BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL McCLAIN, Claimant, vs. LENNOX INDUSTRIES, INC., Employer, and INDEMNITY INSURANCE CO. OF N.A., Insurance Carrier, Defendants.	:	File No. 1664566.01 ARBITRATION DECISION Head Note No. 1100

STATEMENT OF THE CASE

The claimant, Paul McClain, filed a petition for arbitration and seeks workers' compensation benefits from Lennox Industries, Inc., employer, and Indemnity Insurance Company of North America, insurance carrier. The claimant was represented by James Ballard. The defendants were represented by Robert Gainer.

The matter came on for hearing on September 16, 2020, before Deputy Workers' Compensation Commissioner Joe Walsh via Court Call video hearing system. The record in the case consists of joint exhibits 1 through 4, claimant's exhibits 1 through 7 and defense exhibits A through H. The claimant testified under oath at hearing. Tracy Hamm served as the court reporter. The matter was fully submitted on October 12, 2020, after helpful briefing by the parties.

ISSUES

The parties submitted the following issue for determination:

1. Whether the claimant sustained an injury which arose out of and in the course of his employment on December 11, 2018. The parties agree the claimant fell while at work on this date. The defendants, however, assert this fall at work did not "arise out of" his employment.

2. Claimant contends the defendants are responsible for healing period benefits from the date of injury through May 19, 2019. The defendants deny this primarily based on their denial of injury itself.

3. Whether the claimant has suffered any permanent functional disability.

4. Whether the defendants are responsible for medical expenses set forth in claimant's exhibit 5.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship at the time of the alleged injury.

2. Claimant was off work from the date of injury through May 19, 2019.

3. The commencement date for any permanent disability benefits, if any are owed, is May 20, 2019. The claimant's disability, if any, is confined to the right leg.

4. The weekly rate of compensation is $779.96 per week.

FINDINGS OF FACT

Claimant, Paul McClain, was 60 years old as of the date of hearing. He is a long-term employee of Lennox Industries (hereafter, Lennox) and he resides in Marshalltown, Iowa. Mr. McClain testified live and under oath at hearing. Since Mr. McClain's credibility is a key issue in the case, it will be discussed in more detail in the body of the findings of fact.

At the time of the alleged injury Mr. McClain worked as a line assembler for Lennox. He ordinarily walked to work, which was approximately two miles from his home. He did this regularly, 5 or 6 days a week. He testified he considered himself to be in good physical condition. On December 11, 2018, Mr. McClain arrived at the plant at approximately 6:15 a.m. He clocked in, when allowed by Lennox, and proceeded to his work area, carrying a book bag and proceeding at a normal pace. Mr. McClain testified that the plant was running on generators at the time and "the lighting wasn't good." (Claimant's Exhibit 7, McClain Depo., p. 18) At hearing, Mr. McClain testified that he tripped and fell forward landing on his right side. He testified that he thought he caught his toe in an uneven portion of the cement floor or the corner of a pallet. He testified he was unable to get himself up. He then dragged himself a few feet closer to his work station and lay on the production floor for a period of 15 or 20 minutes until someone finally came along. He testified he experienced immediate pain in his right leg. The accident was unwitnessed. Mr. McClain testified that he was certain he caught his toe on something and that he did not trip over his own feet.

A co-worker, Gary Lytton, was the first person to arrive at the scene of the fall. Mr. Lytton prepared a handwritten statement on December 17, 2018.

> On December 11, 2018 I was climbing the bridge over the cabinet insulation track. I noticed Paul was on the floor holding his leg. Went over to him to see if he was alright. He said that he thought he tripped on a crack in the floor but wasn't certain. Told me he hurt his leg (right one I think). I didn't see any cracks in the floor – there is a cut out section where I believe a hoist used to be mounted for old line 3. Also there was a pallet near one of the concrete pillars.

(Def. Ex. E, p. 38) Mr. Lytton passed away prior to hearing and was not available as a witness.

