

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK E. ROBINSON,

Claimant,

vs.

MILLS MANUFACTURING CO.,

Employer,

and

COMMERCE & INDUSTRY
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

APR 24 2015

WORKERS COMPENSATION

File No. 5043557

ARBITRATION DECISION

Head Note Nos.: 1402.40; 1803

STATEMENT OF THE CASE

Mark Robinson, claimant, filed a petition in arbitration seeking workers' compensation benefits from Mills Manufacturing Company, employer, and Commerce and Industry Insurance Company, insurance carrier, both as defendants. Deputy Workers' Compensation Commissioner Erin Pals presided at the hearing, which was held on March 12, 2015 in Waterloo, Iowa.

Claimant, Mark Robinson, John Hodges, and Todd Schmitz all testified live at trial. The evidentiary record also includes claimant's exhibits 1-4 and defendants' exhibits A-H. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties request the opportunity for post-hearing briefs, which were submitted on April 2, 2015.

ISSUE

The parties submitted the following issue for resolution:

1. The extent of industrial disability, if any, that claimant sustained as a result of the November 26, 2012, work injury.

FINDINGS OF FACT

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

Mr. Robinson sustained 15 percent industrial disability as a result of the November 26, 2012 work injury.

Mr. Robinson began working at S & R Manufacturing in 2008. In 2011 S & R was bought by Mills Manufacturing, where claimant was working on the date of the injury. (Testimony) On November 26, 2012, Mr. Robinson injured his right shoulder when he tripped and fell while working in the sandblasting area. He is left arm dominant. Mr. Robinson initially treated with a chiropractor before he saw Douglas Cooper, M.D. During Mr. Robinson's second appointment with Dr. Cooper he was referred to Judson, Ott, M.D. (Exhibit F)

The first time Mr. Robinson saw Dr. Ott was on February 22, 2013. Dr. Ott's diagnosis was right proximal humerus fracture and possible partial rotator cuff avulsion. He placed restrictions on his activities and recommended physical therapy. (Ex. G, pages 13-15) The next note from Dr. Ott is dated May 24, 2013. At that time, Mr. Robinson was making excellent progress and was doing everything at work that he needed to do. Mr. Robinson's pain level was 1-2. The examination noted essentially full active range of motion. New x-rays demonstrated that the proximal humerus fracture healed with no significant displacement. Mr. Robinson felt he was progressing well enough that he wanted to hold off on a diagnostic MRI. Dr. Ott released him from restrictions and advised him to follow-up in six weeks. (Ex. G, pp. 16-18)

On June 27, 2013, Mr. Robinson was laid off from Mills as part of a company-wide layoff due to a significant downturn in business. (Ex. D, p. 6; Ex. G, pp. 35-36, 41) Prior to his layoff Mr. Robinson continued to work at Mills performing his normal job duties. During that time he made accommodations for himself for the things he could no longer lift. (Testimony) Todd Schmitz testified that at the time Mr. Robinson was laid off, approximately 20 employees were laid off due to a lack of business. He also testified that in 2012 the entire workforce was reduced from 67 employees to approximately 30 employees. The 2013 layoffs were the second wave of layoffs at Mills. (Testimony) Based on the record, the testimony of Mr. Robinson, and the testimony of Todd Schmitz I find Mr. Robinson's layoff was not related to the work injury of November 26, 2012. (Ex. D, p. 6; Ex. G, pp. 35-36, 41)

An MR arthrogram of the right shoulder was performed on August 5, 2013. There was still some edema in the lateral aspect of the rotator cuff but the MR arthrogram was essentially normal. (Ex. G, p. 19)

Mr. Robinson saw Dr. Ott again on September 18, 2013. His biggest complaint was stiffness and soreness when he used his arm out away from his body. He reported

he was able to work without restrictions; however, he had been laid off. Dr. Ott offered the option of an arthroscopic exam, but Mr. Robinson did not think his symptoms were significant enough to proceed with any surgery. He was again released with no restrictions. (Ex. G, p. 20)

