BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LUIS PEREZ, Claimant, vs. S.M. HENTGES & SONS, INC., Employer, and COMMERCE & INDUSTRY/AIG, Insurance Carrier/TPA, Defendants.	FILED MAR 13 2019 WORKERS' COMPENSATION File No. 5053115 APPEAL DECISION Head Note Nos.: 1402.20, 1803

Defendants S.M. Hentges & Sons, Inc., employer, and Commerce & Industry/AIG, insurer, appeal from an arbitration decision filed on September 25, 2017. Claimant Luis Perez cross-appeals.

On February 28, 2019, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

This case originally proceeded to hearing on April 19, 2016, and it was considered fully submitted in front of the deputy commissioner on May 16, 2016. The parties stipulated claimant sustained a work-related injury on August 20, 2013, but defendants disputed whether the injury extended into claimant's back or caused any permanent disability. In the resulting September 25, 2017 arbitration decision, the deputy commissioner determined claimant sustained a five percent permanent disability to his left leg as a result of the August 20, 2013 work injury. The deputy commissioner also determined, however, that claimant provided insufficient evidence to support his claim that he sustained any permanent disability to his low back as a sequela of the August 20, 2013 work injury.

On appeal, defendants argue the deputy commissioner erred in his determination that claimant sustained any permanent disability to his leg or foot as a result of the August 20, 2013 work injury.

On cross-appeal, claimant argues the deputy commissioner erred in his determination that claimant provided insufficient evidence to prove he sustained permanent disability to his low back as a sequela of the August 20, 2013 work injury.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal.

I performed a de novo review of the evidentiary record before the presiding deputy workers' compensation commissioner and the detailed arguments of the parties. Pursuant to Iowa Code section 17A.15 and Iowa Code section 86.24, the proposed arbitration decision filed on September 25, 2017, is reversed in part and affirmed in part with additional analysis.

FINDINGS OF FACT:

The deputy commissioner determined claimant sustained permanent disability to his left leg due to plantar fasciitis caused by his August 20, 2013 work injury. For the reasons that follow, I respectfully disagree.

Throughout the course of claimant's treatment with Terrance Kurtz, M.D., at Concentra from the date of injury through November of 2013, the records consistently refer to claimant being struck by the pipe in the "mid calf" or "lower leg." (See Exhibit 1, pp. 1-34) Claimant also provided the same history to Jose Angel, M.D., a Spanish-speaking doctor, in December of 2014. Dr. Angel's notes from that appointment provide that claimant was "hit in the back of the left leg . . . about mid lower leg." (Ex. 3, p. 100)

Claimant, however, subsequently told Sunil Bansal, M.D., during his independent medical examination (IME) that the pipe struck him in the heel. (Ex. 4, p. 123) I acknowledge Dr. Kurtz's record from claimant's appointment on September 4, 2013 indicates claimant's "[l]eft foot bruising [is] gone" and that Dr. Bansal opined this bruising was "evidence of direct injury to the foot area." (Ex. 1, p. 13; Ex. 4, p. 132) It should be noted, however, that not even claimant testified he was struck in the foot; claimant testified he was struck in the heel. (Transcript, p. 22)

Because the early descriptions of claimant's injury, which are more contemporaneous with the August 20, 2013 incident, do not indicate claimant was struck in the heel, I do not find claimant's subsequent statements that he was struck in the heel to be credible.

Notably, Dr. Bansal's causation opinion is based on claimant's reports that he sustained a traumatic blow to his left lower leg, including his heel: "It is my medical opinion that [claimant] developed acute plantar fasciitis from this traumatic blow, most likely occurring from direct damage to the calcaneal-fascial interface." (Ex. 4, p. 125) Because I did not find claimant's assertion that the pole struck him in the heel to be credible, I find Dr. Bansal's causation opinion is based on a flawed assumption. I therefore do not find it persuasive. The deputy commissioner's adoption of Dr. Bansal's opinion is therefore respectfully reversed.

