

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLIFFORD SHAFRANEK,

Claimant,

vs.

THE MASCHHOFFS, LLC,

Employer,

and

U.S. FIRE INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

**FILED**  
JUL 30 2019  
WORKERS' COMPENSATION

File No. 5053593

ARBITRATION

DECISION

Head Notes: 1402.40, 1801, 2501

STATEMENT OF THE CASE

Claimant, Clifford ShafraneK, filed a petition in arbitration seeking workers' compensation benefits from The Maschhoffs, LLC (Maschhoffs), employer, and U.S. Fire Insurance Company, insurer, both as defendants. This case was heard on April 9, 2018 in Des Moines, Iowa by Deputy Workers' Compensation Commissioner Erica Fitch.

The record consists of Joint Exhibits 1-19, Claimant's Exhibits 1-7, Defendants' Exhibits A through L, and the testimony of claimant.

By order of delegation of authority, Deputy Workers' Compensation Commissioner Jim Christenson was appointed to prepare the finding of facts and proposed decision in this case.

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.

### ISSUES

1. Whether claimant's hip and knee problems are causally connected to the March 12, 2014 date of injury.
2. Whether the injury is a cause of temporary disability.
3. Whether there is a causal connection between the injury and the claimed medical expenses.
4. Costs.

The parties stipulated at hearing that the issue of claimant's entitlement to permanent partial disability benefits was not ripe at the time of hearing.

### FINDINGS OF FACT

Claimant was 49 years old at the time of hearing. Claimant was approximately one credit short of graduating from high school. He does not have a GED. Claimant has a certificate in food services from a community college. (Transcript pages 8-10)

Claimant has worked in a grocery store deli. Claimant built houses for approximately 11 years. He worked as a dock hand on a canal barge. Claimant has worked as a herdsman on hog farms. (Exhibit 5)

Claimant began employment with Maschhoffs in 2010 and worked there until 2014. Claimant worked as a lead person in farrowing and breeding. (Ex. 5)

Claimant's prior medical history is relevant. Claimant had a left inguinal hernia in November of 2011. The hernia was surgically repaired. Claimant had a recurrent left inguinal hernia in May of 2013. He had a second hernia repair in May of 2013. Claimant has also received treatment for testicular pain. Claimant returned to work after surgery to full-time work with no permanent impairment or permanent restrictions. (Joint Ex. 2, pp. 20, 23, 30, 33, 35, 38; Jt. Ex. 4, pp. 55-59; Tr. pp. 26-28)

On March 12, 2014 claimant was moving young sows from one building to another. Claimant testified the pigs became scared and tried to run in the opposite direction. Claimant testified he used a red board to attempt to redirect the pigs. Claimant fell back and felt a pop and pain in the right groin area. Claimant reported the injury to his employer the same day. (Tr. pp. 23-25)

Claimant was evaluated on March 26, 2014 by Matthew Manning, D.O. Claimant had complaints of a hernia. Claimant was assessed as having a recurrent inguinal hernia. He was given lifting restrictions and treated with medications. (Jt. Ex. 1, pp. 6-9)

Claimant was seen by Stephen Sundberg, M.D. on March 31, 2014. Claimant was assessed as having a possible muscle tear as opposed to a hernia. He was given an injection and treated with medication. (Jt. Ex. 5, pp. 60-65)

Claimant returned to Dr. Sundberg on April 9, 2014 with no changes in symptoms. He was continued on light duty. (Jt. Ex. 5, p. 63)

Claimant returned on April 29, 2014. He was again assessed as having left inguinal pain secondary to a muscle strain. He was continued on restrictions and treated with medication. (Jt. Ex. 5, pp. 64-67)

Claimant was evaluated by Edward Ortell, D.O. on May 15, 2014. Claimant was assessed as having an ilioinguinal neuropathy not connected with having a hernia. (Jt. Ex. 6)

Claimant underwent an MRI of the pelvis on June 24, 2014. (Jt. Ex. 1, p. 10) The MRI report was reviewed by Cassim Igram, M.D. Dr. Igram saw nothing on MRI that would explain claimant's left groin pain. Dr. Igram recommended claimant be evaluated by a hip specialist. (Jt. Ex. 7, pp. 74-76)

On July 29, 2014 claimant was evaluated by Steven Aviles, M.D. for pain in the left anterior hip with pain radiating to the inguinal area. Dr. Aviles assessed claimant as having an inguinal hernia. Dr. Aviles noted:

There is little doubt in my mind that his problem is associated with the inguinal region and is not a hip problem. He has mild bilateral osteoarthritis in his hip but I do not think that is contributing.

