BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANTHONY COOP,

Claimant,

vs.

MANPOWER,

Employer,

and

COMMERCE AND INDUSTRY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5058958

ARBITRATION

DECISION

Head Note Nos.: 1100; 1108; 1108.50; 1801; 2500

STATEMENT OF THE CASE

Claimant, Anthony Coop, filed a petition in arbitration seeking workers' compensation benefits against Manpower, employer, and Commerce and Industry Insurance Company, insurer, both as defendants, for an alleged work injury on April 19, 2017. This case was heard on May 24, 2018, and considered fully submitted on June 14, 2018 upon the simultaneous filing of briefs.

The record consists of joint exhibits 1 through 5, claimant's exhibits 1 through 5, and defendants exhibits A-J along with the testimony of claimant.

ISSUES

1. Whether claimant sustained an injury on April 19, 2017, which arose out of and in the course of his employment;

2. Whether the claimant is entitled to a running healing period award;

3. Whether claimant is entitled to reimbursement of medical expenses itemized in Exhibit 5;

4. The assessment of costs.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On 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 parties agree that at the time of the alleged injury claimant was an employee of the defendant employer.

The parties further agree that claimant was off work from April 20, 2017 through the present. The defendants concede that if it is determined that the defendants are liable for the shoulder injury, the claimant is entitled to benefits for this period of time.

At the time of the alleged injury, the parties agree that the claimant's gross earnings were $781.25 per week. He was married and entitled to two exemptions. Based on the foregoing, the weekly benefit rate for the claimant's alleged work injury is $509.41.

The claimant is seeking reimbursement of medical expenses and while the defendants dispute that the treatment was reasonable and necessary or that they were causally connected to the work injury, they will not offer contrary evidence to the reasonableness of the fees and will further stipulate that the listed expenses are causally connected to the medical condition upon which the claim of injury is based.

FINDINGS OF FACT

Claimant was a 61 year old person at the time of the hearing. He is right hand dominant. Claimant left high school, obtained his GED and joined the Army. While in the Army, he served as an infantry weapons specialist partial mechanic. He received an honorable discharge. His post-secondary education includes obtaining a welding certification from Kirkwood Community College. He also took computer repair electronic courses at Kirkwood Community College, but did not obtain a degree.

His past work experience includes caring for children in a group home, working as a maintenance mechanic, working as a pest exterminator, dismantling the vehicles, performing some plumbing and electrical work, welding, assembly, and data entry. He testified that he did not enjoy doing the data entry work.

He fell and broke his left pelvic bone while working for Swift. Fortunately, he was able to recover and returned to work without restrictions for an additional five years. From March 2010 until February 2017, claimant worked as an assembler of pump parts at Danfoss. His employment ended when he was discharged over a disagreement regarding insurance.

Claimant's past medical history is significant for a fall in 2001. He injured his pelvis and had to undergo surgery on November 19, 2001. Following this injury, he had drop foot in his left leg and some paresthesias. (Joint Exhibit 2:26) Claimant still wears a brace every day due to his foot drop.

He complained of pain in the left shoulder approximately two weeks prior to the work injury. Claimant also initially testified that his wife fell on the ice in February 2017. He had lifted his wife's wheelchair and felt pain in his left shoulder. It was unclear whether his shoulder pain complaint was related to lifting the wheelchair in a previous month or a new complaint. He did not seek out any medical care nor did that pain prevent him from doing any of his work duties.

During cross-examination after being confronted with evidence that the wheelchair was obtained in April, he admitted that the fall must have occurred in March. He also initially testified that he had stopped pushing the wheelchair after the accident, but there is a May 26, 2017 medical record from the veteran's administration or claimant is described as actively working outside and pushing his wife in the wheelchair. (Joint Exhibit 2:26) Claimant disputes the accuracy of this record. I find that this record did not accurately portray the claimant's condition at the time. The medical records show that in May 2017 claimant had a full thickness tear of two of his tendons and a partial thickness tear in one of them. (Joint Exhibit 2:22) During the May 23, 2017 visit, he was only able to abduct his arm 10° and forward flexed only 20°. He had limited strength and pain with internal and external rotation. (Exhibit 2:28) The notation that he had been active outside was likely a miscommunication or an error. (Exhibit 2:26)

In March 2017, claimant was placed by defendant employer as a temporary worker for Heartland Ag. Claimant was hired to assemble mobile field sprayers. These are units that are attached to large tractors. Claimant testified that the job was very physical. It took place outdoors and entailed lifting equipment with varying weights from very little to over 100 pounds with the assistance of forklifts. (See, e.g. Ex. H)

Claimant testified at hearing that he was in the process of switching the pump and gearbox from one unit to another. A full-time employee had removed the smaller unit and placed it on the cart. In the process of transporting it to the second unit, the cart fell over breaking a pipe. The full-time employee took the damaged equipment to the work bench for repair.

