anti-inflammatories, and physical therapy. It is my opinion that he is at MMI with regards to his injury from June of 2019. I have no restrictions for him. We will put him at full duty and MMI for work.

(JE 4, p. 143)

On April 16, 2020, Dr. Anzmann authored a letter in which she agreed that claimant had reached maximum medical improvement (MMI). (JE 2, p. 115) Like Dr. Rettedal, Dr. Anzmann noted claimant had "no residual instability or deformities noted within his right foot" and that there was "no clinical or radiographic evidence of any underlying pathologies or abnormalities with the Achilles tendon." (JE 2, p. 115) As such, Dr. Anzmann similarly did not believe additional care was warranted and she released claimant back to full-duty work. (JE 2, p. 115)

Claimant was subsequently evaluated for purposes of an independent medical examination (IME) with Sunil Bansal, M.D. Dr. Bansal noted claimant continued to experience pain in both Achilles tendon areas, right greater than left, along with back pain that "started to hurt because he used crutches for approximately four weeks." (Cl. Ex. 1, p. 8)

Dr. Bansal diagnosed claimant with a right Achilles tendon injury, right foot cuboid fracture, left Achilles contusion, and sacroiliitis "that has progressively worsened in intensity from his altered gait secondary to his bilateral foot pathology, especially the right." (Cl. Ex. 1, p. 10) Dr. Bansal assigned a nine percent lower extremity impairment for claimant's right ankle/foot, no impairment for claimant's left ankle/foot, and five percent whole body impairment for claimant's back. (Cl. Ex. 1, p. 11)

Defendants then requested claimant to be evaluated for another IME by Douglas Martin, M.D. Dr. Martin opined claimant did "not satisfy any impairment rating methodology" for his right ankle because his range of motion and strength were within

normal limits and he had no neurological deficits. (Def. Ex. A, p. 6) As he explained, "[t]here are no objective abnormalities that I can find on examination that would allow any conclusion otherwise." (Def. Ex. A, p. 7)

Regarding the back, Dr. Martin stated, "[I]t is not necessarily clear to me that this gentlemen's mechanical low back pain is completely rooted in a true pathological abnormality. It is possible that there may be some symptom magnification and inappropriate illness behavior here as well." (Def. Ex. A, pp. 6-7) He went on to opine as follows: "I certainly can tell you that there is no injury here to the back as a result of the June 21, 2019, incident." (Def. Ex. A, p. 9)

Claimant received no medical treatment for his back pain between the date of injury and the hearing.

At the time of the hearing, claimant continued to work for defendant-employer but in a different position that requires less walking. (Tr., p. 43) He testified he still had mild pain in his right foot and low back. (Tr., pp. 45-46)

Despite claimant's testimony that he continually reported his back complaints to his physical therapists, Dr. Rice, Dr. Rettedal, and Dr. Anzmann, any actual mentions of back pain in the records are sparse. In fact, there are only two medical notes in the entirety of the record that specifically mention back pain. The first was a mention of back pain to claimant's physical therapist on August 15, 2019, just a few days after claimant was given crutches and was instructed to be non-weight-bearing. (JE 3, p. 119A) The second was in Dr. Anzmann's notes from January 2, 2020, after claimant was given a CAM boot. (JE 2, p. 103) There are no mentions of back pain in the records from Dr. Rice or Dr. Rettedal. Instead, as discussed above, Dr. Rettedal specifically refuted claimant's testimony about reporting back pain. (Def. Ex. D, p. 18)

I acknowledge there are references in the record to claimant having an altered gait and there are notes about claimant's increased foot and ankle pain while standing and walking. However, an altered gait does not automatically equate to a back injury.

Dr. Sassman indicated claimant's sacroiliitis was worsened by claimant's altered gait and assigned impairment based on radicular complaints, loss of range of motion, and guarding. However, with the exception of two medical appointments over the course of a year of treatment, there are no mentions of any of these issues in the providers' notes. Dr. Sassman's rating is not consistent with the greater weight of the evidence, and I do not find it persuasive. I therefore find there is insufficient evidence supporting claimant's claim of a permanent sequela injury to his back.

With respect to claimant's foot and ankle, there are three competing opinions in the record: Dr. Bansal's nine percent rating, Dr. Anzmann's three percent rating, and Dr. Martin's opinion that claimant has no permanent disability. I am not persuaded by Dr. Anzmann's rating. She provided no explanation as to how she arrived at this rating, nor did she state the version or the AMA Guides to the Evaluation of Permanent Impairment (hereinafter "Guides") on which she relied.

