

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIJEL BANJANIN,

Claimant,

vs.

BISHOP DRUMM RETIREMENT CTR,

Employer,

INDEMNITY INS. CO. OF N.A.,

Insurance Carrier,  
Defendants.

File No. 5067886: 4/20/18

File No. 5067885: 8/6/18

File No. 5068828: 5/23/19

## ARBITRATION

## DECISION

Head Note No. 1108

## STATEMENT OF THE CASE

Claimant, Danijel Banjanin, filed three petitions for arbitration seeking workers' compensation benefits from Bishop Drumm Retirement Center, the employer and Indemnity Insurance Company of North America, the insurance carrier.

The matter came on for hearing on December 16, 2019, before deputy workers' compensation commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of joint exhibits 1 through 12; claimant's exhibits 1 through 20; and defense exhibits A through K; as well as the sworn testimony of claimant, Danijel Banjanin. The employer called witnesses as well: Hajrudin Malulic, Todd Christianson, Michael Potter and Carey Boysen. Roxann Zuniga was appointed as the court reporter for the proceedings.

The parties briefed this case and the matter was fully submitted on February 11, 2020.

## ISSUES AND STIPULATIONS

The following issues and stipulations were submitted. All of the stipulations have been accepted by the agency and are deemed binding at this time.

File No. 5067886

The claimant alleges he sustained an injury which arose out of and in the course of his employment on April 20, 2018. Defendants deny that an injury occurred. Claimant contends the injury resulted in temporary and permanent disability, which is also disputed. Claimant is seeking temporary disability benefits as set forth in Claimant's Exhibit 14. Claimant is also seeking permanent partial disability benefits for permanent disability in his left shoulder, arm and neck. Defendants dispute claimant's entitlement to such benefits. The claimant is seeking penalty benefits for an improper denial and delay of benefits. The parties stipulate no benefits have been paid on this injury.

The parties have stipulated to the existence of an employer-employee relationship, as well as all elements of the rate of compensation. The parties contend the appropriate rate is \$424.86. Other than timely notice under Section 85.23, all affirmative defenses have been waived. Defendants have raised the affirmative defense of notice under Section 85.23.

Claimant is seeking payment of medical expenses under Section 85.27, as set forth in Claimant's Exhibit 17. Defendants dispute any payments are owed. Claimant is also seeking an IME under Section 85.39. This is also denied.

File No. 5067885

The claimant alleges he sustained an injury which arose out of and in the course of his employment on August 6, 2018. Defendants deny that an injury occurred. Claimant contends the injury resulted in temporary and permanent disability, which is also disputed. Claimant is seeking temporary disability benefits as set forth in Claimant's Exhibit 14. Claimant is also seeking permanent partial disability benefits for permanent disability in his neck and back. Defendants dispute claimant's entitlement to such benefits. The claimant is seeking penalty benefits for an improper denial and delay of benefits. The parties stipulate no benefits have been paid on this injury.

The parties have stipulated to the existence of an employer-employee relationship, as well as all elements of the rate of compensation. The parties contend the appropriate rate is \$427.24. Affirmative defenses have been waived.

Claimant is seeking payment of medical expenses under Section 85.27, as set forth in Claimant's Exhibit 17. Defendants dispute any payments are owed. Claimant is also seeking an IME under Section 85.39. This is also denied.

File No. 5068828

The claimant alleges he sustained an injury which arose out of and in the course of his employment on May 23, 2019. Defendants deny that an injury occurred. Claimant contends the injury resulted in temporary and permanent disability, which is also disputed. Claimant is seeking temporary disability benefits as set forth in Claimant's Exhibit 14. Claimant is also seeking permanent partial disability benefits for permanent disability in his neck, left arm and back. Defendants dispute claimant's entitlement to such benefits. The claimant is seeking penalty benefits for an improper denial and delay of benefits. The parties stipulate no benefits have been paid on this injury.

The parties have stipulated to the existence of an employer-employee relationship, as well as all elements of the rate of compensation. The parties contend the appropriate rate is \$425.46. Affirmative defenses have been waived.

Claimant is seeking payment of medical expenses under Section 85.27, as set forth in Claimant's Exhibit 17. Defendants dispute any payments are owed. Claimant is also seeking an IME under Section 85.39. This is also denied.

