

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL T. SIZEMORE,

Claimant,

vs.

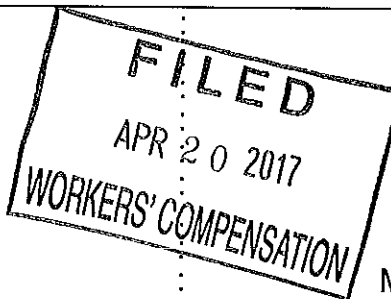
BLACKHAWK FOUNDRY,

Employer,

and

AIG CLAIM SERVICE

Insurance Carrier,
Defendants.



File No. 1167901

MEDICAL BENEFITS

DECISION

Head Note No.: 1402.60

STATEMENT OF THE CASE

In February 2016, Michael Sizemore, claimant, filed a petition for alternate medical care against Blackhawk Foundry, as the employer and AIG, as the insurance carrier. The undersigned heard the alternate medical care claim. Defendants admitted liability for ongoing treatment of claimant's left foot amputation and the undersigned entered appropriate rulings pertaining to care sought for the left foot amputation.

However, defendants denied liability for medical treatment related to any body part other than claimant's left foot amputation. Noting the denial of liability, the undersigned dismissed the petition for alternate medical care to the extent that it sought any medical treatment related to something other than the left foot amputation.

Following the alternate medical care decision, claimant filed a petition for arbitration and for medical benefits on March 7, 2016. Claimant had previously filed a petition for arbitration that proceeded to a formal arbitration hearing and resulted in an arbitration decision filed on November 16, 1998. In the prior arbitration proceeding, claimant was found to have sustained an injury limited to his left foot amputation.

In response to the current petition, defendants filed a motion to dismiss on March 25, 2016. Defendants contended in their motion to dismiss that claimant's petition was barred by the statute of limitations and that his claim was barred by the principles of res judicata, issue preclusion, or claim preclusion. Claimant responded to the motion to dismiss, filing a handwritten letter on April 6, 2016.

Another deputy workers' compensation commissioner entered a ruling on the motion to dismiss on April 11, 2016. The ruling concluded that "Claimant has not set forth a valid claim for additional weekly benefits on the face of the petition. Therefore, the claim for additional weekly benefits is dismissed." However, the April 11, 2016 ruling also concluded that "Claimant has stated a medical benefits claim upon which relief can be granted." The motion to dismiss was sustained as to any claim for weekly benefits but denied as to claimant's assertion of a claim for medical benefits.

On October 13, 2016, defendants filed a motion for summary judgment. Another deputy workers' compensation commissioner entered a ruling on the motion for summary judgment on November 23, 2016. That ruling concluded that "Defendants' motion for summary judgment is granted with respect to Sizemore's alleged impairments to his back and hips."

However, with respect to the claimant's assertion of a claim for medical benefits, the ruling on defendants' motion for summary judgment concluded, "Blackhawk and AIG are not entitled to summary dismissal of Sizemore's claim for medical benefits related to his amputation." Accordingly, this case was scheduled for an in-person, medical benefits hearing on January 4, 2017, in Des Moines, Iowa.

Claimant represented his own interests in these proceedings, assisted by his wife. Defendants were represented by attorney, Jordan Kaplan.

At the commencement of the arbitration hearing, defendants renewed their motion for summary judgment, asserting that none of claimant's asserted medical expenses were directly related to the left foot amputation and asserting that the ruling on the motion for summary judgment precluded an award of any medical expenses related to treatment of claimant's hips or low back. The defendants' motion was overruled and the evidentiary hearing was allowed to proceed.

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.

The evidentiary record includes claimant's exhibits 1 through 6 and defendants' exhibits A through N. Defendants objected to exhibits 1 and 2 as well as 4 through 6 as being untimely produced by claimant. Defendants' objections were overruled. All offered exhibits were received into the evidentiary record.

Claimant testified on his own behalf. Claimant also called his wife, Carla Sizemore, and Genevieve Lawrence, to testify on his behalf. Defendants did not call any witnesses to testify. The undersigned also agreed to and does take administrative notice of the February 2016 alternate medical care proceedings, decision, and all

exhibits filed in conjunction with that alternate medical care proceeding. The evidentiary record closed at the end of the January 4, 2017 hearing.

On January 10, 2017, defendants filed a motion to reopen the evidentiary record, asserting that surprise testimony and evidence was introduced during Carla Sizemore's testimony at hearing. On January 13, 2017, the undersigned entered a ruling denying defendants' motion to reopen the evidentiary record and citing agency rule 876 IAC 4.31, which provides, "No evidence shall be taken after the hearing." Defendants did not request that the evidentiary record be suspended or that evidence be permitted into the record until after the evidentiary record had closed. Therefore, defendants' request for additional evidence was disallowed.

