

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RODNEY REMA,

Claimant,

vs.

TRANSCO RAILWAY PRODUCTS, INC.,

Employer,

and

CHUBB INSURANCE,

Insurance Carrier,
Defendants.File Nos. 21001855.01
21012426.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.30; 1402.40;
1803; 2501; 2907

Defendants Transco Railway Products, Inc., employer, and its insurer, Chubb Insurance, appeal from an arbitration decision filed on March 17, 2023. Claimant Rodney Rema responds to the appeal. The case was heard on September 2, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 3, 2022.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he sustained left shoulder injuries on February 21, 2020, and June 1, 2020. However, the deputy commissioner found claimant's permanent disability of his left shoulder was caused by the February 21, 2020, incident, and not the June 1, 2020, incident. The deputy commissioner also found claimant carried his burden of proof to establish he sustained a right shoulder injury as a sequela of the stipulated February 21, 2020, left shoulder injury. Relying on the expert opinions of Farid Manshadi, M.D., the deputy commissioner found claimant proved he sustained permanent disability as a result of the February 21, 2020, work injury. The deputy commissioner found claimant sustained eight percent functional loss of the left shoulder and fifteen percent functional loss of the right shoulder, which entitles claimant to receive 92 weeks of permanent partial disability benefits commencing on January 31, 2022. Lastly, the deputy commissioner found defendants are responsible for payment, or reimbursement, of all causally related medical expenses itemized in Exhibit 7.

On appeal, defendants assert the deputy commissioner erred in finding claimant proved he sustained a sequela injury to his right shoulder. Alternatively, defendants assert the deputy commissioner erred by compensating each shoulder individually for a combined total of 92 weeks of permanent partial disability benefits. Defendants assert the deputy commissioner also erred in finding defendants liable for payment, or reimbursement, of all causally related medical expenses relating to the right shoulder.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, the arbitration decision filed on March 17, 2023, is respectfully reversed in part, and is modified in part.

I reverse the deputy commissioner's finding that claimant proved he sustained a right shoulder injury as a sequela of the stipulated February 21, 2020, left shoulder injury. As a result, I also modify and reverse the deputy commissioner's findings and conclusions concerning the extent of claimant's entitlement to permanent disability benefits.

As an initial matter, I respectfully diverge from the deputy commissioner's findings of fact concerning claimant's recovery subsequent to the May 2017 work injury, as well as the deputy commissioner's assessment of claimant's functional abilities thereafter. In the arbitration decision, the deputy commissioner found claimant experienced a normal recovery period following his right shoulder surgery in June 2017, and that he was able to return to work as a material handler without any formal restrictions or accommodations. The evidentiary record details a slightly different version of events.

On May 4, 2017, claimant sustained a traumatic injury to his right shoulder, which arose out of and in the course of his employment with defendant-employer. On June 20, 2017, Benjamin Torrez, D.O. performed a right shoulder arthroscopy with biceps tenotomy, labrum debridement, distal clavicle excision, subacromial decompression, and an open right shoulder massive rotator cuff repair. Unfortunately, claimant developed adhesive capsulitis during his recovery from surgery, and on August 29, 2017, Dr. Torrez performed a manipulation under anesthesia. Approximately six months later, Dr. Torrez placed claimant at maximum medical improvement (MMI) and assigned five percent upper extremity impairment. Farid Manshadi, M.D. performed an independent medical evaluation (IME) of claimant and assigned 13 percent right upper extremity impairment due to a loss in range of motion. (Exhibit 5, page 12) At the time of the IME, claimant was reporting constant pain in the right shoulder, including while at rest. (Ex. 5, p. 11) At hearing, claimant testified he continued to experience pain, weakness, and reduced range of motion in his right shoulder following the 2017 surgery. (Hearing Transcript, p. 41; Ex. E, Depo. pp. 27-28, 30; see Ex. 5, p. 14) Claimant further testified he received a better result from the 2021 left shoulder surgery when compared to his 2017 right shoulder surgery. (Tr. p. 50)

Following both the May 2017 and February 2020 work injuries, claimant underwent an initial rotator cuff repair, followed by a manipulation under anesthesia.