I acknowledge Dr. Angel, like Dr. Bansal, opined that claimant's plantar fasciitis of the left heel "is related to his traumatic injury." I further acknowledge Dr. Angel did not appear to be under the flawed impression that claimant's heel was struck by the pole on August 20, 2013. However, Dr. Angel's causation opinion is based on claimant's account that the onset of his plantar fasciitis complaints was the traumatic blow to his leg on August 20, 2013. (Ex. 3, p. 109) In other words, claimant apparently told Dr. Angel that his plantar fasciitis complaints began contemporaneously with the August 20, 2013 injury. (See Ex. 3, p. 109) This account, however, is not supported by the evidence.

While claimant testified at hearing that he experienced heel pain from the date of injury forward, at no point from the date of injury through November of 2014 do the treatment records from Concentra mention heel or foot pain. (Tr., p. 23; see Exhibit 1, pp. 1-34) I acknowledge defendants failed to provide an interpreter for claimant's appointments at Concentra. This is unfortunate, as many (if not all) of the disputes of this case stem from the parties' disagreement as to whether claimant was effectively communicating with his medical providers. Even taking into account the likelihood that there were some communication barriers between claimant and Dr. Kurtz, however, I cannot overlook the fact that the initial records are void of any mention whatsoever of claimant's heel or foot pain but for a single reference to resolved left foot bruising.

This is especially problematic when compared to the records from claimant's appointment with Dr. Kurtz on July 18, 2014, when Dr. Kurtz noted pain in claimant's left foot and tenderness in claimant's left foot sole. (Ex. 1, p. 35) Claimant testified there was no interpreter at the July 18, 2014 appointment. (Tr., p. 32) It is unclear how claimant was able to effectively communicate his left foot and heel pain to Dr. Kurtz without an interpreter on July 18, 2014 if he was unable to do so in his earlier appointments.

Claimant's girlfriend, who speaks both Spanish and English, also attended one of claimant's appointments with Dr. Kurtz roughly three weeks after the date of injury. (Tr., p. 56) Claimant testified he brought her along to help him better understand Dr. Kurtz. (Tr., p. 55) He also testified his girlfriend helped him get all his questions answered and that he left the appointment with no outstanding questions. (Tr., pp. 55-56) Presumably,

if claimant felt there had been a miscommunication regarding the location of his symptoms, he would have raised it through his girlfriend at that time. As discussed, however, this is not reflected in the records. In fact, Dr. Kurtz indicated he felt there was clear communication and understanding between he and claimant during the course of his treatment. (Ex. 1, p. 39)

Notably, in the records from the July 18, 2014 appointment, Dr. Kurtz specifically stated the areas of claimant's left leg he previously treated after the August 20, 2013 injury were "ok with no pain on palpation." (Ex. 1, p. 35) He also stated, "Injury of 8-20-13 is not related" to claimant's likely plantar fasciitis. (Ex. 1, p. 35)

Dr. Kurtz then referred claimant to a podiatrist, Mindi Feilmeier, D.P.M. Interestingly, at claimant's initial appointment with Dr. Feilmeier, he reported his pain began in December of 2013 after stepping on a rock at work. (Ex. 2, p. 43) This is consistent with the intake form, which was filled out by claimant's girlfriend. (Ex; 2, p. 48; Tr., p. 37) There is no mention in this initial record, or any of the records from claimant's appointments with Dr. Feilmeier, of the August 20, 2013 incident. (See Ex. 2, p. 98)

At hearing, claimant seemed to suggest that he was not fully aware of what his girlfriend wrote on the intake form or why she wrote that claimant "stepped on a rock." (See Tr., p. 38) While I acknowledge defendants did not provide an interpreter for the appointments with Dr. Feilmeier, I find this suggestion disingenuous.

It is clear from Dr. Feilmeier's narrative medical records that she followed up with claimant about the alleged rock incident and asked specific questions: "He states that the pain began in December of 2013 after stepping on a rock at work. He states he wears knee-high rubber boots at work so there was no protection from the injury." (Ex. 2, p. 43) If claimant's heel pain was truly contemporaneous with the August 20, 2013 incident, it seems this would have been an opportune time to clarify Dr. Feilmeier's understanding of the onset of his symptoms. The absence of any mention of the August 20, 2013, work injury is also problematic given Dr. Feilmeier's statement that both claimant and his girlfriend "voiced clear understanding at all visits and had all of their questions entertained and answered." (Cl. Ex. 2, p. 99)

For these reasons, I do not find claimant's testimony that he had heel pain beginning in August of 2013 to be credible. As discussed above, Dr. Angel's causation opinion was based, at least in part, on claimant's description of the traumatic blow to his leg as the onset of his plantar fasciitis. Because I do not find claimant's account of the onset of his heel pain to be credible, I find Dr. Angel's causation opinion is based on a flawed assumption. I therefore do not find it persuasive.

