BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHNATHAN MORTALE,

Claimant,

vs.

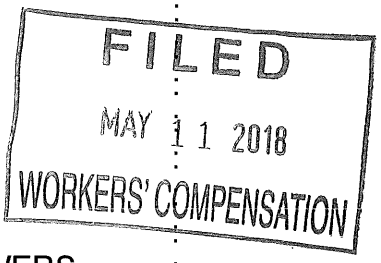
TRINITY STRUCTURAL TOWERS,

Employer,

and

ACE AMERICAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5057124

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Johnathan Mortale, filed a petition in arbitration seeking workers' compensation benefits from Trinity Structural Towers (Trinity), employer, and Ace American Insurance Company, insurer, both as defendants. This matter was heard in Des Moines, Iowa, on January 30, 2018 with a final submission date of February 20, 2018.

The record in this case consists of Joint Exhibit 1 through 11, Defendants' Exhibits A through B, and the testimony of claimant.

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.

ISSUE

1. The extent of claimant's entitlement to permanent partial disability benefits.

FINDINGS OF FACT

Claimant was 25 years old at the time of hearing. Claimant had a GED. Claimant has done plumbing and fabrication, built forms for foundations, driven a fork lift, and done welding and fabrication. (Exhibit 7)

Claimant began with Trinity in 2012. Claimant testified he was a foreman with Trinity and oversaw ten employees. Claimant said he was a hands-on foreman for Trinity. Claimant said that along with supervising employees, he ran a crane and performed welding.

Claimant's prior medical history is relevant. In September 2012, claimant was evaluated for a two-month history of lower back pain without a known injury. Claimant was assessed as having lower back pain and prescribed physical therapy and medication. (Joint Exhibit 8, pages 1-3)

In March 2013, claimant was assessed for back pain after falling on his back while shoveling snow. Claimant was diagnosed as having a mid-back pain and prescribed medication. (Jt. Ex. 8, pp. 5-6)

Claimant testified that on August 7, 2013, he was inside a windmill tower welding. Claimant said he was lying on his side, welding. Claimant went to get up, and as he stood up, claimant's coworkers began rotating the tower while he was inside. Claimant said his standing and the rotation of the tower as he stood, caused his left knee to pop. (Jt. Ex. 11, Deposition pages 19-21)

Claimant said he stayed at work the rest of his shift icing his knee.

On August 8, 2013, claimant was evaluated by Matthew Doty, M.D., for left knee pain. Claimant was assessed as having left knee pain. He was given a knee sleeve. (Jt. Ex. 1, p. 3)

On August 11, 2013, claimant went to the emergency room at Methodist Hospital for left knee pain. Claimant was put in a velcro splint and given crutches. (Jt. Ex. 2, p. 3)

On August 16, 2013, claimant had an MRI of the left knee. The MRI was consistent with a lateral sided knee injury. (Jt. Ex. 1, p. 20)

Claimant returned to Dr. Doty on August 19, 2013. Claimant was returned to work on modified duty of alternating sitting/standing and walking as tolerated. (Jt. Ex. 1, p. 21)

On August 26, 2013, claimant returned to Dr. Doty. Claimant had full function of the left knee without discomfort. Claimant was returned to full duty. Dr. Doty believed claimant was close to being at maximum medical improvement (MMI). (Jt. Ex. 1, p. 25)

Claimant returned to Dr. Doty on November 14, 2013. Claimant indicated his left knee still felt like it could give out. Physical therapy was recommended. (Jt. Ex. 1, p. 3)

Claimant returned to Dr. Doty on November 22, 2013 for a recheck of left knee pain. Claimant complained of his knee locking. Claimant was sent for an orthopedic referral. (Jt. Ex. 1, p. 32.1)

Claimant began with physical therapy on November 15, 2013. Claimant underwent a number of exercises for physical therapy including, but not limited to, hip abduction, hip extension, bridging, clam exercises, calf stretches, ultra sound, knee flexion, knee extension, wall squats, and heel raises. Claimant was discharged from physical therapy on December 18, 2013. (Jt. Ex. 3, pp. 1-12)

