BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROGELIO CORRALES DOMINGUEZ, Claimant, vs. HORMEL FOODS CORP., Self-Insured Employer, Defendant.	:	File No. 21008324.01 ARBITRATION DECISION Head Note Nos.: 1402.20, 2501, 2502

STATEMENT OF THE CASE

Rogelio Corrales Dominguez, claimant, filed a petition for arbitration against Hormel Foods Corp. (hereinafter referred to as "Hormel"), as the self-insured employer. This case came before the undersigned for an arbitration hearing on August 22, 2022.

This case was heard via videoconference using Zoom. All participants appeared remotely for the hearing.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibit 1, Claimant's Exhibits 1 and 2, as well as Defendant's Exhibits A through E. All exhibits were received without objection.

Claimant testified on his own behalf with the assistance of a Spanish to English interpreter. Due to a miscommunication, the interpreter retained for the hearing was unable to remain and provide services for the duration of the hearing. Defendant located and retained an alternate interpreter during the hearing and the hearing continued with the services of a second interpreter. Both interpreters appeared to communicate adequately with claimant and no objections were raised to the use of a second interpreter.

No other witnesses testified live at the hearing. The testimonial record closed at the conclusion of the arbitration hearing. However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on September 16, 2022. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury that arose out of and in the course of his employment on January 10, 2021.

2. Whether claimant gave timely notice of the injury.

3. Whether the alleged injury caused permanent disability.

4. Whether the permanent disability, if any, should be compensated as a scheduled member injury or as unscheduled injury with industrial disability benefits.

5. The proper commencement date for permanent disability benefits, if any.

6. The extent of claimant's entitlement to permanent partial disability benefits, if any.

7. Whether claimant is entitled to reimbursement of his independent medical evaluation pursuant to Iowa Code section 85.39.

8. Whether claimant is entitled to an order providing alternate medical care, specifically including a request for evaluation by a dermatologist.

9. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

Rogelio Corrales Dominguez is a Cuban immigrant, who moved to the United States on a lottery visa in 2006. He lived in Miami, Florida from 2006-2010, and then moved to Iowa in 2020. Mr. Dominguez commenced full-time work for Hormel in September 2020. He worked as a forklift operator for one day and then transferred to a machine operator position packaging pepperoni. Claimant also volunteered for overtime work, performing cleaning duties on Wednesdays and Sundays.

In his position with Hormel, claimant was required to use safety equipment. As part of his work duties, claimant was required to change clothes before entering the production facility, was required to use hand sanitizer, and was required to wear protective gloves during the packaging process. Initially, claimant worked as an assistant in his packaging position but subsequently moved into the operator position. As an operator claimant was required to wear gloves. He described wearing fabric

gloves, latex gloves, as well as metal mesh gloves. Mr. Dominguez testified that he wore the three layers of gloves simultaneously while he performed his duties at Hormel.

Mr. Dominguez testified that the steel gloves he used were too small and were tight on his hands. He also testified that his hands were exposed to hand sanitizer, cleaning chemicals, and were irritated by the tight steel mesh gloves he used. Claimant was not entirely clear which of these exposures he believes ultimately caused his alleged injury.

Nevertheless, Mr. Dominguez testified that he developed redness, itchiness, dryness, and irritation on his hands. Claimant also described some blistering and swelling when his skin was damaged and inflamed. He also testified that he developed pigmentation changes in his skin over time. He described the irritation and changes as occurring day-by-day over time and eventually it became painful to wear the required gloves.

Claimant testified that he reported the symptoms to his supervisor, but the employer provided him no medical care. Claimant did not seek medical care for the condition on his own, other than to use over-the-counter lotions and ointments to self-treat his hands. He testified that he has ongoing symptoms and continues to have difficulties wearing gloves.

Claimant submitted photographs of his hands. (Claimant's Ex. 1, pp. 4-8) Review of those photographs does not demonstrate any significant injury, lesions, or other obvious conditions to an untrained, lay eye. Of course, it is not the undersigned's purview to attempt to diagnose medical conditions.

