

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDY SPARKS,

Claimant,

vs.

PREFERRED CARE PARTNERS
MANAGEMENT GROUP LP d/b/a
POLK CITY NURSING AND
REHABILITATION,

Employer,

and

AMERISURE INSURANCE,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5066410

ARBITRATION

DECISION

Head Note No.: 1402.30

STATEMENT OF THE CASE

Claimant, Randy Sparks, filed a petition in arbitration seeking workers' compensation benefits from Preferred Care Partners Management Group LP d/b/a Polk City Nursing and Rehabilitation (Polk City), employer, Amerisure Insurance, insurer, and Second Injury Fund of Iowa (Fund), all as defendants. This matter was heard in Des Moines, Iowa on December 16, 2019 with a final submission date of January 13, 2020.

The record in this case consists of Joint Exhibits 1-10, Claimant's Exhibits 1-7, Defendant Polk City and Insurer's Exhibits A-I, Defendant Fund's Exhibits AA-BB, and the testimony of claimant.

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

Whether claimant sustained an injury that arose out of and in the course of employment;

Whether the injury resulted in a permanent disability; and if so;

The extent of claimant's entitlement to permanent partial disability benefits;

Whether there was a causal connection between the injury and the claimed medical expenses;

Whether claimant sustained a qualifying injury for the purposes of Fund benefits; and if so;

The extent of claimant's entitlement to Fund benefits; and

Costs.

FINDINGS OF FACT

Claimant was 58 years old at the time of hearing. Claimant graduated from high school. Claimant has a bachelor's degree in business management and a master's in gerontology.

Claimant worked at grocery stores from 1994 through 1996. He worked at Des Moines Sewing Machine, where he oversaw billing and shipping and booking. (Exhibit 2, page 29)

From 1997 through 2006, he worked as a parts coordinator for Maytag. From 2006 through 2012 claimant went to college.

Since 2012, claimant has worked in nursing home administration. From 2012 through 2013, claimant worked as a nursing home administrator in Denison, Iowa. From December 2013 through August 2014, he worked as a nursing home administrator in Carlisle, Iowa. From November of 2014 through February of 2015, he worked as a nursing home administrator in Storm Lake, Iowa. From February of 2015 through May of 2016, he worked as a nursing home administrator in Humboldt, Iowa. (Ex. 2, pp. 30-31)

Claimant began employment as a nursing home administrator with Polk City in May of 2016. As a nursing home administrator with Polk City, claimant's job duties included insuring the facility was run within budget, complying with state and federal regulations and laws, managing department supervisors, and generally overseeing and running the facility. (Transcript p. 15)

Claimant's prior medical history is relevant. In April of 2004, claimant had a carpal tunnel, cubital tunnel, and ulnar nerve release surgery on the left upper extremity. In July of 2004, claimant had a carpal tunnel, cubital tunnel, and ulnar nerve release surgery on the right upper extremity. Claimant also had shoulder surgery. (Joint Ex. 2, p. 19; Jt. Ex. 3, p. 29; Ex. C, p. 12 Deposition, pp. 47-48; Tr. pp. 59, 82-83) Treatment for the above-described surgeries were paid for by Maytag's workers' compensation insurance. (Tr. p. 83)

On February 24, 2005, claimant was found to have a ten percent impairment to the left upper extremity and a four percent impairment to the right upper extremity. (Jt. Ex. 2, p. 24)

Claimant eventually settled his claim for his right arm, right shoulder, and left arm with Maytag under a special case compromise settlement. The settlement suggests that claimant was paid \$22,500.00 for each injury, for a total of \$67,500.00 for all dates of injury. (Ex. AA, pp. 1-9; Tr. p. 84)

In December of 2005, claimant had surgery on his right arm following a car accident. In May of 2009, claimant had surgery to remove hardware from his right arm. (Jt. Ex. 1, p. 4; Jt. Ex. 3, p. 4; Tr. pp. 61-62)

Claimant alleges he sustained a deep vein thrombosis (DVT) in his left leg following a work-related plane trip.

