

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERRY BAIRD,

FILED

Claimant,

MAR 08 2018

vs.

WORKERS COMPENSATION

File No. 5062438

MORRISON TRUCKING,

ARBITRATION DECISION

Employer,

and

GREAT WEST CASUALTY COMPANY,

Insurance Carrier,
Defendants.

Head Note Nos.: 1402.30, 1402.40,
2502, 2907

STATEMENT OF THE CASE

Terry Baird, claimant, filed a petition in arbitration and seeks workers' compensation benefits from defendants, Morrison Trucking, as the employer and Great West Casualty Company, as the insurance carrier. Hearing occurred before the undersigned on November 15, 2017, in Waterloo.

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. 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 Joint Exhibits 1 through 10, Claimant's Exhibits 1 through 5 and 7 through 10, and Defendants' Exhibits A through N. As a result of late disclosure of some evidence, the record was suspended at the conclusion of the live arbitration hearing. Claimant was granted additional time to secure a supplemental report from his medical expert, Sunil Bansal, M.D. Claimant filed Dr. Bansal's supplemental report on December 5, 2017 and that document is received as Claimant's Exhibit 1, pages 18 through 20. All of the foregoing exhibits were received without objection.

Claimant testified on his own behalf. Defendants called Randy Morrison and Curt Morrison to testify. The evidentiary record closed upon receipt of the supplemental report from Dr. Bansal on December 5, 2017.

However, counsel for the parties requested an opportunity to submit post-hearing briefs. Their request was granted. The parties filed post-hearing briefs on January 5, 2018, which represents the date when this case was considered fully submitted to the undersigned.

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of his employment with Morrison Trucking on July 6, 2015.
2. Whether the alleged injury caused a temporary disability and, if so, the extent of claimant's entitlement to temporary disability benefits.
3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits, including a claim for permanent total disability benefits.
4. Whether claimant qualifies for permanent total disability benefits under an odd-lot claim.
5. The proper commencement date for permanent disability benefits, if any.
6. Whether claimant is entitled to reimbursement, payment, satisfaction of outstanding medical liens, or other satisfaction of past medical expenses.
7. Whether claimant is entitled to reimbursement for his independent medical evaluation with Dr. Bansal.
8. Whether defendants should be ordered to pay penalty benefits for an alleged unreasonable delay or denial of weekly benefits and, if so, in what amount.
9. Whether costs should be assessed against either party.

FINDINGS OF FACT

Having considered all of the evidence and testimony in the record, recognizing that there may be competing or contradictory facts within this evidentiary record, I find the following facts:

Terry Baird is a 61-year-old gentleman, who worked as a truck driver for the employer, Morrison Trucking ("Morrison"). Mr. Baird has worked as a truck driver since 1989. He began his employment with Morrison in September 2009.

As required by all interstate truck drivers, Mr. Baird submitted to a physical examination in 2012. His physical demonstrated elevated blood pressure and he was required to submit to re-evaluation three months later. Mr. Baird was able to get his blood pressure under control and passed his subsequent physical in 2012.

Despite having a large body habitus, Mr. Baird testified that he had no physical problems and was healthy prior to the alleged July 6, 2015 date of injury. He had not seen a physician in approximately 50 years prior to July 2015, other than for mandatory DOT physicals to drive truck. He testified he did not carry health insurance before the date of injury because it was cheaper to not carry it and he did not need it. Mr. Baird testified that he had no difficulties with shortness of breath, chest pain, or physical exertion prior to July 6, 2015.

On July 6, 2015, Mr. Baird was working for Morrison. He awoke early and drove to his first destination in Florence, Kentucky, which is a suburb of Cincinnati, Ohio. Mr. Baird successfully accomplished his first delivery.

