BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ZACHARY CORNELL CRIDER,

Claimant,

vs.

ALCOA, INC.,

Employer,

and

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,

Insurance Carrier,
Defendants.

File Nos. 5062108, 5062109

ARBITRATION

DECISION

Head Note Nos.: 1403.30, 1701, 1802, 1803, 2801

STATEMENT OF THE CASE

Zachary Crider, claimant, filed a petitions in arbitration seeking workers' compensation benefits from ALCOA, Inc. (ALCOA), (also known as Arconic), and its insurer, Indemnity Insurance Company of North America, as a result of an injury he allegedly sustained on August 15, 2014 and September 29, 2014, that allegedly arose out of and in the course of his employment. This case was heard in Des Moines, Iowa and fully submitted on February 1, 2018. The evidence in this case consists of the testimony of claimant, Kathryn Nigey, Joint Exhibits 1 – 10. Defendants' Exhibits A – C, and Claimant's Exhibit 1. The defendants submitted a brief. No brief was submitted by claimant.

FOR FILE NO. 5062108 (Date of injury, August 15, 2014).

ISSUES

1. Whether claimant sustained an injury on August 15, 2014, which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

3. Whether the alleged injury is a cause of permanent disability and, if so;

4. The extent of claimant's disability.

5. Whether claimant provided timely notice for his injury to the employer under Iowa Code section 85.23.

6. Whether claimant is entitled to reimbursement of his independent medical examination expense.

7. Assessment of costs.

FOR FILE NO. 5062109 (Date of injury, September 29, 2014).

ISSUES

1. Whether an employer-employee relationship existed at the time of the alleged injury;

2. Whether claimant sustained an injury on September 29, 2014, which arose out of and in the course of employment;

3. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

4. Whether the alleged injury is a cause of permanent disability and, if so;

5. Whether the alleged disability is a scheduled member disability or an unscheduled disability.

6. The extent of claimant's disability.

7. Whether claimant provided timely notice for his injury to the employer under Iowa Code section 85.23.

8. Whether claimant is entitled to reimbursement of his independent medical examination expense.

9. 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.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Zachary Crider, claimant was 63 years old at the time of the hearing. Claimant graduated from high school. (Transcript, page 12) Claimant attended some community college classes right after high school, and took some computer classes in 1992. (Tr. pp. 12, 13) Claimant has one year of community college. (Tr. p. 81) Claimant worked for John Deere for 10 years from 1974 to 1984. Claimant worked in a grocery store for six years and Oscar Meyer for three years. (JEx 8, p. 28)

Claimant's primary care physician is Christopher Crome, M.D. In May 2012 claimant was complaining of low back pain to Dr. Crome after moving a stove and refrigerator. (JEx. 4, p. 14) On June 27, 2013, claimant saw Dr. Crome for low back pain on the left lower side. (JEx. 4, p. 11) On September 24, 2013, claimant saw Dr. Crome for back pain that started about a week and one-half ago. Claimant described the pain as a burst that felt like hot fluid. (JEx. 4, p. 8) Dr. Crome ordered an MRI which showed "Severe degenerative disk disease throughout the lumbar spine causing severe multilevel spinal canal stenosis." (JEx. 6, p. 7)

Claimant began working for ALCOA in 1992 until he retired in 2016. Claimant would work a split-work shift – 36 hours one week and 48 hours the next week. Claimant described one job he had at ALCOA with the title of Flat Sheet Operator. In this position, claimant would inspect sheets of aluminum for defects, which would require some squatting and twisting his head to look at the bottom of the aluminum sheets. (Tr. pp. 31 – 42) Claimant operated nine different machines in the flat sheet department. (Tr. p. 42)

Before claimant worked in the flat sheet department he worked in heat treat and began to experience neck pain. (Tr. p 28) Claimant testified that his work in the heat treat department, off and on, about 10 years ago helped to cause his injury. (Tr. p. 93) These conditions continued when claimant worked in the flat sheet department. (Tr. p. 49)

Claimant performed a number of other jobs at ALCOA. When he was first hired he ran a fork truck. (Tr. p. 44) Claimant had an injury to his ring finger due to his work at ALCOA, and that he and also an insect bite that required medical treatment, which he reported as a work injury. (Tr. p. 24)

In response to the following questions claimant stated:

Q. Well, I have to think it ached for a while before you saw him.

A. Yeah. I'm a person that there is always pain. I can work with pain, but when it gets so bad I can't hardly stand up, that's when I start seeking some help.