#### FINDINGS OF FACT

Danijel Banjanin was 36 years old as of the date of hearing. He resides in Clive, Iowa and is single with no children. Mr. Banjanin immigrated to the United States from Croatia in approximately 2000. He originally located in Twin Falls, Idaho and later moved to the Des Moines area. He eventually took classes at DMACC to become certified in medication management. He does not currently possess a license or certification in this area.

Mr. Banjanin testified live and under oath at hearing. He was a soft-spoken witness. He testified that he has difficulty projecting his voice because he had a surgery to remove his thyroid gland in November 2019. (Transcript, page 14) For a variety of reasons discussed in the body of this decision, I do not find Mr. Banjanin to be an entirely reliable witness. Generally speaking, he was not a reliable historian and his recollection of events does not comport with other, more credible evidence in the record.

Mr. Banjanin's work history is set forth in the record. (See Claimant's Exhibit 7, page 41) His work history is spotty and inconsistent. (Defendant's Exhibit I) He has worked for several different employers, usually for a few months at a time since 2015. He has worked as a cashier or clerk for two different employers. Most of his

employment has been in the medical field. He worked in patient registration for Mercy Hospital from March 2015 through July 2015. He worked as a directed care assistant for Mainstream Living in June and July 2018. In addition, since 2008, Mr. Banjanin has worked as a CDAC provider, giving care to his father. In this capacity he earns \$675 per month. In November 2018, he began working at Bishop Drumm as a maintenance technician. His job description is set forth in Claimant's Exhibit 8. His job was to complete general maintenance and minor repairs on various equipment for the employer, which is a retirement center. He was required to be able to lift in excess of 50 pounds frequently. (Cl. Ex. 8, p. 44)

On November 14, 2017, Mr. Banjanin had a pre-employment physical where he was deemed qualified to perform all of the essential functions of the job. (Cl. Ex. 9, p. 45)

Mr. Banjanin testified that he was lifting a heavy steamer on April 20, 2018, with a co-worker Hajrudin "Dudo" Malulic. (Tr., p. 27-28) He testified that Mr. Malulic suddenly quit helping, placing all of the weight on him and immediately causing pain in his neck, left shoulder and left arm. (Tr., p. 28) He testified that he verbally reported this injury to Todd Christianson, his supervisor, on the date the injury occurred. (Tr., p. 29) Mr. Christianson also testified under oath. He denied this occurred, in fact he testified he was not at work on the date in question. (Tr., p. 138) He testified Mr. Banjanin never told him about any incident lifting or pushing a steamer in April 2018. (Tr., pp. 138-139) He testified that he learned of the claim from Carey Boysen, the HR Manager, after Mr. Banjanin turned in a written claim in September 2018. In fact, Mr. Christianson testified that he had a conversation in June 2018, wherein Mr. Banjanin specifically told him about neck and back pain and specifically denied that his problems were work-related. (Tr., pp. 146-147) He testified they had another discussion in August 2018, where Mr. Banjanin again denied any of his conditions were work-related. (Tr., pp. 147-148)

Mr. Banjanin testified that he suffered a new injury on August 6, 2018. He testified that he was moving heavy furniture on that date with his supervisor, Mr. Christianson and other co-workers. (Tr., pp. 35-36) He testified that while lifting a 200-plus pound dresser with Mr. Christianson, he felt a sudden onset of sharp pain in his neck and left arm. He testified this was witnessed by Mr. Christianson and his co-workers, including Mr. Malulic, and that he later reported it to Carey Boysen.

Mr. Malulic testified under oath as well. Mr. Malulic testified he is now a supervisor. He adamantly denied that he witnessed or was involved in any way with an injury on April 20, 2018. In fact, he claimed that the steamer in question was moved on rollers, not lifted. (Tr., pp. 119-120, 134) This was confirmed by Mr. Christianson. Mr.

Malulic also testified that the August incident did not occur. (Tr., p. 125) Both Carey Boysen and Todd Christianson testified that they had separate conversations in August 2018, with Mr. Banjanin wherein he denied that he had suffered any type of work-related accident. (Tr., pp. 146-147, 214-217)

On September 19, 2018, an accident analysis report was filled out. (Cl. Ex. 5) This report alleged a date of injury of April 25, 2018, and did not mention the lifting of a heavy steamer. "I was lifting heavy hospitals [sic] beds and pushing them – storing it away then I also was lifting extremely heavy furniture with no break in between, also loading and unloading heavy work equipment in to the truck with lots of bending up and down." (Cl. Ex. 5, p. 32) He testified that the HR Director, Carey Boysen directed him to seek medical treatment at Mercy Occupational Health. This written report, signed by Mr. Banjanin on September 18, 2018, does not mention either lifting a heavy steamer or a heavy dresser. The section asking for the names of witnesses was left blank. (Cl. Ex. 5, p. 32) No separate accident analysis report is in the record regarding the alleged August 6, 2018, work injury.