During his direct examination, claimant reviewed an aerial map of the initial delivery site. Although he was ultimately able to accomplish it, claimant had difficulties recalling and drawing the specific route he traveled through the initial delivery location when initially presented with the map. (Claimant's Exhibit 10; Transcript, pages 26-31)

Mr. Baird explained that, after he had made his delivery, he was attempting to exit the customer's property when he unexpectedly hit a speed bump in the road. He testified he did not see it until the last second and believed it was a speed bump, a large snake, or a large chain in the road. After his truck struck the speed bump, Mr. Baird testified that his abdomen and chest struck the steering wheel.

Claimant testified on direct examination that he was not sure how fast his truck was traveling at the time he hit the speed bump, but it was less than 30 miles per hour. On cross-examination at trial, claimant estimated he was traveling between 20 and 30 miles per hour when he hit the speed bump. After the impact, claimant testified that he was lying on the steering wheel and was confused. He testified that he could not breathe and could not think properly. His chest was hurting after the incident. He thought he had broken a rib.

Mr. Baird testified that he pulled over to the side of the road after leaving the customer's location to gather himself. He decided at that time he would call the incident into the employer. He also testified that he may have taken a nap before proceeding to his next delivery site. As will be discussed below, other evidence in the record calls these statements into question.

Mr. Baird did make his second, and final, stop in Cincinnati, Ohio. He testified he had difficulties getting out of his truck at the second stop, used the truck to walk and support himself. At trial, claimant offered a very slow, dramatic rendition of his experience at his second stop on July 6, 2015. He testified that he felt ready to collapse at this site and that he almost died at his second stop.

Nevertheless, claimant completed the second delivery and then proceeded to a nearby truck stop. Claimant testified that he called "Randy" in dispatch with the employer and gave notice of his injury. Randy told him to speak with "Curt," in safety regarding the injury. Claimant then testified that he took a nap for one to two hours and

used his truck's air conditioner as "artificial respiration" to breathe. Ultimately, claimant called a cab and went to a local emergency room at Clinton Memorial Hospital.

Claimant was admitted to the hospital and had two days of testing. Mr. Baird testified that he had chest bruising and was coughing up blood. He was diagnosed with what he understood to be a collapsed artery in his heart that required a balloon procedure.

The medical records from Clinton Memorial Hospital document diagnoses that include chest pain, atrial fibrillation, pneumonia, among other things. (Joint Ex. 2, p. 6) The record does document some chest wall contusion was present. (Joint Ex. 2, p. 8) Following testing, including a cardiac stress test, the Clinton Memorial Hospital physicians determined that claimant had a serious cardiac condition that required more specialized care. Claimant was transferred to a larger, tertiary facility, The Christ Hospital, for further intervention.

Claimant underwent a heart cardioversion to restore a normal heart rhythm at The Christ Hospital. (Joint Ex. 3, p. 12) He also underwent catheterization and balloon angioplasty for blockages identified in his heart. (Defendants' Ex. K, p. 1) He was released after four days of testing, procedures, and observation.

After discharge from The Christ Hospital, claimant was transported back to Iowa via bus. He established care through a local cardiologist, Kalyana Sundaram, M.D. He requires ongoing medication management and describes significant ongoing symptoms, including pulmonary difficulties, fatigue, and various other related symptoms and difficulties.

After claimant's initial report of this injury, defendants conducted an investigation. As part of that investigation, defendants took claimant's recorded statement. During that recorded statement, Mr. Baird indicated that the speed bump injury occurred in Cincinnati, Ohio. Defendants investigated that possibility by contacting and obtaining an affidavit from a management individual at the claimant's second stop on July 6, 2015. That individual indicated in his affidavit that there are not and have not been speed bumps present on the premises of the second delivery location. (Defendants' Ex. D)

Defendants also had another driver for Morrison drive to the second delivery site and take photographs. That driver also offered an affidavit, stating that there were no speed bumps present at the second delivery site. (Defendants' Ex. E)

After defendants denied liability based upon the lack of speed bumps at the second delivery site, claimant clarified his description in his deposition to state that the speed bump incident occurred at his first delivery. Defendants argue claimant lacks credibility based upon this. I do not perceive the evidence exactly as defendants argue it.

