BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY OBERHOLTZER,

Claimant,

vs.

NORTHERN LIGHTS PIZZA,

Employer,

COMMERCE AND INDUSTRY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5056899

ARBITRATION

DECISION

Head Note No.: 2501

STATEMENT OF THE CASE

Timothy Oberholtzer, claimant, filed a petition in arbitration and seeks workers' compensation benefits from defendants, Northern Lights Pizza, as the employer and Commerce and Industry Insurance Company, as the insurance carrier. The case was initially filed naming Liberty Mutual Insurance Company as the proper insurance carrier. After it was determined that Liberty Mutual was not the proper insurance carrier, defense counsel sought to withdraw and the application to withdraw was granted.

Commerce and Industry Insurance Company was substituted as the proper insurance carrier and defendants were ordered to file an answer or appearance, either pro se or through counsel. Defendants have not complied with the undersigned's March 9, 2017 ruling. Claimant demonstrated service upon Commerce and Industry Insurance Company via certified mail. However, defendants failed to appear to defend the case.

On May 11, 2017, claimant moved for default judgment against the employer and Commerce and Industry Insurance Company. That motion for default judgment was denied because claimant did not properly comply with Iowa Rules of Civil Procedure 1.971 et seq.

Claimant renewed the motion for default judgment on November 7, 2017 and demonstrated compliance with the rules of civil procedure. Defendants still failed to appear. On November 28, 2017, the undersigned entered default against defendants and scheduled a telephonic hearing to occur on January 5, 2018. The November 28, 2017 ruling also cut off all further activity to defendants as a sanction and permitted claimant to waive the January 5, 2018 hearing.

On December 29, 2017, counsel for claimant notified the undersigned via correspondence that claimant elects to forego a live hearing in this case. Claimant submitted written evidence in support of his claim and asks that the case be ruled upon based on the written evidence only. Counsel also clarified that claimant seeks no award of weekly benefits and only seeks award of a past medical expense contained at Claimant's Exhibit 3.

The undersigned accepts claimant's waiver of the live hearing and accepts claimant's decision to submit the case on a written evidentiary record. Claimant's proposed Exhibits 1 through 3 are formally accepted. These exhibits constitute the entirety of the evidentiary record before the undersigned.

ISSUE

1. Whether defendants should be ordered to pay the medical charges contained in Claimant's Exhibit 3.

FINDINGS OF FACT

Having considered all of the evidence in this record, I find the following facts:

In this case, there are only two pieces of evidence demonstrating the cause of claimant's medical treatment and the alleged injury. The first is a medical record demonstrating discharge care instructions for claimant indicating he sustained a broken rib on November 14, 2015. (Exhibit 1, page 6) The second piece of evidence demonstrating a potential causal connection is a medical history provided by claimant. In that medical history, claimant relayed that he was delivering pizza, experienced an accident in which he fell off some steps and sustained injury. Claimant noted that his employer at the time of the fall was Northern Lights Pizza. (Ex. 2)

Given that this evidence is unrebutted in this record and that the evidentiary record has been closed to further activity by defendants, I accept Exhibits 1 and 2 as sufficient proof to establish by a preponderance of the evidence that claimant sustained a rib injury that arose out of and in the course of his employment with Northern Lights Pizza located in Des Moines, Iowa, on November 14, 2015.

Exhibit 3 is a medical billing statement from Unity Point Health, demonstrating medical charges claimant incurred on November 14, 2015. These charges include emergency room charges, intravenous therapy, radiology charges, and pharmacy charges. Each of these appear to be related to the claimant's work accident on November 14, 2015. Certainly, there is no contrary evidence in this record. Therefore, I find that claimant has established a causal connection between the charges contained in Exhibit 3 and the November 14, 2015 work injury. I find the medical charges ($2,469.38) to be reasonable and the care itemized therein to be reasonable and necessary medical care for claimant's November 14, 2015 work injury.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a 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. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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).

Having found that the unrebutted evidence in this record establishes claimant sustained a work related injury on November 14, 2015 while in the employment of within the course and scope of his employment with Northern Lights Pizza, I conclude that claimant has established a compensable work injury.

Mr. Oberholtzer asserts only a claim for past medical expenses contained in Claimant's Exhibit 3. Having reviewed those charges, I found them to be reasonable, necessary, and causally related to the November 14, 2015 work injury.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Evidence in administrative proceedings is governed by section 17A.14. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence. The rules of evidence followed in the courts are not controlling. Findings are to be based upon the kind of evidence on which reasonably prudent persons customarily rely in the conduct of serious affairs. Health care is a serious affair.

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

In this instance, claimant presented to the Unity Point Health emergency room and was provided emergent medical care, as detailed in Exhibit 3. Claimant relied upon the emergency room physicians for their expertise and care. The care rendered has been found to be reasonable, necessary and causally related to claimant's November 14, 2015 work injury for Northern Lights Pizza. Therefore, I conclude claimant is entitled to an order directing defendants to reimburse any out-of-pocket expenditures by claimant, to pay any outstanding medical expenses directly to the medical provider, reimburse any third-party payer, and to generally hold claimant harmless for all charges contained in Exhibit 3.

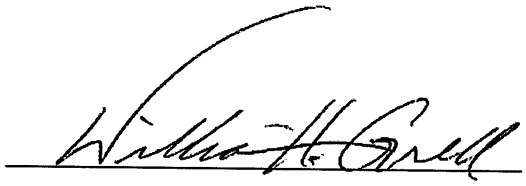
ORDER

THEREFORE, IT IS ORDERED:

Defendants shall reimburse claimant for all out-of-pocket expenses, pay any outstanding charges directly to the medical providers, reimburse any third-party payers of the medical expenses, and otherwise hold claimant harmless against all medical expenses contained in Claimant's Exhibit 3 totaling two thousand four hundred sixty-nine and 38/100 dollars ($2,469.38).

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 24th day of January, 2018.



WILLIAM H. GRELL
DEPUTY WORKERS'
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CERTIFIED AND REGULAR MAIL

WHG/kjw

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.