(Jt. Ex. 7, pp. 78-80)

Claimant was seen by Dr. Dennis Whitmer on August 18, 2014. No hernia was found on exam. Dr. Whitmer believed claimant had an ilioinguinal neuralgia. He recommended a pain center evaluation. Claimant was kept off work. (Jt. Ex. 8, pp. 101-102)

Claimant was seen by Clinton Harris, M.D., at Pain Specialists of Iowa on September 14, 2014. He was assessed as having an ilioinguinal neuralgia on the left. He was treated with medication. (Jt. Ex. 9, pp. 127-129)

Claimant returned to Dr. Whitmer on October 8, 2014. Given the length of time and no resolution of pain, exploratory surgery was recommended. (Jt. Ex. 8, pp. 106-107)

On March 9, 2015 claimant had an ilioinguinal and genitofemoral nerve block. The nerve block produced a 15 percent relief in pain for approximately one and a half weeks. (Jt. Ex. 9, pp. 132-135)

Claimant underwent a functional capacity evaluation (FCE) on June 3, 2015. Claimant's efforts were found to be inconsistent. Given the results, the FCE was found not to be a true representation of claimant's abilities. (Jt. Ex. 11)

In a June 12, 2015 letter claimant was informed by defendant insurer that a claims examiner had spoken with Dr. Whitmer. Based on that conversation, temporary benefits were stopped. Claimant was paid two percent permanent partial disability benefits. (Ex. J)

In an October 20, 2015 report, Todd Harbach, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant complained of pain in the low back and left groin. Dr. Harbach recommended a hip joint injection. He also recommended a potential SI joint injection and MRI of the hip. He did not find claimant at maximum medical improvement (MMI). He limited claimant to a 10-15 pound lift. (Jt. Ex. 7, pp. 82-87)

On November 11, 2015 claimant underwent an MRI of the bilateral hips. The results were negative for soft tissue abnormalities or fractures. (Jt. Ex. 12, p. 174)

Claimant was seen by Dana Simon, M.D. on November 19, 2015. Claimant received a left intra-articular hip injection. (Jt. Ex. 9, p. 149) Claimant returned to Dr. Simon on December 14, 2015. He indicated pain relief for one week when symptoms had returned. Dr. Simon recommended left hip surgery. (Jt. Ex. 9, p. 152)

In a December 14, 2015 note, written by claimant's attorney, Dr. Simon indicated claimant had not reached MMI from his March of 2014 injury and continued to receive reasonable and necessary care. (Ex. 1, p. 2)

Claimant had an MRI on the left hip on January 11, 2016. The findings were consistent with a femoral acetabular impingement. The MRI did not show a labral tear.

On January 20, 2016 claimant was evaluated by Dr. Aviles. Claimant had constant pain in the left posterior hip. Dr. Aviles noted he initially evaluated claimant in 2014. Claimant had no evidence of hip pathology at that time. Because claimant had some pain resolution with the injection, Dr. Aviles recommended arthroscopic surgery as a treatment option. (Jt. Ex. 7, pp. 93-96)

In a letter written by defense counsel, Dr. Aviles indicated claimant's work activities with his employer on March 12, 2014 did not cause or contribute to claimant's left hip pain. He indicated claimant did not require further treatment for the left inguinal pain. He believed claimant had reached MMI as of January 20, 2016. (Ex. K)

Claimant was seen by Christopher Nelson, D.O. on May 25, 2016. Dr. Nelson believed claimant's relief from injection confirmed an impingement in the acetabular or femoral sides. He recommended surgery. (Jt. Ex. 14, pp. 182-183)

On July 21, 2016 claimant underwent surgery with Dr. Nelson. Surgery consisted of left hip arthroscopic surgery. Claimant was assessed as having a labral tear. (Jt. Ex. 15, pp. 216-222)

Claimant underwent physical therapy from late July of 2016 through October of 2016. Claimant was discharged from physical therapy on October 6, 2016. (Jt. Ex. 16, p. 224)

In a November 9, 2016 letter Dr. Nelson assessed claimant as having an acute left hip labral tear. He opined claimant's labral tear was either caused or materially aggravated by the March of 2014 work injury. He indicated claimant should have lifting restrictions and was not to work with live hogs. (Ex. 2, pp. 7-8)

Claimant returned to Dr. Nelson on December 20, 2016. He found claimant at MMI and claimant was released to return to work. (Jt. Ex. 14, p. 196)

In a March 2, 2017 letter Dr. Harbach opined claimant sustained a labral tear of his left hip when he was pushed by hogs on March 12, 2014. He opined the care claimant received was reasonable and necessary. He found claimant at MMI as of December 20, 2016. (Ex. 3, pp. 18-19)

On March 6, 2017 claimant had an MRI of the left hip. It suggested a tear on the anterior aspect of the labrum. (Jt. Ex. 17, p. 255)

Claimant returned to Dr. Nelson on April 28, 2017 with continued left hip pain. Dr. Nelson recommended conservative treatment. (Jt. Ex. 14, p. 100)