Although claimant did state his injury occurred in Cincinnati, Ohio, he later clarified that it really happened at a suburb of Cincinnati, which is actually located in Kentucky. I can understand how this type miscommunication can occur and do not necessarily reject claimant's testimony or find him incredible based upon his statement that the injury occurred in Cincinnati, Ohio, rather than Florence, Kentucky.

However, there are many other inconsistencies and issues with claimant's testimony that do call his credibility into question. First, he testified on cross-examination at trial that he was traveling between 20-30 miles per hour at the time he hit the speed bump. The employer introduced satellite tracking data from claimant's truck, which demonstrates claimant was not traveling at the speeds he testified to at the time he drove over a speed bump. (Defendants' Ex. B; Testimony of Randy Morrison)

In his recorded statement, Mr. Baird testified he believed he was going 10 to 20 miles per hour at the time he struck the speed bump. (Joint Ex. 8, p. 2) In his answer to interrogatory in this case, claimant stated that he "struck at least one, maybe more" speed bumps and that he was "going between 20 and 30 miles per hour." (Defendants' Ex. G, p. 1) In his deposition, claimant refers only to "the" speed bump. (Defendants' Ex. 15, p. 5 (depo., tr., p. 23))

Similarly, claimant's testimony about stopping on the side of the road to take a nap between the first and second delivery is not consistent with documentation from the employer. Satellite data demonstrates that claimant proceeded almost immediately from the first to the second delivery. (Defendants' Ex. B; Testimony of Randy Morrison) Claimant's testimony about potentially taking a nap is not credible given this objective data of his actions.

Mr. Baird also testified that he called Randy in dispatch to report this accident after the initial accident occurred. The employer introduced cell phone records that clearly demonstrate claimant did not call this into Randy Morrison until 1:15 p.m., a few hours after he left the initial delivery and only after he completed the second delivery. (Defendants' Ex. C; Testimony of Randy Morrison) Again, claimant's testimony to the contrary is not credible and the more objective cell phone records, coupled with Randy Morrison's testimony, are accepted as accurate and convincing.

In the initial emergency record intake at Clinton Memorial Hospital, it is recorded that claimant reported hitting a parking block. (Joint Ex. 2, p. 1) Mr. Baird denies that he stated he hit a parking block and asserts that he always reported it as a speed bump. Certainly, such a miscommunication could be understood. However, there are numerous other errors or contradictions contained within the medical records.

For instance, some of the other evidentiary records reflect that claimant stated he hit multiple speed bumps or hit the steering wheel multiple times. (Joint Ex. 2, p. 3; Joint Ex. 3, pp. 2, 8; Joint Ex. 4, p. 1) These reports are not consistent with claimant's testimony at trial. In his recorded statement, claimant told the adjuster that he sent a message to dispatch about the incident. The employer has no such message.

In that recorded statement, Mr. Baird made it sound as though he hit the speed bump, reported the incident via message and drove to a truck stop. No mention was made of the second stop or delivery during the recorded statement. Mr. Baird also told the adjuster that he had immediate pain and knew right away that he was injured. (Joint Exhibit 8, pp. 3-6) His trial testimony was slightly different. Instead of knowing he was injured right away, claimant attempted to gather himself after the speed bump incident, took a rest, and decided that he could make the second delivery to test his ability to continue. (Transcript, pp. 38-40)

In a medical record generated shortly after the incident, Mr. Baird told the medical provider that he was a restrained driver at the time of the incident. (Joint Ex. 8, p. 6) He testified in his deposition, at hearing, and stated during his recorded statement that he was not using his seatbelt at the time of the incident.

