BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BILL MASON,	:	
Claimant,	:	File No. 5066224.01
vs.	:	A R B I T R A T I O N
AMSTED RAIL,	:	D E C I S I O N
Self-Insured Employer, Defendant.	:	Head Note Nos.: 1402.30, 2502

STATEMENT OF THE CASE

Claimant, Bill Mason, filed a petition in arbitration seeking workers' compensation benefits from self-insured defendant employer, Amsted Rail (Amsted). This matter was heard via CourtCall on August 20, 2020 with a final submission date of September 3, 2020.

The record in this case consists of Joint Exhibits 1-3, Claimant's Exhibit 1, Defendant's Exhibits A-B, and the testimony of claimant and Robert James.

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

ISSUES

Whether claimant sustained an injury that arose out of and in the course of employment.

Whether the injury is a cause of a permanent disability; and if so,

The extent of claimant's entitlement to permanent partial disability benefits.

Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

FINDINGS OF FACT

Claimant was 53 years old at the time of hearing. Claimant has worked for Amsted for over 5 years. At the time of hearing, claimant worked as a maintenance mechanic. Amsted makes train wheels.

On April 1, 2018, claimant was working in an area called "riser knock out." Claimant said this is an area where casting molds are split. Claimant said there was a mold that was hung up. Claimant went across a conveyor belt to release the mold. When claimant came down, he testified he slipped on rice hulls. Claimant said Amsted uses rice hulls to insulate the molds and that there are rice hulls everywhere.

When claimant slipped on the rice hulls, he held a rail to keep from falling. Claimant said that he injured his right knee. (Transcript pages 7-8)

Claimant told a supervisor he injured his knee. The records indicate claimant's supervisor was supposed to report the injury, but did not. (Exhibit 1, page 2)

Claimant was eventually sent by the employer to be evaluated by Rachel Oliverio, D.O. Claimant saw Dr. Oliverio on August 28, 2018. Claimant indicated he injured his left knee while stepping over a conveyor belt. Claimant's pain was in the left knee. An MRI of the left knee was recommended. Claimant was put on restricted duty. (JE1, pp. 1-2, 5-7)

On August 29, 2018, claimant had an MRI for the left knee. Claimant indicated on the intake form that his left knee popped when he stepped on something at work. (JE1, p. 10) An MRI of the left knee showed a complex tear of the posterior horn of the medical meniscus, an ACL tear, and a bone contusion. (JE1, pp. 12-13)

Claimant returned to Dr. Oliverio on August 30, 2018. Dr. Oliverio reviewed the MRI. She did not believe the method of the incident was consistent with the MRI finding. A second opinion of the MRI finding was requested. (JE1, p. 18)

Robert James testified he is the safety and health manager at Amsted. As a part of his job duties, Mr. James said that he is involved with workers' compensation claims at Amsted. In that capacity, he said he is familiar with claimant and his workers' compensation claim.

Mr. James said that he received a phone call from Dr. Oliverio on August 30, 2018. He said that during that phone call, Dr. Oliverio indicated she did not think that, based on the MRI results and the description of the incident, the incident was work-related. (Tr. pp. 23-24)

Claimant ultimately had surgery due to the left knee, in 2019. Claimant later had a left knee injection in April of 2019. (Ex. 1, p. 4)

In a January 24, 2020 report, Robin Sassman, M.D., gave her opinions of claimant's condition following an IME. Claimant felt his left knee was unstable. Claimant had left knee pain. Claimant had swelling in the knee and decreased range of motion. Claimant wore a knee brace. Claimant took over-the-counter medication for pain. (Ex. 1, p. 4)

Claimant was assessed as having a left knee medial meniscus and ACL tear, a contusion, and post partial medial meniscectomy. Dr. Sassman opined that claimant's work caused the medial meniscus and ACL tear on the left. She opined that claimant would ultimately need a knee replacement in the future. She opined claimant was at maximum medical improvement (MMI) as of April of 2019. Dr. Sassman found claimant had a ten percent permanent impairment to the left lower extremity. She did not give claimant any permanent restrictions. (Ex. 1, pp. 6-7)