Fortunately, claimant retained and submitted to a medical evaluation with an occupational medicine physician, John D. Kuhnlein, D.O. Dr. Kuhnlein evaluated Mr. Dominguez on June 29, 2022 and issued a formal report on July 7, 2022. Dr. Kuhnlein performed a physical examination of claimant's hands and "could not identify any lesions on his hands." (Claimant's Ex. 1, p. 3)

Dr. Kuhnlein opined, "I cannot diagnose a work injury at this time, not because there was no injury, but because there has been no medical evaluation that would rule in or rule out a diagnosis." (Claimant's Ex. 1, p. 9) Dr. Kuhnlein provided several differential diagnoses, including medical constriction of claimant's hand from the mesh metal gloves. However, Dr. Kuhnlein also noted that he was "not sure that makes sense." (Claimant's Ex. 1, p. 9)

Alternatively, Dr. Kuhnlein noted that claimant may have simply experienced skin dryness due to exposure to hand sanitizer. Another alternative diagnosis offered by Dr. Kuhnlein is allergic dermatitis, either as a metal allergy ("unlikely" according to Dr. Kuhnlein) or an allergy to the cleaning chemicals, or a combination of the chemicals and exposure to mesh metal gloves. Another possible option offered by Dr. Kuhnlein is contact dermatitis caused by the tight mesh gloves. Interestingly, Dr. Kuhnlein offered a final differential diagnosis of "anger at his perceived mistreatment by Hormel." (Claimant's Ex. 1, p. 9)

Dr. Kuhnlein explained that a dermatological evaluation is necessary to render a diagnosis and to determine causal connection to claimant's employment. (Claimant's Ex. 1, p. 9) Ultimately, Dr. Kuhnlein opined, "Without a formal diagnosis, it is impossible to determine whether Rogelio needs any permanent work restrictions, as it is unknown what caused whatever skin reaction he experienced." (Claimant's Ex. 1, p. 10)

Again, Dr. Kuhnlein's report is the only medical evidence or opinion in this record. Dr. Kuhnlein's opinions are frank and credible. I accept Dr. Kuhnlein's opinions as credible and convincing. However, that also means I find that a work injury cannot be diagnosed or found at this time. Having made this finding, I further find that claimant failed to prove by a preponderance of the evidence that he sustained an injury that arose out of and in the course of his employment.

CONCLUSIONS OF LAW

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.

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).

In this case, I found that no medical expert causally connected claimant's alleged skin condition to his employment activities. In his post-hearing brief, claimant argues, "With no medical opinion denying causation in the record, the claimant has met the burden of proving his work-related injury." (Claimant's Post-Hearing Brief, p. 3) Claimant's argument appears to apply an incorrect legal standard and seeks to impose some affirmative burden of proof upon the defendant, which is not legally supported. Claimant bore the burden of proof to establish a causal connection between his work conditions and the alleged injury. Defendant did not bear a burden of production or burden of persuasion on the issue of causal connection. Therefore, I reject claimant's argument and analyze this case using an evidentiary standard that imposes the burden of proof upon claimant to establish a causal connection between his work and his alleged injury.

I accepted the medical opinions of Dr. Kuhnlein and found that a work injury cannot be diagnosed at this time. Specifically, I found that claimant failed to prove by a preponderance of the evidence that he sustained an injury that arose out of and in the course of his employment. As noted, claimant bore the burden of proof to establish that he sustained an injury that arose out of and in the course of his employment with Hormel. Mr. Dominguez failed to carry his burden of proof or establish entitlement to any permanent disability benefits. I conclude claimant failed to prove a compensable injury or entitlement to any permanent disability benefits.

Claimant asserts that his lay testimony, coupled with the medical opinion of Dr. Kuhnlein is sufficient to establish he sustained an injury that arose out of his employment. Indeed, it is possible to "boot strap" medical expert opinions with lay testimony to prove a compensable injury. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). However, claimant still carries the burden to establish the causal connection. In this case, I did not accept claimant's testimony as sufficient to prove causation without a medical expert opinion.