Defendants requested an opportunity to file a post-hearing brief. All parties were offered the right to file a post-hearing brief. Defendants served their post-hearing brief timely on January 18, 2017, at which time the case was considered fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's claim for medical expenses for treatment of his low back and hips is barred by the statute of limitations.
2. Whether claimant is entitled to payment or reimbursement of past medical expenses, including a challenge regarding whether the claimed medical expenses are causally related to the alleged work injury.
3. Whether claimant is entitled to alternate medical care, including an order that care be provided through his chosen physician, Maruti R. Kari, M.D.

Defendants stipulated that claimant remains entitled to medical care related to treatment of his foot amputation. However, they dispute whether claimant is entitled to payment of any medical expenses for any condition other than the foot amputation/stump. (Hearing Report)

Claimant prepared a hand-written list of several additional disputed issues he would like to be considered and/or awarded. Mr. Sizemore's list of additional disputes and claims is attached to the hearing report and contained within the agency record. That list of additional claims and disputes includes:

1. "Reimbursement of the \$20,000 AIG took from Michael's Social Security back pay for medical bills that they were supposed to pay."
2. "Reimbursement for the further damages done to Michael and his health by Dr. Rick Garrells [sic]."

3. "That AIG pay Michael's medical bills past and present for his injury that they've denied payment for."
4. "That Dr. Kari be established as Michael's permanent workman's comp doctor and that his medical insurance care AIG issued be reinstated so that we no longer pay for his necessary [sic] medications out of pocket."
5. "That Nick Avignorinas [sic] be held accountable for neglecting his attorney's duties and not properly recusing himself from Michael's case."
6. "That AIG be made to pay for Michael's necessary medical supplies and treatments with no future issues or delays."

The undersigned addressed several of these disputes issued at the commencement of hearing. For instance, this agency does not have subject matter jurisdiction over a claim that AIG took claimant's Social Security benefits. This agency does not have jurisdiction over a claim for medical malpractice or intentional tort alleged against Dr. Garrels, nor is Dr. Garrels a party to this litigation. Similarly, this agency does not have jurisdiction over any legal malpractice or ethics complaints claimant is attempting to assert against his former attorney.

Claimant was advised at the commencement of the evidentiary hearing that the undersigned did not have subject matter jurisdiction over the above disputed issues and that no relief could or would be granted as to those asserted disputes. To the extent that claimant is asserting disputes outlined in the above paragraph, those claims are dismissed for lack of subject matter jurisdiction.

FINDINGS OF FACTS

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

Michael Sizemore sustained a horrific work-related injury on August 17, 1995. On that date, Mr. Sizemore was injured when an unattended forklift rolled towards him and its forks penetrated his left foot. The injuries sustained were very serious, horrific, and life-changing for Mr. Sizemore. Mr. Sizemore's left foot was amputated as a result of his injuries.

Mr. Sizemore described the after-effects of this injury as having been through hell and then having been spit on because of this injury. He described difficulties getting jobs and feeling discriminated against as a result of his injury. Mr. Sizemore is no longer gainfully employed and has not been employed since 2003. Mr. Sizemore subsists on Social Security disability.

He describes experiencing flashbacks and describes himself as having post-traumatic stress disorder. However, the initial arbitration decision issued by this agency found that claimant's injuries were limited to the left foot.

Since his injury, Mr. Sizemore has developed debilitating pain and symptoms in his low back and hips. Mr. Sizemore's symptoms and resulting loss of function do not sound pleasant and he is credible when he testifies that these conditions have caused him to lose a significant amount of his physical capabilities.

Mr. Sizemore alleges that these symptoms and his treatment of those conditions is causally related to his underlying left foot work injury of August 17, 1995. Defendants dispute whether the low back and/or hip symptoms are related to the work injury.

Mr. Sizemore submitted several past medical expenses for which he seeks payment or reimbursement. He concedes that all of the claimed medical expenses are for treatment of conditions or body parts other than his left foot amputation. (Claimant's testimony)

Ultimately, I must decide whether the medical treatment and medical expenses to claimant's low back and hips are causally related to, materially aggravated by, or accelerated by the August 17, 1995 left foot injury at work. Review of the evidentiary record discloses that there are several competing medical opinions related to this factual issue.

In a handwritten letter, Mrs. Sizemore asserted, "Dr. Collins informed Michael he had herniated disks for being an amputee and that he needed surgery." (Ex. 3) Mrs. Sizemore's handwritten letter clearly constitutes a hearsay statement. Dr. Collins did not testify and his opinions are not detailed in a medical record or report. While Mrs. Sizemore's recollection of comments made by a physician may be accurate, it is also possible that she misunderstood or that the physician's opinions would not be precisely as recollected by Mrs. Sizemore if detailed via written report or via testimony. I do not find hearsay testimony about a physician's causation opinion to be convincing evidence and I do not rely upon the purported opinions of Dr. Collins as convincing or dispositive evidence in this case.