While his coworker was occupied, the gearbox and pump assembly slipped off the sprayer. Claimant caught the assembly which weighed approximately 30 pounds, pushed the unit back onto the sprayer and bolted it down. Claimant testified that he caught the falling part with his left arm and shoulder and then reached up to place the unit back on the sprayer. This testimony was consistent with the statement he created on April 21, 2017 (Exhibit 1:6) At hearing, he testified he felt a pop in his shoulder as he was catching the unit and placing it back up on the sprayer.

Defendants point out that his description of exactly how the injury occurred varied. On the April 20, 2017 Worker's Compensation authorization and intake form, the mechanism of injury was described as follows: "left shoulder – something pull apart putting a gearbox and pump on machinery at about chest height and left shoulder popped." (Joint Exhibit 1:1) In the April 24, 2017 medical note by Lacreasia K. Wheat-Hitchings, M.D., claimant's injury occurred "when his left arm gave out when he was lifting the pump gear box onto equipment." (Joint Exhibit 1:5) This account was consistent with the incident report form completed by the claimant on April 20, 2017. (Exhibit 1:5)

During an emergency room visit, claimant's injury was described as resulting from "reaching top [sic] stop a piece of machinery from falling." (Joint Exhibit 2:22) This account was later clarified as occurring when claimant tried to stop a piece of machinery from falling. (Joint Exhibit 2:24) He gave the same general account in his statement given to the employer on April 21, 2017. (Exhibit B:7) In the intake history recorded by Kary R. Schulte, M.D., described the injury as "he was pinned by some equipment into the building then had to lift the equipment off him." (JE 5:66)

Regardless of how exactly the injury occurred, claimant did sustain "bruising noted on the medial aspect of the upper arm as well as some resolving ecchymosis dorsally. He also has bruising along the postero-lateral aspect of the chest wall near the shoulder and some bruising along the pectoral muscles." (Joint Exhibit 1:5)

In Joint Exhibit 1:1, claimant asserted the injury occurred on or around 11:00 a.m. In his deposition he testified that the injury occurred at 4:00 p.m. The defendants also believe it is unlikely the claimant could have sustained a massive rotator cuff injury and continue to work for several hours following the tear. However, defendants also point to the wheelchair incident as an alternative cause of claimant's shoulder injury. If it was unlikely claimant could have continued working after the massive rotator cuff tear on April 19, 2017, it would also be unlikely claimant could have continued working after a rotator cuff tear caused by lifting claimant's wife's wheelchair.

There is also no evidence that claimant injured himself at home after he left work and before he went to the clinic.

The uncontroverted evidence is that claimant was working with the gear and pump assembly that weighed approximately 30 pounds. He had significant bruising on the medial aspect of the upper arm and on the chest wall in the region claimant believed he had impact with the gear and pump assembly.

Defendants assert that claimant is not credible because he cannot remember exactly whether he caught the gear pump assembly or whether it fell and struck him or whether his arm gave out, causing the gear pump assembly to land on his chest and arm. I find these variances inconsequential. Whether the gear pump assembly fell or whether claimant lost his grip or whether he somehow shoved up against it, all of these

motions took place while claimant was working. Claimant credibly testified that catching, stabilizing and pushing the assembly back up onto the sprayer was all one motion. The greater weight of the evidence supports a finding that claimant suffered a blow to his shoulder and chest on the left side while working on April 19, 2017.

Claimant continued to work throughout the day and left for home around 5:00 p.m. Two hours later he began to feel pain in the shoulder and elbow. He went to bed but in the morning he discovered his arm had swollen. He had pain from the shoulder to the elbow and was unable to bend the elbow.

He reported his injury first to Heartland Ag and then to Manpower. Defendant employer asked claimant to come to the office to do paperwork on the injury. Claimant did so. (Exhibit 1:5) After he filled out his paperwork, he was instructed to go see a doctor at the McFarland Clinic. (JE 1:1)

In the medical history, claimant denied any past shoulder injury. (Joint Exhibit 1:5) Dr. Wheat-Hitchings noted the bruising and pain located primarily along the superior posterolateral scapular border. (Joint Exhibit 1:5) Claimant exhibited limited range of motion, pain with range of motion and reduced strength. (Joint Exhibit 1:6) He was diagnosed with this shoulder and pectoral strain, given hot and cold packs, medication and recommended modified duty.

