BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JAN 27 2017
WORKERS' COMPENSATION

DAVID AYARD, Claimant, vs. MASTERBRAND CABINETS, INC. d/b/a OMEGA CABINETRY, Employer, and ACE AMERICAN INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5054866 ARBITRATION DECISION Head Note No.: 1108

STATEMENT OF THE CASE

David Ayard, the claimant, seeks workers' compensation benefits from Masterbrand Cabinets, Inc. d/b/a Omega Cabinetry, an Iowa employer, and its insurer, Ace American Insurance Company, as a result of an alleged injury on March 20, 2015. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on November 21, 2016, but the matter was not fully submitted until the receipt of the parties' briefs and argument on December 12, 2016. Oral testimony and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Claimant's exhibits were marked numerically. Defendants' exhibits were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Ex 1-2:4." Citations to the hearing transcript of testimony such as "Tr-4:5," or to a deposition transcript such as "Ex. 14-4" shall be to the actual page number(s) of the original transcript, not to page number of a copy of the transcript containing multiple pages or to a page number of an exhibit package.

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

1. On March 20, 2015, claimant received an injury to the right shoulder arising out of and in the course of employment with defendant employer. Defendants deny that claimant's left shoulder condition is related to this injury or to his employment with defendant employer.

2. Claimant is seeking temporary total or healing period benefits from August 18, 2015, the day he last worked according to the defendant employer records. (Tr-54)

3. Defendants agree that the right shoulder injury is a cause of some degree of permanent disability, although they assert that claimant is not at maximum medical improvement (MMI).

4. At the time of the March 20, 2015 injury, claimant's gross rate of weekly compensation was $589.12. Also, at that time, he was married and entitled to five exemptions for income tax purposes. Therefore, claimant's weekly rate of compensation is $414.70, according to the workers' compensation commissioner's published rate booklet for this injury.

5. All medical expenses sought in this proceeding for the left shoulder are disputed.

6. Prior to hearing, defendants paid 19.4309 weeks of compensation at the rate of $402.90. (Ex. B)

ISSUES

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

I. The extent of claimant's entitlement to weekly temporary total or healing period benefits and permanent disability benefits as a result of the right and/or left shoulder condition; and,

II. The extent of claimant's entitlement to medical benefits for the left shoulder.

III. The extent of defendants' entitlement to credit for group disability insurance benefits paid to claimant in the amount of $4,683.64.

At hearing I denied defendants' motion for continuance until after another evaluation of the right shoulder on November 29, 2016 by James Nepola, M.D., a doctor who had not previously been involved in this case. However, after further review of the record, I realized that any decision I may make on whether claimant has achieved MMI for the right shoulder condition could be rendered moot by the views of Dr. Nepola, a well-respected orthopedist at the University of Iowa Hospitals and Clinics. Therefore, I decided that the MMI issue is not at this time justiciable.

I then informed the parties by email of my determination and inquired as to the status of Dr. Nepola's evaluation and whether claimant desired any surgery he may

propose. The parties informed me that Dr. Nepola recommended right shoulder surgery; claimant desires to proceed with that surgery; and, defendants are authorizing that surgery. Therefore, claimant's right shoulder condition has not achieved MMI. The only remaining issue is claimant's entitlement to weekly benefits for the right shoulder condition during his treatment and his entitlement to weekly and medical benefits for the disputed left shoulder injury. The issue of entitlement to permanent disability benefits for either condition must await claimant's achievement of MMI.

FINDINGS OF FACT

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

From my observation of his demeanor at hearing I did not observe anything in his demeanor to suggest lack of truthfulness. However, claimant required use of a translator, so my observations of claimant's demeanor during his testimony were quite limited, as I do not speak or understand the Spanish language.