. . . .

Q. Then how did your back pain and low back pain start, do you know?

A. It just - - It was just like, as - - I guess as I started getting older, and I'm climbing these steps, I'm beating clamps. We have airplane metal for the last days air force, and the clamps are this big (indicating).

. . . .

Q. Do you have a recollection about your back pain and neck pain and whether they started about the same time?

A. It just - - I guess it just really started after, you know, when I was on the heat treat. That's how come I'd been at the job and go to the - - to the automatics because I wasn't being able to keep doing that. I can't keep doing that job.

(Tr. pp. 51, 52)

Timothy Millea, M.D., examined claimant on September 6, 2013. (JEx. 2, p.14) Dr. Millea ordered an MRI. Claimant testified that Dr. Millea told him he had bone spurs in his lower back and sent claimant for injections. (Tr. p. 53) The history recorded by Dr. Millea noted:

He has had at least a few years of occasional low back pain. However, over the past month he has had increasing difficulty with pain not only in the back but into both lower extremities. He had an episode about 4 to 5 weeks ago where he was seated on his couch and reached off to his left side. He recalls feeling a sequence of "3 pops" in the lower back with 2 on the left paralumbar area and one on the right. This is followed by a "hot feeling" across the low back and upper buttock area, but without significant lower extremity pain. Since that time, he has had increasing difficulty with pain extending from the back into both lower extremities, again on the left more than the right. These symptoms tend to be more frequently associated with standing and walking, while sitting is more comfortable for him. His symptoms, however, have started to bother him at nighttime as well. He has been able to continue working at his job as a machine operator at Alcoa, but finds that his walking tolerance is becoming more and more of a problem. His bowel and bowel bladder

> function remains intact. He has had no prior episodes of significance such as this in years past.

(JEx. 2, p. 14)

Dr. Millea's plan was:

> PLAN: I discussed at length with the Crider's today that the severity of his stenosis is quite impressive on MRI. He does not have focal neurologic deficits nor evidence of cauda equina syndrome. I discussed with him that this most likely represents a combination of pre-existing congenital stenosis with developing degenerative stenosis.

(JEx. 2, p. 15) On December 9, 2013, Dr. Millea recommended claimant obtain epidural injections. (JEx. 2, p. 12) Claimant had a lumbar epidural injection on February 11, 2014. (JEx. 5, p. 1)

Claimant saw his family physician about his lower back and was referred again to Dr. Millea, in August 2014. Dr. Millea examined claimant on August 22, 2014 for neck and upper extremity pain. (JEx. 2, 10) Dr. Millea reviewed a February 2014 MRI and noted that it was remarkable that claimant was not having more symptoms. (JEx. 2, p. 10)

Claimant was referred to the University of Iowa Hospitals and Clinics (UIHC) and initially saw Dr. Howard who recommended a cervical collar. (Tr. p. 54) Claimant eventually had neck surgery by Dr. Hitchon at UIHC. (Tr. p. 55) Claimant discussed with Dr. Hitchon his flat sheet job and Dr. Hitchon informed claimant he would be able to go back to work after his surgery. (Tr. p. 56) Claimant had low back surgery in April 2016.

On September 29, 2014, Matthew Howard, M.D., of the UIHC examined claimant. Dr. Howard noted:

> He has been symptomatic with numbness in all his extremities, pain in his back and difficulties with fine finger manipulation, including doing his buttons. He was thoroughly evaluated locally, which included an MRI of the lumbar spine from August 28, 2013 and the cervical spine from February 25, 2014. There is severe narrowing, both of the lumbar and cervical spine. The cervical spine is extreme from C3 through T1. There is cord compression and cord injury signal changes.
>
> . . . .
>
> IMPRESSION: I explained to the patient and the patient's wife that he has an extremely complex and dangerous situation and that the level of compression of the cervical spinal cord is remarkable.