Mr. McClain was taken to the emergency room at Unity Point Health in Marshalltown. The medical records from this encounter document the following: "He reportedly tripped on a crack at work, landing on his right knee." (Jt. Ex. 2, p. 8) He was placed in a knee immobilizer and provided x-rays which demonstrated a comminuted and displaced distal femur fracture. (Jt. Ex. 2, p. 11) He was transferred and admitted to Mercy Hospital in Des Moines. The following day, he underwent surgery on his right leg. Kamaldeen Aderibigbe, M.D., performed an open reduction and internal fixation of his right distal femur and right femoral shaft. (Jt. Ex. 3, p. 15) Mr. McClain was hospitalized and then transferred to a rehabilitation facility until December 28, 2018. (Jt. Ex. 3, p. 18)

Lennox performed some type of an investigation following the accident.[1] A nurse from Lennox contacted Mr. McClain at the hospital, documenting the conversation as follows.

> I had a good talk with Paul. He is a very nice man, appears to be quite an anxious person. He was appropriate with answers and seemed to understand my questions. He is quite stressed about whether or not the claim will be found compensable.
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> MEETING WITH IW. * I met with the IW in room 562 at Mercy. I introduced myself and explained my role. IW agreed to work with me . . . . IW states he thinks he tripped on a cracked floor. It was 5:30 am, he believes. He states 'he was only ½ awake' at that time of day. He thinks the floor was still 'a mess' due to the previous tornado damage. There was no mention of debris or anything else on the floor. He denies feeling ill. Nothing out of the ordinary day for him. * IW states he fell forward and

[1] No formal "investigation report" was entered into evidence, nor did anyone testify on behalf of the employer to outline the specific nature of the investigation.

> landed on his right knee. States he had immediate pain and numbness from the knee down.

(Def. Ex. F, pp. 39-40) This statement was sent to Sean Graham from ESIS, the third-party administrator. (Def. Ex. G) Numerous photographs from the general work area were also taken. (Cl. Ex. 3, 4) According to an email from defense counsel, the photographs were taken by Jeffrey Mann on December 11, 2018, between 8:03 am and 8:10 am. (Cl. Ex. 4, p. 20) It is unknown whether anything was moved or cleaned up prior to the photographs being taken. These photographs were sent to Mr. Graham on December 14, 2018.

Mr. McClain testified that these photographs were taken by Jeffrey Mann. There is very little context for these photographs. There is no way to determine, for example, how Mr. Mann chose to take the pictures he took. Mr. McClain testified that the photographs did not provide any close-up photographs of the area where he actually fell. When asked specifically about Claimant's Exhibit 4, page 23, he testified that he fell near the barrel in the center, which is relatively distant in the photograph. As such, that photograph certainly does not depict the condition of the floor at the precise location he fell. In regard to the other photographs, I find there is little context or explanation as to what precisely they are alleged to represent. There is also no indication from investigators whether any pallet or debris was removed from the floor. Ultimately, the photos provided do depict a generally flat, unobstructed surface.[2] Nevertheless, I find that these photographs are not particularly probative of the condition of the floor in the location Mr. McClain actually fell.

After reviewing the photographs and the statement from the Lennox nurse, ESIS denied the compensability of Mr. McClain's injury.

> We have investigated this matter, to include speaking with you on multiple occasions surrounding the fall you experienced. When you initially spoke to the Lennox facility nurse, you identified that you thought you tripped over a crack in the floor. . . . Your fall was unwitnessed.
>
> We obtained a statement from Mr. Lytton, who came upon you after your fall on December 11, and he provides you stated you thought you tripped on a crack.
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> Our investigation returned that you were walking over an even, dry, and unobstructed floor, while carrying only your personal belongings. The closest pallet was over five feet away from where you were found initially and explained the incident occurred. . . . We cannot find any causal nexus between the employment and any risk of injury.

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[2] It is noted, however, that the concrete floor is not exactly smooth like a basketball court. It is slightly pitted with some bumps and cracks.

