

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEN ROBERTSON,  
Claimant,

vs.

FAIRFIELD CASTINGS, LLC,  
Employer,

and

RIVERPORT INSURANCE COMPANY,  
Insurance Carrier,  
Defendants.

**FILED**  
**MAR 18 2019**  
WORKERS' COMPENSATION

File No. 5056541

REHEARING

DECISION

Defendants filed a motion for reconsideration and for more specific findings. This motion is considered an application for rehearing under rule 876 IAC 4.24 (application). Claimant has yet to respond. The application is considered.

Defendants contend the deputy workers' compensation commissioner who heard this matter erred in finding claimant had a back injury caused by the August 5, 2014, work accident. More specifically, defendants argue the deputy ignored "...the complete more nuanced opinion..." of Todd Harbach, M.D. and instead adopted the causation opinion found in a May 4, 2017, report.

Dr. Harbach performed two lumbar surgeries on claimant (Joint Exhibit 4, pages 28-30 and 35-39) A chronology of the opinions of Dr. Harbach are as follows:

On April 28, 2017, Dr. Harbach indicated the injury of August 5, 2014, required his care and treatment of claimant. (Jt. Ex. 4, pp. 70-71)

On May 2, 2017, Dr. Harbach indicated claimant's low back surgery was not related to the August 5, 2014, injury as claimant had no back or hip pain for four months. (Ex. A, pp. 1-2)

On May 4, 2017, Dr. Harbach opined it was more likely than not the twisting injury of August 5, 2014, caused an injury to claimant's low back. He also indicated

claimant's low back was injured on the date of claimant's leg injury and the condition in the back was not fully manifested until claimant attempted to beginning walking, bending and twisting. (Jt. Ex. 4, pp. 72-73)

On May 8, 2017, the day before hearing, Dr. Harbach signed a letter indicating claimant's low back surgeries were not related to the August 5, 2014, injury. (Ex. A, p. 13)

The arbitration decision noted that prior to the August 5, 2014, work injury, claimant never sought medical treatment for his back. (Arbitration Decision page 9)

The decision notes claimant was caught in a mauler machine and was pinned for 10 minutes with his entire body twisted. It took 45 minutes to extract claimant from the mauler. (Arb. Dec. p 2)

Initial treatment records note the mauler caused strong torque that twisted claimant's entire body while he was held in the machine. (Arb. Dec. p 2)

Treatment notes from Gregory Ivins, M.D. note that when claimant began experiencing hip and lower back pain, that pain was related to overuse of the right leg or caused by the injury itself. (Jt. Ex. 1, p. 15)

Based, in part on this history, the deputy commissioner noted:

"On May 4, 2017, claimant's counsel sent another letter to Dr. Harbach seeking his opinions based on a stated set of facts. I find that the facts as stated in this letter are consistent with the record as a whole and my findings of fact. Dr. Harbach signed the letter written by claimant's counsel and indicated that the letter accurately reflected his opinions. Dr. Harbach opined that it was more likely than not that the twisting injury of August 4, 2014 caused an injury to the low back but was not recognized initially because of the pain from the broken leg and the associated narcotic pain medications. Additionally, as the herniations went untreated over time the symptoms became more profound as the impact on the nerve root was increased. Dr. Harbach agreed that the back injury occurred on the date of the injury for the leg but the condition did not fully manifest until Ken attempted to resume normal ambulation along with bending and twisting activities. Dr. Harbach also indicated that the herniation caused progressively increasing symptoms based on the nature of the herniation.

(Arb. Dec. p 7)(citation omitted)

The deputy commissioner also detailed:

“Several experts have provided their opinions regarding causation. After reviewing all of the opinions I find that Dr. Harbach’s May 4, 2017 opinion is the most persuasive. Dr. Harbach, the orthopedic surgeon who treated Ken, has issued several causation opinions. These opinions have been in the form of responding to letters from each side’s attorney. It appears that Dr. Harbach answered the questions posed to him based on each set of facts as they were presented to him. I conclude that the opinions rendered by Dr. Harbach on May 4, 2017 are based on the most informed and accurate facts, as I find them. Therefore, I find Dr. Harbach’s May 4, 2017 opinion to carry great weight in this matter. (Ex. JE4, pp. 72-73) In that opinion, Dr. Harbach took Ken’s history, account of the accident, and onset of symptoms into consideration. Dr. Harbach opined that Ken’s back was injured on the date of the injury to his leg and that the condition was not fully manifested until Ken attempted to begin normal ambulation along with bending and twisting activities. The doctor further opined that Ken’s herniations caused progressively increasing symptoms. I find Dr. Harbach’s May 4, 2017 opinions to be well-reasoned and persuasive. Thus, I find that claimant has carried his burden of proof to show that his back was injured during the August 5, 2014 work injury.”

(Arb. Dec. p 8)

Claimant had no prior treatment for his back before his injury of August 5, 2015. The injury, where claimant was caught in a mauler, pinned and twisted claimant’s body for ten minutes. Claimant was not extracted from the mauler for 45 minutes. Treatment records from other physicians relate claimant’s low back and hip pain to his August 5, 2015, injury when he was twisted and caught in the mauler. This history is detailed in the arbitration decision and in the record.

Based on this history, the deputy commissioner found Dr. Harbach’s May 4, 2017, causation opinion, finding claimant’s back condition was caused by the mauler accident, most convincing.

The deputy commissioner who wrote this decision made detailed findings of facts and conclusions of law. Given the facts as detailed above, it is again found the deputy commissioner did not err in finding the May 4, 2017, causation opinion of Dr. Harbach most convincing. Defendants’ application is denied as to this ground.

Defendants also argue the appeal decision in this case is required to give more detailed findings of fact as to why Dr. Harbach’s May 4, 2017, opinion was found most convincing. That is an incorrect understanding of the requirements of the appeal process of this Division.

In Bridgestone/Firestone v. Accordino, 561 N.W.2d 60, 62 (Iowa 1997), the Iowa Supreme Court noted: “the commissioner need not discuss every evidentiary fact and the basis for its acceptance or rejection so long as the commissioner’s analytical process can be followed on appeal.” In Accordino, the commissioner affirmed and adopted the deputy’s decision. *Id.* at 61. The Iowa Supreme Court concluded the “short form” decision by the commissioner met the requirements of section 17A.16(1). *Id.* at 62.

In Accordino, the Court indicated:

We believe the standards have been met by the agency here. No purpose would be served by requiring the commissioner to duplicate the deputy’s effort. We do not believe the statute to require it. When the commissioner’s affirmance rests on review yielding identical factual findings, and the commissioner’s legal analysis mirrors that described by the deputy, no further recitals are necessary to satisfy section 17A.16(1)...

(*Id.*)

See Dodd v Fleetguard, 759 N.W. 2d 133 (Ia. Ct. App. 2008); Heartland Specialty Foods v Johnson, 731 N.W.2d 397 (IA Ct. App. 2007)

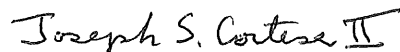
As noted, the arbitration decision provided detailed findings of facts, and well-reasoned analysis as to why Dr. Harbach’s May 4, 2017, causation opinion was most convincing. The arbitration and appeal decision are clear regarding the findings of facts and the analysis used in determining causation, and should be easy to follow should this case be appealed.

For the reasons detailed above, defendants’ application is denied as to this ground.

ORDER

Therefore it is ordered that defendant’s application for rehearing is denied in its entirety.

Signed and filed on this 18<sup>th</sup> day of March, 2019.



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JOSEPH S. CORTESE II  
WORKERS’ COMPENSATION  
COMMISSIONER

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