Reviewing the record as a whole, there are numerous inconsistencies between Mr. Baird's version of events at trial and those recorded by others or other statements made by Mr. Baird. The employer testified that Mr. Baird is known to be a storyteller and that Mr. Baird believes he is capable of turning himself invisible. Mr. Baird confirmed this statement without prompting by counsel at trial. (Tr., pp. 118, 132)

Mr. Baird's perception of reality may differ slightly from those around him. His recollection of events may vary from the documents recorded contemporaneously or with his prior statements. Nevertheless, in spite of any inconsistencies, there was documentation that claimant sustained a chest contusion and it remains possible that the incident occurred and that Mr. Baird was injured as a result of the asserted injury.

Many of claimant's treating physicians were asked to comment on the cause of his cardiac issues and treatment obtained since July 6, 2015. The initial emergency room physician opined in her records that claimant's presenting condition "appears to be an unrelated issue of a mild motor vehicle accident with a chest contusion, but who was found subsequently to have multiple medical problems." (Joint Ex. 2, p. 11)

After his transfer, Joseph K. Choo, M.D., treated claimant at The Christ Hospital. Dr. Choo is a cardiologist. He opined, "it is more likely than not that Mr. Baird's heart blockages for which [he] performed catheterization and balloon angioplasty were not caused by the alleged work injury." (Defendants' Ex. K, p. 1) Dr. Choo opined that he could not state that atrial fibrillation was caused by the alleged work injury within a reasonable degree of medical certainty and opined that the claimant's cardiomyopathy was more likely than not a condition that predated the work injury. (Defendants' Ex. K, p. 2)

Dr. Sundaram is claimant's local treating cardiologist in Waterloo, Iowa. Dr. Sundaram noted that claimant "is convinced that all of his diagnosis [*sic*] were related to his semi accident." However, Dr. Sundaram notes that Mr. Baird "has no idea about his general illness." (Joint Ex. 4, p. 3) Given the discrepancies in the evidentiary record and my findings above, it is certainly possible that Dr. Sundaram is accurate and that claimant really has no idea about his general illness. Indeed, given this statement it

is particularly important to consider the medical causation opinions pertaining to claimant's alleged injuries and cardiac conditions.

Dr. Sundaram referred claimant for evaluation with a specialist at the University of Iowa Hospitals and Clinics. Elaine Demetroulis, M.D. evaluated and treated claimant at the University of Iowa Hospitals and Clinics. Dr. Demetroulis is board certified in cardiovascular disease and board certified in interventional cardiology. She is fellowship trained at the University of Iowa Hospitals and Clinics. (Defendants' Ex. L, pp. 3-4)

Dr. Demetroulis opined, that Mr. Baird "had a significant amount of chronic heart-related disease that was not caused by the alleged July 6, 2015 work injury" when he came to be evaluated by her. Dr. Demetroulis further explained that claimant's coronary artery disease, including obstructive blockages within his arteries, is a personal condition and not related to the alleged work injury of July 6, 2015. She similarly stated that claimant's atrial fibrillation and cardiomyopathy diagnoses are most likely also personal conditions not related to the alleged work injury. (Defendants' Ex. L, p. 1)

Claimant conceded at trial that none of his treating physicians have opined that his cardiac condition is causally related to or arose out of his employment with Morrison. Tr., pp. 61-62) Defendants selected none of these providers. All were selected on an emergent basis, directly by claimant, or upon referral from claimant's chosen physician.

Claimant elected to obtain an independent medical evaluation. He selected Sunil Bansal, M.D. to perform this evaluation. Dr. Bansal is a board certified occupational medicine physician. However, there is no evidence in this record to demonstrate that Dr. Bansal has any particular expertise or experience in treating or diagnosing cardiac conditions or determining their cause. (Claimant's Ex. 1)

Dr. Bansal explained that "blunt chest trauma can lead to a coronary event." Dr. Bansal opined that "the mechanism of injury, striking his chest on the steering wheel, coupled with his acute clinical presentation is consistent with his acute dysrhythmia (atrial fibrillation), leading to his acute coronary event." (Claimant's Ex. 1, p. 11) Dr. Bansal noted the strong temporal relationship between the July 6, 2015 speed bump event and claimant's onset of symptoms and need for emergent care.

