

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TRAVIS M. SCHULTZ,

Claimant,

vs.

VENDORS UNLIMITED,

Employer,

and

CINCINATTI INSURANCE,

Insurance Carrier,
Defendants.

FILED

JUL 08 2016

WORKERS COMPENSATION

File No. 5049177

ARBITRATION DECISION

Head Note Nos.: 1108, 1803, 2907

STATEMENT OF THE CASE

Travis Schultz, claimant, filed a petition in arbitration seeking workers' compensation benefits from Vendors Unlimited and its insurer, Cincinnati Insurance Company, as a result of an injury he sustained on October 6, 2010 that arose out of and in the course of his employment. This case was heard in Waterloo, Iowa and fully submitted on November 20, 2015. The evidence in this case consists of the testimony of claimant, Julie O'Neill and Molly Griswold and claimant's exhibits 1 through 6 and defendants' exhibits A through H.

ISSUES

The extent of claimant's disability.

Assessment of costs.

The stipulations contained in the hearing report are accepted and incorporated into this decision as if fully set forth. The parties proffered weekly workers' compensation rate of \$437.18 is accepted as claimant's weekly rate.

FINDINGS OF FACT

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

Travis Schultz, claimant, was 43 years old at the time of the hearing and is now 44 years old. He graduated from high school in 1990. He attended 2 community

colleges from 1990 through 1993. He obtained an associate of science degree in electronic engineering in 1997. (Exhibit 5, page 189)

At the time of the hearing claimant was working for the defendant, Vendors Unlimited (Vendors). Claimant testified that he started to work for Vendors about a year before his work injury of October 6, 2010. (Transcript, page 8) Before working for Vendors, he repaired copiers from, 1998 until 2000. He had a number of seasonal jobs, driving and construction. He worked nine months as a correctional officer at Anamosa State Penitentiary in 2001. He also worked nine months security at a bar. From 2004 through 2007/2008 he performed maintenance on electrical and mechanical machines for Airways in Cedar Rapids, Iowa. (Ex. 5, pp. 191, 192; Tr. pp. 53 – 55; Ex. G, p. 22)

Claimant's position with Vendors is a route driver. Claimant drives every day and fills vending machines. He drives from 100 to 180 miles a day. He described the job as fast paced. The most physical portions of the job are when he has to hand carry cases of pop, cases of snacks and load the truck at night for the next day's run. (Tr. pp. 10, 11)

On October 6, 2010, claimant was leaving his truck. His foot got stuck in a plate on the truck and he fell out the door to his truck and landed on the second step. He eventually was able to extricate himself from that position and he fell to the ground. When claimant fell in the truck, he hit his perineum. Claimant recovered and drove back to Vendors. Upon reporting his injury claimant was taken to the hospital. He left the emergency department about 1:00 a.m. and was sent home.

He returned to the hospital the next day due to his pain in his perineum and testicles. (Tr. p. 16) Claimant was admitted, and an abscess was discovered in the perineum that was surgically drained. (Tr. p. 18) Claimant believes he was in the hospital for five days. Claimant has had three abscesses in the perineum area since his work accident. (Tr. p. 45) Claimant's pain continued and he was referred to the University of Iowa Hospital and Clinics (UIHC). Claimant said that he received medications, a steroid injection and nerve blocks to manage his pain. Claimant said that initially he received some relief, but as time went on the period of relief has shortened. (Tr. pp. 21, 22) At the UIHC claimant was told that surgery was not an option and he was referred to the UIHC pain clinic. (Tr. p. 20) At the time of the hearing he was still receiving care from the UIHC pain clinic. (Tr. p. 21) In early 2013, claimant's physicians at UIHC suggested that claimant try a spinal cord stimulator. (Tr. p. 25) In May 2013 a trial spinal cord stimulator (SCS) was implanted in claimant. The SCS provided some relief and improved claimant's ability to sleep so it was implanted on a permanent basis. (Tr. 27) The SCS helps claimant with his burning pain, but does not help with his pins and needles, pain and numbness. (Tr. p. 29) Claimant is not to use the SCS while driving or at work.

