BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL SELIGER, Claimant, vs. HY-VEE, INC., Employer, and UNION INSURANCE COMPANY OF PROVIDENCE, Insurance Carrier, Defendants.	File No. 19003453.02 ARBITRATION DECISION Head Notes: 1108.50, 1402.40, 1801, 1803, 2501, 2907

STATEMENT OF THE CASE

Daniel Seliger, claimant, filed a petition in arbitration seeking workers' compensation benefits from Hy-Vee, Inc., employer, and Union Insurance Company of Providence, insurance carrier, as defendants. Hearing was held on January 5, 2022. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the declaration of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via Internet-based video. Accordingly, this case proceeded to a live video hearing via Zoom with all parties and the court reporter appearing remotely.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. 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.

Daniel Seliger was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE7, claimant's exhibits 1-4, and defendants' exhibits A-K. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on January 28, 2022, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury to his left hip as the result of the stipulated June 22, 2019 work injury.

2. The nature and extent, if any, of permanent disability sustained by claimant as the result of the stipulated June 22, 2019 work injury.

3. Whether claimant is entitled to healing period benefits from August 1, 2019 to September 30, 2019.

4. Payment of past medical expenses.

5. Whether claimant is entitled to reimbursement pursuant to Iowa Code section 85.39 for an independent medical examination.

6. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Daniel Seliger, sustained an injury to his left knee which arose out of and in the course of his employment with Hy-Vee, Inc. ("Hy-Vee") on June 22, 2019. The central dispute in this case is whether Mr. Seliger also sustained an injury to his left hip on June 22, 2019.

Mr. Seliger began working for Hy-Vee part-time in January 2015 as a truckdriver. He passed the pre-employment physical and did not require any restrictions. Initially, he worked one or two days a week, as needed by Hy-Vee. In June 2015 he began working four days a week. At the time of the hearing, Mr. Seliger was still a regular time truckdriver for Hy-Vee. For reasons not related to the work injury, he has reduced his driving to three days per week. (Testimony)

Prior to the work injury, Mr. Seliger had some problems with his left hip. As early as 2009 Mr. Seliger sought medical treatment for left hip symptoms. In June 2009 he reported lower back pain and right and left hip discomfort. The clinical notes indicate he was quite active; he bicycles, plays racquetball, and numerous other sports that aggravate those areas. X-rays of the left hip demonstrated an abnormality. In July 2018, Mr. Seliger reported left hip aching. He wondered if it was bursitis. He reported he does a considerable amount of walking. The assessment included left hip pain. Again, there was mention of possibly seeing Dr. Liudahl for his left hip. Mr. Seliger reported left hip symptoms again in December 2018. (JE2, pp. 3-10)

At the time of the work injury on June 22, 2019, Mr. Seliger was in the process of loading some empty pallets onto his trailer at a Hy-Vee store in Minnesota. In his answers to interrogatories Mr. Seliger described the injury as follows: "I was climbing out of my trailer when I twisted my left knee and hip and had to sit down. I initially thought I had a 'hip-pointer' and that I would be okay with rest but the next day I could barely walk." (Def. Ex. F, p. 28) He testified that at the time of the injury, when he was climbing down from the truck, he misjudged how far he was from the ground. As a result, he stepped down awkwardly, twisting his left hip and left knee. Mr. Seliger was not able to help the other workers at the store finish up. He hobbled over to the side and sat down. He was able to drive back to his home destination. He fueled up his truck and walked around the truck and trailer to make certain it was secure. He testified that he limped the whole time. He did not report the injury that day because he thought his symptoms would go away. (Testimony)

The next morning Mr. Seliger was barely able to walk. He reported the left knee and left hip injury to Hy-Vee, and they directed him to seek treatment with Timothy G. Rice, D.O. at Cherokee Regional Medical Center. (Testimony)

Mr. Seliger saw Dr. Rice on June 24, 2019. He reported that he was climbing out of a trailer when he twisted his left knee and hip. He thought it would get better, but it had not. Mr. Seliger was positive for gait problems and myalgias. X-rays of the left hip revealed early severe osteoarthritis throughout the hip with advancing subchondral collapse and total loss of acetabular femoral joint space distance on weightbearing surface. Dr. Rice's assessment was left hip strain and strain of the left knee. Dr. Rice recommended physical therapy and over-the-counter pain medications. (JE4, pp. 13-15; JE5)