David is 49 years of age. (Tr-22:23) He only has a 6th grade education he received while growing up in Mexico. (Tr-23) He came to this country in 1987. David is able to understand and speak rudimentary English, and was able to communicate enough to successfully perform his work at Omega, but he is not fully conversant in English, and he does not know how to read or write English. (Tr-23:24) When something came up at work that was important, David was provided an interpreter. (Tr-69)

David testified that between 2004 and 2005, he experienced neck pain that radiated to his shoulder blades area for which he received treatment. (Tr-35) He asserts that he subsequently improved and was released without activity restrictions. (Id.) David underwent a pre-employment physical at the insistence of Omega and passed the physical without restrictions. (Tr-35:36) David also stated that he experienced shoulder area pain from his repetitive work during his first month of work at Omega for which he went to a physician, took some medications, improved and continued to work without restrictions. (Id.) David's assertion that he had no restrictions before March 20, 2015 is uncontroverted. The record does show that he had some bilateral shoulder pain before March 20, 2015 which will be discussed further later in this decision.

David started working for Omega, a manufacturer of cabinets, as a laborer in February 2013. (Tr-34; Ex. 10-237) All of his work at Omega involved repetitive use of his hands and arms, performing various tasks in assembly line fashion. Omega initially assigned David to a job covering various sizes of cabinet pieces, and wrapping them with cardboard to take them to trucks. This required him to lift at times up to 70 pounds between two people, and also required repetitive overhead work in that he had to pull down doors from a "car" that is used in the plant. (Tr-36:37) David was subsequently assigned to another job preparing doors for cabinets. (Tr-37) In that job, he pulled

doors stacked in "cars" overhead and placed them onto a conveyor. (Id.) The doors ranged in size, some with dimensions as large as 4 feet by 3 feet with dense wood weighing up to 20-35 pounds. (Tr. 37-41; 89; 111)

The stipulated right shoulder injury on March 20, 2015 occurred when David pulled on a large door at head level, and felt a pop and pain in his right shoulder which radiated down to his right arm/wrist area. (Tr-39:41) Although doctors in this case indicate that David had some right shoulder aching one or two weeks before this injury due to an increased work load due to a shortage of workers (Ex. 4-108, 114; Ex. 1-1), it was not until the March 20, 2015 incident that the right shoulder condition significantly worsened to the extent that David required medical treatment and work restrictions. After David reported his injury, Omega, initially, only provided physical therapy at the plant for approximately two weeks to address his right shoulder and arm symptoms. (Tr-42) David said that while attending a previously scheduled appointment on March 24, 2015 with his family doctor, Ted Bonebrake, M.D., his doctor addressed his right shoulder work injury. Dr. Bonebrake diagnosed right sided, subacromial bursitis; provided a cortisone injection; and, directed David to not overuse the shoulder. (Ex. 1-1)

David did not see a physician authorized by defendants until April 10, 2015, when he began treating with Kenneth McMains, M.D., an occupational medicine specialist with Allen Occupational Health. Dr. McMains diagnosed acute right shoulder pain/bursitis and treated David with medications and an activity restriction consisting of no use of the right upper extremity. (Ex. 2-39:45) The doctor also ordered David to keep his elbow at his right side. (Id.)

Omega accommodated Dr. McMains' restrictions by providing David light duty work from April 13, 2015 through August 18, 2015. (Ex. 7-185) This work involved scanning boxes using a hand held scanner weighing only a few pounds (Ex. D) and then marking the boxes with a crayon. (Tr-91) David testified that despite Dr. McMains' instructions, he used his right hand (which was in a sling) to hold the scanner and used his left had to mark the boxes. (Tr-44) David also states that using only his left arm, he also made boxes to cover cabinets, and he pulled down boxes from overhead to make lids to cover the cabinets. (Tr-45) David states that he performed all of these tasks on light duty until he was taken off work in August 2015 due to new restrictions imposed on use of his left shoulder and arm by Dr. Bonebrake. (Tr-46) Thereafter, David was off work receiving non-occupational group disability insurance benefits from August 10, 2015 through August 17, 2015 which totaled $4,683.64. (Ex. C) As previously stated, he has not worked in any capacity at Omega or elsewhere since August 19, 2015.