Claimant testified that he has significantly limited his non-work activity since his accident. He has some difficulties sitting flat in a chair or when driving, he sits to one side, more on a hip. Claimant testified that the numbness he has causes difficulty in recognizing urgency for his bowel movements and he now has to bring additional pants

to work. (Tr. p. 39) Claimant also testified that he now falls frequently due to difficulty with his legs. He falls once every two to three days. (Tr. p. 41) Claimant also testified as to pins and needles and a burning feeling in his arms. Claimant stated that he drops items every day. Claimant believes that the problems with his legs and arms are related to the work injury. (Tr. p. 42) Claimant testified that prior to his work injury he did not have any difficulty with his arms and legs. At the time of the hearing claimant had not been evaluated by a neurologist. (Tr. p. 44)

Claimant has had to slow the pace that he works at for his job with Vendors. He said it was difficult for keep working at Vendors and he did not know how much longer he could keep working. (Tr. p.49) Claimant has been told that with the SCS he will not be able to continue to engage in heavy lifting and that that he could have difficulty in maintaining his current position for over five years. (Tr. pp. 50, 51)

Claimant has a commercial driver's license (CDL) to perform his job as a route driver. He passed a DOT physical in 2013. (Ex. G, p. 6) Claimant applied for a position of route mover with Vendors shortly after the SCS was installed. He did not get this job.

Molly Griswold was called by the defendants to testify. Ms. Griswold is the office manager at Vendors. She stated the claimant is back in the office timely after his daily route. (Tr. p. 88)

Julie O'Neill was called by the claimant to testify. Ms. O'Neill and claimant cohabitate and have two children together. She was living with claimant before his work injury at Vendors. Ms. O'Neill said that injury has affected the claimant greatly. Claimant was active before his injury and now is not. (Tr. p. 78) She testified claimant gets home from work and just sits on the couch. She has witnessed him dropping items and hearing him fall. (Tr. pp. 79, 80, 82)

The medical evidence is not in much dispute. After his fall at work claimant went to the Findley Hospital on October 6, 2010. (Ex. 1. p. 1) On October 7, 2010, Brian Nelson, M.D.'s assessment was,

A 38-year-old with straddle injury with painful hematoma in his scrotum. Intolerant to pain. Being admitted for IV pain medicines and there is a question of a cellulitis based on CT readings of radiologist. At this point he is receiving IV antibiotics through the emergency room. Will continue Zosyn for broad coverage. We will give IV and pain medicines and nausea medicine. Will have a urology evaluate [sic] in the hospital tomorrow. Further plan based on urology.

(Ex. 1, p. 5) On October 8, 2010 claimant had a cystoscopy, incision and drainage of perineal abscess. His post-operative diagnosis was "Perineal abscess." (Ex. 1, p. 6) Claimant's discharge diagnosis was, "1. Perineal abscess. 2. Scrotal trauma." (Ex. 1, p. 8)

On January 20, 2011 Keith Shaw, M.D., examined claimant for a scrotal hematoma. Claimant had bloody drainage in the perineal area which Dr. Shaw was unable to explain, and he made a referral to a colorectal surgeon. (Ex. 2, p. 24) On February 7, 2011, Douglas Khoury, M.D. examined claimant. He opined that claimant's primary problem was his left testicle and referred claimant to a urologist. (Ex. D, p. 1)

Claimant was referred to UIHC and was seen by John Byrn, M.D., on March 21, 2011. Dr. Byrn's assessment was "39 yo male with perineal and scrotal pain." (Ex. 3, p. 27) He ordered an MRI. The results of the MRI were;

1. No evidence of perineal or perianorectal abscess.
2. Small area of mildly increased STIR signal and enhancement in the perineum posterior to the scrotum, a nonspecific finding, could be related to mild skin inflammation or old granulation tissue.
3. Linear enhancement extending posteriorly from anus and terminating in the medial right gluteal fold at a small area of increased signal and enhancement; no discrete fluid collection is identified. Findings could represent a granulated perianal fistula.

(Ex. 3, p. 30) Dr. Byrn's assessment on March 28, 2011 was "39 yo male with perineal pain, possibly neuropathic." (Ex. 3, p. 30) Claimant was referred to the chronic pain clinic at the UIHC.

Usman Saleem, M.D.'s assessment was:

Travis Schultz is a 39 year old man with history of perineal abscess sp I&D and now presents with symptoms consistent with neuropathic pain. The pain in his legs and gluteals is likely myopathic pain from compensatory mechanical changes that the patient has made i.e. sitting in different positions than normal.

(Ex. 3, p. 33) Dr. Saleem prescribed several medications. On July 7, 2012, an assessment at the UIHC by Esther Benedetti, M.D. was

39 year old male who suffered from a groin injury after a fall at work in October 2010. Several days after the fall a perineal abscess was drained. He has had persistent groin numbness and tingling with episodic, debilitating severe pain. We believe his injury caused a neuropathy effecting the coccyx, levator ani and peritoneum. He also has rectal hyposensitivity. He is still having a bloody pus from his rectum every two weeks.