On December 30, 2012, claimant was evaluated by Kary Schulte, M.D., an orthopedic specialist. Claimant was assessed as having left fibular head subluxation. Surgery was discussed. Claimant was returned to work at his normal work duties. (Jt. Ex. 4)

Claimant was seen by Annunziato Amendola, M.D., an orthopedic surgeon, at the University of Iowa Hospitals and Clinics (UIHC), on February 24, 2014. Claimant complained of left knee lateral pain and popping. An MRI of the left knee, taken on the same day, showed a vertical tear of the posterior horn of the lateral meniscus. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 5, pp. 1-8)

On March 19, 2014, claimant had left knee surgery consistent of repair of the lateral meniscus. Surgery was performed by Dr. Amendola. (Jt. Ex. 5, pp. 13-16)

In April through July, claimant underwent physical therapy. Claimant's physical therapy exercises included, but were not limited to, gait training, heel slides, weight shifts, heel raises, hamstring curls, squats, step ups, and bicycling. A few records, during physical therapy during this period, note that claimant had an antalgic gait. (Jt. Ex. 3, pp. 16-62)

Claimant returned to Dr. Amendola on June 16, 2014. Claimant indicated his knee pain had worsened following surgery. Claimant was given a steroid injection. Claimant was continued on physical therapy as needed. (Jt. Ex. 5, pp. 27-29)

Claimant returned to Dr. Amendola on July 14, 2014. Claimant indicated the injection only gave him two days of pain relief. Claimant continued to indicate pain was worse following surgery. A second surgery was recommended and chosen as a treatment option. (Jt. Ex. 5, pp. 30-33)

On August 7, 2014, claimant had knee surgery consisting of a lateral meniscus repair. (Jt. Ex. 5, pp. 41-42)

On August 29, 2014, claimant had a third knee surgery to deal with a rupturing of the incision from the second surgery. Claimant had a debridement and a closure of the wound. (Jt. Ex. 5, pp. 47-50)

Claimant returned to Dr. Amendola on September 1, 2014. Claimant had full range of motion and no popping. Claimant was returned to work with modified activity of no squatting, kneeling, crouching, or lifting more than 30 pounds. (Jt. Ex. 5, pp. 66-67.1)

On January 5, 2015, claimant returned to Dr. Amendola. Claimant indicated the popping in the knee resolved. Claimant was returned to work with no squatting, kneeling, and no lifting more than 30 pounds. (Jt. Ex. 5, pp. 69-71)

On February 23, 2015, claimant was returned to work with current restrictions until his appointment with Dr. Chen. (Jt. Ex. 5, pp. 77-77.1)

On April 1, 2015, claimant was evaluated by Joseph Chen, M.D. Claimant was found to have a 10 percent permanent impairment to the left lower extremity. He was given restrictions of only occasional kneeling, squatting, crouching, and crawling. (Jt. Ex. 5, pp. 82-83)

In an October 3, 2017 report, Sunil Bansal, M.D., gave his opinion of claimant's condition following an independent medical evaluation (IME). Claimant had pain with kneeling and constant aching. Claimant complained of locking when standing for an extended period. Claimant did not want restrictions from Dr. Bansal. Dr. Bansal opined that claimant had an antalgic gait. (Jt. Ex. 6, pp. 1-9)

Dr. Bansal found that claimant had permanent impairment from his knee condition. He also opined that claimant had developed sacroiliitis due to an altered gait. He found claimant was at MMI for his knee as of April 1, 2015, and as of July 21, 2017 for his alleged back condition. Dr. Bansal found that claimant had 10 percent permanent impairment to the left lower extremity and a 3 percent permanent impairment to the body as a whole for the alleged sacroiliitis. (Jt. Ex. 6, pp. 10-13)

In a December 4, 2017 report, Joshua Kimmelman, D.O., gave his opinions of claimant's condition following an IME. Dr. Kimmelman assessed claimant as having chronic lower back pain. He opined that claimant's back condition was not related to the August 7, 2013 work injury. This was due, in part, because claimant had a two-month history of back pain back in September 2012. (Jt. Ex. 10, pp. 4-8)

A December 27, 2017 note, Dr. Bansal indicated he had reviewed Dr. Kimmelman's report. He reiterated his opinion claimant had developed a perpetuated sacroiliitis due to the left knee injury. (Jt. Ex. 6, p. 15)

Claimant said that he had no hip or back pain prior to his knee injury. He said he has a limp which he believes causes his lower back pain. Claimant said he has difficulty bending, squatting, lifting or carrying. Claimant said he has difficulty standing

for long periods of time. He said he has difficulty carrying heavier weights due to his knee and hip issues. Claimant said he takes over-the-counter medication for pain.