On May 5, 2015, following an MRI, Dr. McMains diagnosed SLAP tear with tendinopathy and changed David's work restrictions to no work at or above shoulder level with the right arm; no lifting with the right arm below the knee or above the shoulder; and, keep right elbow at the side. (Ex. 2-59:62) There was no change in David's light duty assignment after this change. A month later, the doctor added that David is to wear a shoulder immobilizer/sling when needed. (Ex. 2-65)

On referral by Dr. McMains, David was evaluated on May 26, 2015 by Robert Bartelt, M.D. an orthopedic surgeon. After review of the MRI, Dr. Bartelt diagnosed a partial rotator cuff tear (SLAP) and biceps tendinopathy. (Ex. 3-100) He stated that he saw nothing in the MRI that required surgery and recommended continued conservative care, except for another cortisone injection which he provided. Dr. Bartelt also directed David to not use his right arm. (Id.) In a follow-up visit on June 23, 2015, David reported to Dr. Bartelt no improvement following the injection and additional pain in his left shoulder from having to use his left arm more at work. The doctor reports that he told David that his pain is more than one would expect based on the imaging findings. The doctor continued to not recommend surgery and referred David back to Dr. McMains for continued conservative care of his bilateral shoulder complaints. (Ex. 3-103)

In June 2015, David was referred by Dr. McMains for physical therapy. This therapy ended fairly quickly due to a lack of improvement in David's symptoms, and at the direction of Dr. McMains, the therapists then performed testing for the purposes of an impairment rating. In a letter dated July 28, 2015 to defendants' claims adjuster, Dr. McMains reported that David exhibited symptom magnification and that surgery was rejected by Dr. Bartelt partly due to an inconsistent exam. (Ex. 2-89) Dr. McMains placed David at MMI on July 2, 2015 stating a pain drawing was "not physiological and that David had an overlaying of symptom magnification." (Id.) The doctor also reported inconsistent findings after grip testing. (Ex. 2-90) Dr. McMains provided a permanent impairment rating using the AMA Guides, Fifth Edition, of 5 percent to the right upper extremity which converts to a body as a whole rating of 3 percent. (Id.) He finally states that David has a good prognosis of return to a pre-injury state and he would not assign any permanent restrictions. (Id.) However, he stated that based on his subjective complaints, David should avoid above shoulder work activity to prevent any increase in discomfort. (Id.) The doctor then ended any further treatment. (Ex. 2-91)

In a second letter to the adjuster dated August 3, 2015, Dr. McMains explained that given the lack of any objective evidence of a condition that restricts him from returning to his regular job, David has no permanent restrictions and was advised that he is able to safely return to all activities. (Ex. 2-92)

David is also seeking additional benefits for an asserted sequelae injury to the left shoulder due to his overuse of the left arm while performing the light duty work as a result of the right arm injury. David testified that left shoulder pain developed about two months after starting the light duty work, primarily from the overhead work involving the cardboard. (Tr-46) Defendants deny that the left shoulder problems are work related given that his only work task using the left arm was marking the boxes with a crayon. Although defendants admit that he was initially seen by management doing the cardboard work such as handling the cardboard pieces and making lids, both the safety director and a nearby supervisor testified that they stopped David from doing the cardboard tasks and stated David only performed cardboard work tasks for a week after beginning the light duty scanning job. (Tr-94:96, 118) These managers also testified that the cardboard he handled weighed very little, similar in weight to an empty pizza

box, and there was no overhead work. (Tr-97, 117) David denies that he was ever told not to perform the cardboard tasks. (Tr-73) The safety manager admits that David told him that his left shoulder was bothering him because of utilizing his left arm more than his right while performing the light duty job, but that he rejected that assertion due to the minimal use of his left arm in that job. (Tr-99:100)

The first medical record in evidence reporting left shoulder complaints was an office visit with Dr. Bonebrake on June 5, 2015. The doctor reports the following clinical history:

> David has been having trouble with his left shoulder again. He has had 2 injections in that shoulder since last November. About 2-3 months ago, he injured he injured his right shoulder at work lifting a heavy door. He saw work comp at Allen for this, and has had an MRI. I do not have those results. He is apparently supposed to be going to PT, but that has not yet been scheduled. They told him that he may need surgery. In the meantime, he has been using his right arm almost exclusively at work, and that shoulder has started to hurt again. David works at Omega Cabinets. He has pain with flexion and abduction beyond 90 degrees, and some point tenderness in the anterior shoulder. (emphasis added)