(Ex. 3, pp. 35, 36) Dr. Benedetti concluded claimant had neuropathic perineal pain as a sequela of the October 6, 2010 work injury and recommended a ganglion nerve block. Claimant received his first nerve block on July 8, 2011. (Ex. 3, p. 40) Claimant

received a number of ganglion nerve blocks. On January 4, 2012, Ron Schey, M.D. at UIHC wrote,

He is unable to sit comfortably due to his severe symptoms. He has continued to work but is [sic] has been very difficult to [sic] him. Currently has a daily movement every morning with completed evacuation sensation, with once-twice a week an afternoon episode of pressure and urgency. (Emphasis in original.)

(Ex. 3, p. 71) A January 11, 2012 note at the UIHC stated that claimant could not sense when he was having bowel movements, so he defecated on a timed schedule to avoid accidents. (Ex. 3, p. 75) On January 6, 2012, Sanjeev Gupta, M.D. examined claimant for perineal pain. (Ex. 1, p. 9) Dr. Gupta found a perineal abscess, which he drained on January 7, 2012. (Ex. 1, pp. 10, 14)

On January 25, 2013, Dr. Benedetti discussed with claimant using an SCS. (Ex. 3, p. 106)

On February 25, 2013, Timothy Miller, M.D. of the Findley Hospital examined claimant and discussed claimant's options concerning treatment. His diagnosis was,

[C]occygodynia with secondary diagnosis of neuropathic pain related to injury of the nerve denervation primarily of sacral 5 and the caudal nerve branches, I believe these are related to damage occurring during the injury of 10/06/2010 and associated abscess.

(Ex. 1, p. 22)

On May 6, 2013, claimant had an SCS trial. (Ex. 3, p. 109) It was considered a successful trial and a permanent SCS was implanted on May 29, 2013. (Ex. 3, p. 126) On July 12, 2013, claimant reported 2 unexplained falls when the SCS was turned off. (Ex. 3, p. 131)

On August 26, 2013, UIHC released claimant to return to work without restrictions as of September 3, 2013. He was advised not to use the SCS while driving and ideally not at work. (Ex. 3, p. 142) On September 27, 2013, claimant reported that when he is able to use the SCS he receives 70-80 percent relief. He also reported incidents of his legs giving away. (Ex. 3, p. 145) On January 15, 2014, Dr. Benedetti's diagnosis was, "[m]ale perineal pain, [p]erineal pain in male and CRPS (complex regional pain syndrome)." (Ex. 3, p. 149) Dr. Benedetti noted that the SCS gave claimant relief when he could use it, but he was not able to use it at work. (Ex. 3, p. 149)

On February 12, 2014, Joseph Chen, M.D. examined claimant. Dr. Chen did not believe that there were additional treatments that would help claimant and placed claimant at maximum medical improvement (MMI). Dr. Chen provided a 23 percent of the whole person impairment. (Ex. 3, p. 157)

On July 9, 2014, claimant saw Dr. Benedetti with complaints of new onset of numbness and tingling in the left lower and left upper extremities and right hand. (Ex. 3, p. 157) Dr. Benedetti's assessment was;

41 yo M s/p SCS implant with NSGY presents to our clinic for evaluation of new onset diffuse sensory symptoms of numbness and tingling in upper and lower extremities.

Neuropathic pain

Given the presentation of the symptoms no present in a dermatomal/nerve distribution pattern, it is hard to pin point the pathology of these symptoms. We do not think it is related to the SCS as the patient reports good results when it is on and does not want to make any changes in it.

(Ex. 3, p. 161)

On March 5, 2015, Dr. Benedetti responded to questions from claimant's counsel. Dr. Benedetti made the following comments,

1. I do not think that his recent symptoms (2 months before last visit) in his arms and legs (tingling and numbness) are related to his rectal injury or to the spinal cord stimulator implant.

2. I indeed feel that he should be evaluated by a neurologist given the fact that these symptoms are new and unlikely to be related to the injury or the interventional treatment that he has undergone for its management.