Mr. Seliger returned to Cherokee Regional Medical Center on July 2, 2019. He reported that his left knee and hip felt the same. A review of the CT scan from the emergency room on June 29, 2019 showed severe degenerative changes in his left hip. The notes state that "it sounds like his accident he had really dinged and flared up his arthritis." (JE4, p. 18) Mr. Seliger's Tramadol was refilled and physical therapy was recommended to try to quiet down the arthritis, otherwise he would probably need a hip replacement. It was noted that he would need to see his PCP for that. (JE4, pp. 16-18)

Mr. Seliger testified that after initially seeing Dr. Rice he felt it was likely the defendants would deny his hip claim. He made an appointment to see Kevin J. Liudahl, M.D. at Tri-State Specialists. He saw Dr. Liudahl on July 9, 2019. Mr. Seliger reported he had some off and on hip ache and discomfort over the last couple of years. It had been quite some time since he had an episode. Three to four weeks ago he had a minimal misstepping out of his pickup and felt some anterolateral, lateral, and some posterolateral discomfort that radiated down to his knee and rarely below the knee. He described his pain as quite unbearable. Mr. Seliger was told in Cherokee that he is an excellent candidate for a replacement and wants to have his hip replaced as soon as possible. Dr. Liudahl noted the hip x-rays showed end stage left hip, moderate severe right hip osteoarthritis. He also noted that Mr. Seliger had a significant antalgic limp. Dr. Liudahl's impression was end stage left hip osteoarthritis, moderate to moderate severe right hip osteoarthritis but presently minimally symptomatic. He recommended

uncemented total hip replacement with ceramic head. The surgery was scheduled for the day after Mr. Seliger's daughter's wedding. (JE6, pp. 28-32)

Dr. Liudahl performed the total hip replacement on August 5, 2019. The postoperative diagnosis was severe left hip arthritis. He was kept off work for a period following the surgery. He was released back to full duty work on September 30, 2019. (JE6, p. 44; JE7, pp. 45-46; testimony)

On August 6, 2019, Dr. Rice authored a hand-written note that stated, "It is in my medical opinion that Mr. Seliger's hip condition and the need for surgery is related to a personal condition which would have manifested regardless of the incident of 6/22/19." (JE4, p. 19)

On August 7, 2019, claimant was advised by the defendants that they had completed their investigation of the facts surrounding his alleged left knee and left hip injury. Defendants were accepting the knee injury as compensable. However, based on the opinion of Dr. Rice, defendants denied the left hip injury. (Def. Ex. D, p. 22)

Mr. Seliger returned to Tri-State Specialists on August 14, 2019. He was 10 days post surgery and was doing well. He was to remain off work. (JE6, pp. 37-38) He continued to follow-up with Dr. Liudahl's office. On September 3, 2019, Dr. Liudahl noted Mr. Seliger was doing very well and was increasing his activities. Dr. Liudahl felt that Mr. Seliger was not ready to load and unload as a truck driver quite yet. He gave him a release for that work in four weeks. (JE6, pp. 40-44)

On September 23, 2019, Mr. Seliger returned to Dr. Rice for follow-up of his left knee strain. He completed physical therapy and was doing much better. Dr. Rice noted that Mr. Seliger wanted to be released. Mr. Seliger reported his knee was better and it was feeling good. Dr. Rice noted he had good range of motion and placed him at maximum medical improvement. Mr. Seliger was advised to follow-up as needed. He was released fit for full duty. Mr. Selinger returned to work at Hy-Vee. (JE4, pp. 20-23; testimony)