The x-rays were negative for any acute injury but showed moderate osteoarthritis of the left AC joint. (Joint Exhibit 1:7) The claimant continued to have pain in return for a follow-up visit on April 24, 2014. By that date claimant was unable to lift his arm in the front or abduct the arm to any significant degree. (Joint Exhibit 1:9) A CT arthrogram was scheduled but then changed to an MRI due to claimant's hip replacement hardware. (Joint Exhibit 1:14) The MRI was initially not able to be conducted due to claimant's claustrophobia. He was given medication and ultimately the MRI took place on May 5, 2017. (Joint Exhibit 1:19) The MRI showed a large full thickness full width tear of the supraspinatus involving the anterior infraspinatus, a large full thickness full width tear of the subscapularis, severe osteoarthritis of the left AC joint, and degeneration of the glenoid labrum with cartilage loss of the inferior humeral head and a large glenohumeral joint effusion. (Joint Exhibit 1:19)

Dr. Wheat-Hitchings concluded that she did not believe the mechanism of injury was consistent with claimant's work injury and informed him he needed to submit his injury to private insurance for treatment. (Joint Exhibit 1:20) Dr. Wheat-Hitchings' opinion was further clarified in a letter to the defendant employer's insurance carrier.

> DISCUSSION: Based on the photographs that you shared with me and the service manager's report of prior knowledge of another non-related work injury, coupled with the fact that he did not report the injury the day of and that he was able to finish his shift without apparent difficulty, I have some concerns regarding Mr. Coop's case. According to his recounting of events, he described working as an equipment

> assembler when his left arm gave out while he was lifting the pump gear box onto another piece of equipment. There was no mention of any object falling or catching any equipment at the time of my assessment. According to your note, he reports catching the gear box as it fell. Your letter also reports that the service manager indisputably remarks that 'the patient reported injuring his left shoulder while pulling his wife's wheelchair out of a vehicle a week prior.'

(Exhibit C: 14) Dr. Wheat-Hitchings also concluded that the extent and severity of the rotator cuff injury suggested a significant injury involving more weight, momentum, angularity then would likely be possible stabilizing a gearbox over a pump, even one that weighed 30 pounds. (Exhibit C: 14) When asked about whether lifting a wheelchair could have caused claimant's current condition, Dr. Wheat-Hitchings declined to answer. (Ex C:15)

The claimant did not have private insurance and followed up at the Veterans Administration. (Joint Exhibit 2:22) He underwent a mini open cuff repair and biceps tenodesis arthroscopic on June 22, 2017. (Joint Exhibit 2:29) However, the surgery did not provide him with good results. He went to physical therapy and he believes that he was reinjured during the physical therapy. A subacromial injection was performed in August 29, 2017 which helped him for approximately a week and one-half but he returned to pre-injection level with worsening pain (JE 2:39) Another MRI was conducted which showed a massive re-tear. (JE 2:40) Allen Lang, M.D., concluded that "given the poor quality of the cuff tissue" another repair was not warranted.

The care providers there gave him a referral to an orthopedic consult and on December 18, 2017 claimant was seen by Dr. Schulte. (Joint Exhibit 5:66) On examination the claimant had limited range of motion on the left along with pain and decreased strength. (Joint Exhibit 5.67) Dr. Schulte diagnosed claimant with a massive and irreparable left rotator cuff tear with arthropathy and recommended a reverse shoulder replacement. (Joy 5:68) Surgery took place on January 17, 2018. (Joint Exhibit 5:74)

Claimant is currently healing from his total shoulder replacement surgery.

Claimant maintained at hearing that Dr. Wheat-Hitchings never told him that the injury was not work related. Claimant also believed that he was never given a referral to an orthopedic surgeon. Dr. Wheat-Hitchings medical records seem to indicate otherwise, but there was not an orthopedic visit made until December 2017 and that was at the request of Dr. Lang from the VA. (See JE 1:20, 5:66)

Dr. Schulte opined that claimant should regain shoulder range of motion within 80 to 90 percent of normal with only minimal pain. He also concluded that the rotator cuff injury and the two surgeries following were related to his work injury of April 19, 2017. (Exhibit 1:20) Dr. Lang came to the same conclusion. Based on the history, examination, and radiographic findings, the rotator cuff tears were causally related to his

work injury of April 19, 2017. (Exhibit 2:56) Dr. Lang wrote "the rotator cuff tears are not usually associated with any bruising; however, the mechanism of injury described here would indicate that the equipment that he was working on fell onto his shoulder, which would have caused a contusion and the bruising, in addition to the tear of his rotator cuff. (Exhibit 2:56)

On February 28, 2018, Charles Mooney, M.D., issued an opinion regarding causation as it relates to claimant's shoulder injury. (Exhibit D) Claimant declined to complete any of the routine questionnaires associated with an independent medical examination, including description of the incident, pain drawings, ADL questionnaire, pain questionnaire, mental health symptoms checklist, routine description of past medical history, review of systems questionnaire, and medications and allergies. (Exhibit D: 19) Dr. Mooney did conduct an interview but during the interview, claimant would not discuss how the incident occurred and instead referred the doctor to claimant's deposition. (Exhibit D: 20) Claimant did inform Dr. Mooney that he had surgery with Dr. Lang and then again by Dr. Schulte. (Ex. D:20)