(Ex. 1-3)

I believe the doctor made a typographical error in stating that David was using the right arm exclusively at work after the right shoulder problems began and meant to refer to the left arm which would be more consistent with the rest of the language in the doctor's historical narrative. It should be emphasized that according to Dr. Bonebrake, David had been having left shoulder problems requiring injections since November 2014, five months before the March 20, 2015 right shoulder injury. Upon a diagnosis of left sided subacromial bursitis, the doctor provided another injection. (Ex. 1-4)

Dr. Bonebrake performed another injection to the left shoulder on July 8, 2015. (Ex. 1-5) On August 19, 2015, David reported continued bilateral shoulder pain and reported symptoms of depression after struggling with his shoulder problems. The doctor prescribed medication upon a diagnosis of a major depressive disorder, recurrent episode. (Ex. 1-8) Dr. Bonebrake administered yet another injection into the left shoulder at this time. (Id.) The doctor increased his medications to include hydrocodone and imposed a restriction of no use of the left arm. (Ex. 1-13) This is the first time any doctor in this record imposed work restrictions for the left shoulder.

On August 19, 2015, David reported for work and delivered Dr. Bonebrake's restrictions of no use of his left upper extremity. Omega managers sent David home stating they did not have any work within his restrictions. (Tr-52, 55)

On September 28, 2015, defendants sent David back to Dr. McMains for the left shoulder complaints. The doctor assigned restrictions against use of the left shoulder

similar to the restrictions he imposed initially for the right shoulder. Defendants' adjuster then sought Dr. McMains' opinion as to the work relatedness of the left shoulder problems. In a letter dated October 9, 2015, Dr. McMains stated he is unable to opine that David suffered an injury to the left shoulder when complaints began in May 2015 or that the left shoulder symptoms are due to an inability to use the right arm, since he has been released to use the right arm. (Ex. 2-94:95) He adds that it is hard for him to state that the left shoulder condition related to his work activity in that he continues to have pain after leaving that work activity in August. (Id.)

At the request of his attorney, David was evaluated on October 1, 2015 by John Kuhnlein, D.O., who is also an occupational medicine physician. In his report dated November 17, 2015, Dr. Kuhnlein states that David had been having right shoulder aching leading up to the March 20, 2015 injury, which was an acute injury strain superimposed on the previous right shoulder pain causing a significant increase of pain and dysfunction that persists today. (Ex. 4-108, 115) Dr. Kuhnlein relates a history of the development of increased left shoulder pain after the right shoulder injury due to increased use of the left arm, including over-the-shoulder use, due to the inability to fully use the right arm. (Ex. 4-109) Although Dr. Kuhnlein did not specifically discuss the injections to the left shoulder beginning in November 2014, he makes reference to Dr. Bonebrake's March 24, 2015 office note which contains that history regarding David's pre-existing left shoulder problems. (Ex. 4-115) The doctor's assessment was right rotator cuff strain and SLAP tear and left shoulder pain of undetermined etiology. (Ex. 4-114) He provided permanent impairment ratings for both shoulders, but stated that both shoulders require further orthopedic workup and suggested three orthopedists, one of which was Dr. Nepola. (Ex. 4-116) Dr. Kuhnlein also opined as follows to the cause of the left shoulder problems:

> Given the currently available record, with accommodation by the left arm for the right shoulder injury in accommodation, the left shoulder pain Mr. Ayard is currently experiencing is a sequela to the March 20, 2015, injury related to overuse of the left arm. This would be consistent with the documentation by other physicians besides Dr. McMains.

(Ex. 4-116)

Dr. Kuhnlein recommended work restrictions limiting lifting to 20 pounds occasionally from floor to waist, 30 pounds occasionally form waist to shoulder and 20 pounds occasionally over the shoulder. David also can work occasionally at or above shoulder height, including tools. (Ex. 4-125) Dr. Kuhnlein did not specify whether these restrictions were necessitated by the right, left or both shoulder conditions.

