

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUAN ORDONEZ,

Claimant,

vs.

CITY OF BOUTON,

Employer,

and

IMWCA,

Insurance Carrier,
Defendants.

FILED

JAN 19 2017

WORKERS COMPENSATION

File No. 5052627

ARBITRATION DECISION

Head Note No.: 1402.30

STATEMENT OF THE CASE

Juan Ordonez, claimant, filed a petition for arbitration against the City of Bouton as the employer and General Casualty Company of Wisconsin as the insurance carrier. An in-person hearing occurred on October 13, 2016. At the commencement of hearing, defense counsel notified the undersigned that the proper insurance carrier for the file is IMWCA. Claimant moved to amend the pleadings to reflect IMWCA as the proper insurance carrier. Defendants did not resist the amendment and the amendment was granted. Hearing proceeded with the corrected defendants.

The evidentiary record includes claimant's Exhibits 1 through 5 and defendants' Exhibits A through M. Claimant testified on his own behalf. Defendants called the City's Fire Chief, Brian Sondgeroth, and the Mayor, Timothy Hudspeth, to testify.

The parties filed a hearing report at the commencement of hearing. On that hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed in either file. The parties are now bound by their stipulations.

The evidentiary record closed at the end of the October 13, 2016 hearing. However, counsel for the parties requested the opportunity to file post-hearing briefs. The parties were given until November 4, 2016 to file their post-hearing briefs, at which time the case was considered fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a right knee injury that arose out of and in the course of his employment on January 7, 2015.
2. Whether claimant gave timely notice of the alleged right knee injury pursuant to Iowa Code section 85.23.
3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.
4. Whether claimant is entitled to alternate medical care, including future treatment for his right knee.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Juan Ordonez began working as an on-call, volunteer firefighter for the City of Bouton, Iowa in August 2014. He alleges he sustained a right knee injury on January 7, 2015. Specifically, Mr. Ordonez asserts that he slipped on a wrench that was on the floor of the Bouton Fire Department. (Transcript, page 14) Mr. Ordonez testified that he went to the fire station at the request of the fire chief, Brian Sondgeroth. Upon entering, he testified that he slipped and fell onto his right knee.

Mr. Ordonez testified that Mr. Sondgeroth saw him fall and immediately asked if he was injured. (Tr., p. 14) Mr. Ordonez asserted that Mr. Sondgeroth did not know where to locate the injury report, but claimant asserts he made multiple attempts to contact Mr. Sondgeroth to obtain medical care.

In support of his claim, Mr. Ordonez also offered the medical opinions of Sunil Bansal, M.D. Dr. Bansal performed an independent medical evaluation on May 19, 2016. Dr. Bansal opined that claimant's current right knee condition is causally related to the January 7, 2015 work incident as described by claimant. Dr. Bansal opined that claimant sustained a five percent permanent impairment of the right lower extremity as a result of the January 7, 2015 work injury and imposed permanent work restrictions. (Exhibit 4)

Defendants called the City's fire chief, Brian Sondgeroth, and the Mayor, Timothy Hudspeth, to testify. Mr. Sondgeroth testified that he did not see claimant fall and that claimant never reported a work injury to him. (Tr., p. 59) Mr. Sondgeroth denies claimant's testimony that Mr. Ordonez attempted multiple times to contact him to obtain medical treatment for his right knee.

Mr. Hudspeth was not present on the date of the alleged injury and testified that he spoke with claimant two times. However, he denies any knowledge of the alleged work injury until at least March 2015. (Tr., pp. 75, 79, 82, 85)

Defendants note claimant had significant pre-existing right knee injuries and treatment, including an anterior cruciate ligament repair and meniscectomies in 2006. (Ex. A, C-H) Defendants note that claimant has had numerous prior workers' compensation claims. (Ex. K, pp. 36-37, 51-56) Defendants also point to evidence suggesting that claimant may not have been entirely forthcoming about prior injuries in 2003 when reporting and obtaining treatment for his right knee after his 2006 work injury. Specifically, claimant treated with orthopaedic surgeon, Jeffrey P. Davick, M.D. after his 2006 knee injury. Dr. Davick's record dated September 25, 2006 notes that claimant "denies any prior knee problems." (Ex. H, p. 1) Clearly, claimant had experienced prior right knee injuries.

