BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EARL "BUTCH" UMBLE, Claimant, vs. PRINCIPAL LIFE INSURANCE COMPANY, Employer, Self-Insured, Defendant.	:	File No. 5065077 A P P E A L D E C I S I O N Head Note Nos.: 1803, 1108, 1108.50

Defendant Principal Life Insurance Company, self-insured employer, appeals from an arbitration decision filed on August 13, 2018. Claimant Earl "Butch" Umble, filed a cross appeal. The case was heard on July 3, 2018, and it was considered fully submitted in front of the deputy worker's compensation commissioner on July 23, 2018.

In the arbitration decision, the deputy commissioner found that the claimant sustained a permanent disability arising out of pre-existing conditions to claimant's arthritic hip and the degenerative condition in claimant's back. Because of this permanent disability, claimant was awarded 15 percent industrial disability. Further, the deputy commissioner awarded medical benefits and pages one through nine of the attachment to the hearing report and mileage corresponding to the medical visits contained in aforementioned pages one through nine.

On appeal, defendant asserts the finding that there was a permanent aggravation of claimant's pre-existing conditions was erroneous and that the 15 percent industrial disability was excessive. Claimant cross appeals on the basis that the award of 15 percent industrial disability was too modest.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, those portions of the proposed arbitration decision filed on August 13, 2018, that relate to the issues properly raised on intra-agency appeal are affirmed in full.

Defendant's primary complaint regarding the permanency finding is that the deputy erroneously relied upon the opinion of Sunil Bansal, M.D. over that of Steven Aviles, M.D.

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).

Defendant argues that Dr. Bansal's opinions are largely speculative and, in some areas, contradictory. For instance, Dr. Bansal opines claimant suffered inflammation which caused synovial facet joints to fill with fluid and distend. Dr. Aviles points out that there is no evidence of inflammatory fluid in the MRI and the MRI findings correlate not to acute post-traumatic hip pain but rather degenerative changes. Dr. Aviles found claimant to have sustained a temporary aggravation that would return to baseline. Similarly, Todd Harbach, M.D., who treated claimant for back pain concluded that claimant had sustained an aggravation to a pre-existing condition but that it was temporary in nature.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

However, claimant did not return to baseline. He testified credibly and without rebuttal that he continues to have pain in his low back and hip up to the date of the hearing. Defendant's focus on the MRI scans failing to show a traumatic or ongoing injury overlooks the findings of the treating physicians who all agreed claimant did suffer an aggravation that they assumed would return to baseline. The greater weight of the evidence supports a finding that despite treatment claimant did not become pain-free.

While his work is largely sedentary and he has been able to carry out the essential duties of his position, he has modified his leisure activities. He is no longer able to participate in many of his non-work pleasure activities because of his ongoing pain. The deputy worker's compensation commissioner did not rely solely on Dr.

Bansal but rather looked at the totality of the evidence including the opinion of claimant's family physician, Debra Sixta, M.D., as well as claimant's unrebutted testimony about his ongoing pain and discomfort as well as the claimant's self-limitations in his personal life. All of those weigh in favor of finding that the work injury was a substantial factor in lighting up or aggravating claimant's pre-existing condition in his back and hip. Claimant has not returned to baseline and continues to suffer as a result of his work injury for the foreseeable future. The deputy commissioner's finding is upheld.

Both parties take issue with the deputy commissioner's impairment rating. Claimant argues that it is too low and defendants argue it is too high. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code section 85.34.

Claimant graduated from the University of Iowa in 1991 with a degree in computer science and has worked for the defendant as a senior systems analyst in IT for the last 27 years. His job in the most recent past is primarily sedentary in nature. Despite the permanency of his disability, claimant has made no adjustments to the way in which he carries out the essential functions of his job. However, the law requires the agency to take in a totality of circumstances in determining whether the claimant's earning capacity has been changed by his permanent disability. In this particular circumstance, while claimant can continue in his current position for his current employer without accommodation or restriction, some part of the market place of labor has been affected due to his ongoing disability and thus his earning capacity has been

affected. His feet often go numb while walking longer distances, he is not able to run any significant distance, and his ability to be an outdoorsman engaging in physical activities has been greatly curtailed. While his current position does not require physical exertions of that nature, other positions in the labor market place do. Thus, a finding of 15 percent industrial disability is not excessive. The deputy workers' compensation commissioner's award is upheld.

I further affirm the deputy commissioner's decision that claimant is entitled to reimbursement of medical expenses identified in pages one through nine of the attachment to the hearing report as well as mileage that corresponds to the medical visits in the aforementioned pages.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 13, 2018, is affirmed in full.

Defendant shall pay claimant permanent partial disability benefits of seventy-five (75) weeks, beginning on the stipulated commencement date of January 16, 2016, until all benefits are paid in full.

All weekly benefits shall be paid at the stipulated rate of one thousand, one hundred and eighty-three and 79/100 dollars ($1,183.79) per week.

All accrued benefits shall be paid in a lump sum.

Defendant 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).

Defendant shall pay claimant medical expenses as set forth in this decision.

Defendant shall pay claimant medical mileage as set forth in this decision.

Defendant shall reimburse claimant arbitration costs in the amount of one hundred dollars ($100.00).

Costs of the appeal are assessed against defendant.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 23rd day of March, 2020.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Donna R. Miller Via WCES

E.J. Giovannetti Via WCES