Despite experiencing virtually identical recoveries, the deputy commissioner described claimant's recovery following the May 2017 injury as "normal" and the recovery following the February 2020 injury as "difficult." (Arb. Dec. pp. 2, 4)

With respect to permanent restrictions, Dr. Manshadi recommended claimant avoid any activities that required repetitious reaching at shoulder height or overhead. He also recommended claimant avoid any activity that required lifting more than 30 to 40 pounds. (Ex. 5, p. 13) Once assigned, claimant testified he consistently followed the permanent lifting restrictions assigned to his right shoulder. (Ex. E, Depo. pp. 76-77; Hr. Tr., p. 38)

Due to the permanent restrictions assigned to claimant following his recovery from the May 4, 2017, work injury, defendant-employer reassigned claimant to work as a material handler. According to claimant, his job duties as a material handler were also modified as a result of his permanent restrictions. For example, claimant testified his co-workers regularly handled the loading and unloading of heavy items into his truck bed. (See Ex. E, Depo. pp. 16-18) However, based on the description of the February 21, 2020, work injury, it appears claimant did not always receive assistance loading and unloading heavy items. (Ex. E, Depo. pp. 37-38) Nevertheless, it is clear claimant did not return to work as a material handler without any formal restrictions or accommodations as provided in the arbitration decision.

I similarly diverge from the deputy commissioner's findings as they relate to the credibility and persuasiveness of the competing medical opinions.

In total, three physicians addressed causation as it relates to claimant's right shoulder. Matthew Bollier, M.D., who evaluated claimant at defendants' request for purposes of an IME, and Benjamin Torrez, D.O., who served as the claimant's treating surgeon following both the May 2017 and February 2020 work injuries, offered opinions against causation. Dr. Bollier cited to the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Edition, and explained that the medical literature does not support "favoring" as a reasonable cause for development of symptoms in the contralateral shoulder. (Ex. A, p. 10)

After reviewing Dr. Bollier's report, Dr. Torrez stated,

This is exactly my frustration in evaluating and being left with deciding whether or not this was work related, as there is no complete evidence between the time of his recovery and the time that he was, again, complaining of right shoulder pain. We have no data showing what has gone on outside of work in regards to that right shoulder. Therefore, it is extremely difficult to identify this is new right shoulder pain as being strictly related to his line of work, especially after we fixed the rotator cuff, among other things initially.

(JE3, p. 87)

Dr. Torrez agreed with Dr. Bollier's opinion that claimant's right shoulder complaints were not caused by, or materially aggravated by, or are a sequela of the left shoulder injury claimant sustained in February or June of 2020. (*Id.*) In his most recent report, Dr. Torrez stated, "Therefore, to make this painfully obvious, his current right shoulder diagnosis and treatment is based upon his initial right shoulder diagnosis and treatment. We are not discussing his left shoulder. The right shoulder is not related to the left." (JE3, p. 90)

Farid Manshadi, M.D., claimant's IME physician, offered a favorable causation opinion for claimant. He opined, "Mr. Rema also currently has right-sided shoulder pain with reduced range of motion as a sequela to the left shoulder injury due to overcompensation." (Ex. 5, p. 17) This statement is the extent of his causation opinion.

The deputy commissioner found the opinion of Dr. Manshadi to be convincing evidence of a causal relationship between the right shoulder condition and the February 21, 2020, left shoulder injury. For the reasons that follow, I respectfully disagree.

The deputy commissioner rejected the expert medical opinions of Dr. Bollier and Dr. Torrez. The deputy commissioner's rationale for discounting the opinions of Dr. Bollier and Dr. Torrez stemmed from the perceived inadequacy in their consideration of the specific circumstances surrounding claimant's injury. The deputy commissioner observed that both physicians instead relied on the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Edition. Notably, the deputy commissioner placed reliance on Dr. Manshadi's opinion, yet refrained from commenting on the degree to which Dr. Manshadi took into account the specific circumstances of claimant's injury. Moreover, neither claimant nor Dr. Manshadi produced any research or medical literature to refute the claims of Dr. Bollier and the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Edition.

Dr. Bollier, like Dr. Manshadi, summarized claimant's medical records and conducted a physical examination. Unlike Dr. Manshadi, Dr. Bollier reviewed and summarized the available diagnostic imaging. (*See* Ex. A, p. 10) Contrary to the deputy commissioner's assertion that Dr. Bollier seemed to rely exclusively on a treatise, Dr. Bollier's report provides, "After reviewing patient's clinic notes, physical therapy notes, outside imaging reports/images, [and] operative notes – it is my opinion that his current right shoulder pain is not related to overcompensation after a left shoulder injury." (Ex. A, p. 10) It was only subsequent to a thorough assessment of the facts and circumstances surrounding claimant's right shoulder condition that Dr. Bollier sought to reinforce his conclusion by citing to the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Edition.

In the arbitration decision, the deputy commissioner provided a limited review of the series of letters produced by Dr. Torrez.

