

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHANE MARCOV,

Claimant,

vs.

COLLIS, INC.,

Employer,

and

SAFETY NATIONAL INSURANCE CO.,

Insurance Carrier,

Defendants.

FILED
AUG 02 2019
WORKERS COMPENSATION

File No. 5059018

ARBITRATION

DECISION

Head Note Nos.: 1108, 2500

STATEMENT OF THE CASE

Shane Marcov, claimant, filed a petition in arbitration seeking workers' compensation benefits from his employer, Collis, Inc. and Safety National Insurance Company. The matter proceeded to hearing on June 10, 2019. The parties submitted post-hearing briefs and the matter was considered fully submitted on July 22, 2019.

The dispute in this case involves payment of medical expenses. The record was held open post-hearing to allow claimant to submit the most recent medical treatment records and bills. The evidentiary record includes: Claimant's Exhibits (also labeled as Joint Exhibits) marked, JE1 through JE18, which were admitted at hearing, along with JE19, which was timely submitted by claimant post-hearing. The record also contains Defendants' Exhibit A. In addition, claimant provided testimony 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

The parties submitted the following disputed issues for resolution:

1. Whether claimant is entitled to payment of medical expenses contained in Exhibit JE15 and JE19.
2. Costs as attached to the Hearing Report.

FINDINGS OF FACT

After a review of the evidence presented, I find as follows:

Shane Marcov, claimant, was 46 years old at the time of the hearing. (Tr. p. 8) He completed the eighth grade. (Ex. A-8)

On October 9, 2016, claimant was working for the defendant employer when he fell through a hole in the floor and "caught his right upper leg on the floor when his left knee went down." (Ex. JE1-3)

On October 10, 2016, claimant received treatment with Medical Associates, and complained of pain in his right groin and right thigh. There was no mention of any back pain during his initial medical evaluation. (Ex. JE1, pp. 1-6)

Defendants have admitted claimant sustained an injury to his right leg and groin, but have denied certain medical bills as unauthorized and further denied any injury to claimant beyond the right leg and groin.

Claimant continued to treat with Medical Associates. On October 17, 2016, claimant noted 25 percent improvement with no pain at rest. (Ex. JE2-3) The assessment was, "right hip strain, sequela." (Ex. JE2-4) On October 27, 2016, the injury was described as involving the right "hip/groin." (Ex. JE4-3) The pain was described as descending down the leg to the ankle. (Ex. JE4, pp. 1-5) On October 28, 2016, claimant complained of pain in the groin area with numbness from groin to toes, and the working diagnosis was "Contusion RIGHT thigh." (Ex. JE5-5)

Significantly, there was no recorded complaint of back pain during claimant's treatment with Medical Associates and his last diagnosis did not extend beyond the right leg.

On November 19, 2016, claimant presented at Mercy Medical Center Emergency Department with a complaint of right leg and right groin pain. (Ex. JE6-1) The complaints were also described as right hip, right upper leg/thigh and lower pelvis pain. (Ex. JE6-4, 5) Claimant underwent a CT Scan of the abdomen with pelvis contrast,

which showed no acute findings. (Ex. JE6-8) He was given hydrocodone for pain. (Ex. JE6-9) I note that there was again, no complaint of back pain.

Claimant testified that he did not report to his employer that he needed medical attention before going to the Emergency Room on November 19, 2016. (Ex. Tr. p. 22) Then he testified later that he told a supervisor he was going to this appointment. (Tr. p. 42) I find claimant's testimony contradictory and not credible on this point.

The November 19, 2016 emergency room visit was not authorized by defendants. There was no evidence presented of the nature of the emergent situation that might have prevented claimant from seeking authorized care. Further, at one point, claimant testified that he did not tell his employer about any unauthorized medical care. (Tr. p. 45) Claimant stated in regards to the unauthorized emergency room visits: "I'm not gonna [sic] call Collis to get permission to go to an ER doctor for something that was their fault." (Tr. p. 45)

Deb Bianchi, the human resources manager for the employer, testified that she is responsible for the general management of workers' compensation cases and has contact with employees about doctor appointments. (Tr. pp. 59-60) She testified that she met with claimant about his noncompliance with doctor appointments. (Tr. p. 62) She further testified that she was advised by the authorized medical provider, that claimant had missed several appointments. She then met with claimant to discuss his noncompliance. (Tr. pp. 61-62) Claimant denied that he ever met with or spoke to Ms. Bianchi about his medical care in this case. (Tr. p. 39) I find claimant not credible on this point. Ms. Bianchi testified credibly that she had a face to face meeting with claimant in her office about his medical care. (Tr. p. 62) Ms. Bianchi also credibly testified that claimant never expressed to her any dissatisfaction about the authorized medical care or his desire for any additional care. (Tr. pp. 63, 71-71)