(JEx. 3, p. 21) Claimant was provided with a 30-pound weight restriction. (JEx. 3, p. 24)

On June 18, 2015, Patrick Hitchon, M.D., operated on claimant's cervical spine, He performed the following procedures:

1. Posterior cervical approach.

2. Application of Mayfield skull clamp.

3. C2 pars interarticularis screw instrumentation bilaterally using DePuy Synthes Mountaineer System.

4. T1 and T2 pedicle screw instrumentation, bilateral using DePuy Synthes Mountaineer System.

5. C3, C4, C5, and C6 lateral mass screw instrumentation using DePuy Synthes Mountaineer Posterior Cervical System.

6. C3, C4, C5, C6 and C7 bilateral laminectomies.

7. C2-T2 posterolateral fusion using autologous local bone graft and cortical cancellous bone chips.

8. Use and interpretation of C-arm fluoroscopy images.

9. Use of intraoperative ultrasonography.

(JEx. 3, p. 15) The postoperative diagnosis was, "Multilevel cervical stenosis with cervical myelopathy." (JEx. 3, p. 14) Dr. Hitchon released claimant to return to work on August 3, 2015 with restrictions of avoiding working from heights, ladders and scaffolding. (JEx. 3, p. 10) Claimant was seen on December 12, 2015 and his condition was stable. His restrictions of avoiding working from heights and weight over 30 pounds was continued. (JEx. 3, p. 6)

On October 5, 2017, Dr. Hitchon answered questions from defendants' counsel. Dr. Hitchon wrote;

> 1. What was your diagnosis of Mr. Crider's neck and/or cervical spine condition?
>
> Mr. Crider carries a diagnosis of cervical stenosis and myelopathy. This is due to a combination of deterioration of the joints that comes with age and the natural wear and tear. A contributing factor in Mr. Crider's case is that of a congenital or inborn narrowing of the spine which also has contributed to his condition. The wear and tear can result from normal activities as well as the type of work an individual performs. Obviously, repetitive

> bending, lifting, and twisting are contributing factors to deterioration of the joints.
>
> 2. Was Mr. Crider's work at Arconic, including any incident or cumulative work duties during his employment, a substantial factor in causing any injury to his neck and/or cervical spine?
>
> The type of work Mr. Crider performed at Arconic may have contributed to the cervical stenosis and myelopathy. The exact degree to which his work contributed to this is beyond anyone's ability to estimate. His employment could have contributed to this condition, yes. However, patients with sedentary work who have been active in sports can also develop this condition, necessitating surgery as well.

(JEx. 3, p. 2)

Claimant said that after his surgeries he was not allowed to return to work for ALCOA. (Tr. p.57) Claimant had surgery on his neck in June 2015. (Tr. p. 127) Claimant last worked for ALCOA September 29, 2014. (Tr. p. 125)

Dr. Millea saw claimant on January 28, 2016 for continued problems with his lower back. (JEx. 2, p. 8) On February 8, 2018, Dr. Millea discussed lower back surgery with claimant, among other options. (JEx, 2, p. 7) On April 20, 2016, Dr. Millea performed a decompressive laminectomy at the T11 – S5. Dr. Millea's postoperative diagnosis was, "Multilevel thoracolumbar stenosis." (JEx. 6, p. 1) On August 18, 2016, Dr. Millea noted that he thought claimant's conditions could improve however given the stenosis at both the cervical and lumbar areas expectations should be somewhat guarded. (JEx. 2, p. 4) In a response letter to the defendants' attorney, Dr. Millea wrote on November 3, 2017:

> 1. Mr. Crider's lumbar spine conditions are, in my opinion, related to a combination of longstanding congenital stenosis accompanied with progressive degenerative stenosis.
>
> 2. In my opinion, Mr. Crider's work at Arconic was not a substantial factor in causation to the issues related to his lumbar spine. There is no indication of a specific injury or incident, nor is there an indication of a cumulative work-related history that would directly contribute to his lumbar spine problems.

(JEx. 2, p. 1)

Claimant filed for Social Security Disability with the short/long term disability carrier pursuing the claim for claimant. (Tr. p. 132; Ex. C, p. 2) The application summary stated, "I have not filed nor do I intend to file for any workers' compensation,

public disability or black lung benefits." (Ex. C, p. 2) Claimant was awarded Social Security Disability on September 27, 2015 with an onset date of September 26, 2014.