Mr. Banjanin had received medical treatment from his primary care provider, Kimberley Bauman, M.D., beginning in April 2018. On April 18, 2018, Dr. Bauman's notes documented that he was evaluated for intermittent joint pain in his bilateral hands. (Jt. Ex. 3, p. 71) He was diagnosed with pain in multiple finger joints and arthralgia. (Jt. Ex. 3, p. 75) While on its face, this record has nothing to do with the injury claims at hand, it is noted he was seen for bilateral hand pain just two days prior to the first alleged injury.

Mr. Banjanin returned to Dr. Bauman on May 16, 2018, complaining of left upper arm pain, as well as left sided pain below his shoulder blade. "He does a lot of lifting at work and exercises at home. Was doing pull ups at home before the pain began. Pain is worse with lifting exercising." (Jt. Ex. 3, p. 76) He was diagnosed with chest pain, left upper extremity and neck pain. Cervical spine x-rays were taken and heart problems were ruled out. (Jt. Ex. 3, pp. 77-79) He was prescribed Meloxicam and Cyclobenzaprine for the left upper arm/neck pain which Dr. Bauman opined was likely related to a muscle strain. (Jt. Ex. 3, p. 79)

Mr. Banjanin returned to Dr. Bauman on June 22, 2018. "Patient is a 34 yo M who presents to f/u on neck pain, upper back pain, and L shoulder pain that he has had for approx. 2 months. States his pain is getting worse." (Jt. Ex. 3, p. 82) Dr. Bauman documented that he had not picked up his Meloxicam and Cyclobenzaprine which were prescribed in May. (Jt. Ex. 3, p. 82)

When Mr. Banjanin was cross-examined about whether he was doing pullups at

home, he initially denied it and then seemed to indicate that he was exercising at the gym when his pain began. (Tr., pp. 90-91) His cross-examination testimony on this point is somewhat muddled as he repeatedly denied the accuracy of Dr. Bauman's medical notes but then conceded the accuracy at least partially.

Q. Do you deny that's what you told her?

A. I deny I was talking about the gym. I meant, I meant going to the gym.

Q. Well, did you –

A. It was probably a misunderstanding back then.

Q. Okay. Did you tell her that your pain started when you were doing pullups regardless of where they were at?

A. I said when I was exercising.

Q. When you were doing pullups?

A. I don't remember exactly what I was doing. Well, I meant gym and exercising.

(Tr., p. 91)

In August 2018, Mr. Banjanin sought treatment with Jolene Smith, D.O., at Pain Specialists of Iowa on his own. She reported the following. "Patient is seen in clinic today for neck and left arm pain that started he thinks 1.5 years ago after being in MVA. This case has been since closed. His pain has flared up in the last 4-5 months." (Jt. Ex. 6, p. 127) On cross-examination, Mr. Banjanin denied this. (Tr., pp. 87-88) His denial is not credible particularly in light of Broadlawns' records which outline a car accident in March 2015, which caused a neck injury. (Jt. Ex. 1, p. 3)

Mr. Banjanin attended his first appointment with MercyOne East Des Moines Occupational Health on September 27, 2018. He testified this is where Ms. Boysen sent him following his report of injury. The following is documented.

States has pain in neck radiating to the left side with numbness in his 4<sup>th</sup> and 5<sup>th</sup> finger. States this started a month ago. States was previously seen in April by PCP and was thought to have a muscle injury. States pain continued from April then last month went to PCP again for pain. States in August was lifting and carrying furniture at work and pain worsened at that time and went back to PCP and pain specialist. States was injected by pain specialist and helped for 5-6

days then pain returned. States has follow up next month with pain specialist. States currently doing PT and seeing PCP. Denies any medications at present. States has been previously prescribed steroids and Baclofen but did not like the baclofen so he stopped this. States has not had a previous neck injury. States previously lifted furniture at Storage Container x 2-3 days without injury.