On November 2, 2021, at the request of his attorney, Mr. Seliger underwent an independent medical evaluation with Sunil Bansal, M.D. In addition to examining Mr. Seliger, Dr. Bansal also reviewed the records provided to him. As the result of his review and examination Dr. Bansal issued a report on November 29, 2021. Dr. Bansal's diagnoses included aggravation of left hip osteoarthritis and left knee strain. He placed Mr. Seliger at MMI for his left knee on September 23, 2019 and for his left hip on August 5, 2020. Under the subjective portion of the report, Dr. Bansal noted the history that as Mr. Seliger climbed out of the trailer at work, he twisted his left hip and left knee. However, under the causation portion of Dr. Bansal's report, he stated "jumping off his semi trailer and twisting his left knee is consistent with his left knee strain." (Cl. Ex. 1, p. 10) With regard to the left hip he stated, "[i]n my medical opinion, Mr. Seliger aggravated his left hip osteoarthritis from jumping off his semi trailer and twisting his hip on June 22, 2019." Id. Dr. Bansal assigned no impairment for the left knee and 15 percent whole person impairment for the left hip. He permanently restricted Mr. Seliger to no prolonged standing or walking greater than 30 minutes at a time; avoid kneeling and squatting; avoid multiple stairs or climbing. (Cl. Ex. 1)

On November 22, 2021, at the request of the defendants, Mr. Seliger underwent an IME with Charles D. Mooney, M.D. In addition to examining Mr. Seliger, Dr. Mooney also reviewed the records provided to him. As the result of his review and examination Dr. Mooney issued a report with his opinions. Mr. Seliger told Dr. Mooney that at the time of the injury he was "[c]limbing out of the trailer he stepped down approximately 30 inches and felt pain in his left knee and left hip." (Def. Ex. A, p. 12) Dr. Mooney opined Mr. Seliger sustained a strain of the left knee which responded well to conservative treatment. He felt there was no objective advancement of his previous left knee condition related to the June 22, 2019 incident. He felt Mr. Seliger had reached MMI and that he did not have any ratable impairment as the result of the work injury. Additionally, he did not assign any permanent restrictions for the left knee. With regard to the left hip, Dr. Mooney opined that,

> Mr. Seliger clearly had pre-existing osteoarthropathy of the left knee and had previous symptoms prior to the date of injury of 6/22/19. It is my opinion that the date of injury of 6/22/19 did not objectively advance his condition, nor result in his need for left hip replacement. It is my opinion that the medical record is clear that he had been having symptoms for several years and the findings are consistent with the natural progression of degenerative arthropathy unrelated to the injury.

(Def. Ex. A, p. 17)

Dr. Mooney further opined that the need for left total hip replacement was not causally related to the work injury which may have caused a transient increase in symptoms. He felt the need for hip replacement was directly related to Mr. Seliger's severe and advanced osteoarthropathy of the hip that predated the work injury. Dr. Mooney believed the need for the hip replacement was directly due to Mr. Seliger's personal condition and would have manifested regardless of the work incident. He noted that the medical records indicated a progressive symptomatology. Dr. Mooney did not assign any permanent impairment or restrictions for the left hip as related to the work injury. (Def. Ex. A)

The first issue to be addressed is whether Mr. Seliger sustained a permanent injury to his left hip as the result of the stipulated June 22, 2019 work injury. Initially, Dr. Rice provided treatment to Mr. Seliger for his left knee and left hip. Dr. Rice opined that Mr. Seliger's left hip condition and the need for hip replacement surgery is related to a personal condition which would have manifested regardless of the work incident on June 22, 2019. (JE4, p. 19) Dr. Mooney's opinion is consistent with the opinion of Dr. Rice. Dr. Mooney felt the work incident may have caused a transient increase in symptoms but the need for the hip replacement was directly related to the severe and advanced osteoarthropathy of the hip that predated the work injury. Both Dr. Rice and Dr. Mooney opined that Mr. Seliger did not sustain any permanent restrictions or impairment as the result of the work injury. The record is void of any opinion from the treating surgeon in this case. The only other doctor to render an opinion on causation is Dr. Bansal.