(Cl. Ex. 2, p. 11) What is difficult to understand in this investigation summary is what information the defendants were relying on regarding the precise location where Mr. McClain fell. At the time of hearing, I have a number of questions which are not adequately answered. For example, when Mr. Graham indicates that the "closest pallet was over five feet away from where you were found", which pallet in the photographs is he referring to? I am also curious about how Mr. Lytton's statement factors into this. He indicated there "is a cut out section where I believe a hoist used to be mounted for old line 3," which could mean there was an uneven surface in the area near where Mr. McClain fell. Mr. Graham does not mention this at all and there is no indication whether this area is included in any of the photographs. In addition, it is unclear whether Mr. Graham was aware that Mr. McClain drug himself several feet closer to his work station after he fell.

There may be perfectly good and reasonable explanations for all of this, but they are not in this record.

Mr. McClain was off work for five and a half months while under treatment for his condition. Dr. Aderibigbe released Mr. McClain to return to work full-duty on May 10, 2019. (Jt. Ex. 3, p. 29) "Closed displaced comminuted fracture of shaft of right femur with routine healing. . . . Patient's fracture is completely healed." (Jt. Ex. 3, p. 29) Mr. McClain has returned to work at Lennox and continues to be employed at the time of hearing.

On June 15, 2020, Mr. McClain was evaluated by Sunil Bansal, M.D., for an independent medical evaluation (IME). Dr. Bansal took a full history, reviewed appropriate records and examined Mr. McClain. (Cl. Ex. 1) He opined Mr. McClain sustained a 12 percent impairment of the right leg based on the displaced supracondylar fracture based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Cl. Ex. 1, p. 8) He further opined that the injury itself, as well as the resulting disability, was consistent with the type of fall described by Mr. McClain.

> In my medical opinion, the pattern of injury that occurred on December 11, 2018 indicates that Mr. McClain tripped over an obstruction on the floor, such as a crack on the floor, landing on his knee against the concrete, resulting in an extensive supracondylar fracture with extension to the infracondylar aspect, necessitating surgical fixation.
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> A trip is defined as a sudden loss of footing, and the sequela of an interruption in the natural rhythmic movement of the swinging leg. It occurs at any point where an obstruction impedes or checks the smooth completion of the step, causing a momentary hang-up of the foot, causing one to fall forward and usually onto the knee, as occurred in Mr. McClain's case.

(Cl. Ex. 1, p. 8)

On behalf of defendants, Charles Mooney, M.D., performed a records review and prepared a report dated August 12, 2020. Dr. Mooney opined that Mr. McClain's diagnosis was supracondylar/intracondylar femur fracture of the right lower extremity associated with osteoporosis, vitamin D deficiency, and low testosterone. (Def. Ex. A, p. 2) He opined there was no occupational hazard which caused the injury and that the "severity of his injury related to the fall, is related to preexisting osteoporosis." (Def. Ex. A, p. 3) He assigned a 5 percent permanent impairment rating based upon the AMA Guides.

Having reviewed the entire record and listened to the sworn testimony of the claimant live, I find that Mr. McClain has carried his burden of proof that he sustained an injury to his right leg on December 11, 2018, which arose out of and in the course of his employment. This case is highly dependent upon Mr. McClain's credibility. It is noted that defendants have attacked his credibility.

I find Mr. McClain to be generally credible. His demeanor was appropriate. There was nothing about his demeanor at hearing which caused me any concern for his truthfulness. He was not the most accurate historian. Defendants pointed out a couple of inaccuracies in his testimony. For example, he initially testified that he had taken no medications prior to his injury and then later admitted he had taken medications. (Def. Ex. H, McClain Depo, pp. 10-14) He also initially misremembered Mr. Lytton's name at hearing and he misremembered the year in which a tornado struck the Lennox plant. He could not remember the exact shoes he was wearing at the time of the accident. These instances though, appear to be related to poor memory, rather than dishonesty. The reality is, a comparison of Mr. McClain's hearing testimony with his deposition testimony, as well as the nurse's notes and medical documentation, is remarkably consistent. Mr. McClain stated from the very beginning that he thought he caught his toe in a crack in the floor causing him to fall forward onto his right leg. He was honest that he was not 100 percent certain about the exact mechanism of the fall, but he clearly believed that he caught his toe on something. That never changed.[3] Mr. McClain's leg was broken. He did not have an opportunity to investigate the exact cause of the injury. The employer did. Unfortunately, the employer's investigation was deficient.