At the request of defendants, Dr. McMains responded to Dr. Kuhnlein's views stating that the work activity David was performing at Omega only involved waist level tasks with no shoulder involvement and that such work would not explain an injury to the left shoulder. (Ex. 2-97) He added that the left shoulder condition continued to

worsen after ending his work in August 2015 which indicates an idiopathic presentation. (Id.)

On November 13, 2015, Dr. Bonebrake continued the restriction against use of his left arm. (Ex. 1-16) David recalls that he took these restrictions to the employer, and they again allowed him to work in a lighter duty job for a couple hours, and then sent him home as before. (Tr-60:61) In a letter dated November 16, 2015, Omega's human resources (HR) manager issued a letter to David stating as follows:

> In light of Dr. McMains' determination that your left shoulder complaints are not related to your work at Omega, coupled with the fact your own treating physician (not our authorized treater) has provided work restrictions stating "no use of left arm," Omega had determined it does not have available light duty work for you at this time. The fact you now claim that lifting a scanner during light duty work has caused these issues with your left arm, which seems incredible, leads us to believe any further light duty of that nature would not be advisable. Further, you never reported any left shoulder issues in connection of your work . . . You were at home at the time you alleged the left shoulder issues arose. You will remain off work until further notice, pending determination of your employment status.

(Ex. 8-193)

Dr. Bonebrake continued treating David's shoulder problems and has prescribed medications, including Relafen and Hydrocodone. (Ex. 1-17-22) The restriction against any use of the left arm continued until January 15, 2016 when Dr. Bonebrake completed an FMLA report in which he noted permanent impairment in range of motion of 8 percent to his right shoulder/upper extremity, and 7 percent to his left shoulder/upper extremity and stated that his impairments substantially limit a major life activity, including lifting and reaching, and interferes with his ability to perform job functions because David is unable to lift more than 20 pounds from floor to waist, 30 pounds from waist to shoulder, and 20 pounds over shoulder, and he added his recommendation of no overhead work. (Ex. 1-34) However, he states that further evaluation of his work-related injury is needed. (Ex. 1- 23:24)

After receiving the completed FMLA report from Dr. Bonebrake, Omega's HR manager contacted David on January 22, 2016 stating that they could accommodate the restrictions set forth in that FMLA report and David was directed to return to work on January 25, 2016. (Ex. 8-196) However, on that same date, Dr. Bonebrake stated that the FMLA paper work was not a release to return to work because David was still in need of further evaluation and was scheduled for an MRI and follow-up appointment on January 25, 2015. (Ex. 1-25) Consequently, the doctor states that he would not be able to return to work until after the results of the MRI are received. (Id.)

After an MRI of the left shoulder indicated a similar SLAP tear in the left shoulder, Dr. Bonebrake revised the work restrictions on January 25, 2016 allowing David to lift up to 20 pounds occasionally, but no more than 20 times per day, or 4 times per hour and that he should not do any work over his head. (Ex. 1-34)

On January 26, 2016, David returned to Omega delivering the new restrictions. Managers placed him in a light-duty job sanding small doors for a mere two hours before they called him to the office and again sent him home, noting there was no work available for him. (Tr-58, 61)

In a letter dated January 29, 2016 to claimant by Omega's HR manager David's employment with Omega was terminated for his failure to return to work on January 25, 2016 and an inability to accommodate the new restrictions by Dr. Bonebrake. (Ex. 8-196)

Upon referral by Dr. Bonebrake, David was evaluated by Christopher Eagan, D.O., an orthopedist, on February 11, 2016. Dr. Eagan noted bilateral shoulder pain since 2015, and he diagnosed bilateral shoulder pain, noting that MRI is consistent with bilateral SLAP tears and some inflammatory changes of the rotator cuff. Dr. Eagan recommended subacromial decompression and biceps tenotomy for each shoulder, starting with the right shoulder. (Ex. 1-35:38) These surgeries have not been performed, as David no longer had health insurance.