On August 31, 2021, defendants produced a letter to Dr. Torrez asking him to confirm the opinions he provided during a recent conference call. (JE3, pp. 80-81) In

the letter, defendants asked Dr. Torrez to confirm claimant did not report that his right shoulder and elbow complaints were related to his work duties, that Dr. Torrez did not provide any treatment for the right shoulder and elbow complaints, and as a result Dr. Torrez was unable to causally relate claimant's right shoulder and elbow complaints to his work duties.

Dr. Torrez addressed the accuracy of defendants' statements in his own letter, dated September 22, 2021. (JE3, pp. 82-83) In the letter, Dr. Torrez summarized his treatment of claimant since January 7, 2021. (Id.) Dr. Torrez confirmed claimant did not report right shoulder complaints during his appointments on January 7, 2021, and February 8, 2021. (JE3, p. 82) According to Dr. Torrez, claimant first reported right shoulder complaints – due to overcompensation – on February 11, 2021. (Id.) Dr. Torrez expressed his initial confusion regarding the right shoulder complaints as, "The patient did not inform me of his right sided problems until after a month follow up of working up his left shoulder, which had been injured for nearly a year." (Id.) However, given the contents of the February 11, 2021, medical record, Dr. Torrez concluded he could not clearly state that claimant did not claim right shoulder and elbow problems with his left shoulder. (JE3, p. 83) The letter continues:

However, the timing of claiming right elbow and shoulder pain, because of the left shoulder, is interesting. What is also interesting, is that the left shoulder apparently had been injured for nearly a year with no report. However, the patient did claim on February 11 a right shoulder and elbow issue that he claims was a workers' comp injury and actually had a specific date of January 15, 2021. In my opinion, this becomes very convoluted.

(Id.)

In December 2021, claimant's counsel penned a letter to Dr. Torrez, which indicated, "I could tell from the letters that you were put in the middle of this a little bit and were somewhat uncomfortable with providing an opinion on the topic." (JE3, p. 84) The letter then purported to provide Dr. Torrez with, "The facts and medical records which I believe support a finding of a sequela injury regarding the right shoulder/elbow[.]" However, the medical summary provided by claimant's counsel contains a number of flaws. First, the summary asserts claimant "had no treatment for his right shoulder/elbow after February 18, 2018 until his February 21, 2020 injury." (Id.) Claimant's summary is somewhat misleading as claimant did not report any right shoulder/elbow complaints until December 18, 2020.

The summary continues, "He was limiting the use of his left shoulder/arm for a fairly long period of time commencing with his traumatic left shoulder injury of February 21, 2020." (Id.) However, the evidentiary record provides little to no support for this assertion. Claimant's testimony and the lack of contemporaneous medical records raise questions as to when claimant started overcompensating with his right shoulder. Claimant testified his pain following the February 20, 2020, work injury was not bad

enough to seek medical treatment and there were days he was not experiencing any symptoms. (Ex. E, Depo. pp. 40, 44) Claimant also testified that his pain was manageable enough to the point where he felt capable of moving around heavy valves between February and May 2020. (Ex. E, Depo. p. 47) Indeed, claimant's assertion that he re-injured his left shoulder moving 85-pound valves around in the back of his truck in late May or early June of 2020 contradicts the assertion that claimant lost the use of his left shoulder to any significant degree following the February 21, 2020, work injury. Moreover, between February 21, 2020, and November 24, 2020, claimant only presented for two medical appointments. Claimant presented to his primary care provider shortly after both alleged injuries; however, he did not report any left or right shoulder symptoms during either exam. (JE1, pp. 1-11)

Notably, a reasonable argument exists that claimant's left shoulder pain did not significantly impact his functional abilities until October 2020. While claimant contradicted himself on a number of occasions, he consistently testified at both his deposition and at the evidentiary hearing that something specific occurred in October 2020 that increased his left shoulder pain from 2 to 3 out of 10, all the way to 10 out of 10. Claimant could not remember what specifically happened, or when the incident occurred; however, he consistently testified something occurred while he was working that significantly increased his pain and convinced him to seek medical treatment. (Ex. E, Depo. p. 52; Hr. Tr., pp. 44-45) He further testified that it "probably had something to do with lifting." (Ex. E, Depo. p. 72) Moreover, when claimant first presented to his primary care physician on November 24, 2020, he reported that his left shoulder pain was manageable until October 27, 2020. (JE1, p. 12)

Dr. Torrez responded to claimant's counsel on February 9, 2022. (JE3, p. 86) In the letter, Dr. Torrez opined, "I believe there is a reasonable degree of medical certainty that his right shoulder condition is in fact a sequela injury to his left shoulder." (JE3, p. 86) However, the letter also provides, "it is definitely a probability that the patient's right shoulder injuries, or condition, could be related to or be a sequela injury as a result of compensation due to his left shoulder injuries." (Id.)

