BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PETER ANDERSEN, Claimant, vs. WESTHAVEN COMMUNITY, Employer, and ARGENT, A DIVISION OF WEST BEND, Insurance Carrier, Defendants.	File No. 19700492.01 ARBITRATION DECISION Head Note No: 1402.30

STATEMENT OF THE CASE

Claimant, Peter Andersen, filed a petition in arbitration seeking workers' compensation benefits from Westhaven Community ("Westhaven"), employer, and Argent, insurer, both as defendants. This matter was heard on October 29, 2020, with a final submission date of November 30, 2020.

The record in this case consists of Joint Exhibits 1-5, Claimant's Exhibits 1-4, Defendants' Exhibits A-E, and the testimony of claimant.

At hearing, claimant moved to dismiss file 19700653.01 (date of injury 12/19/2017), and file 19700493.01 (date of injury 09/13/2018). The motion was granted at hearing.

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 the injury resulted in a permanent disability; and if so,

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

FINDINGS OF FACT

Claimant was 50 years old at the time of hearing. Claimant graduated from high school. Claimant received an LPN license in 1998. (TR p. 10)

Claimant has worked at fast food restaurants, as a janitor and as a waiter. Claimant has worked for hospice companies and as a CNA. Claimant has also worked as a flow and charge nurse at assisted living facilities. (Ex. 2)

Claimant was hired by Westhaven in 2010 as a charge nurse.

On December 2, 2017, claimant was helping a CNA transfer a resident from a shower chair to a wheelchair when the resident's knees buckled. Claimant said he over-extended his arm and twisted his neck and upper back in holding the resident. Claimant said he felt a sharp pain in his right arm, neck and across the left side of his left shoulder. (TR pp. 18-19)

On the same date, claimant was evaluated by Arul Molian, M.D. Claimant had back pain and right arm pain after transferring a resident. Claimant was assessed as having right arm pain with tingling. Claimant was taken off work. (JE 1, pp. 1-5)

On December 4, 2017, claimant was seen by Charles Mooney, M.D. Claimant complained of tingling and pain in the right arm. Claimant was assessed as having right periscapular muscle strain. He was prescribed medication and physical therapy. Claimant was given restrictions limiting him to light duty work. (JE 1, pp. 6-8)

Claimant returned to Dr. Mooney on January 12, 2018. Claimant had no improvement following physical therapy. Claimant indicated increased pain at night and decreased range of motion. Claimant was assessed as having a right shoulder rotator cuff strain. Claimant was recommended to have an MRI. (JE 1, pp. 12-14)

On January 22, 2018, claimant underwent an MRI of the right shoulder. The MRI did not show a rotator cuff tear or tendinopathy. (Ex. A, p. 3)

Claimant returned to Dr. Mooney on January 25, 2018. Claimant complained of pain in the shoulder and the parascapular area. Claimant was recommended to have more physical therapy and to see an orthopedic specialist. (JE 1, p. 17)

Claimant saw Dr. Mooney on February 26, 2018, with complaints of continued right shoulder pain. Dr. Mooney noted claimant's MRI was normal. Claimant had normal cervical range of motion. Claimant was given a right shoulder subacromial injection. He was continued on physical therapy. (JE 1, p. 22)

On April 4, 2018, claimant was evaluated by David Sneller, M.D., an orthopedic surgeon. Claimant had ongoing right shoulder pain. Claimant indicated the injection by Dr. Mooney did not help with symptoms. Dr. Sneller noted claimant had a normal exam. Dr. Sneller did not believe surgery was warranted. He recommended claimant return to full duty work. (JE 1, pp. 26-27)

On May 21, 2018, claimant returned to Dr. Mooney. Claimant complained of right arm pain and tingling and numbness in the right hand. Dr. Mooney noted no objective basis for claimant's symptoms. He noted claimant's shoulders appeared normal with no pathological findings. Dr. Mooney recommended an EMG, cervical x-rays and consideration of a cervical MRI. (JE 1, pp. 28-30)

On June 4, 2018, claimant underwent EMG/NCV testing. Testing was normal for the right and left upper extremities with no findings supporting neuropathy, plexopathy, radiculopathy or myopathy. (JE 1, p. 37, Ex. A, p. 4)

On June 19, 2018, claimant had an MRI of the cervical spine. The MRI was normal, but showed a small central disc herniation at the C3-4 level. The MRI did not show significant spinal canal or neuroforaminal compromise. (JE 1, p. 37)

Claimant returned to Dr. Mooney on July 1, 2018. Dr. Mooney noted he could not explain claimant's continued symptoms. Claimant was released from care and found to be at maximal medical improvement (MMI). (JE 1, p. 37)

On September 13, 2018, claimant had a second work injury while assisting a resident.