Defendants rely upon the medical opinions of Charles D. Mooney, M.D. to challenge causation of claimant's current right knee condition and his alleged January 7, 2015 work injury. Dr. Mooney's assessment of claimant's condition was "[p]rior right ACL reconstruction with both medial and lateral meniscectomies, with tricompartmental arthritis of the right knee which is longstanding in nature." (Ex. A, p. 7) Dr. Mooney noted that claimant's alleged January 7, 2015 right knee injury was "poorly documented in the medical records." (Ex. A, p. 7) Indeed, defendants note that there is no reference to the alleged January 7, 2015 right knee injury until after claimant was terminated by the City of Bouton on March 12, 2015. (Ex. 1)

Defendants challenge claimant's credibility. Similarly, claimant challenges Mr. Sondgeroth's credibility. Indeed, Mr. Ordonez and Mr. Sondgeroth provided irreconcilable testimony at trial. Credibility of both of these witnesses is important.

Mr. Ordonez testified via deposition and live at hearing. His testimony differs in significant ways between his deposition and trial. For example, in his deposition, Mr. Ordonez testified that he only spoke to the Mayor once and that the conversation occurred after he was terminated. (Ex. K, pp. 21, 24-25, 26) At trial, however, Mr. Ordonez testified that he called and spoke with the Mayor only once and that the conversation occurred before he was terminated in March 2015. (Tr., p. 17)

Another example of claimant's contradictory testimony is on the issue of the reason Dr. Vinyard would not perform a right total knee replacement. In his deposition, Mr. Ordonez testified that Dr. Vinyard recommended a knee replacement. However, claimant testified in his deposition that he did not receive a knee replacement because Dr. Vinyard does not perform that type of surgery. (Ex. K, pp. 43-44, 47-48)

At trial, Mr. Ordonez had a different explanation for why he did not receive a right total knee replacement. At trial, claimant testified that he did not receive a knee replacement because Dr. Vinyard told him that he was too young and overweight. (Tr., pp. 20-21) Mr. Ordonez offers no explanation for these variations in his testimony on relatively important issues in his case.

Defendants also point out that claimant sought medical attention six times after his alleged work injury with personal medical providers and did not report a January 2015 work injury. Review of the medical records in evidence demonstrates that claimant sought medical care on January 14, 2015; January 28, 2015; February 13, 2015; March 3, 2015; March 9, 2015; and March 20, 2015 before he received the termination letter. (Ex. I, pp. 1-7, 9-10, 13-14; Ex. J, pp. 1-2) At none of these medical appointments did Mr. Ordonez report right knee symptoms or a work related injury in January 2015.

Interestingly, claimant acknowledges that claimant's personal physician checked his gait during the January 14, 2015 evaluation. (Tr., p. 38) The physician noted on January 14, 2015 that claimant's gait and station were "within normal limits." (Ex. I, p. 2) Mr. Ordonez also acknowledges that Dr. Vinyard checked his right knee at his March 9, 2015 appointment. (Tr., p. 42) Dr. Vinyard documented that claimant had normal active range of motion that was pain free as of March 9, 2015. (Ex. J, p. 2) Again on March 20, 2015, claimant's personal medical provider documented he had normal gait and station. (Ex. I, p. 13) Ordonez provides no explanation why the medical providers were evaluating his right knee and documenting normal findings prior to his termination in March 2015.

On March 12, 2015, the City of Bouton terminated Mr. Ordonez from its fire department. (Ex. 1) Claimant received this letter sometime after his March 20, 2015 evaluation by Lindsay Weber, PA-C. (Tr., p. 44) On March 25, 2015, at his first medical evaluation after receiving the termination letter, claimant reported his alleged January 7, 2015 knee injury at work for the first time to a medical provider. (Ex. 2, p. 2; Tr., pp. 44-45) Mr. Ordonez does not provide a terribly credible explanation why he never mentioned his right knee injury to any medical provider prior to his termination.