On or about May 22, 2017 claimant began a new job installing DISH Network systems. (Ex. 5)

In a June 28, 2017 letter Dr. Nelson assessed claimant as having a recurrent labral tear of the left hip. He believed the tear was related to the work injury. He indicated claimant may require surgery and that claimant was trying to work through his pain. (Ex. 2, p. 11)

Claimant returned to Dr. Nelson on July 18, 2017. Claimant had left hip pain and right knee pain. An MRI was recommended. (Jt. Ex. 14, p. 201)

An MRI, taken in August of 2017, showed a medial meniscus tear on the right knee. Dr. Nelson recommended knee surgery. (Jt. Ex. 14, p. 204)

Claimant returned to Dr. Nelson on December 12, 2017 with complaints of left knee pain. He wanted to pursue surgery. Dr. Nelson recommended and performed an intra-articular left hip injection. (Jt. Ex. 14, p. 209)

On December 22, 2017 claimant was released to return to work without restrictions. (Jt. Ex. 14, p. 211)

On the December 28, 2017 report Sunil Bansal, M.D., gave his opinions of claimant's condition following an IME. Claimant had continued left hip pain along with shooting pain in the groin and buttock. Claimant also had right knee pain. Claimant was assessed as having ilioinguinal neuritis, a recurrent left labral tear and right knee meniscus tear. (Ex. 4, pp. 20-41)

Regarding the hip and right knee, Dr. Bansal recommended surgery. He found claimant was at MMI for the neuritis on June 8, 2015. He opined claimant's left groin and left hip injuries were work related. He opined claimant's right knee tear was a sequela to the left hip injury. Dr. Bansal found claimant could occasionally lift 25 pounds. He also restricted claimant to no frequent bending, squatting or climbing. (Ex. 4, pp. 41-45)

Claimant returned to Dr. Nelson on January 5, 2018. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 14, pp. 212-213)

Claimant testified that sometime in late 2017 or early 2018 he left his job as a DISH installer to have surgery. (Tr. p. 40)

On February 8, 2018 claimant underwent left hip surgery consisting of a labral repair. (Jt. Ex. 15, pp. 221-223)

On March 7, 2018 claimant saw Dr. Nelson for a four-week post-operation checkup. Claimant indicated he was doing well. (Jt. Ex. 14, pp. 214-215)

In a March 28, 2018 letter, Dr. Nelson again opined claimant's labral tear was work related and claimant's recurrent labral tear was related to the March of 2014 work injury. This was based, in part, that claimant had no labral tear before the accident. Claimant was not at MMI. Dr. Nelson cannot believe claimant would have permanent impairment from this injury. (Ex. 2, p. 14)

Claimant testified that approximately two weeks prior to hearing, he had surgery on his right knee. (Tr. p. 50) Claimant testified that following surgery on his left hip he felt good. (Tr. p. 40)

#### CONCLUSIONS OF LAW

The first issue to be determined is whether claimant's knee and hip condition are causally related to the injury of March 12, 2014.

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).

The record indicates claimant had continued hip and groin pain from approximately the date of injury until shortly after his second surgery for the labral tear. There is no evidence claimant had hip pain prior to the March of 2014 date of injury.

Four experts have opined regarding the causal link for the two labral repairs.

Claimant treated with Dr. Aviles approximately two times. Records from June of 2014 note claimant had left hip pain. At that time Dr. Aviles did not believe claimant had a hip problem but a hernia. (Jt. Ex. 7, pp. 78-80)

Records from the January of 2016 visit with Dr. Aviles indicated claimant had hip pain. Dr. Aviles noted claimant has had pain relief from the intra-articular injection and was willing to consider hip arthroscopic surgery. (Jt. Ex. 7, p. 93)

In a February of 2016 letter, written by defendants' counsel, Dr. Aviles indicated claimant's work at defendant employer did not cause or contribute to the left hip complaints and that his need for left hip surgery was unrelated to claimant's injury at Maschhoffs. (Ex. K)

Defendants contend Dr. Aviles' causation opinion should be considered rather than the opinions of Drs. Nelson and Bansal. This position is based, in large part on Dr. Aviles' letter found at Exhibit K. Defendants also contend claimant had no hip pathology in the months following his work incident. (Defendants' Post-Hearing Brief, pp. 12-17)

Dr. Aviles' opinion regarding causation is problematic for several reasons. First, it is clear from the July 29, 2014 date of service claimant was having some symptoms in his left hip. Records indicate claimant had left hip pain. The records suggest claimant discussed his left hip pain with Dr. Aviles, as Dr. Aviles clarified in his notes he believed claimant's pain was due to a hernia, and not hip pain. (Jt. Ex. 7, pp. 78-80)

Second, there is no record in evidence claimant had problems with a labral tear prior to the March of 2014 work injury.