Moreover, in Rose, the medical expert opined that the work incident "could be the precipitating cause" of the alleged injury or disability. Rose, 247 Iowa at 911, 76 N.W.2d at 762. In this case, Dr. Kuhnlein opined, "I cannot diagnose a work injury at this time." (Claimant's Ex. 1, p. 9) While Dr. Kuhnlein clarifies that his opinion is "not because there was no injury," he notes that there is no diagnosis of claimant's condition. (Claimant's Ex. 1, p. 9) Given the lack of a diagnosis and a medical opinion that claimant's expert "cannot diagnose a work injury," claimant's testimony must supplement those opinions sufficiently to convince the undersigned that a work injury actually occurred.

Unfortunately, it is unclear from claimant's testimony if it was a cleaning chemical, a hand sanitizer, perspiration trapped on his hands, friction from metal mesh

gloves, some combination of those items, or something else that actually caused claimant's alleged injury. Moreover, it was not possible for Dr. Kuhnlein or the undersigned to identify any lesions on claimant's skin. Without some diagnosis of claimant's condition, and with vague lay testimony about the nature and cause of the alleged injury, there is simply insufficient evidence to find claimant proved by a preponderance of the evidence that he sustained an injury to his hands or skin as a result of, arising out of, and in the course of his employment. Therefore, I conclude claimant failed to prove a compensable injury or any claim for permanent disability.

Mr. Dominguez also seeks reimbursement of the independent medical evaluation charges from Dr. Kuhnlein. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

However, following statutory changes made in 2017, certain pre-requisites must be established before claimant qualifies for reimbursement under Iowa Code section 85.39. In relevant part, Iowa Code section 85.39(2) provides:

> An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or Chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury.

In this case, I concluded that claimant failed to carry his burden of proof to establish an injury that arose out of and in the course of his employment with Hormel. "Under the express wording of section 85.29(2) [*sic*], an employer is only liable to reimburse an employee for the cost of an IME if the injury for which the employee is being examined is determined to be compensable." Elliott v. Flynn Company, Inc., File No. 20003792.03 (Appeal Dec. November 2022). Therefore, having determined that the alleged injury being examined was not proven to be compensable, I conclude claimant fails to qualify for reimbursement of his independent medical evaluation under Iowa Code section 85.39(2).

Mr. Dominguez also asserted a claim for alternate medical care and specifically seeks an order directing that he be provided an evaluation and treatment with a dermatologist. Indeed, once a work injury is established by a preponderance of the evidence, an employer is obligated to provide all reasonable and necessary medical care to treat that injury. Iowa Code section 85.27.

In this case, however, defendant denied liability for the alleged injury. The agency cannot award or order alternate medical care until liability for the injury is conceded or determined. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010); R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190 (Iowa 2003). In this instance, I conclude that claimant failed to prove the alleged injury is compensable. An employer does not owe medical benefits, including alternate medical care, for an injury that is not proven to have arisen out of or in the course of claimant's employment. Iowa Code section 85.27; Miedema v. Dial Corp., 551 N.W.2d 309, 312 (Iowa 1996) ("The workers' compensation statute is not a general health insurance policy that extends to any and all injuries that happen to occur while on the job, but rather exists to compensate workers who are injured as a result of a condition of their employment.") Accordingly, claimant did not meet or satisfy the requirements of Iowa Code section 85.27(4) to assert an alternate medical care claim and that request is denied.

The final disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Exercising the agency's discretion, I conclude that neither party's costs should be assessed in this case. Rather, all parties should bear their own costs.

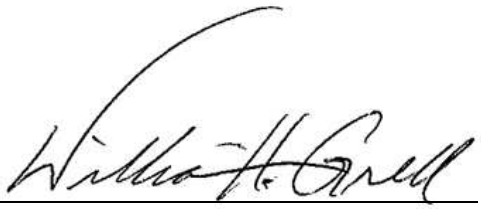
ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing.

All parties shall pay their own costs.

Signed and filed this __9th__ day of November, 2022.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nathaniel Boulton (via WCES)

Abigail Wenninghoff (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.