Claimant testified at the hearing that he told every doctor and physical therapist that he saw that he had back trouble.

CONCLUSIONS OF LAW

The only issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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 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).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a

scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Defendants accepted liability for claimant's left lower extremity injury. Claimant contends that as a result of his work-related left lower extremity injury, he also has a hip and back condition, and his injury should be assessed as an industrial disability.

Claimant treated for approximately a three month period of time with Dr. Doty for his left lower extremity injury. There is no mention in any of Dr. Doty's records of hip or back symptoms, complaints or problems. (Jt. Ex. 1)

Claimant was seen by Dr. Schulte on one occasion for an evaluation. There is no mention of Dr. Schulte's records of hip or back symptoms, complaints, or problems. (Jt. Ex. 4)

Claimant treated with Dr. Amendola for approximately one year. Dr. Amendola performed all of the claimant's knee surgeries. There is no indication in any of the records from the UIHC or Dr. Amendola regarding any hip or back symptoms, complaints or problems. (Jt. Ex. 5)

Claimant attended numerous physical therapy sessions for his left knee. It is true that in some of the physical therapy sessions claimant was noted to have an altered gait. It is true that in some of the physical therapy sessions claimant was given exercises for his hips. Claimant was also given numerous exercises for his lower extremities. Of the nearly 90 pages of physical therapy records, only one or two refer to claimant having any hip irritation. (Jt. Ex. 3, p. 52) None of the records indicate claimant had any back irritation.

Claimant was evaluated by Dr. Chen in April 2015. Claimant completed a symptom diagnosis indicating where he was experiencing symptoms. Claimant only indicated left knee symptoms. (Jt. Ex. 5, p. 84) Dr. Chen's evaluation found claimant had normal range of motion and strength in his hips and back. Dr. Chen's evaluation makes no mention of any hip or back symptoms, complaints, or problems. (Jt. Ex. 5, pp. 81-82)

Claimant had an IME with Dr. Kimmelman. Dr. Kimmelman opined that claimant's back condition was not related to his left knee accident. (Jt. Ex. 10, p. 14)

Only Dr. Bansal assessed claimant as having sacroiliitis related to claimant's knee injury. (Jt. Ex. 6, pp. 12-13) Dr. Bansal evaluated claimant on one occasion. Dr. Bansal offers no rationale why claimant has a work-related back condition, and yet no medical records, dating back to August 2013, make any reference to any back or hip complaints. Dr. Bansal offers no explanation or analysis why claimant allegedly has a work-related back condition, yet numerous physical therapy records spanning a year make scant reference to any back or hip conditions. Given Dr. Bansal's failure to address this particular issue, his opinion regarding causation is found not convincing.

Claimant was treated and evaluated by four different physicians in August 2013 through April 2015. There is no mention in any of these records of a back or hip condition. There is little mention of any hip or back condition in the nearly 90 pages of physical therapy records. Dr. Bansal's opinion regarding causation for a back injury are found not convincing. Given this record, claimant has failed to carry his burden of proof that his alleged back or hip condition is causally connected to his August 7, 2013 injury to the left knee.

Both Dr. Chen and Dr. Bansal found claimant had a 10 percent permanent impairment to the left lower extremity for his August 2013 knee injury. (Jt. Ex. 5, pp. 81-82, Jt. Ex. 6, p. 13) Given this record, claimant is due 22 weeks of permanent partial disability benefits. (22 weeks x 10 percent)

ORDER

THEREFORE, IT IS ORDERED:

That defendants shall pay twenty-two (22) weeks of permanent partial disability benefits at the rate of four hundred seventy-three and 44/100 dollars ($473.44) commencing on September 10, 2014.

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

That defendants shall pay interest on any unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall receive a credit for benefits already previously paid.

That both parties shall pay their own 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 11th day of May, 2018.

James F. Christenson

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.