There are no further medical treatment records in evidence.

At the request of defendants, David was evaluated in August 2016 by R.L. Broghammer, M.D. There were no curriculum vitae for this doctor in evidence. A Google search indicates he is an occupational medicine specialist who specializes in providing IMEs and has an office in Cedar Rapids, Iowa. However, he does continue to practice occupational medicine in the state of Colorado. In this report, Dr. Broghammer opines that David suffered a right shoulder injury on March 20, 2015 which was an aggravation of a pre-existing condition. He disagrees with Dr. McMains that David has reached MMI and recommended an evaluation by Dr. Nepola as a "tie breaker" on the issue of whether David requires right shoulder surgery. (Ex. 5-165-168)
Dr. Broghammer also opined that David's light duty work at Omega (as described to him by Omega representatives) was insufficient to aggravate David's pre-existing left shoulder condition and he disagreed with the causation views of Dr. Kuhnlein. He states that David's failure to improve after ending work at Omega is evidence that the left shoulder condition is not related to that work. However, he also stated as follows:

> I would agree that Mr. Ayard may have symptoms in left shoulder due to increased use but there is no evidence that there is any industrial event or activity that would have been reasonably expected to have materially aggravated his more likely than not preexisting left shoulder condition. In this regard I would agree with the opinions of Dr. McMains.

(Ex. 5-167)

Ultimate Findings:

Right Shoulder

The current condition of the right shoulder is causally related to the stipulated work injury of March 20, 2015. This is based on the views of Drs. Bonebrake, Kuhnlein and Broghammer. I did not find Dr. McMains' views convincing. The suggestive language in Dr. McMains' report as to symptom magnification is not supported by any other doctor. Dr. McMains misquoted Dr. Bartelt in stating that he rejected surgery due to inconsistencies in the exam. Dr. Bartelt rejected surgery based on the MRI and merely said that David's complaints exceed what he would expect from the MRI findings. If Dr. Bartelt believed David was faking his injury, he would not have referred him back to Dr. McMains for further treatment.

Assessing the restrictions from just the right shoulder is difficult given this record. Dr. Kuhnlein did not specify whether his restrictions applied to just the right shoulder or both shoulders. Dr. Bonebrake does not do so either. At the time David stopped working for Omega, his work restrictions were being accommodated by Omega by providing light duty work consistent with his work related restrictions. He was apparently able to do that work until his left shoulder condition worsened to a point that he could no longer do that job. However, David did not refuse Omega's offer of a light duty assignment on January 25, 2016 because his doctor did not release him to return to work on that date. Thereafter, Omega withdrew the offer because he was restricted from that job by his family doctor due to the left shoulder condition.

Left Shoulder

I find that the work injury of March 20, 2015 to the right shoulder and the consequent inability to fully use the right arm caused an overuse injury to the left shoulder, a sequelae injury. This injury is also an aggravation of a pre-existing left shoulder injury. This finding is based on the views of Dr. Kuhnlein. I found the views of Drs. McMains and Broghammer unconvincing because they based their views of information from Omega managers that indicated he only used the scanner and crayon marker in his job. I did not find their testimony at hearing convincing. Both claim that they observed David frequently, if not daily, after David began working the light duty job, but if that were so, why would it take them a week or so to notice that he was working outside of his restrictions doing the cardboard work. It seems apparent that they were speculating as to how long David performed the cardboard tasks. No specific dates were given for the time they allegedly told David not to perform the cardboard work. These managers also state that he did not work overhead doing the cardboard work, but he worked overhead in doing similar cardboard tasks before he began the job of preparing doors. David stated that he worked on various sizes of cabinets and some were over his head. Consequently, he would have to scan and work with cardboard overhead. The weight of the material is not as significant as the repetitive use of the

arm overhead as opined by Dr. Kuhnlein. Also, if he was not doing overhead work, why would Dr. Bonebrake have restricted him from that task in his last issued restrictions? At any rate, David clearly had a significant left shoulder condition which required steroid injections prior to his March 20, 2015 right shoulder injury. It would not take much of added use of the left arm to aggravate such a serious condition. Drs. McMains and Broghammer attributed the increased left shoulder symptoms to non-work activity, but there is no evidence of any significant work involving the shoulders outside of Omega to cause this. There was some hearsay speculation about people seeing David recently performing landscaping work, but David's denial of this is uncontroverted. It would appear that one or two weeks of such added use at Omega was enough to compel Dr. Bonebrake to impose the restrictions he issued on January 25, 2016, and these remain in effect at this time. The extent or seriousness of the left-sided aggravation cannot be determined at this time.