From February 20, 2017 through February 23, 2017, claimant attended an orientation program in Plano, Texas for nursing home administration. (Tr. pp. 20-21)

Claimant flew from Des Moines to Dallas on February 19, 2017. He left from the airport on February 23, 2017 at the end of the conference. Claimant testified the flight from Texas to Des Moines was scheduled to depart at 8:25 p.m. but was delayed due to mechanical problems. (Tr. p. 26) Claimant testified he believed he sat on the plane for an hour before it departed to Des Moines. (Tr. p. 28) The records indicate the plane left at 8:43 p.m. or 18 minutes after the scheduled departure time. (Ex. E) The plane taxied for 23 minutes in Texas. The plane spent 86 minutes in the air. It taxied 5 minutes in Des Moines. (Ex. 4, p. 42)

Claimant said he was tired when he returned home on February 23, 2017 and felt nauseated the following day. Claimant said he left work early on February 24, 2017 and began having leg cramping on February 25, 2017. Claimant said he rested the weekend of February 25, 2017 through February 26, 2017 and worked the next week. (Tr. pp. 35-37)

Claimant said he had leg cramping the morning of March 2, 2017. He said that after going to work, he left and went to Mercy North. (Tr. pp. 34-35)

On March 2, 2017, claimant was seen by Denis Reavis, D.O., for left calf pain and swelling. Claimant was assessed as having a left leg DVT. He was treated with medication. (Jt. Ex. 4, pp. 39-40)

Claimant was seen by Dale Grunewald, D.O., on March 7, 2017 for continued left leg pain. Claimant was continued on medication. (Jt. Ex. 5, pp. 48-50)

On March 8, 2017, claimant went to Mercy West Lakes Emergency Room with complaints of an "odd sensation" in his chest. A CT scan found bilateral lower lobe non-occlusive pulmonary embolism (PE). (Jt. Ex. 6, pp. 54-56)

On March 13, 2017, claimant went to Iowa Methodist Emergency Room with complaints of shortness of breath, left-sided chest pain, and dizziness. A staff physician indicated claimant's symptoms were probably due to the bilateral pulmonary emboli. (Jt. Ex. 1, pp. 6-11)

Claimant returned to Mercy West Emergency Room on March 20, 2017 complaining of chest pain, shortness of breath, and coughing up blood. A CT scan found claimant's pulmonary embolism was still present, but smaller. (Jt. Ex. 6, pp. 61-64)

Claimant was evaluated by David Chew, M.D., at Iowa Heart Center on April 11, 2017. Claimant had shortness of breath. Dr. Chew recommended claimant needed to use compression stockings and prescribed Xarelto. Dr. Chew also recommended claimant have his blood tested for hypercoagulable agents. (Jt. Ex. 7, pp. 67-68)

On May 27, 2017, claimant was seen by Michael Krowka, M.D., at the Mayo Clinics. Claimant had a pulmonary embolism. Dr. Krowka indicated this was probably precipitated by a long plane ride. Claimant was referred to the Mayo Thrombophilia Clinic. (Jt. Ex. 9, pp. 80-81)

On May 5, 2017, claimant saw Ryan Meverden, PA-C, at the Mayo Thrombophilia Clinic. PA Meverden noted:

It would be somewhat difficult to say this was provoked considering the length of flight was less than four hours, but the timing of his DVT and PE would seem to indicate that it was related.

(Jt. Ex. 9, p. 84)

Claimant underwent blood testing. (Jt. Ex. 9, pp. 84-85)

On May 15, 2017, claimant returned to the Mayo Thrombophilia Clinic. Claimant had tested positive for Factor V Leiden, but had no other findings or causes for his DVT or PE. PA Meverden noted:

We do not necessarily think that the travel he had would have been a provoking agent either. Therefore, at this point, we would consider this an unprovoked DVT/PE and recommend long-term anticoagulation.

(Jt. Ex. 9, p. 90)

Claimant saw PA Meverden on August 16, 2017 for a follow-up for his DVT. Because it was believed the DVT was “questionably unprovoked,” long term treatment was advised. Claimant was told to manage with compression, exercise, and anticoagulation. (Jt. Ex. 9, pp. 96-97)

Claimant testified he believed defendant insurer denied his workers’ compensation claim in August 2017 based on PA Meverden’s opinion that his DVT was not caused by the plane travel. (Tr. p. 43)

Claimant testified he spoke with PA Meverden regarding his causation opinion. Claimant said PA Meverden revised his note to reflect the travel caused his DVT. (Tr. p. 44)

There is no evidence in the record that PA Meverden changed his notes to reflect that claimant’s DVT was related to travel.