Dr. Bansal offers some research article citations in support of his medical conclusions and opinions. In fact, Dr. Bansal wrote a coherent and logical report detailing why he believes claimant's cardiac condition is causally related to, or materially aggravated by, his work accident on July 6, 2015. Dr. Bansal opines, "the evidence is quite compelling that the July 6, 2015 event was a significant contributing factor for his acute coronary event, necessitating cardiac catheterization." (Claimant's Ex. 1, p. 12)

From a layman's standpoint, Dr. Bansal's report and opinions make sense in the temporal sense and are logical. However, Dr. Bansal's credentials and experience

simply do not measure up to those of the other physicians offering causation opinions, who are specialists and treated claimant's cardiac condition.

For instance, Dr. Choo is board certified in internal medicine and in cardiovascular medicine. He attended Yale Medical School and participated in a fellowship in cardiovascular medicine at Massachusetts General Hospital. Dr. Choo also was a clinical and research fellow in interventional cardiology at Massachusetts General Hospital. He has 17 years of experience in practice as a cardiologist. (Defendants' Ex. K, p. 3) Dr. Choo's credentials and experience are far superior to those of Dr. Bansal when it comes to the diagnosis, causation, or treatment of cardiac conditions.

Dr. Demetroulis treated Mr. Baird at the University of Iowa Hospitals and Clinics. Dr. Demetroulis is an interventional cardiologist at the University of Iowa Hospitals and Clinics. Dr. Demetroulis clearly has significant credentials, published articles pertaining to cardiac medicine, and superior credentials to those offered by Dr. Bansal.

Having reviewed, pondered, and weighed the competing medical causation opinions in this evidentiary record, I accept the opinions of Dr. Choo as most credible. Dr. Demetroulis' opinions support Dr. Choo's analysis and conclusions as well and are also accepted. The opinions of Dr. Bansal, while detailed and logical to a layperson, simply do not rest upon the knowledge, experience and credentials that measure up to those possessed by either Dr. Choo or Dr. Demetroulis in cardiac issues. Having reached this finding of fact, I similarly find that claimant has not proven that his cardiac condition, the treatment he obtained on or after July 6, 2015, or any resulting disability from that condition, are causally related to, arose out of, or were materially aggravated or accelerated by the claimant's work activities on July 6, 2015, including the speed bump incident.

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" 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 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 the medical opinions of the board certified cardiologists to be more persuasive and credible than the opinions offered by claimant's independent medical evaluator, who is a board certified occupational medicine physician. Having accepted the medical opinions of Dr. Choo and Dr. Demetroulis, in particular, I found that claimant failed to prove his cardiac conditions treated on and after July 6, 2015 are causally related to, or arose out of, claimant's employment activities with Morrison Trucking. Having reached this finding, I conclude that claimant failed to carry his burden of proof in this case and has failed to prove a compensable workers' compensation claim. Instead, I conclude that claimant's original notice and petition should be dismissed without an award of either weekly or medical benefits.

Mr. Baird also seeks reimbursement of his independent medical evaluation with Dr. Bansal. 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).

An employer is not obligated to reimburse a claimant's independent medical evaluation fee unless the claimant has complied with the necessary statutory process for obtaining that reimbursement. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 844 (Iowa 2015). In this case, claimant has not established that defendants selected a physician or obtained a permanent impairment rating before claimant obtained Dr. Bansal's evaluation and impairment rating. Therefore, I conclude that claimant has not established entitlement to reimbursement of Dr. Bansal's evaluation pursuant to Iowa Code section 85.39.

Finally, claimant also seeks assessment of his costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Claimant failed to prove a compensable claim. Therefore, I conclude that his request for assessment of costs should be rejected. Defendants did not submit a request for assessment of costs.

All other disputed issues are rendered moot by the above findings of fact and conclusions of law.


ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing.

All parties shall bear their own costs.

Signed and filed this 8th day of March, 2018.



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DEPUTY WORKERS'
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WHG/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.