Therefore, I find that claimant's current absence from work after August 18, 2015 is also the result of an aggravated left shoulder condition caused by the right shoulder work injury of March 20, 2015.

I find that all medical treatment of the shoulders since March 20, 2015 constitutes reasonable and necessary treatment of the work injury of March 20, 2015.

CONCLUSIONS OF LAW

I. 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).

Where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident including sequelae injures that occur after a return to work. Oldham v. Scofield & Welch, 266 N.W. 480, 482 (Iowa 1936); see also Workers' Compensation, Iowa Practice 15, (2014-2015), section 4:4, pp. 32-33.

Right Shoulder

Defendants assert that claimant is not entitled to weekly benefits after leaving Omega's work on August 19, 2015 due to the work-related right shoulder injury because his inability to perform the offered light-duty job was caused by a non-work related left shoulder condition. Defendants are incorrect. Claimant is entitled to temporary total disability/healing period benefits when he is unable to return to the job he was performing at the time of the injury due to treatment of the injury. (Iowa Code sections 85.33 & 85.34(1)). The only way defendants can escape liability for such weekly benefits is for claimant to refuse an offer of suitable light duty work. (Iowa Code section 85.33(3)). However, if a refusal is based on reasonable grounds, e.g. being away from supportive family, defendants must pay weekly benefits regardless of the offer. Neal v. Annett Holdings, Inc. 814 N.W.2d 512 (Iowa 2012). The refusal must be an intentional act in order to deny weekly benefits. Edward v. Weitz Corp., File No. 5032285 (App. August 22, 2012); Brodigan v. Nutri-Ject Systems, Inc., File No. 5001106 (App. April 13, 2004). In this case, there was no intentional refusal and the offer was withdrawn upon claimant's termination. Consequently, claimant is entitled to temporary total/healing period benefits from August 19, 2015 regardless of whether or not the left shoulder condition was work related. Such benefits will be awarded.

Left Shoulder

I found that the left shoulder condition is a sequelae injury from the March 20, 2015 right shoulder injury and is also a cause of claimant's disability and absence from employment since August 19, 2015. The award of temporary total/healing period benefits is also based on the left shoulder condition.

II. Pursuant to Iowa Code section 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988)

In the case at bar, I found that all of the medical treatment for the right and left shoulder since the work injury of March 20, 2016 constitutes reasonable and necessary treatment of the work injury. Consequently, defendants are liable for the treatments to the shoulders by Dr. Bonebrake and Dr. Eagan since March 20, 2015.

ORDER

1. Defendants shall pay to claimant temporary total disability/healing period benefits from August 19, 2015 at the stipulated rate of four hundred fourteen and 70/100 dollars ($414.70) per week. These weekly benefits shall continue until such time as they may be discontinued pursuant to Iowa Code section 85.33 and 85.34(1).

2. Defendants shall reimburse claimant for his out-of-pocket medical expenses for treatment of his shoulder by Dr. Bonebrake and Dr. Eagan since March 20, 2015 and shall hold claimant harmless from the remainder of those expenses.

3. Defendants shall pay accrued weekly benefits in a lump sum and shall receive credit against this award for weekly benefits previously paid.

4. Defendants shall receive credit for previous payments of benefits under a non-occupational group insurance plan, under Iowa Code section 85.38(2), less any tax liability from those payments.

5. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

6. Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter.

7. Defendants shall file subsequent reports of injury (SROI) as required by our administrative rule 876 IAC 3.1(2).

Signed and filed this 27th day of January, 2017.

LARRY WALSHIRE
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.