Claimant told Dr. Mooney that he had no prior history of any significant injury other than the left lower extremity. (Exhibit D: 20) Based upon the review of the medical records, Dr. Mooney concluded that there was evidence of advanced osteoarthropathy of the acromioclavicular joint with subsequent spur formation. Because of the multiple histories provided as to the mechanism of the claimant's injury, Dr. Mooney believed that no conclusion could be drawn as to any relationship between the alleged injuries and the diagnosis found on MRI. (Exhibit D: 21) Dr. Mooney related that rotator cuff tears are known to be associated with degenerative changes. More than half of rotator cuff tears become symptomatic within three years and that degenerative rotator cuff tears tend to occur in older patients. (Ex. D: 30)

Defendants assert that Dr. Wheat-Hitchings stipulated there was no mention of any object falling or catching any equipment. (Exhibit C: 14) She was also skeptical that the injury was new within 24 hours based on the degree of bruising and extent of the resolution of the bruising and discoloration. Id. Dr. Wheat-Hitchings first visit with the claimant was on April 20, 2017. (Joint Exhibit 1:1) There is no notation regarding claimant's bruising until April 24, 2017. (Joint Exhibit 1:5) By that time, over five days had passed. The degree, discoloration, and extent of the bruising that Dr. Wheat-Hitchings referred to was documented in her medical records five days later, not one day later.

In the statement filled out by the claimant the following day, on April 20, 2017, he described the injury as occurring when he put the gearbox and pump onto machinery at chest level. (Joint Exhibit 1:1) On April 21, 2017, just two days after the claimant's injury, claimant described the gear and pump assembly slipping off the mobile unit. Claimant grabbed it quickly and pushed it back up. (Exhibit B:7)

Dr. Wheat-Hitchings' opinions are based on incomplete and/or not wholly precise information.

Both Dr. Mooney and Dr. Wheat-Hitchings opined that claimant's left shoulder injury was non-work related because of his purported varying accounts of how the mechanism of injury occurred. Because I disagree that the variances were substantial, I give less weight to their opinions.

Claimant has incurred medical bills and expenses in the amount of $147,543.37, related to his rotator cuff tear. (Exhibit 5:60)

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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).

As stated in the findings of fact, I give less deference to the opinions of Dr. Mooney and Dr. Wheat-Hitchings. Dr. Wheat-Hitchings noted that it is highly unusual to have bruising of the pectoral muscle secondary to rotator cuff tear however, claimant did have a full thickness full width tear of the supraspinatus and subscapularis. He also had bruising of the pectoral muscles which would be consistent with a blow to the left shoulder and upper arm. Both Dr. Lang and Dr. Schulte, orthopedic surgeons, opined that the blow that the claimant sustained from the gear and pump assembly led to his massive rotator cuff tear.

While claimant may have suffered pain and discomfort following a lifting incident at home and may have also had significant degenerative arthritis in his left shoulder, he was largely asymptomatic prior to the injury at work. Claimant had no medical treatment to his shoulder, neck, back, or upper extremities in the time leading up to his work injury.

Therefore, it is found the claimant has sustained an injury on April 19, 2017, to his left shoulder which necessitated a total shoulder reverse arthroplasty arising out of and in the course of his employment. Claimant is still recovering from his shoulder surgery and is not at MMI. Neither has claimant returned to work, nor is he capable of returning to substantially similar employment.

The parties stipulated that if the claimant's injury is found to be related to his work, he is entitled to healing period benefits beginning on April 20, 2017 and continuing to the present time.

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).

Because of the aforementioned causation finding, claimant is entitled to reimbursement of his medical bills as requested and any future medical care necessary related to his left shoulder injury.

ORDER

THEREFORE, it is ordered:

All stipulations of the parties set forth in the hearing order are accepted and enforceable.

All weekly benefits shall be paid at the stipulated rate of five hundred and nine and 41/100 dollars ($509.41).

Defendants shall pay the claimant temporary total or healing period benefits from April 20, 2017, through the date of hearing and continuing until such time as there is a basis for ending such benefits by law.

That defendants shall pay medical expenses as itemized in the summary attached to the hearing report and Claimant's exhibit 5.

That defendants shall furnish all reasonable medical expenses in the future related to claimant's left shoulder injury.

That defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. April 24, 2018).

That defendants are to be given credit for benefits previously paid as stipulated to in the hearing report.

That defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 20th day of August, 2018.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JGL/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.