Both Dr. Martin and Dr. Bansal relied upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, in arriving at their opinions; in fact, both looked specifically at claimant's ankle range of motion. Although Dr. Martin indicated claimant's range of motion was within normal limits, claimant's physical therapist indicated upon claimant's discharge in March of 2020 that claimant was unable to demonstrate full, pain-free range of motion. Furthermore, claimant's complaints of pain and discomfort in his right foot and ankle have remained consistent throughout the entirety of his treatment. Thus, despite claimant's healed fracture, I do not find Dr. Martin's opinion that claimant has no permanent disability to be convincing.

Instead, I find Dr. Bansal's lower extremity rating to be the most consistent with claimant's medical treatment and ongoing complaints. I therefore adopt Dr. Bansal's nine percent impairment rating for claimant's lower extremity. Dr. Bansal's ratings are based on the range of motion of claimant's ankle and hindfoot. (See Cl. Ex. 1, p. 11; Guides, p. 537)

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

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).

In this case, the parties agree claimant sustained a work-related injury on June 21, 2019, but they disagree as to whether claimant sustained any permanent disability as a result of that injury and whether any such disability extends into claimant's body as a whole via a permanent sequela injury to his back.

I found Dr. Bansal's rating most convincing with respect to claimant's right foot and ankle. I was not persuaded by Dr. Martin's opinion that claimant did not sustain any permanent disability because claimant has consistently complained of pain in his foot and ankle since his date of injury and continued to complain of mild pain at the time of the hearing. Dr. Azmann's rating was problematic because she did not cite any version of the Guides or offer any support for her rating. I therefore adopted Dr. Bansal's nine percent lower extremity rating.

As mentioned, Dr. Bansal's rating was based on range of motion deficits in claimant's hindfoot and ankle. Because claimant's impairment extends beyond his foot, I conclude Dr. Bansal's rating must be applied to claimant's leg under the schedule in Iowa Code section 85.34(2). Maldonado v. City View Farms, LLC, File No. 5056539 (Arb. May 17, 2017) ("Rather, claimant sustained injury to his ankle. In Iowa, the loss of function in a joint is compensated as part of the proximal side of the joint, not as a loss of the member on the distal side of the joint. Thus, an ankle is compensated as an injury to the leg, not the foot.") Pohle v. John Deere Dubuque Works, File No. 5031976 (Arb. May 10, 2011) ("An ankle injury is an injury to the leg."); Buchholz v. ABF Freight System, Inc., File No. 5026217 (Arb. Apr. 27, 2009) ("Based on multiple findings of reduced range of motion in the ankle, it is found that Buchholz's loss is to the leg, rather than the foot, and must therefore by compensated under Iowa Code section 85.34(2)(o) as a percentage of 220 weeks."). As a result, I conclude claimant carried his burden to prove he sustained a nine percent permanent disability to his right leg.

Though claimant established a permanent disability to his leg, I found insufficient evidence to support claimant's alleged sequela injury to his back. Dr. Bansal assigned an impairment rating for claimant's back condition, but this rating was not consistent with the greater weight of the evidence in the record. There is simply insufficient

evidence in the record to support claimant's testimony that he regularly told his providers about his back pain. I therefore conclude claimant failed to satisfy his burden to prove his injury extends beyond his leg and into his body as a whole. Claimant's permanent disability is thus limited to his leg.

Compensation for the leg is based on a schedule of 220 weeks. Iowa Code §85.34(2)(p) (post-July 1, 2017). As such, claimant is entitled to 19.8 weeks of permanent partial disability (PPD) benefits.

Claimant also seeks reimbursement for her costs in the amount of $117.10 for her filing fee and service fees. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Because claimant was generally successful in his claim, I tax defendants with the entirety of claimant's costs. 876 IAC 4.33(3), (7).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant nineteen point eight (19.8) weeks of permanent partial disability benefits commencing as stipulated on April 7, 2020, at the stipulated rate of six hundred eight-six dollars and 75/100 ($686.75) per week.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant's costs in the amount of one hundred seventeen and 10/100 dollars ($117.10).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 3rd day of January, 2022.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Byrne (via WCES)

Lindsey Mills (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.