Claimant testified that he was told by Mark Steel, the safety manager, that he could no longer receive medical care after his last appointment with Medical Associates. (Tr. pp. 38-40) I do not find claimant's testimony credible on this point. Ms. Bianchi testified credibly that Mr. Steel, who has worked for the employer for over 30 years, does not have authority to grant or deny authorization for appointments and would not have done so. (Tr. p. 60)

Claimant's testimony concerning who he spoke to about medical care and when it might have occurred was contradictory on multiple occasions during the hearing. I do not find claimant's testimony credible concerning who he allegedly spoke to, what might have been said, and any response he received concerning his medical care.

I find that the November 19, 2016 visit to the emergency room was unauthorized medical care that was not truly emergent in nature, such that claimant was reasonably prevented from first seeking authorized care from the employer. I also note that

claimant did not seek alternate medical care under Iowa Code section 85.27(4) and he was therefore, never denied alternate medical care.

Claimant returned to the emergency department on December 1, 2016 for unrelated headaches. Although the headaches were the primary concern that brought him to the emergency department, it is noted that claimant had "chronic back pain," and "chronic leg pain," and the "Active" problem was listed as "back pain." (Ex. JE7-1) However, claimant's back was noted to have "Normal range of motion" and there were no opinions given concerning the cause of the back pain. (Ex. JE7-2) This is the first recorded mention of back pain in the medical records, about eight weeks after the work incident.

Claimant testified that he was terminated from his employment on December 2, 2016. (Tr. p. 23)

On December 8, 2016, claimant reported to the Midwest Medical Center Emergency Department that he had right hip and lower back pain "for the past 9 weeks after falling through a floor." (Ex. JE8-3) This is the first mention in the medical records wherein claimant described back pain in relation to the work injury. However, again, there is no medical opinion regarding causation of the back condition. Claimant was told to follow-up with his primary care physician. (Ex. JE8-6) Concerning the work injury, it is noted that the doctor had "No information about his injury," and claimant "Seems to have had a normal exam," at his prior visit and there were no "records from his 'company doc'" to review. (Ex. JE8-7)

There are no additional treatment records for six months thereafter until June 9, 2017, when claimant was seen in the Emergency Department for an unrelated forehead laceration. At this visit, claimant reported "No Chronic Problems," and he had normal musculoskeletal range of motion, and no problems were noted. (Ex. JE9-1)

On August 21, 2017, claimant reported to Community Health Care that he had back pain since a "fall while at work, 10 months ago" . . . when he "fell through a floor and landed on a joist," and his "Back pain has progressively gotten worse with radiation to the right leg." (Ex. JE11-3) Again, there is no specific causation opinion from the medical provider concerning the back condition.

On September 19, 2017, claimant underwent an MRI of the lumbar spine due to "Low back pain and bilateral leg radiculopathy. Recent Fall." (Ex. JE12-1) Although it could be assumed, it is unclear if the "Recent Fall" refers to the work injury from over 11 months earlier, or a more recent undisclosed incident. It seems odd to refer to a fall from 11 months earlier as "recent" and it seems equally odd to not describe a more recent fall. (Ex. JE12-1) Claimant also underwent a thoracic spine MRI on the same date. The lumbar spine showed mild degenerative changes, worse at L4-5, with mild-to-moderate central canal narrowing. (Ex. JE12-2) The thoracic spine MRI was normal. (Ex. JE12-3)

It is significant that the low back condition was noted to be degenerative in nature with no mention of any acute condition.

On December 23, 2017, claimant was seen again at the emergency department and described worsening right-sided lumbar pain radiating down the posterior buttocks and lateral right thigh with numbness and tingling in the right foot. He described the work incident of falling through a hole in October, 2016, but again, there is no causation opinion from the medical provider. In fact, the doctor states that "The onset was chronic," not acute, undercutting a potential causal connection. (Ex. JE13-1)

Claimant again went to the emergency room on April 5, 2018, and again there is no causation opinion offered by any medical provider concerning the back complaints.