During her testimony, Mrs. Sizemore stated that Dr. Agazo has opined that all of claimant's symptoms and his herniated disks in his low back are causally related to his foot amputation. (Carla Sizemore testimony) Once again, the opinions of Dr. Agazo are presented only in hearsay form. Dr. Agazo did not testify and none of his opinions are documented in a medical report contained in the evidentiary record. For the reasons outlined above, I do not find the opinions of Dr. Agazo, as described via hearsay, to be convincing or sufficient to find a causal connection between claimant's low back treatment and his left foot amputation.

In a February 20, 2014 office note, Brett Josie, PA-C, noted, "Patient has chronic pain in his left leg and has low back chronic pain do [sic] to it." (Ex. 3) Mr. Josie's opinion provides very little analysis of why or how the low back chronic pain is related to the work injury. As a physician assistant, Mr. Josie's opinions are respected but do not carry as much weight as a physician's opinion on the causation issue. Mr. Josie's opinion is not given any significant weight in this situation.

Maruti R. Kari, M.D., is claimant's current treating physician. In an office note dated February 1, 2016, Dr. Kari noted that claimant has "chronic low back pain that started after his right foot amputation in 1995 secondary to a work related injury." (Ex. 3) However, Dr. Kari's note continues and notes "[c]onditions like DDD and PTSD may provoke significant muscle spasms in the paravertebral muscles, and therefore may result in significant low back pain." (Ex. 3) Dr. Kari provides no analysis of whether the degenerative disc disease he references is causally related to, materially aggravated by, or accelerated by the August 17, 1995 work injury.

Dr. Kari's opinion clearly provides a temporal relationship to demonstrate that claimant's back pain developed after his left foot injury. However, a temporal relationship by itself is not sufficient to establish that claimant's low back symptoms and treatment are legally related to his left foot work injury. I find Dr. Kari's opinions to be credible to the extent they establish a temporal relationship between claimant's left foot injury and his subsequent development of back symptoms. However, I do not find Dr. Kari's opinion to be sufficient to find that the back symptoms and related medical treatment are related to his left foot work injury, materially aggravated by it, or accelerated as a result of it.

Defendants introduced a medical report from Midwest Medical Providers as part of a Social Security Disability evaluation. Stanley Rabinowitz, M.D., was the evaluating physician. Dr. Rabinowitz noted that claimant "apparently does well with the prosthesis without stump complications or local irritative [sic] problems. As a result of the asymmetric weight distribution however, the patient has complained of joint and back pain." (Ex. G, p. 1) However, Dr. Rabinowitz's ultimate impression was that claimant has "Hip and chronic low back pain, probably degenerative in nature." (Ex. G, p. 3)

Dr. Rabinowitz's evaluation was as an independent evaluator for the Social Security Administration. He offered opinions that were not intended to be beneficial for either claimant or for the employer. In this sense, his opinions could carry great weight. However, Dr. Rabinowitz's opinions are somewhat confusing. He suggests that claimant's back pain may be related to asymmetric weight distribution, which seems reasonable and probable with claimant's left foot amputation. However, Dr. Rabinowitz ultimately diagnoses claimant's back problems as being degenerative in nature. I find that Dr. Rabinowitz's opinions are entitled to weight, but given that they are not entirely clear as to the cause of claimant's back pain, I ultimately rely upon other medical opinions offering more direct opinions on the topic.

Defendants also introduce medical evidence from Solomon M. Yigazu, M.D. Dr. Yigazu's credentials, medical specialty, and connection to claimant and/or this case are unknown. However, in his office note of August 25, 2005, Dr. Yigazu notes that claimant has scoliosis. Dr. Yigazu notes claimant's left foot amputation but refers to it as "an unrelated accident." (Ex. I, p. 1)

It does not appear that Dr. Yigazu was attempting to specifically address whether there was a causal connection between claimant's low back complaints and his left foot

amputation. However, he clearly did not directly connect the two medical problems. Dr. Yigazu's notation of scoliosis interestingly is not mentioned by any of the aforementioned medical providers. Yet, the scoliosis diagnosis is confirmed by an x-ray contained in this evidentiary record dated November 11, 2003. (Ex. H, p. 1) Ultimately, I find Dr. Yigazu's diagnosis of scoliosis as convincing but I do not give Dr. Yigazu's opinions on causal connection any significant weight because I do not believe the physician was specifically contemplating the potential connection.