The next note from Dr. Ott is dated November 18, 2013. At that time Mr. Robinson was almost one year out from the injury. He reported some soreness and discomfort in his shoulder. The examination noted some limited range of motion. Dr. Ott felt if claimant did not opt for surgical treatment then he had essentially reached maximum medical improvement (MMI). The note indicates Mr. Robinson was going to consider surgery. (Ex. G, p. 21)

Mr. Robinson returned to Dr. Ott on December 18, 2013, and advised he did wish to proceed with surgical treatment. (Ex. G, pp. 23-24) Dr. Ott performed a right shoulder arthroscopy on January 9, 2014. The procedure consisted of: biceps tenotomy, debridement of partial-thickness articular side rotator cuff tear, and arthroscopic acromioplasty with conversion to type I acromion. (Ex. 1, pp. 1-3)

Mr. Robinson was seen on April 9, 2014, for follow-up of his operation. He was clearly improved from his preoperative status. He was released to return to work with restrictions. (Ex. G, p. 26) Mr. Robinson was seen again on May 21, 2014. He had a little bit of soreness, but was still improving with time. He demonstrated nearly full range of motion. Dr. Ott kept restrictions on Mr. Robinson's activities. (Ex. G, p. 27) On July 2, 2014, Dr. Ott placed Mr. Robinson at MMI and released him to regular duty with no restrictions. (Ex. G, p. 28) This is the last time Mr. Robinson sought any treatment for his right shoulder. (Testimony) On July 21, 2014, Dr. Ott opined that Mr. Robinson had sustained a five percent whole person rating. (Ex. 3)

At his attorney's request, Mr. Robinson was seen by Richard F. Neiman, M.D., at Neurological Associates of Iowa City, P.C, on August 12, 2014 for purposes of an independent medical examination (IME). Dr. Neiman noted Mr. Robinson had "quite restricted" range of motion. (Ex. 2, p. 3) Dr. Neiman assigned 12 percent whole person impairment to Mr. Robinson. With regard to restrictions, Dr. Neiman felt he should avoid tasks which require repetitive flexion, extension, abduction, adduction, and internal and external rotation of the right shoulder. He opined that the impairment and restrictions were related to the November 26, 2012 work injury. (Ex. 2)

We now turn to the issue of industrial disability. In the present case there are 2 expert medical opinions. First, there is the opinion of Dr. Ott, the orthopedic surgeon who surgically treated Mr. Robinson. Dr. Ott released Mr. Robinson to return to work without restrictions and assigned a 5 percent body as a whole impairment. Dr. Ott treated Mr. Robinson for nearly 1 ½ years. Dr. Ott observed and treated Mr. Robinson over a long period of time. He was able to see him on numerous occasions. Second, there is the opinion of Dr. Neiman, the IME physician. He opined that Mr. Robinson sustained 12 percent impairment of the whole person. He assigned permanent restrictions of avoiding tasks which require repetitive flexion, extension, abduction,

adduction, and internal and external rotation of the right shoulder. Dr. Neiman only saw Mr. Robinson on 1 occasion. During that 1 exam, his findings varied significantly from the findings throughout Mr. Robinson's treatment. For example, he found that Mr. Robinson's range of motion on the right shoulder was "quite restricted." These exam findings simply do not fit with the medical picture as a whole. Unfortunately, Dr. Neiman does not offer any explanation or acknowledgement of these exam differences. Furthermore, Dr. Neiman specializes in neurology, while Dr. Ott specializes in orthopaedics. For these reasons, I find that the opinions of Dr. Ott are more persuasive than those of Dr. Neiman. Therefore, I find that as a result of the November 26, 2012 injury, Mr. Robinson sustained 5 percent functional impairment to his body as a whole. I further find that he does not have any permanent restrictions as a result of the injury.