Dr. Bansal opined claimant aggravated his left hip osteoarthritis from jumping off his semi-trailer and twisting his hip on June 22, 2019. He noted that preinjury Mr. Seliger's baseline was characterized as doing well with only mild intermittent hip pain. After the injury, this was no longer the case, necessitating a left total hip replacement. Unfortunately, Dr. Bansal bases his causation opinion on an incorrect history. Dr. Bansal opined that jumping off the trailer was the mechanism of injury. However, the preponderance of the evidence demonstrates that Mr. Seliger was not jumping off his trailer at the time of the work injury; rather, Mr. Seliger was stepping off the trailer and misjudged the distance of the step causing a bit of a misstep. Because Dr. Bansal's opinion is based on an incorrect history, I do not find his opinion to be more persuasive than those of Dr. Rice and Dr. Mooney. Thus, I find that claimant has failed to carry his burden of proof to show that the work injury caused any permanent impairment or the need for the hip replacement surgery. (Cl. Ex. 1)

We now turn to the issue of whether Mr. Seliger sustained any permanent impairment as the result of the injury to his left knee on June 22, 2019. Following the injury Mr. Seliger received conservative treatment and his knee improved. In September 2019 Dr. Rice noted the left knee strain had resolved and placed Mr. Seliger at MMI. He released him to full duty. He did not issue any type of impairment rating for the left knee. (Testimony; JE4, pp. 20-23)

The two IME doctors in this case did address the issue of permanent impairment for the left knee. Dr. Mooney stated that Mr. Seliger did not demonstrate any ratable impairment for the left knee as the result of the work injury. Likewise, Dr. Bansal noted there was no ratable impairment for the left knee. (Def. Ex. A, p. 16; Cl. Ex. 1, p. 11) I find that the preponderance of the evidence demonstrates that Mr. Seliger sustained no impairment as the result of the June 22, 2019 injury to his left knee.

Mr. Seliger is seeking temporary total disability benefits from August 1, 2019 to September 30, 2019 while he was undergoing treatment for his left hip. However, because claimant failed to demonstrate that the work injury necessitated the hip replacement surgery, it follows that the time he was off work for his hip surgery is not related to the work injury. I find claimant failed to demonstrate that he missed work from August 1, 2019 to September 30, 2019 due to the June 22, 2019 work injury.

Next, Mr. Seliger is seeking payment of past medical expenses as set forth in claimant's exhibit 3. A review of claimant's exhibit 3 reveals that the medical expenses were incurred for treatment of Mr. Seliger's left hip. I find Mr. Seliger failed to demonstrate that the treatment he seeks payment for was related to the June 22, 2019 work injury.

Next, Mr. Seliger is seeking reimbursement for the IME performed by Dr. Bansal on November 2, 2021. In claimant's post-hearing brief he concedes that he is not entitled to reimbursement pursuant to Iowa Code section 85.39. Rather, he is seeking reimbursement as a cost. Thus, the IME will be addressed in the cost section.

Finally, claimant is seeking reimbursement of costs as set forth in claimant's exhibit 1, p. 12. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. I find that claimant was

generally not successful in his case and therefore I exercise my discretion and do not assess costs against the defendants. Each party shall bear their own costs.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

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 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).

When an expert's opinion is based upon an incomplete or incorrect history, it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965). The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Based on the above findings of fact, I conclude the opinions of Dr. Rice and Dr. Mooney carry greater weight than that of Dr. Bansal. As such, I conclude claimant failed to demonstrate by a preponderance of the evidence that the work injury necessitated his hip replacement surgery. I further conclude claimant failed to demonstrate that he sustained any permanent partial disability to his left hip or left knee as the result of the work injury.

Claimant is seeking temporary total disability benefits. When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

In the present case, claimant is seeking payment of temporary total disability benefits for the time he was unable to work due to his left hip replacement surgery. Because he failed to demonstrate that this was causally connected to the work injury, claimant has also failed to demonstrate by a preponderance of the evidence that he is entitled to benefits during this period of time. I conclude claimant shall not receive any temporary total disability benefits from August 1, 2019 to September 30, 2019.

Claimant is seeking payment of past medical expenses. 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).

Based on the above findings of fact, I conclude claimant failed to demonstrate by a preponderance of the evidence that the medical expenses listed in claimant’s exhibit 3 were incurred as the result of the June 22, 2019 work injury. As such, I conclude defendants are not responsible for those expenses.

Finally, claimant is seeking an assessment of costs, including the IME performed by Dr. Bansal. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner. 876 IAC 4.33. I conclude claimant was not successful in his case and therefore I exercise my discretion and do not assess costs against the defendants. Each party shall bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

Each party shall bear their own costs.

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 ___14th_____ day of April, 2022.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mary Hamilton (via WCES)

Lindsey Mills (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.