Defendants had claimant evaluated by a pain specialist, Dr. Timothy Miller on May 21, 2015. Dr. Miller notes that claimant "feels" his low back complaints are "solely related to his previous amputation with no evidence." (Ex. N, p. 1) Dr. Miller opines, "I do not believe there is any correlation between his back symptoms and previous traumatic amputation, but instead is related to chronic condition spondylolisthesis." (Ex. N, p. 1) Dr. Miller's opinions appear to be specifically considering whether claimant's low back condition is somehow related to the left foot amputation. Dr. Miller specifically rejects that theory. Dr. Miller's opinions are entitled to significant consideration and weight given his credentials as a pain specialist and given that he was specifically considering the issue to be decided in this case.

Finally, defendants introduce the medical opinions of a board certified neurosurgeon, Loren J. Mouw, M.D., who has approximately 23 years of experience. Dr. Mouw has experience in research at the Spinal Cord Injury Laboratory at the Veterans' Affairs Medical Center in Iowa City, Iowa. He has given presentations on the anatomy and physiology of the spinal cord as well as co-authored publications related to treatment of spine injuries. (Ex. M, pp. 3-6)

Claimant refused to be evaluated by Dr. Mouw. However, Dr. Mouw performed a review of claimant's relevant medical records and was specifically asked to opine on whether there is a causal relationship between the August 1995 left foot injury and claimant's current back complaints and treatment. Dr. Mouw opined:

There is no indication that his amputation and subsequent prosthesis have caused any material aggravation of his low [back] pain or acceleration of the degenerative disc disease and central disc bulge at L5-S1. The cause of his disc protrusion at L5-S1 appears to be related to the natural degenerative process as a person ages.

(Ex. M., p. 2)

Dr. Mouw's credentials, training, experience, as well as his specific consideration of the disputed issue, are all impressive. Dr. Mouw's opinions are the most highly reasoned and articulate opinions in this evidentiary record. Given his status as a board certified neurosurgeon and his years of experience, I find Dr. Mouw's opinions to be the most convincing opinions in this evidentiary record. Dr. Miller's opinions support Dr. Mouw's opinions. When combined, I find the opinions of Dr. Miller and Dr. Mouw to be the most credible medical opinions in this evidentiary record.

Having considered all of the medical opinions in the evidentiary record, I accept the opinions of Dr. Miller and Dr. Mouw as most convincing and accurate. Although there are some potentially competing opinions contained within the evidentiary record, those opinions are not thorough and the credentials of those medical providers are not as impressive as those possessed by Dr. Miller and Dr. Mouw. Therefore, I find that claimant has not proven by a preponderance of the evidence that the medical treatment and medical expenses he submits in this case related to treatment of his low back and hips are causally related to, materially aggravated by, or accelerated by the August 17, 1995 left foot injury at work.

CONCLUSIONS OF LAW

Mr. Sizemore asserts a claim for 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).

Mr. Sizemore conceded that all of the medical expenses currently in dispute are related to treatment of his low back and hips and not directly related to treatment of his left foot amputation. (Claimant's testimony) Therefore, the question to be decided in this case is whether defendants are liable for providing medical care for claimant's low back and hips.

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 R. App. P. 6.14(6). In this instance, this means that claimant must prove his entitlement to the claimed medical expenses by a preponderance of the evidence.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the medical benefits or medical treatment 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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found that claimant failed to prove by a preponderance of the evidence that his low back and hip conditions and resulting medical treatment are causally related to, materially aggravated by, or otherwise accelerated by his left foot amputation at work. Therefore, I conclude that claimant has not proven entitlement to payment or reimbursement of his claimed medical expenses.

Mr. Sizemore also sought an award of alternate medical care and specifically the appointment of Dr. Kari as his authorized medical provider. Having found that claimant failed to prove his low back and hip treatment is causally related to or materially aggravated by his left foot injury and having concluded that defendants are not responsible for claimant's medical expenses in this respect, I conclude that defendants are not responsible for providing future medical care related to claimant's low back and/or hips. Therefore, claimant's claim for alternate medical care fails. Iowa Code section 85.27; Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 203, Iowa 2010); R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197 (Iowa 2003)

Having concluded that claimant cannot prove entitlement to medical care for his low back or hips, I conclude that all other pending disputed issues for which this agency has subject matter jurisdiction are moot. This decision does not rule upon, modify, or eliminate any of claimant's rights to seek medical treatment, at defendants' expense, which is causally related to his left foot amputation. Claimant remains entitled to future, causally related medical care for his left foot injury and amputation.

ORDER

THEREFORE, IT IS ORDERED:


Claimant takes nothing in this proceeding.

Claimant remains entitled to future, causally related medical treatment of his left foot amputation.

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.

Each party shall bear their own costs.

Signed and filed this 20th day of April, 2017.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/kjw

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.