Dr. Hitchon released claimant on August 3, 2015 with restrictions of avoiding working from heights, ladders or scaffolding. (JEx. 3, p. 10)

On October 1, 2014, claimant was considered for accommodation by ALCOA to see if there was work he could do with his restriction of wearing a neck collar and a 30-pound lifting restriction. There was no position found that he could do. (Tr. pp. 60, 61,125; JEx. 8, p. 6) Accommodations were again considered in August 2015 and no accommodations were identified so that claimant could continue to work at ALCOA (JEx. 8, p. 4) Claimant testified that he decided to retire so that he could maintain medical benefits and receive a retirement incentive. (Tr. pp. 61, 65) Claimant signed a notice of intent to retire in May 2016. (Tr. p. 149; JEx. 8, p. 1)

Claimant had surgery on his lower back on April 20, 2016. (JE6, p. 1) He was released from medical care with restriction for the lower back surgery on August 18, 2016. (Tr. p. 143)

Claimant testified that he has limited range of motion in his neck due to the surgery. That due to two rods in his neck his head he can only move his head up and down a little. (Tr. p. 66) Claimant testified he has difficulty walking more than a block and has limited use of his right arm. (Tr. p. 67)

Claimant testified that in July 2016 he contacted an attorney and a petition was filed within 30 days from when ALCO had notice of the injury. (Tr. p. 86) In interrogatory answers claimant wrote:

> When I contacted Hamilton Law Firm, I was seeking legal advice about my involuntary retirement. He suggested I may have a repetitious injury. I contacted him in July, 2016. I understood he filed a petition within 30 days, giving the company notice. I did not know there was anything like a repetitious injury until I talked with Hamilton Law firm.

(Ex. B, p. 1) Claimant testified that he never asked his doctors as to whether his work at ALCO was causing his neck and back problems. Claimant said that he was told he had a degenerative condition of the spine. (Tr. p. 114)

Claimant was questioned about the IME of Sunil Bansal, M.D. Claimant admitted that the IME report was mistaken in including one date for both injuries, and that the date of his first treatment was September 29, 2014 and that he returned to work. (Tr. pp. 119, 120) Claimant admitted that other than Dr. Bansal he did not report a cracking in his neck and low back pain after a twisting incident to any other physician. (Tr. p. 118)

Kathryn Nigey, sheet finish manager, testified at the hearing. Ms. Nigey was involved in claimant's requests for accommodation at ALCOA. (Tr. 169) Ms. Nigey said that there were no accommodations that would allow claimant to perform the essential functions of his job. (Tr. p. 172) Ms. Nigey said that when inspecting the sheets of metal for defects it was mandated that every seventh piece was to be inspected. (Tr. p. 178)

Ms. Nigey testified that the sheet inspection with a flashlight was performed infrequently during the week, generally a few times a week. (Tr. pp. 185, 186, 188)

Dr. Bansal performed an IME on September 18, 2017. Dr. Bansal reported claimant injured his neck and back on August 15, 2014. Dr. Bansal reported:

> He picked up scraps of aluminum after cutting pieces with a metal shear machine. The scraps had to be disposed of in another area that was accessed with stairs. He twisted but did not fall while ascending the stairs, and heard a pop in his neck. He stopped for a few minutes, then continued to pick up scraps.
>
> By the end of the day he noticed a constant cracking noise in his neck, as well as increasing low back pain. He reported this to a lead person, who told him to be checked out by a physician. The scrap metal was about two inches thick, and in several pieces. He feels that the scraps were awkward to handle, and could weigh a total of 50 pounds. The floor was also slippery from grease. He was seen by his primary care physician.