In an August 9, 2020 report, Matthew Bollier, M.D., gave his opinions of claimant's condition following a records review. Dr. Bollier did not think the work incident caused the ACL or medical meniscus tear. This was because he did not believe the action of stepping over a conveyor belt would cause an ACL or meniscus tear. He opined that the ACL and meniscus tear were present before the April 2018 work injury. He opined that the 2019 knee surgery and injections were not related to an April 2018 work injury. (Ex. A. p. 3)

Claimant testified he was told that he would ultimately require a knee replacement in the future. He said he wears a knee sleeve at work. Claimant testified he has difficulty climbing stairs and ladders.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained an injury that arose out of and in the course of employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

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" referred 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).

Claimant testified twice at hearing that he injured his right knee at work. (Tr. pp. 7-8)

Claimant saw Dr. Oliverio on August 28, 2018. Records from that visit indicate claimant had a left knee injury. (JE1, pp. 1-3, 6) Dr. Oliverio made a request for an MRI of the left knee. (JE1, p. 7)

A questionnaire completed by claimant for the MRI indicates he injured his left knee. (JE1, p. 10) Claimant had an MRI of the left knee. (JE1, pp. 12-13) The MRI showed an ACL and medical meniscus tear and a bone contusion on the left. (JE1, pp. 12-13)

Claimant returned to Dr. Oliverio on August 30, 2018 for a left knee injury. Dr. Oliverio did not believe claimant's reported injury was consistent with the MRI. She opined that if the report of the injury and the MRI were both accurate, claimant's injury was not work related. (JE1, p. 18)

Mr. James testified that he received a call from Dr. Oliverio on August 30, 2018. In that call, Dr. Oliverio indicated that she did not believe that based on the MRI results and the description of the incident, that claimant's knee problems were work related. (Tr. p. 24)

A records review performed by Dr. Bollier found that claimant's injury to the left knee was not work related. (Ex. A)

Claimant underwent an IME with Dr. Sassman. Dr. Sassman opined the left knee injury was caused by slipping at work. However, Dr. Sassman gives no explanation how claimant's injury resulted in a bone contusion when claimant indicated he never fell or struck his knee in the alleged work injury. Given this discrepancy, Dr. Sassman's opinion regarding causation is found not convincing.

Claimant testified two times in hearing that his injury was to his right knee. (Tr. pp. 7-8) All medical exhibits in the record indicate claimant actually injured his left knee. Dr. Oliverio opined that claimant's knee injury, as reported, was not consistent with the findings in the MRI. Dr. Bollier opined that claimant's left knee injury was not caused by the work incident. Dr. Sassman's opinion regarding causation is not found convincing. Given this record, claimant has failed to carry his burden of proof he sustained an injury that arose out of and in the course of his employment.

As claimant has failed to carry his burden of proof he sustained an injury that arose out of and in the course of employment, all other issues, except for reimbursement of the IME, are moot.

The final issue to be determined is if claimant is due reimbursement for Dr. Sassman's IME.

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.

Defendant is 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).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an IME at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v.Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an IME, a claimant can still be reimbursed at hearing for the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

Dr. Sassman gave her opinions of claimant's permanent impairment in a January 24, 2020 report. Dr. Bollier gave his opinions of claimant's permanent impairment in an August 9, 2020 report. Given the chronology of the reports, claimant has failed to prove he is entitled to reimbursement for Dr. Sassman's IME under Iowa Code section 85.39.

Costs are awarded at the discretion of this agency. As claimant has failed to prevail on any of the issues in this case, the costs of the preparation of Dr. Sassman's report is not awarded as a cost to claimant under rule 876 IAC 4.33(6).

ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 12th day of October, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James P. Hoffman (via WCES)

Bill M. Lamson (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.