(Jt. Ex. 8, p. 150) This provider reviewed his medical records from his primary care provider and noted that "it is mentioned he was doing pullups at home before the pain started and also it was noted he does heavy lifting at work." (Jt. Ex. 8, p. 153)

Mr. Banjanin continued to follow up with Mercy Occupational Health through December 2018. (Jt. Ex. 8) He was diagnosed with cervical disc disorder with radiculopathy. He was eventually provided an injection for pain on December 10, 2018. Thereafter, he followed up with Dr. Smith. (Jt. Ex. 6, pp. 131-138) She adjusted his medications and provided conservative care.

On May 23, 2019, Mr. Banjanin claimed a third work injury. He testified that he suffered an injury while replacing a toilet by himself. (Tr., pp. 44-45) Specifically, he claimed that Mike Potter called him at approximately 3 p.m. with an emergency. "He called me and said there's an emergency at Martina Place in Room 325." (Tr., p. 44) He testified that he repaired the toilet by himself, suffered stabbing, shooting nerve pain in his low back. He then claimed he reported this injury to his supervisor, Mike Potter. A formal incident report was completed on June 13, 2019. (Cl. Ex. 5)

Mr. Potter testified that he did ask the claimant to fix a toilet on May 23, 2019, but it was earlier in the morning. (Tr., p. 204) He was sure it was not 3 p.m., because Mr. Potter had surgery that day at 2:30 p.m. He testified Mr. Banjanin did not report an injury to him that day. (Tr., pp. 184, 187) Mr. Potter testified that Mr. Banjanin claimed he had been injured working on the toilet sometime in June 2019, after Mr. Potter wrote him up for a work performance issue. (Tr., p. 187) Mr. Banjanin was written up for inappropriate work activities on June 7, 2019. (Def. Ex. F, pp. 17-18) Mr. Christianson testified that he investigated Mr. Banjanin's claim that he had repaired the toilet and determined that the toilet had not been replaced as Mr. Banjanin had claimed. (Tr., pp. 142-145) On July 2, 2019, Mr. Banjanin was terminated for inappropriate work activities. (Def. Ex. F, pp. 21-22)

At hearing, defendants presented reports from treating physicians, Dr. Smith and Dr. Bauman. (Def. Exs. B-C) These reports generally confirm the veracity of their office notes wherein they indicated that Mr. Banjanin had not initially claimed that he suffered a work-related injury. (See Def. Ex. B, pp. 7-8; Def. Ex. C, pp. 9-10) Defendants also presented a March 4, 2019, report from Trevor Schmitz, M.D., who opined that claimant

suffered from left-sided C6-C7 disc herniation. (Def. Ex. A, p. 3) Dr. Schmitz could not relate this condition specifically to an August 2018 work injury based upon any of the information he reviewed. (Def. Ex. A, p. 3)

Mr. Banjanin was evaluated by Sunil Bansal, M.D., on August 22, 2019. He prepared a report dated October 31, 2019. (Cl. Ex. 1) Dr. Bansal assigned a 15 percent whole body rating for the neck and a five percent whole body rating for the low back condition. (Cl. Ex. 1, pp. 21-22) He opined these impairments were related to claimant's various work injuries. (Cl. Ex. 1, p. 22) It appears he was basing this opinion solely upon Mr. Banjanin's history provided at the time of his evaluation, assuming that the same was accurate. He assigned significant permanent work restrictions and recommended surgical consultation for the cervical condition. (Cl. Ex. 1, p. 23)

Having reviewed all of the evidence in the record, I find that the claimant has failed to meet his burden of proof that he suffered an injury which arose out of and in the course of his employment on April 20, 2018, August 6, 2018, or May 23, 2019. There are simply too many inconsistencies in the record to support such a finding. The witness testimony provided by Mr. Christianson, Ms. Boysen, Mr. Malulic and Mr. Potter, combined with the contradictory documentation in the relevant medical notes of Dr. Bauman and Dr. Smith, is simply too much for the claimant to overcome with his testimony alone.

### CONCLUSIONS OF LAW

The fighting question in this case is whether the claimant suffered an injury which arose out of and in the course of his employment on April 20, 2018, August 6, 2018, or May 23, 2019.

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.

Having found that the claimant has failed to meet his burden of proof that he sustained an injury which arose out of and in the course of his employment on any of the dates in question, I conclude that claimant is entitled to no further benefits of any kind for his alleged injuries.


ORDER

THEREFORE, IT IS ORDERED

Claimant shall take nothing from these proceedings.

Each party shall pay their own costs.

Signed and filed this 28<sup>th</sup> day of September, 2020.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Robert E. Tucker (Via WCES)

Charles Cutler (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 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.