On September 14, 2017, claimant saw Dr. Reavis with complaints of leg pain. Claimant was prescribed hydrocodone for pain. (Jt. Ex. 4, p. 42-43)

On September 20, 2017, claimant was terminated from his employment with Polk City. (Ex. D)

Claimant returned in follow up on September 22, 2017 at the Iowa Heart Center for a recheck on his DVT and pulmonary embolism. Testing showed a partial DVT was still present in claimant’s left leg. Claimant was recommended to continue Eliquis, compression stockings, and leg elevation. He was also recommended to stay on lifelong anticoagulation medication. Notes from that checkup indicate, “He is heterozygous for factor V Leiden which does put him at a 5-10 fold increase risk of thrombosis, so I have encouraged lifelong anticoagulation for him.” (Jt. Ex. 7, pp. 72-74)

From October 2017 through February 2018, claimant worked on a temporary assignment as a nursing home administrator at Manor Care Health Services in West Des Moines through a staffing agency. (Ex. 2, p. 31; Tr. p. 65)

From March 2018 through July 2019, claimant worked as a nursing home administrator for Oaks Care Center in Lake City, earning \$77,000.00 per year. (Ex. 2, p. 31)

Claimant returned to PA Meverden on November 2, 2018 concerning another possible DVT. PA Meverden opined that claimant did not have an acute DVT and that claimant had shown improvement in his prior condition. (Jt. Ex. 9, pp. 116-118)

In December 2017, claimant began teaching online gerontology classes through Des Moines Area Community College. Claimant earned approximately \$10,000.00 per year for this job. (Ex. 2, pp. 31-32; Tr. pp. 66-67)

In an August 14, 2018 report, Charles Mooney, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant complained of a constant cramping and burning pain in the left leg. He had symptoms of fatigue and poor circulation in the left leg. Claimant indicated that all symptoms regarding the pulmonary embolism appeared to have resolved. (Ex. B, pp. 1-5)

Dr. Mooney indicated that individuals with Leiden Factor V, like claimant, have a seven times greater likelihood of having DVTs than those without the condition. He noted that age was also a factor. Dr. Mooney opined it was improbable that claimant would have developed DVT by sitting on a plane, without his condition of having Leiden Factor V. He assessed claimant as having unprovoked DVT. (Ex. B, pp. 6-7)

Claimant was seen on October 23, 2018, for increased swelling and pain in the left leg for the past two days. Claimant had been painting and driving a car for several hours and not wearing compression socks. Claimant's Eliquis dosage was increased. (Jt. Ex. 10, pp. 131-133)

On November 2, 2018, claimant returned to Mayo and followed up with PA Meverden. PA Meverden did not believe claimant had an acute DVT episode and recommended that claimant be consistent with compression socks. (Jt. Ex. 9, p. 118)

In a May 6, 2019 report, Sunil L. Bansal, M.D., gave his opinions of claimant's condition following an IME. Claimant indicated shortness of breath with exertion. Claimant had continued pain and numbness in his left leg. Claimant indicated that if he did not wear compression socks, the swelling and pain would return. He said he still has numbness in all fingers and has a weaker grip strength. (Ex. 1, pp. 1-11)

Dr. Bansal assessed claimant as having left leg DVT and bilateral PE. Dr. Bansal found that claimant's airline flight was the proximate cause of his DVT. Dr. Bansal found claimant was at maximum medical improvement (MMI) on February 26, 2019. He opined claimant would require future medical treatment consisting of long-term anticoagulation, be monitored for DVTs and/or PEs, and need to wear compression stockings long term. He found that claimant had 10 percent permanent impairment to the body as a whole. Dr. Bansal limited claimant to no walking more than 20 minutes and no lifting greater than 25 pounds. (Ex. 1, pp. 14-15) Dr. Bansal also found that claimant had a 2 percent permanent impairment to the right upper extremity. (Ex. 1, p. 16)

In a September 16, 2019 addendum to the IME, Dr. Bansal indicated he had reviewed other documents, including claimant's deposition, flight information, and medical records. He indicated review of the records did not change his opinion found in his May 6, 2018 report, except that he found that claimant had 20 percent permanent impairment to the lower extremity due to the DVT. (Ex. 1, pp. 19-23)

In a December 6, 2018 report, Dean Wampler, M.D., gave his opinions following review of Dr. Bansal's IME report. Dr. Wampler opined that the correct analysis and evaluation of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition resulted in a ten percent permanent impairment to the left lower extremity due to the DVT. (Ex. H, p. 2)

At the time of hearing, claimant was looking for work in the Kansas City area. Claimant said he began to apply for jobs in Kansas City in June of 2019. (Ex. 5) Exhibit 5 is a list of all the jobs claimant has applied for in 2019. (Ex. 5, pp. 43-44) Claimant has searched for jobs as a nursing home administrator. He has not been denied employment due to a health condition. (Ex. 5, p. 68, 81)

Claimant says he still takes Eliquis daily to keep his blood from clotting. He said he wears compression socks daily to prevent the reoccurrence of a DVT. He said that he believes he would have to continue to take Eliquis and use compression socks for the rest of his life. (Tr. pp. 46-47)

Claimant said that when he drives or sits, he has to get up every hour and a half to two hours to stretch. He said that he believes he can lift up 40 pounds. He testified he has not had any problems working as a nursing home administrator since his alleged injury and believes that he is able to perform the nursing home administrator job. Claimant is not limited in the number of hours he can work. (Tr., pp. 54, 56-57, 68, 91)

In 2016, claimant earned \$76,636.00. In 2017, he earned \$94,350.00. In 2018, claimant earned \$90,552.00. (Ex. BB, pp. 10-18)

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained an injury that arose out of and in the course of employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

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 Electric 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).