As mentioned, defendants subsequently provided Dr. Torrez with Dr. Bollier's IME report. After reviewing Dr. Bollier's report, Dr. Torrez provided his updated causation opinion to defendants. (JE3, p. 87) Dr. Torrez concluded his letter by opining that he agreed with Dr. Bollier's opinion that claimant's right shoulder complaints were not caused by, or were materially aggravated by, or are a sequela of the left shoulder injury that he sustained in February or June of 2020. (Id.)

Despite this updated opinion, claimant's counsel subsequently requested that Dr. Torrez provide an impairment rating for the right shoulder, "as a result of his current sequela injury relating to his prior traumatic left shoulder injury." (See JE3, p. 88) Dr. Torrez was also asked to address whether claimant will need a right total shoulder replacement in the future, "as a result of his current right shoulder sequela injury." (JE3, p. 88) In a July 15, 2022, letter, Dr. Torrez answered the latter question in the affirmative, provided an impairment rating to the right shoulder, and added, "Without any

other background history, this is most probable due to the patient's result of his right shoulder sequela injury." (JE3, p. 89)

On August 14, 2022, Dr. Torrez produced a letter to defense counsel, clarifying his comments in the July 15, 2022, letter to claimant's counsel. (JE3, p. 90) The letter provides:

There seems to be some confusion about the last line of the last paragraph of my letter. The patient's current right shoulder injury and thus treatment, is due to his initial right shoulder problems that we treated him for in the past. I agree with the independent medical examiner's assessment that this has nothing to do with his left shoulder issues due to the patient's significant primary right shoulder diagnosis and subsequent treatment.

(Id.)

In the arbitration decision, the deputy commissioner concluded that Dr. Torrez, "changed his opinion due to being shown page 766 of the AMA Guides to the Evaluation of Disease and Injury Causation[.]" (Arb. Dec., p. 5) I respectfully disagree. As explained in both the May 10, 2022, and August 14, 2022, letters, Dr. Torrez clearly considered the facts and circumstances surrounding claimant's right shoulder condition.

Dr. Torrez has been claimant's treating surgeon since the May 2017 work injury and is well-versed in the circumstances surrounding claimant's alleged injuries. While Dr. Torrez's series of opinions on causation exhibit a degree of inconsistency, it is crucial to contextualize this within the scope of his role as the petitioner's treating physician for both the May 2017 and February 2020 injuries. His initial opinions, which range from suggesting a lack of causal relationship to acknowledging a potential link, may reflect an unfamiliarity with workers' compensation cases, which may not be part of his regular practice. Indeed, claimant's attorney acknowledged that Dr. Torrez was "somewhat uncomfortable with providing an opinion on the topic." Importantly, Dr. Torrez's later opinions converge to definitively state a lack of causal connection. While the fluctuation in opinions raises valid concerns about credibility, the consistency of his final opinions, aligned with his role as the treating physician, bolsters the overall credibility of his insights.

There exists no discernible evidence to substantiate that Dr. Manshadi's assessment of the specific circumstances of claimant's injury significantly differed from those of Dr. Bollier and Dr. Torrez. Consequently, I find the distinction drawn by the deputy commissioner lacks substantive basis.

Turning to the factors that raise concerns about the persuasiveness of Dr. Manshadi's opinion, I first note that Dr. Manshadi did not offer significant analysis of his rationale or provide medical support for his conclusions regarding the right shoulder. In contested cases featuring multiple expert opinions on causation, a robust analysis is imperative to establish a clear and coherent understanding of the causal link between

an alleged injury and its effects. Dr. Manshadi's report fails to provide a diagnosis for the alleged right shoulder injury or address whether overcompensating with the right shoulder permanently and materially aggravated, accelerated, or lit up claimant's pre-existing right shoulder condition. The report similarly provides no discussion of what job duties or other work-related factors contributed to the alleged overuse injury. Despite conducting IMEs for both the May 2017 and February 2020 work injuries, Dr. Manshadi offers no deliberation that contrasts claimant's enduring right shoulder condition attributed to the May 2017 incident with the alleged right shoulder pain that forms the basis of the alleged February 2020 sequela injury. Instead, the report simply provides, "Mr. Rema also currently has right-sided shoulder pain with reduced range of motion as a sequela to the left shoulder injury due to overcompensation." (Ex. 5, p. 17)