At the end of the day, I believe Mr. McClain. The greater weight of the evidence supports a finding that the most likely reason he fell was that his toe caught on some type of crack or obstruction on the ground causing him to fall forward onto his right knee.

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[3] The defendants suggest Mr. McClain's explanation of the injury was "shifting and contradictory." (Def. Brief) Having reviewed all of the evidence in the record, I disagree. I find his explanation actually remarkably consistent. Many of the details which are described by defendants as "shifting and contradictory" are minor semantic distinctions. The only areas where Mr. McClain's testimony was actually wrong are minor memory lapses which are not significant to the case, not instances of actual dishonesty.

CONCLUSIONS OF LAW

The fighting issue submitted is whether the claimant's fall on December 11, 2018, arose out of and in the course of his employment.

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" refer 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.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

It is the claimant's burden to prove that his injury arose out of his employment. Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007). Mr. McClain must prove by a preponderance of evidence "that a causal connection exists between the conditions of his employment and the injury." Miedema v. Dial Corp, 551 N.W.2d 309, 312 (Iowa 1996).

I reject the defendants' contention that the evidence presented demonstrates Mr. McClain's fall was either idiopathic or unexplained. I have found that the greater weight

of evidence supports a finding that his toe caught on some type of crack or obstruction on the ground causing him to fall forward onto his right knee. There is some evidence in the record to refute this. I find that the claimant's testimony, which is consistent with his deposition testimony and buttressed by the nurse's notes and medical records, including the opinion of Dr. Bansal, is more convincing than the employer's investigation evidence, which was largely lacking context and otherwise deficient as described in the findings of fact.

Having found that the claimant suffered an injury which arose out of and in the course of his employment, the remaining questions involve what benefits he is entitled to.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

The claimant is entitled to healing period benefits from the date of his injury through the date he returned to work and was released by the doctor, May 19, 2019.

The next issue is the extent of permanent partial disability.

> In all cases of permanent partial disability described in paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "t", or paragraph "u" when determining functional impairment and not loss of earning capacity.

Iowa Code Section 85.34(2)(x) (2019). In other words, the law, as written, is not concerned with an injured worker's actual functional loss as determined by the evidence, but rather the impairment rating as assigned by the adopted version of The AMA Guides. The only function of the agency is to determine which impairment rating is most accurate.

The claimant has also suffered a permanent partial disability of his right leg under Iowa Code Section 85.34(2)(p) (2019).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been a viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980)

I find that Dr. Bansal has provided the most reliable rating of impairment under The AMA Guides, Fifth Edition. He is the only physician to provide a rating who actually examined Mr. McClain. His report better explains the basis for his rating. Therefore, the claimant is found to have suffered a12 percent functional disability of his right leg. I conclude this entitles him to 26.4 weeks of permanent partial disability benefits commencing on May 11, 2019. Dr. Mooney may well be correct that other factors may have contributed to the severity of Mr. McClain's injury, such as osteoporosis, however, this does not change the fact that the fall was undoubtedly a substantial contributing factor to the impairment.

The next issue is medical expenses. Claimant is seeking the expenses set forth in Claimant's Exhibit 5.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant's Exhibit 5 has been reviewed thoroughly. The defendants are responsible for these expenses.

Finally, the claimant seeks the costs set forth in Claimant's Exhibit 6, in the amount of $2,047.00.

Iowa Code section 86.40 states:

Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

I find the defendants are responsible for these costs.

ORDER

THEREFORE IT IS ORDERED

All benefits shall be paid at the rate of seven hundred seventy-nine and 96/100 ($779.96) per week.

Defendants shall pay healing period benefits from the date of injury through May 10, 2019.

Defendants shall pay the claimant twenty-six point four (26.4) weeks of permanent partial disability benefits commencing May 11, 2019.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30 (2019).

Defendants are responsible for medical expenses as set forth in Claimant's Exhibit 5.

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

Costs are taxed to defendant in the amount of two thousand forty-seven and 00/100 dollars ($2,047.00).

Signed and filed this 22nd day of April, 2021.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Ballard (via WCES)

Robert Gainer (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.