Claimant had medical care at Unity Point Pain Clinic in May, 2019. (Ex. JE19) Dr. Miller noted after reviewing his MRI, that he observed "modest disc bulging," and "I do not see [a] point of compression that he has radicular component . . ." (Ex. JE19-3) Again, there is no opinion from a medical provider concerning a causal connection between the back condition and the work injury.

The medical bills outlined in Exhibit JE15, include an unauthorized visit to the emergency room on November 19, 2016, concerning the leg and groin injury, along with treatment on additional dates for headaches, and back pain.

As found above concerning the November 19, 2016 emergency room visit, I likewise find that the additional emergency room visits by claimant were not of such an emergent nature that he was prevented from first seeking authorized medical care. Again there was no evidence that claimant sought or was denied alternate medical care under Iowa Code section 85.27(4).

CONCLUSIONS OF LAW

1) Whether claimant is entitled to payment of medical expenses contained at Exhibit JE15 and JE19.

There are two issues embedded within the medical expenses claimed. The first sub-issue involves claimant's treatment for the accepted leg and groin at an emergency room, such as on November 19, 2016. Defendants have accepted the right leg and groin injury, but the emergency room visit was not authorized medical care. Prior to going to the emergency room, claimant's treatment had been authorized at Medical Associates, and his last visit was on October 28, 2016. (Ex. JE5-3)

Claimant testified that he did not tell his employer he was going to the emergency room or that he was receiving unauthorized medical care. (Tr. p. 22, 45)

I found above that claimant's visits to the emergency room, even for the accepted leg and groin, were not of an emergent nature. There was no evidence presented that the employee was unable to make contact with the employer to request medical care before going to the emergency room. There was no evidence that the claimant sought alternative medical care and was denied. Therefore, concerning the unauthorized emergency room treatment, including treatment for the leg and groin, I conclude the care was simply unauthorized and the employer is not responsible for payment under Iowa Code section 85.27.

The second sub-issue relates to treatment beyond the right leg and groin, including the hip and back. This raises a question of causation.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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).

In this case, although some of the medical records discuss the back and hip pain together with the work injury, this is a reflection of claimant's self-reporting and not in the form of a medical causation opinion. In short, the medical records do not contain a causation opinion concerning any claimed injuries sought by claimant beyond the leg and groin.

I further question the causal connection based on my above findings that there was no recorded complaint of back pain during claimant's initial treatment with Medical Associates. Also, claimant's first complaint of back pain did not occur for almost two months after the work injury and arose in the context of a primary complaint of headaches, not back pain, and at that time there was no discussion of the work injury. (Ex. JE7-1) When the work injury is discussed at a later date, it was noted that the provider had "No information about his injury," and claimant "Seems to have had a normal exam," at his prior visit. (Ex. JE8-7) Claimant then has a significant six month gap in treatment until June, 2017, at which time he was seen for unrelated concerns and reported "No Chronic Problems," and had normal musculoskeletal range of motion. (Ex. JE9-1) Claimant then has additional trips to the emergency room and an MRI and in December, 2017, over a year after the work injury, claimant described worsening right-sided lumbar pain radiating down the posterior buttocks and lateral right thigh with numbness and tingling in the right foot, along with the work incident, but the doctor states that "The onset was chronic," not acute. (Ex. JE13-1)

The weight of the medical evidence alone would tend to lead to a conclusion that the parts of the body beyond the leg and groin may not be work related. However, the overwhelming issue is that there is simply no medical opinion presented making the causal connection between the October 9, 2016 work incident and any part of claimant's body beyond the leg and groin.

I conclude that claimant has failed to carry his burden of proof and I further conclude that defendants are not obligated to pay the medical expenses sought by claimant for the reasons stated above.

Costs

The final issue is costs. Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I conclude that each party should pay their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing.

Each party shall pay their own costs.

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

Signed and filed this 2nd day of August, 2019.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Susan M. Hess
Attorney at Law
590 Iowa St., Ste. 2
Dubuque, IA 52001
susan@hammerlawoffices.com

Timothy Clausen
Attorney at Law
Mayfair Center, Upper Level
4280 Sergeant Rd, Ste 290
Sioux City, IA 51106
clausen@klasslaw.com

Deena A. Townley
Attorney at Law
4280 Sergeant Rd Ste 290
Sioux City, IA 51106
townley@klasslaw.com

TJG/kjw

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.