Mr. John Hodges testified on behalf of Mr. Robinson about the impact the injury has had on Mr. Robinson. Mr. Hodges is the claimant's second cousin. He testified that Mr. Robinson was a very good worker. He has observed a change in Mr. Robinson's capacity to work. According to Mr. Hodges, the claimant takes longer to complete tasks than he did before the shoulder injury because he only has one good arm. Mr. Hodges also testified that there are quite a few manufacturing plants in the area that the claimant resides. (Testimony)

At hearing, Mr. Robinson testified that his current condition was not horrible. He does have pain when he reaches overhead. He also feels that his strength and grasp are limited. He believes his right arm is three-fourths what it should be when he is using it to reach overhead. He testified that he still has pain, but it is not as extensive as it was. He only has pain when he tries to use it; he does not have pain when he is at rest. He also testified that he cannot perform many of the heavy lifting tasks that he did before. At the time of hearing he was no longer using prescription medications.

Mr. Robinson testified that he could perform his old job at Mills as long as the lifting was limited to 25 pounds. However, he testified he needs to limit his lifting to 25 pounds due to a back problem that he has. He also said that the difficulty he has with bending is due to his back, not his shoulder injury. Mr. Robinson has not applied at Mills since he was laid off. (Testimony)

Mr. Robinson currently lives in Earlville, Iowa, which is approximately 50 miles from Waterloo and a little over 30 miles to Dubuque. At the time of hearing he was 56 years of age. Mr. Robinson graduated from Maquoketa Valley High School in 1977. The only other training he received was in welding. However, he did not complete enough of the coursework to receive any type of degree or certificate.

As defendants point out, Mr. Robinson's work history is sporadic at best. During discovery claimant was asked to provide his employment history prior to the injury. He responded by indicating that he worked for S & R Manufacturing and prior to that "I did farm work." (Ex. C, p. 5) At hearing, he testified he worked for a farrow-to-finish hog operation as a laborer. He helped sort hogs, performed basic maintenance on

machinery; he did a little bit of everything. He testified that this job required a lot of crawling, pushing, and tugging. He performed this job off and on for about 20 to 25 years. He also worked at Henderson Manufacturing, which he described as heavy manufacturing. (Testimony)

Prior to claimant's layoff from Mills he was back performing his old job without restrictions. After he was laid-off, Mr. Robinson opted to undergo surgery for his right shoulder. Mr. Robinson testified that the surgery improved his condition. Since the injury he has also worked part-time for a farmer. He laid plastic flooring in a hog house. He performed this work for a farmer he had previously worked for on a part-time basis; the farmer had never needed him on a full-time basis. Mr. Robinson testified he could still run any piece of farm equipment out there. He has also worked harvesting and planting. During harvest he might work 60-80 hours per week. He earned \$12.00 per hour. Claimant also testified that he just applied to run an articulated dump truck and excavators.

Considering claimant's age, employment background, educational background, ability to return to his pre-injury job until his lay-off, residual physical abilities, his permanent impairment, motivation levels, and all other industrial disability factors identified and outlined by the Iowa Supreme Court, I find that Mr. Robinson has sustained a 15 percent loss of future earning capacity as a result of the November 26, 2012 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).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219

Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

For the reasons stated above, I found Mr. Robinson sustained a 15 percent loss of industrial disability as a result of his November 26, 2012 work injury. Therefore, claimant is entitled to payment of 75 weeks of permanent partial disability benefits. The payment of the benefits shall commence on the stipulated date of July 3, 2014. The weekly benefits shall be paid at the stipulated weekly workers' compensation rate of \$379.14.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay seventy-five (75) weeks of permanent partial disability benefits at the rate of three hundred seventy-nine and 14/100 dollars (\$379.14) per week commencing on July 3, 2014.


Defendants shall pay all accrued benefits in a lump sum.

Defendants shall pay interest as provided in Iowa Code section 85.30.

Defendants shall have a credit for benefits paid to date.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 24th day of April, 2015.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

ROBINSON V. MILLS MANUFACTURING CO.

Page 7

Copies To:

Carter Stevens
Attorney at Law
PO Box 956
Waterloo, IA 50704-0956
lawfirm@rsplaw.biz

Aaron T. Oliver
Attorney at Law
5th Fl. US Bank Bldg.
520 Walnut St.
Des Moines, IA 50309-4119
aoliver@hmrlawfirm.com

EQP/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.