(JEx. 1, p. 11) Dr. Bansal reported claimant first started treating for his low back on September 29, 2014 and claimant did not return to work. (JEx. 1, p. 11) Later, in the report, Dr. Bansal wrote claimant returned to work after his injury, but was forced to retire. (JEx. 1, p.13)

As far as causation of claimant's neck and back condition, Dr. Bansal wrote:

> In my medical opinion, Mr. Crider incurred an acute on chronic injury to his neck and back on August 15, 2014. He was engaged in repetitive bending and lifting for 24 years at Alcoa, leading to marked degenerative changes in the cervical, thoracic, and lumbar spine. Against this backdrop, the spine is fairly vulnerable to injury as the threshold is markedly lowered. Consistent with that, the twisting incident on August 15, 2014 served as the proverbial "straw that broke the camel's back." After this incident, his body was no longer able to sustain or adapt to the cumulative toil that had occurred to his spine, fully aggravating his underlying spondylosis and facet arthropathy and requiring a multi-level fusion and laminotomies.

(JEx. 1, p. 15) Dr. Bansal provided a combined 30 percent of the whole body for claimant's neck and 19 percent whole body impairment for the back. (JEx. 1, pp. 17, 18) Dr. Bansal recommended the following restrictions;

> I would place a lifting restriction of 5 pounds. He should avoid lifting any overhead lifting.
>
> He needs to avoid work or activities that require repeated neck motion, or that place his neck in a posturally flexed position for any appreciable duration of time (greater than 15 minutes).
>
> No frequent bending or twisting.
>
> No prolonged sitting, standing, or walking greater than 30 minutes at a time.
>
> Continue to use a cane to prevent falling.

(JEx. 1, p.18)

CONCLUSIONS OF LAW

The two-year statute of limitations for original proceedings and the 90-day notice period does not began to run until the injured worker, acting as a reasonable person, knew or should have known that his or her physical condition was serious enough "to have a permanent adverse impact on the claimant's employment or employability." Herrera v. IBP, Inc., 633 N.W.2d 284, 288 (Iowa 2001). This rule is applicable to both traumatic and cumulative work injuries. Baker v. Bridgestone/Firestone, 872 N.W.2d 672 (Iowa 2015); Baker v. Bridgestone/Firestone, File Nos. 5040732 & 5040733 (Remand, April 13, 2016).

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

The time period both for giving notice and filing a claim does not begin to run until the claimant as a reasonable person, should recognize the nature, seriousness, and probable compensable character of the injury. The reasonableness of claimant's conduct is to be judged in light of claimant's education and intelligence. Claimant must know enough about the condition or incident to realize that it is work connected and serious. Claimant's realization that the injurious condition will have a permanent adverse impact on employability is sufficient to meet the serious requirement. Positive medical information is unnecessary if information from any source gives notice of the condition's probable compensability. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256 (Iowa 1980); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

In this case there is no indication from any of the claimant's treating physicians that they informed claimant that work could be the cause of his upper and lower back symptoms. Claimant was told he had a degenerative condition. There is not any convincing evidence that claimant had any idea that his back symptoms could be work related. Given the fact that the claimant's treating physicians did not identify work as a possible cause of his condition, claimant did not reasonably know his condition could be work related until July 2016. I find that claimant provided timely notice of his claim. He notified defendants within 90 days of being informed that his condition could be considered work related.

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler,

483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

In this case, the only physician who stated that claimant's condition was work related was Dr. Bansal. I do not find his opinion convincing. Dr. Bansal incorrectly identified the date of the injuries, the amount of work claimant was able to do after the August 15, 2014 injury, and relied upon a mechanism of injury that does not appear in the claimant's treatment records.

Dr. Hitchon acknowledged that claimant's conditions could possibly be caused or aggravated by his work at ALCOA, but did not opine within a reasonable degree of medical certainty.

Dr. Millea was not able to attribute claimant's back condition to his work at ALCOA. Claimant had significant degeneration of his back for many years before the alleged injury dates of August 15, 2014 and September 29, 2014.

I find that claimant has failed to meet his burden of proof in both claim files, that work at ALCOA caused his back condition.

Claimant has not established that he is entitled to reimbursement of the IME expense of Dr. Bansal. The IME was performed before the defendants obtained impairment opinions.

I decline to award claimant or defendants costs.

ORDER

FOR FILE NO. 5062108 (Date if injury, August 15, 2014):

The claimant shall take nothing further.

FOR FILE NO. 5062109 (Date of injury, September 29, 2014):

The claimant shall take nothing further.

Signed and filed this 23rd day of October, 2018.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/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.