As noted, Mr. Ordonez concedes that Dr. Vinyard evaluated his right knee on March 9, 2015 and found pain free active range of motion, normal gait, and normal strength. (Tr., p. 42) Claimant provides no credible explanation why he had essentially normal objective findings on March 9, 2015 but reported his injury and proclaimed pain with walking, bending the knee, and climbing stairs on March 25, 2015. (Ex. 2, p. 2)

Considering the contradictions in claimant's deposition and trial testimony, as well as the lack of any reported right knee injury or symptoms between January 7, 2015 and March 12, 2015 when claimant was terminated by the City of Bouton, I do not find claimant to be a credible witness. I do not accept his version of events for January 7, 2015 as credible.

Claimant also challenges the credibility of Mr. Sondgeroth. Indeed, Mr. Sondgeroth provided some strange testimony at the time of trial that does damage his credibility. Mr. Sondgeroth testified with great specificity as to the events of January 7, 2015, while at the same time proclaiming that an injury did not occur on that date. Mr. Sondgeroth testified that he recalled that date well because it was his daughter's birthday and there was a scheduled firefighters' meeting that evening. (Tr., p. 68)

Claimant's counsel challenged Mr. Sondgeroth's memory by asking about events the following day. Again, Mr. Sondgeroth provided testimony with great specificity as to his actions on January 8, 2015. Then Mr. Sondgeroth asserted that he is capable of recalling his events and actions on essentially any random day within the past couple of years. However, when posed with a specific date, Mr. Sondgeroth could not recall any specific events of the day and asked for some refresher as to what he may have been doing. In fact, claimant's counsel asked him about a date prior to the date of the alleged injury and Mr. Sondgeroth speculated perhaps the date quoted was the date he issued the termination letter. (Tr., pp. 66-69)

Clearly, Mr. Sondgeroth's memory is not as clear as he proclaimed during cross-examination. Mr. Sondgeroth severely damaged his credibility on cross-examination. As claimant asserts, it is strange that Mr. Sondgeroth has such precise memory of a date when no significant developments allegedly occurred. Ultimately, I do not find Mr. Sondgeroth to be a credible witness.

The Mayor, Timothy Hudspeth, provided credible testimony. However, claimant testified that only he and Mr. Sondgeroth were present on the date and at the time of the alleged work injury on January 7, 2015. I find neither of the alleged witnesses to be credible. Ultimately, Dr. Bansal's causation opinion assumes and relies upon the accuracy of the reported fall at work on January 7, 2015. Dr. Bansal's ultimate opinions are only accurate and worthy of credibility and weight if the assumptions upon which those opinions are based are ultimately accurate.

In this instance, I do not believe either Mr. Ordonez or Mr. Sondgeroth. Given the lack of credible evidence regarding the events of January 7, 2015, I find that Mr. Ordonez failed to prove by a preponderance of the evidence that he slipped and fell at work on January 7, 2015. Therefore, I reject the causation opinion of Dr. Bansal because I have not found the underlying facts upon which he relies to be accurate or credible. Ultimately, I find that claimant's evidence is not sufficiently credible to be relied upon in this case.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when

performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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 instance, I found neither claimant nor the fire chief to be credible. However, it was ultimately claimant's burden of proof to establish that he sustained an injury to his right knee at work on January 7, 2015. Having found that claimant did not carry this burden of proof, I conclude that Mr. Ordonez's claim for benefits must fail. All other disputes issues are rendered moot by this conclusion.

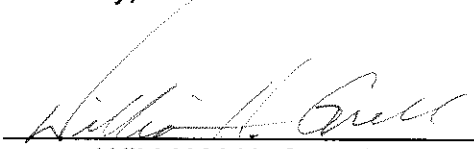
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

The parties shall bear their own costs related to this contested case proceeding.

Signed and filed this 19th day of January, 2017.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/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.