On September 14, 2018, claimant was evaluated by Matthew Baughman, M.D., for pain in the right arm. Claimant was assessed as having right arm and neck pain and cervical radiculopathy. He was returned to occupational medicine. (JE 1, pp. 41-42)

On September 18, 2018, claimant was seen by Lacreasia Wheat-Hitchings, M.D. Claimant had numbness and tingling in the right arm. Claimant was given an injection. Claimant was put on modified duty and recommended to have an epidural steroid injection (ESI). (JE 1, pp. 45-46)

Claimant returned to Dr. Wheat-Hitchings on September 28, 2018. Claimant indicated the injection provided no relief. Claimant's exam was normal. Claimant was prescribed medication and physical therapy. (JE 1, pp. 50-51)

On October 8, 2018, claimant returned to Dr. Wheat-Hitchings. Claimant had no improvement in his symptoms. Dr. Wheat-Hitchings discharged claimant from care and returned him to work at regular duty. (JE 1, p. 53)

In a December 7, 2018 report, Robert Broghammer, M.D., gave his opinions of claimant's condition following a records review. Dr. Broghammer assessed claimant as having upper back strain due to the December 2, 2017, date of injury. He opined claimant's continuing right shoulder and neck problems were idiopathic in nature and not causally connected to the December 2, 2017 date of injury. He opined claimant had reached MMI and that claimant had no permanent impairment. (Ex. A, pp. 1-7)

On December 31, 2018, claimant reinjured his neck and right arm while putting a patient in a Hoyer lift.

Claimant returned to Dr. Wheat-Hitchings on January 3, 2019. Claimant complained of numbness and tingling in the right arm. Claimant was prescribed medication and given restrictions. (JE 1, pp. 66-67)

Claimant saw Dr. Wheat-Hitchings on January 28, 2019. Claimant's pain had returned to baseline. Claimant was discharged from care and returned to regular duty. (JE 1, p. 74)

On April 1, 2019, claimant was pushing a medication cart and stopped quickly. Claimant felt pain in his neck and left scapula. (JE 1, p. 81)

On April 2, 2019, claimant saw Nichole O'Brien, A.R.N.P. X-rays of the neck showed mild degenerative changes. X-rays of the left shoulder were negative. Claimant was prescribed medication and returned to work at modified duty. (JE 1, pp. 81-85)

Claimant returned to Nurse Practitioner O'Brien on April 23, 2019. Claimant indicated he was back to baseline with full range of motion. Claimant had full range of motion of the cervical spine and left shoulder. Claimant was released to return to work at full duty. (JE 1, pp. 88-89)

In a December 6, 2019 report, Dr. Broghammer indicated he reviewed medical records concerning claimant's alleged injury of December 31, 2018, when placing a Hoyer lift for a patient. He again opined that claimant had an upper back strain including a strain to the right shoulder area. He opined that claimant's injury did not cause cervical disc herniation and that any disc herniation was not work related. He opined that claimant did not require further medical care. (Ex. C)

In a March 12, 2020 report, Robert Rondinelli, M.D., gave his opinion of claimant's condition following an independent medical evaluation (IME). Claimant complained of numbness in his right hand. Claimant indicated a loss of motion and strength in his right arm and shoulder. Claimant also had scapular pain with work activity. (Ex. 1, pp. 1-6)

Dr. Rondinelli noted that claimant was asymptomatic prior to the December 2, 2017 incident. He opined that it may be that claimant had Ehlers-Danlos Syndrome, and that syndrome may have been aggravated by the December 2, 2017 date of injury. He also noted that the herniated disc in claimant's cervical spine was an incidental finding relating to claimant's upper extremity problems and that claimant's history of depression might be delaying claimant's recovery of his physical problems. (Ex. 1, pp. 8-9)

Dr. Rondinelli did not find claimant at MMI. He did provide a provisional rating of claimant. He found that claimant had an 18 percent permanent impairment of the body as a whole. Dr. Rondinelli limited claimant's lifting to no more than 20 pounds and to avoid right-handed activity at or above shoulder level. (Ex. 1, pp. 10-11)

In an April 7, 2020 report, Dr. Broghammer gave his opinion following a record review. Dr. Broghammer also reviewed Dr. Rondinelli's IME report. Dr. Broghammer indicated that if claimant had Ehlers-Danlos Syndrome, this could potentially explain claimant's ongoing subjective complaints. He opined that claimant's subjective complaints were unrelated to his work injury. He opined that claimant's ongoing subjective complaints might be related to claimant's Ehlers-Danlos Syndrome and possible psychological factors. He opined that claimant's continued complaints and symptoms were not work related. (Ex. D)

CONCLUSION OF LAW

The first issue to be determined is whether claimant's injury of December 2, 2017, resulted in a permanent disability.

