

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VICTOR E. JOHNSON,

Claimant,

vs.

J.B. HUNT TRANSPORT, INC.,

Employer,

and

INDEMNITY INSURANCE CO. OF  
NORTH AMERICA,Insurance Carrier,  
Defendants.

File No. 1662855.01

ARBITRATION DECISION

Head Note Nos.: 1402.40, 2902, 2907

## STATEMENT OF THE CASE

Victor Johnson, claimant, filed a petition for arbitration against J. B. Hunt Transport, Inc. and its workers' compensation insurance carrier, Indemnity Insurance Company of North America. On March 12, 2021, claimant's attorney of record moved to withdraw. Claimant gave written consent for that requested withdrawal and the undersigned entered an order granting the withdrawal on March 17, 2021. Given the proximity to the arbitration hearing, the undersigned ordered claimant's former counsel to provide Mr. Johnson with a copy of the order granting withdrawal. Former counsel for claimant complied with that request and filed a statement with the agency on March 18, 2021, confirming that the undersigned's order granting withdrawal was provided to claimant via e-mail, regular mail, and via certified mail.

As part of the ruling granting withdrawal of claimants' counsel, the undersigned ordered Mr. Johnson to register with the agency via WCES and to enter a notice of appearance within WCES, or retain alternate counsel, no later than March 24, 2021. Claimant did not retain alternate counsel or enter an appearance in compliance with the undersigned's order.

Additionally, as part of the ruling granting withdrawal, the undersigned ordered Mr. Johnson to contact CourtCall to register and participate in the March 26, 2021 arbitration hearing via CourtCall's internet-based video platform. Mr. Johnson did not register with CourtCall or secure a connection to participate in the arbitration proceeding on March 26, 2021. Mr. Johnson has not filed any other motions, pleadings, or otherwise indicated a desire or intention to represent himself or move his case forward.

In addition, prior to hearing, defendants filed a motion to strike certain evidence. Claimant's former counsel filed a resistance to the motion to strike. Given the proximity to trial and the withdrawal of counsel, the motion to strike was not ruled upon prior to the commencement of the arbitration hearing on March 26, 2021.

This case came before the undersigned for an arbitration hearing on March 26, 2021. Claimant failed to appear for the arbitration hearing. Defendants appeared at the hearing through their attorney, Robert Gainer.

Defendants' motion to strike was taken up and considered at the commencement of the arbitration hearing. Defendants' counsel argued the motion orally. Given claimant's failure to appear for the hearing, defense counsel acknowledged that there was no prejudice to defendants because claimant had no evidence to introduce at hearing. Given this reasonable concession, the motion to strike was overruled and the hearing proceeded.

As noted, claimant failed to appear and was determined to be in default. Claimant offered no evidence at the time of the March 26, 2021, arbitration hearing. The evidentiary record was closed to further activity by Mr. Johnson.

Recognizing the difficulties for claimant to carry his burden of proof without evidence, defendants elected to rest without offering any written evidence or calling any live witnesses. Accordingly, the evidentiary record closed on March 26, 2021. The case was considered fully submitted to the undersigned on that date.

#### STATEMENT OF THE ISSUES

Pursuant to the hearing report filed by the parties in advance of hearing, the following disputed issues are considered for resolution:

1. Whether the April 3, 2019 work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.
2. The proper commencement date for permanent disability benefits, if any.
3. The proper rate at which weekly benefits should be paid, including disputes pertaining to claimants' average gross weekly wages.
4. Whether costs should be assessed against either party and, if so, in what amount.

#### FINDINGS OF FACT

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

Victor Johnson, claimant, filed an original notice and petition alleging he sustained an injury that arose out of and in the course of his employment with J. B. Hunt Transport, Inc., on April 3, 2019. Claimant asserted a claim for permanent disability benefits. Defendants disputed the permanent disability claim.

Mr. Johnson failed to comply with a ruling and order of the undersigned filed on March 17, 2021. Specifically, Mr. Johnson failed to register with the agency in WCES, file a notice of appearance, or secure alternate counsel for his case prior to the March 24, 2021 deadline established by the undersigned's order. Mr. Johnson violated the undersigned's order in this respect.

Claimant also violated the undersigned's March 17, 2021 order by failing to contact CourtCall or establish a connection to appear for the March 26, 2021 arbitration hearing. Claimant's violation of the undersigned's order would support imposition of sanctions pursuant to 876 IAC 4.36, up to and including cutting off all evidence for claimant and/or dismissal of his claim without prejudice. However, the undersigned reserved ruling on any sanctions.

Instead, the arbitration hearing proceeded on March 26, 2021. Mr. Johnson failed to appear and was found to be in default. Claimant failed to offer or introduce any evidence at the time of the arbitration hearing and the evidentiary record closed to further activity by Mr. Johnson. Defendants elected not to introduce any evidence given claimant's failure to offer any evidence.

Given his failure to introduce any evidence, Mr. Johnson failed to prove that he sustained permanent disability as a result of the alleged April 3, 2019 work injury.

#### CONCLUSIONS OF LAW

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).

Claimant had the burden of proof to establish entitlement to permanent disability. Having failed to introduce any evidence, Mr. Johnson failed to carry his burden of proof on the issue of permanent disability. I conclude that claimant failed to prove entitlement to an award of permanent disability benefits.

The issue of weekly rate is moot given that no weekly benefits will be awarded as part of these proceedings.

Finally, the hearing report identifies costs as a disputed issue. Costs are taxed at the discretion of the agency. Iowa Code section 86.40. In this instance, Mr. Johnson

has not proven entitlement to any benefits and has failed to secure an award in this case. I decline to award any costs to Mr. Johnson under these circumstances. Rather, I conclude that all parties should bear their own costs.

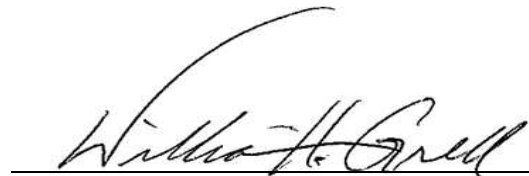
ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing in these proceedings.

All parties bear their own costs.

Signed and filed this 12<sup>th</sup> day of May, 2021.

A handwritten signature in black ink, appearing to read "William H. Grell", is written over a horizontal line.

WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Victor Johnson (via regular and certified)  
14 Loisel Drive  
East Saint Louis, IL 62203

Victor Johnson (via regular and certified)  
P. O. Box 3084  
Fairview Heights, IL 62208

Robert Gainer (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.