Claimant contends his flight from Texas to Des Moines caused the DVT in his left leg.

According to Exhibit 4, claimant’s flight from Texas had an 18-minute delay. The flight took 23 minutes to taxi out of the Texas airport. The flight was in the air for 86 minutes. It took 5 minutes to taxi in Des Moines. According to Exhibit 4, claimant was on the plane 132 minutes, or 2 hours and 12 minutes. Claimant testified he believes he sat on the plane for 60 minutes before it left Texas. He testified he believes he sat on the plane for another 20 minutes after it returned to Des Moines. (Tr. pp. 28, 32) According to claimant, he was on the plane for approximately 3 and a half hours.

Three experts have opined regarding the cause of claimant’s DVT in his left leg.

PA Meverden, with the Thrombophilia Clinic from the Mayo Hospitals, treated claimant for his DVTs for about two years from November of 2017 through July of 2019. He opined, in May of 2017 and August of 2017, that claimant's DVT was an unprovoked condition and probably not related to his air flight. (Jt. Ex. 9, pp. 90-91, 96-98)

Claimant testified PA Meverden corrected this opinion to show causation. (Tr. p. 44) There is no evidence in the record that PA Meverden changed his notes to reflect that claimant's DVT was related to travel.

Dr. Mooney evaluated claimant once for an IME. He opined that it was improbable claimant developed a DVT by sitting on a plane. He noted that claimant had tested positive for having Leiden Factor V, which made claimant seven times more likely to develop DVT. He assessed claimant as having unprovoked DVT. (Ex. B, pp. 6-7)

Claimant's risk for having a DVT, due to the presence of Leiden Factor V, was also noted from records from the Iowa Heart Center. (Jt. Ex. 7, p. 72)

Dr. Bansal evaluated claimant once for an IME. Dr. Bansal opined claimant's air flight the proximate cause of his DVT. (Ex. 1, p. 14)

There are several problems with Dr. Bansal's opinion regarding causation. First, in support of his opinion for causation, Dr. Bansal cites to a CDC webpage that does not exist. (Ex. 1, p. 2)

Evidence in the record includes a printout from the CDC website. The CDC printout warns that those traveling by air for more than four hours may be at risk for a blood clot. (Ex. 1, p. 2) As noted above, the record indicates claimant was on a plane less than four hours.

Second, there is nothing in either of Dr. Bansal's reports indicating how long claimant was on his plane trip from Texas. Dr. Bansal relates claimant's plane travel to his DVT. The CDC indicates that plane travel of more than four hours may be a risk for a blood clot. The fact the time of air travel, critical information in determining causation in this case, is omitted from Dr. Bansal's report, indicates one of two things. Dr. Bansal did not know how long claimant traveled. In the alternative, Dr. Bansal did know how long claimant traveled and omitted the time from his report, knowing that it might be contrary to guidelines from the CDC. Either alternative undermines the credibility of Dr. Bansal's opinion regarding causation.

Given the issues with Dr. Bansal's IME report, it is found that his opinions regarding causation are found not convincing.

Claimant was in a plane from Texas for approximately three and a half hours. Information from the CDC indicates that passengers sitting on a plane more than four hours may be at risk for blood clots. PA Meverden opined that claimant's DVT was

unprovoked. Dr. Mooney also opined that claimant's DVT was unprovoked. Dr. Bansal's opinion regarding causation is found not convincing. Given this record, claimant has failed to carry his burden of proof his DVT arose out of and in the course of employment with Polk City.

Claimant failed to carry his burden of proof his DVT arose out of and in the course of employment. As a result, all other issues are moot.

As claimant has failed to prove a qualifying first injury for the purpose of Fund benefits, claimant has also failed to carry his burden of proof he is entitled to Fund benefits.


ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing in the way of benefits from this proceeding.

That both parties shall pay their own costs.

Signed and filed this 31st day of March, 2020.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Neal (via WCES)

Caitlin R. Kilburg (via WCES)

Jonathan Bergman (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.