Both Dr. Bansal and Dr. Angel opined that the traumatic blow to claimant's left leg caused his plantar fasciitis. Claimant, however, was diagnosed with bilateral plantar

fasciitis by Dr. Feilmeier in November of 2014 and Dr. Angel in January of 2015. (See Ex. 2, p. 81; Ex. 3, p. 107) It is strange that a traumatic blow would cause claimant's left-sided plantar fasciitis shortly before claimant was diagnosed with right-sided plantar fasciitis as well. Instead, the diagnosis of bilateral plantar fasciitis appears to support Dr. Feilmeier's opinion that the mechanism of injury—being struck with a pipe—would not have caused claimant's left plantar heel pain symptoms. (Ex. 2, p. 98)

Ultimately, I agree with Dr. Kurtz that claimant provided inconsistent histories regarding the onset and cause of his plantar fasciitis throughout the course of his treatment with various providers. (Ex. 1, p. 38) I find Dr. Kurtz's opinion that the incident on August 20, 2013 did not cause, aggravate, or significantly contribute to the diagnosis of plantar fasciitis to be most convincing. (Ex. 1, p. 38)

For the above-stated reasons, I respectfully disagree with the deputy commissioner and find insufficient evidence to support claimant's assertion that his plantar fasciitis is causally related to the August 20, 2013 incident.

Dr. Bansal was the only physician to provide an impairment rating, and his rating was based on claimant's plantar fasciitis. (See Ex. 4, p. 126) Because I found insufficient evidence to causally relate claimant's plantar fasciitis to the August 20, 2013 incident, I decline to adopt Dr. Bansal's rating. The deputy commissioner's adopting of Dr. Bansal's impairment rating is therefore respectfully reversed.

Instead, I adopt Dr. Kurtz's opinion that claimant sustained no permanent impairment as a result of the pipe striking his leg on August 20, 2013. When claimant was released from Dr. Kurtz's care on November 1, 2013, claimant's hematoma and ulcer were "healed 100%." (Ex. 1, p. 33) Claimant also reported no significant pain or problems performing his regular duties. (Ex. 1, p. 33) This is consistent with Dr. Feilmeier's observation at claimant's initial appointment in August of 2014; she saw "no evidence of a laceration to the left lower leg." (Ex. 2, p. 98) For these reasons, I find insufficient evidence of any permanent disability to claimant's left leg or foot as a result of the pipe striking claimant's leg on August 20, 2013. The deputy commissioner's finding that claimant sustained a five percent permanent disability to his left leg is therefore respectfully reversed.

The next issue to be addressed is whether claimant sustained a permanent disability to his low back as a sequela of the August 20, 2013 work injury.

Dr. Bansal, who was the only physician to provide an impairment rating for claimant's alleged low back sequela injury, opined that claimant's sacroiliitis progressively worsened in intensity from his altered gait secondary to his left foot pathology. (Ex. 4, p. 125) With respect to the permanency of the low back condition, Dr. Bansal stated, "As the left foot pathology and pain is permanent, it follows that his back pathology is permanent as it is being aggravated by his antalgic gait resulting from his

foot condition." (Ex. 4, p. 126) However, I found insufficient evidence of a permanent work-related left foot or left leg condition. Because Dr. Bansal's opinions regarding the cause and permanency of claimant's alleged low back condition are based on the incorrect assumption that claimant has a permanent work-related disability to his left foot, I find Dr. Bansal's opinion to be flawed and unpersuasive.