(Ex. B, p. 3)

On May 7, 2015, Mark Taylor, M.D. performed an independent medical examination (IME). (Ex. 4, pp 170 – 184) Dr. Taylor assigned a 25 percent impairment whole person rating. He generally agreed with Dr. Chen's rating and included localized lumbar pain with palpation due to the SCS. (Ex. 4, pp. 180, 181) Dr. Taylor opined that claimant's current level of work may be too much due to claimant's worsening symptoms and recommended a 30-40 pound lifting limit above the knees and alternate between sitting, standing and walking as needed. He recommend against ladders. (Ex. 4, p. 181) Dr. Taylor recommended a neurological examination.

As for claimant's condition in his extremities he wrote,

Presently, it appears more likely than not that the symptoms extending into his posterior thighs are related to the original injury and disease process, including his neuropathic pain. . . . The upper extremity symptoms are somewhat more difficult to explain from an anatomic and neurologic standpoint.

(Ex. 4, p. 182) He recommend claimant be examined at the Mayo Clinic.

The claimant was a credible witness. His body movements, eye contact, cadence of testimony, speech patterns, general demeanor, and general consistency were all consistent with a credible witness.

Claimant is a motivated employee. He has remained employed at Vendors. He credibly testified it was getting harder to do his job due to his pain in his groin area. Claimant has an implanted medical device, the SCS. He has lifting restrictions recommended by Dr. Taylor. He is unable to use the SCS at work and has been able to work through his pain. He is not able to feel urgency in his bowel movements and takes extra clothing to work in case of defecation accidents. Considering the claimant's medical impairments, training, permanent restrictions, daily pain, as well as all other factors of industrial disability, the claimant has suffered a 35 percent loss of earning capacity.

CONCLUSIONS OF LAW

The parties have stipulated that claimant suffered a permanent injury and permanent impairment due to his fall at work.

The parties do not agree as to the extent of permanent impairment and where his impairment has affected his lower and upper extremities.

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 evidence about claimant's upper extremity being related to his work injury or the SCS is not convincing. It is possible, but no medical opinion has thus connected those symptoms to his injury. Other than the fact that he did not have the symptoms

before his work injury, there is no convincing medical evidence that these symptoms are a result of his October 6, 2010 work injury.

There is an opinion by Dr. Taylor that the left lower extremity numbness is related to the work injury. Dr. Benedetti did not believe the symptoms in claimant's arms and legs were related to his work injury or the SCS. I find Dr. Benedetti's opinion more convincing. She has had much more contact with the claimant and she and staff at the UIHC pain clinic have extensive knowledge of claimant's conditions. A neurological examination was recommended, which could have provided information concerning causation, but it was not performed at the time of the hearing. Claimant has not proven by a preponderance of the evidence that the symptoms in his legs and arms arose out of his work injury.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. 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).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant has argued that his industrial disability is substantial. He argued that his working life was significantly shortened. There was no medical or vocational evidence introduced to prove this as a fact. I found that claimant has a 35 percent loss of earning capacity. I considered the fact that claimant is still working for Vendors, performing the same job. While the SCS provides claimant some relief from pain, he is not able to use it at work. He has lifting limitations. Occasionally claimant is incontinent due to his work injury. Claimant credibly testified he has more difficulty performing his job with Vendors. He could not work security in a bar with an SCS. His current knowledge on working with copiers is most likely out of date. I considered all of the factors of industrial disability and find that claimant has a 35 percent industrial disability, entitling claimant to 175 weeks of permanent partial disability benefits.

As claimant has prevailed in this matter, I award claimant the \$100.00 filing fee pursuant to rule 876 IAC 4.33.

ORDER

Defendants shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability benefits at the weekly rate of four hundred thirty-seven and 18/100 dollars (\$437.18) commencing September 9, 2013.

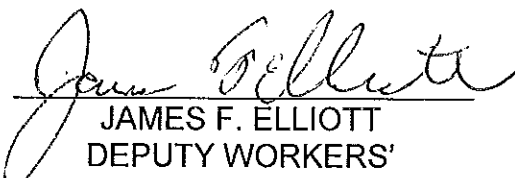
Defendants shall have credit for indemnity benefits that they have paid claimant.

Defendants shall pay any past due amounts in a lump sum with interest.

Defendants shall pay claimant one hundred and 00/100 dollars (\$100.00) for costs.

Defendants shall file subsequent reports of injury (SROI) as required by this agency.

Signed and filed this 8th day of July, 2016.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Chadwyn D. Cox
Attorney at Law
PO Box 239
Dubuque, IA 52004-0239
cox@rkenline.com

Christopher C. Fry
Attorney at Law
700 Locust St., Ste. 200
Dubuque, IA 52001
cfry@octhomaslaw.com

JFE/srs

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.