The record indicates claimant had left hip pain when he first treated with Dr. Aviles in July of 2014. Dr. Aviles offered no rationale why claimant had no prior labral tear before the March of 2014 date of injury, and yet the labral tear was not connected with the date of injury. Dr. Aviles only evaluated claimant on two occasions. Based on this, it is found the opinions of Dr. Aviles regarding causation are found not convincing.

Dr. Nelson treated claimant for almost two years. He performed two surgeries on claimant. Dr. Nelson opined, in several reports, claimant's labral tear was caused or materially aggravated by the March of 2014 work injury. (Ex. 2, pp. 7-8, 11-12, 14) Dr. Nelson has more familiarity with claimant's condition and medical presentation than any other expert in this case. He based his opinions, in part, on the fact that claimant had no prior labral problems before his March of 2014 work accident. Based on these facts, it is found the opinions of Dr. Nelson regarding causation are more convincing than those of Dr. Aviles.

Dr. Harbach evaluated claimant once for an IME. Dr. Harbach initially opined claimant's labral tear injury was caused by being pushed over by hogs at work. (Ex. 3, pp. 18-19) Dr. Harbach later rescinded that opinion. (Ex. L) Because Dr. Harbach offered two different opinions regarding causation, his opinions are found not convincing.

Dr. Bansal opined claimant's labral tear injury was caused by the March of 2014 work injury. (Ex. 4)

Claimant had constant hip and groin pain, and later hip pain from the date of injury until his second surgery. There is no record claimant had a labral tear prior to the March of 2014 work injury. The opinions of Dr. Aviles regarding causation are found not



convincing. The opinions of Drs. Nelson and Bansal regarding causation of the left hip injury are found convincing. Based on this, it is found claimant has carried the burden of proof his labral tear was caused or aggravated by the March 12, 2014 work injury.

Claimant also contends he suffered a right knee injury that was a sequela to the March of 2014 hip injury.

Claimant did not allege a knee injury in his petition. He did not amend the petition. There is no evidence in the record claimant alleged a knee injury in either his answers to interrogatories or requests for production. While proceedings before this agency are informal and less technical than those in the courts, defendants have a fundamental right to be informed of the particulars of the claims made against them in order to prepare an adequate defense. Doerring v. Kramer, 556 N.W.2d 816 (Iowa App. 1996); Sulzberger Excavating, Inc. v. Glass, 351 N.W.2d 188 (Iowa App. 1984); Van Meter v. Van Meter, 328 N.W.2d 497 (Iowa 1983); Hoening v. Mason & Hanger, Inc., 162 N.W.2d 188, 192 (1968).

Claimant failed to include a claim for a knee injury as detailed above. As a result, he is precluded from now alleging his knee injury is a sequela to the March of 2014 left hip injury.

The next issue to be determined is whether claimant is entitled to temporary benefits.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Claimant's temporary benefits were discontinued in a letter dated June 12, 2015. (Ex. J) Claimant was placed at MMI by Dr. Nelson on December 20, 2016. (Jt. Ex. 14, p. 196)

Claimant had a second left hip surgery on February 8, 2018. There is no evidence in the record claimant had reached MMI by the time of hearing.

Based upon the above, claimant is due temporary benefits from June 13, 2015 through December 20, 2016 and from February 8, 2018 until such time as claimant reaches one of the three events as detailed under Iowa Code section 85.34(1).

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

As noted above, claimant failed to plead an injury to his right knee. As a result, claimant has failed to carry his burden of proof any medical bills related to treatment for the right knee are to be paid by defendants.

Defendants indicate in their brief they accept liability for claimant's inguinal nerve condition. As a result, defendants are liable for all medical bills related to this condition.

As noted above, claimant carried his burden of proof his labral tear was causally connected to the March 2014 work injury. There is no evidence the charges for treatment of the labral tear were not fair and reasonable. Defendants stipulated the medical bills regarding claimant's labral tear are causally connected to his hip injury. Based on this, defendants are liable for all medical expenses related to claimant's hip injury and labral tear.

The final issue to be determined is costs. Claimant seeks costs for the filing fee, service, and for two reports obtained from Dr. Harbach and Dr. Nelson.

Rule 876 IAC 4.33(6) permits the assessment of costs for obtaining two medical reports. Defendants offer no evidence any of the costs claimant seeks should not be reimbursed. Based upon this, defendants are liable for the costs sought by claimant.

ORDER

Therefore, it is ordered:

That defendants shall pay temporary total disability benefits from June 13, 2015 through December 20, 2016 and from February 8, 2016 until claimant reaches maximum medical improvement, at the rate of five hundred forty-one and 26/100 dollars (\$541.26) per week.

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. Apr. 24, 2018).

That defendants shall pay costs.

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

Signed and filed this 30<sup>th</sup> day of July, 2019.



JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
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JFC/sam

**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.