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. 6.904(3).

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).

Claimant contends he has a permanent disability due to the December 2, 2017 injury. As detailed above, claimant has had multiple diagnostic testing. These include an MRI of the right shoulder, an MRI of the cervical spine, and an EMG/NCS test of the bilateral upper extremities. All diagnostic testing, except for a small disc herniation of the C3-4 level, have been normal. (Ex. A, pp. 3-4, JE 1, p. 37)

As Dr. Rondinelli notes, claimant has had multiple diagnostic testing including a right shoulder x-ray in December 2017, a left shoulder x-ray in April 2019, an MRI of the

right shoulder in January 2018, a cervical spine x-ray in May 2018, a cervical spine x-ray in January 2019, a cervical spine x-ray in April 2019, an MRI of the cervical spine in June 2018, and EMG and nerve conduction testing of the bilateral upper extremities in June 2018. Dr. Rondinelli notes, "These studies have been generally unremarkable, save for a small central disc herniation at C3-C4 with no specific central canal or foraminal compromise. (Ex. 1, p. 7)

Claimant had a normal exam by an orthopedic surgeon in April 2018. (JE 1, pp. 26-27)

Claimant's own IME physician, Dr. Rondinelli, notes that the C3-4 disc herniation is an incidental finding to claimant's symptoms. (Ex. 1, p. 9)

Dr. Mooney indicated in his June 2018 exam that he could not explain claimant's symptoms and did not see any evidence of a pathologic process that required further evaluation. (JE 1, p. 37)

Dr. Rondinelli assessed claimant with a potential Ehlers-Danlos Syndrome and that claimant had potential psychological barriers to recovery. Dr. Rondinelli opines that claimant may have a permanent disability based on these potential other conditions.

There is scant evidence in the record finding that claimant has an Ehlers-Danlos Syndrome. There is no evidence that claimant's injury of December 2, 2017, aggravated a "potential" Ehlers-Danlos Syndrome. There is no testing or evidence that claimant's December 2, 2017 injury aggravated an Ehlers-Danlos condition. There is no testing or evidence that any limitations claimant might have for a permanent disability are due to an aggravation of a pre-existing mental health condition. Given this record, the opinions of Dr. Rondinelli regarding causation and potential permanent disability are found not convincing.

Claimant has had numerous diagnostic testing, including an MRI of the cervical spine, an MRI of the shoulder, and EMG/NCS testing for both upper extremities. All diagnostic testing has been normal. The MRI of the cervical spine showed a small herniated disc at the C3-4 level. Even claimant's own expert notes that the herniated cervical disc is an incidental finding. Dr. Rondinelli's opinions regarding causation and permanent disability are found not convincing. Claimant had a normal exam by an orthopedic surgeon. Claimant has been returned to work to regular duty by numerous providers. Dr. Mooney notes that there is no evidence of any pathological process to suggest further evaluation. Dr. Broghammer has indicated in 3 reports that claimant's continued symptoms are not related to any work injury. Given this record, claimant has failed to carry his burden of proof that his December 2, 2017 injury resulted in permanent disability.

As claimant failed to carry his burden of proof his December 2, 2017 incident resulted in a permanent disability, all other issues are moot.

ORDER

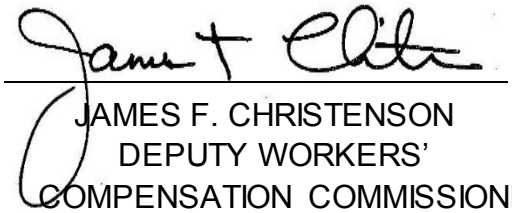
THEREFORE, IT IS ORDERED:

That claimant shall take nothing in the way of further benefits from this matter.

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 24th day of May, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

David Drake (via WCES)

Michael Roling (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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.