However, even assuming for argument's sake that claimant sustained permanent disability to his foot or leg due to the plantar fasciitis, as found by the deputy commissioner, I still affirm the deputy commissioner's determination that claimant provided insufficient evidence of a permanent disability to his low back with the following additional findings:

Claimant testified he had back pain before he was evaluated by Dr. Feilmeier in August of 2014, but as correctly noted by the deputy commissioner, claimant's complaints of back pain do not appear in any records until December of 2014 when he was evaluated by Dr. Angel. While defendants did not provide an interpreter for claimant's appointments with Dr. Feilmeier, claimant was accompanied by his girlfriend who speaks both Spanish and English, and Dr. Feilmeier stated both claimant and his girlfriend "voiced clear understanding at all visits and had all of their questions entertained and answered." (Tr., pp. 37, 49; Ex. A, p. 25; Cl. Ex. 2, p. 99) Claimant also testified that he raised his back symptoms with Dr. Feilmeier but she told claimant she could not treat claimant's back because "it was a different field compared to hers." (Tr., p. 41) Dr. Feilmeier, however, indicated claimant never noted any history of back pain. (Ex. 2, p. 98) These discrepancies raise questions about the credibility of claimant's back complaints.

Further, even if claimant had back pain beginning in the summer of 2014 as he testified, it apparently was not severe enough to preclude him from performing his regular job without restrictions. He testified he worked his regular job through the construction seasons in 2014 and 2015 before he was laid off in early 2016. (Tr., pp. 48, 51, 54) Per claimant's testimony, his job entailed welding, repairing, and moving pipes, which required lifting a maximum of sixty to seventy pounds. (Tr., p. 20)

While I appreciate claimant's economic constraints and his desire to limit medical costs while treating on his own with Dr. Angel, there are just too few references elsewhere in the record of claimant's low back pain to support his claim. For these reasons, I find insufficient evidence to support claimant's assertion that he sustained a permanent disability to his low back as a sequela of the August 20, 2013 work injury. With the above-stated findings, I therefore affirm the deputy commissioner's determination that claimant provided insufficient evidence of a permanent disability to his low back as a sequela of the August 20, 2013 work injury.

CONCLUSIONS OF LAW:

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).

An injury is considered to be a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012). The Iowa Supreme Court held long ago that "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Schofield & Welch, 266 N.W. 480, 482 (1936). The Court explained as follows:

> If an employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable. Where an employee suffers a compensable injury and thereafter returns to work and, as a result thereof, his first injury is aggravated and accelerated so that he is greater disabled than before, the entire disability may be compensated for.
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> Id. at 481.

In this case, I found claimant provided insufficient evidence to support his assertion that his plantar fasciitis is causally related to the August 20, 2013 incident.

Because the only impairment rating in the record was for claimant's non-work-related plantar fasciitis, I also found insufficient evidence of any permanent disability to claimant's left leg or foot as a result of the August 20, 2013 work injury. I therefore conclude claimant failed to satisfy his burden to prove he sustained any permanent disability to his left leg or foot as a result of the August 20, 2013 work injury. The deputy commissioner's determination that claimant sustained a five percent permanent disability to his left leg is therefore respectfully reversed.

With respect to claimant's alleged low back condition, I found insufficient evidence to support claimant's assertion that he sustained a permanent disability to his low back as a sequela of the August 20, 2013 work injury. I therefore conclude claimant failed to satisfy his burden to prove he sustained a permanent disability to his low back as a result of the August 20, 2013 work injury. With the above-stated findings and analysis, the deputy commissioner's determination that claimant failed to prove he sustained a permanent work-related disability to his low back is therefore affirmed.

Because I concluded claimant failed to satisfy his burden to prove he sustained any permanent disability as a result of the August 20, 2013 work injury, I respectfully reverse the deputy commissioner and conclude claimant shall take nothing with respect to permanent partial disability benefits.

The deputy commissioner's award of medical expenses as set forth in Claimant's Exhibit 12 and reimbursement for the IME as set out in Claimant's Exhibit 13 was not appealed. As such, I will not address those issues, and defendants remain responsible for those expenses.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 25, 2017, is reversed in part and affirmed in part with my additional findings, conclusions, and analysis.

Claimant shall take nothing with respect to permanent partial disability benefits.

Defendants shall pay the medical expenses set forth in Claimant's Exhibit 12 and the independent medical evaluation expenses as set forth in Claimant's Exhibit 13.

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

The parties shall split the cost of this appeal.

Signed and filed this 13th day of March, 2019.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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