There is also some concern as to whether Dr. Manshadi was privy to all of the medical records in evidence. For instance, Dr. Manshadi references, but does not discuss, the January 25, 2021, MRI arthrogram of the right shoulder or its findings. Alternatively, if Dr. Manshadi did review the MRI Arthrogram, he did not find it significant enough to include a summary of its findings in his IME report. (See Ex. 5, p. 15) An analysis of the MRI arthrogram would have been particularly helpful in this case, as there is not a consensus among the evaluating physicians. The interpreting physician at Gunderson Health System and Dr. Bollier concluded there was no evidence of residual or recurrent full-thickness cuff tear; however, there was a partial-thickness articular tear of the infraspinatus tendon. (JE1, p. 20; Ex. A, p. 10) In comparison, Dr. Torrez observed a recurrent full-thickness tear in the right rotator cuff. (JE3, p. 54)

Along the same lines, Dr. Manshadi's medical records summary only discusses two medical records specific to the right shoulder condition. Notably absent from the medical records summary is claimant's inconsistent reporting as to when his right shoulder pain escalated. Claimant reported to Dr. Olsen and Dr. Torrez that his right shoulder pain started in the summer months of 2020. (JE2, p. 35; JE3, p. 55) Claimant's reporting is concerning given the contradictory nature of his medical examinations in the fall and winter months of 2020. More specifically, claimant did not describe right shoulder pain when he presented to his primary care provider on November 24, 2020. (JE1, p. 12) Claimant then presented to Dr. Olsen on November 30, 2020, and completed a patient in-take form. (JE2, p. 26) On the in-take form, claimant was asked to, "Mark the body diagram to show the location of your symptoms." (Id.) Claimant marked the front and back of his left shoulder. (Id.) He did not make any markings on or around the right shoulder. (Id.) Claimant did not report right shoulder pain until December 18, 2020. (JE2, p. 31) Dr. Manshadi provides no comment about the inconsistencies in claimant's reporting of when his right shoulder pain escalated.

Dr. Manshadi's report also fails to discuss the well-documented third incident that allegedly occurred at work in October 2020.

For these reasons, I respectfully reverse the deputy commissioner's finding that the opinions of Dr. Manshadi were the most credible and convincing in the evidentiary record. Based on the evidentiary record, I find claimant provided insufficient evidence

to establish that his current right shoulder condition was materially aggravated by, caused by, or is a sequela of the February 21, 2020, left shoulder injury or overuse following that injury. The deputy commissioner's determination that claimant proved he sustained a sequela injury of the right shoulder as a result of the February 21, 2020, left shoulder injury is therefore respectfully reversed.

The evidentiary record contains two medical opinions with respect to permanent impairment related to claimant's left shoulder condition. Both physicians utilized Chapter 16 of the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, to assess claimant's impairment. Dr. Torrez assigned seven percent left upper extremity impairment, while Dr. Manshadi assigned ten percent left upper extremity impairment. (JE3, p. 79; Ex. 5, p. 17) Dr. Manshadi specified that he would attribute eight percent left upper extremity impairment to the February 21, 2020, work injury. (Ex. 5, p. 17) However, due to the above noted deficiencies in Dr. Manshadi's report, I find Dr. Torrez's rating to be the more persuasive of the two.

Claimant's left rotator cuff injury is compensated as a shoulder under Iowa Code section 85.34(2)(n). Permanent partial disability compensation for the shoulder shall be paid based on a maximum of 400 weeks. Iowa Code section 85.34(2)(n) Having adopted Dr. Torrez's seven percent upper extremity impairment rating, I find claimant is entitled to receive 28 weeks of PPD benefits. The deputy commissioner's award of 92 weeks of PPD benefits is therefore modified.

The parties stipulated that claimant was paid 28 weeks of compensation at the rate of \$520.72 per week. As such, claimant is not entitled to any additional permanent partial disability benefits in this case.

Because I find claimant failed to prove he sustained a sequela injury of his right shoulder as a result of the February 21, 2020, work injury, I respectfully reverse the deputy commissioner's finding defendants are responsible for payment, or reimbursement, of the medical expenses itemized in Exhibit 7.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed March 17, 2023, is reversed in part and is modified in part.

Defendants shall pay claimant twenty-eight (28) weeks of permanent partial disability benefits at the weekly rate of five hundred twenty and 72/100 (\$520.72) commencing on January 31, 2022.

Defendants shall receive credit for all benefits previously paid.

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, claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 12th day of September, 2023.

A handwritten signature in black ink, reading "Joseph S. Cortese II". The signature is written in a cursive style with a horizontal line extending from the end.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

John Pieters (via WCES)

James Ballard (via WCES)