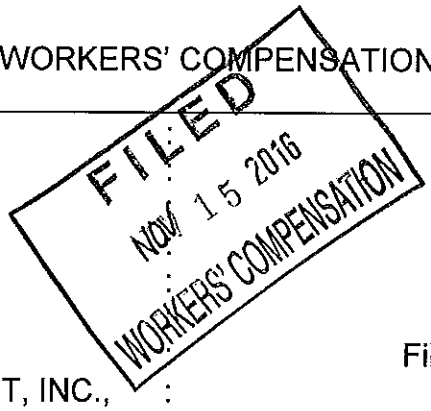
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JONATHAN WALTZ,

Claimant,

vs.

GREGG YOUNG CHEVROLET, INC.,

Employer,

and

FIRST DAKOTA INDEMNITY CO.,

Insurance Carrier,
Defendants.

File No. 5056839

A R B I T R A T I O N

D E C I S I O N

Head Note Nos.: 1100, 1108, 1400, 1800

STATEMENT OF THE CASE

Claimant filed an original notice and petition on June 16, 2016. He alleged he sustained a work-related injury to his right lower extremity and to his body as a whole. Claimant alleged the work injury occurred on April 5, 2016. (Original notice and petition) Claimant served a copy of the original notice and petition to the employer and insurer by certified mail, return receipt requested and sent the petition to the last known address. No answer was filed by defendant or anyone acting on behalf of defendant.

On July 14, 2016, claimant filed a motion for entry of default. Claimant also sent a copy of the motion for entry of default to the employer. It was signed for on July 15, 2016.

On August 30, 2016, Deputy Stan McElderry entered a ruling on the motion for default. In the final paragraph of the ruling the deputy wrote:

> Default is hereby entered against the defendants. This case shall come on before the undersigned for hearing on the 7th day of October, 2016 at 1:00 p.m. for consideration and award such relief as may be warranted by the evidence. The hearing shall be conducted SOLELY on the documentary evidence that shall be filed prior to the hearing.

The undersigned deputy workers' compensation commissioner heard the case on the scheduled date. Claimant submitted exhibits marked 1 through 8 as evidence for

the hearing. The exhibits were admitted. No evidence was submitted by the defendants.

ISSUES

The following issues will be addressed in this decision:

1. Whether claimant is entitled to temporary benefits;
2. Whether claimant's work injury caused a permanent disability;
3. If claimant is entitled to a permanent disability, what is the extent of the permanent disability;
4. Whether claimant is entitled to medical expenses and if entitled, the extent of those medical expenses; and
5. Whether claimant is entitled to future medical care.

FINDINGS OF FACT

Claimant is single with no dependents. There was the existence of an employer-employee relationship at the time of the injury. Claimant sustained an injury arising out of and in the course of employment on April 5, 2016. The injury is a cause of temporary and permanent disability. Claimant earned $15.00 dollars per hour, was single and entitled to one exemption. His weekly benefit rate is $382.18 per week. Prior to the hearing, claimant was paid zero weeks of compensation; and claimant paid certain costs to litigate the claim.

Claimant was employed by Gregg Young Chevrolet on April 5, 2016. On that date he stepped on a cord at work and twisted his right knee. (Exhibit 1, page 1) He suffered a medial meniscus tear. (Ex. 2, p. 20) He has not worked since the date of injury and has been paid no workers' compensation benefits. (Ex. 2, p. 21) He was released to full-duty work on July 28, 2016 but the employer has not returned the claimant to work. (Ex. 2, p. 28) He underwent physical therapy, but had to discontinue, as he could not afford to pay for it himself. As of the date of hearing there were known medical bills outstanding for the work injury of $2,006.34. (Ex. 7, pp. 1-5) Claimant asserts a 15 percent loss of use of his left leg from the work injury; there is no contrary evidence.

REASONING AND CONCLUSIONS OF LAW

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).

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa

1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Claimant has met his burden of proof; he sustained a work injury on April 5, 2016 that arose out of and in the course of his employment. The injury caused a torn right medial meniscus.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

It is the determination of the undersigned; claimant is entitled to healing period benefits from the date of injury to July 28, 2016 when he reached maximum medical improvement.

Claimant is also entitled to permanent partial disability benefits for a permanent injury to his right lower extremity (RLE). Because the injury affects the right leg, the injury is scheduled.

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The Courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability". Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the 66-year-old case of Soukup v. Shores, 222 Iowa 272, 277; 268 N.W. 598, 601(1936):

> the legislature has definitely fixed the amount of compensation that shall be paid for specific injuries.....and that, regardless of the education or qualifications, or nature of the particular individual or of his inability.....to engage in employment, ...the compensation payable...is limited to the amount therein fixed.

Our Court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or

unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. Delong's Sportswear 332 N.W.2d 886, 887 (Iowa 1983); Martin v Skelly Oil Co., 252 Iowa 128, 133 106 N.W.2d 95, 98 (1960).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C.M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Code section 85.34(2)(u) the industrial commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

Evidence considered in assessing the loss of use of a particular scheduled member may entail more than a medical rating pursuant to standardized guides for evaluating permanent impairment. A claimant's testimony and demonstration of difficulties incurred in using the injured member and medical evidence regarding general loss of use may be considered in determining the actual loss of use compensable. Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). Consideration is not given to what effect the scheduled loss has on claimant's earning capacity. The scheduled loss system created by the legislature is presumed to include compensation for reduced capacity to labor and to earn. Schell v. Central Engineering Co. 232 Iowa 421, 4 N.W.2d 399 (1942).

The right of a worker to receive compensation for injuries sustained which arose out of and in the course of employment is statutory. The statute conferring this right can also fix the amount of compensation to be paid for different specific injuries, and the employee is not entitled to compensation except as provided by statute. Soukup v Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

I found that the claimant suffered a 15 percent permanent loss of use of his lower extremity due to the April 5, 2016 injury. Based on such a finding, the claimant is entitled to 33 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(o), which is 15 percent of 220 weeks, the maximum allowable weeks of disability for an injury to the leg in that subsection.

The next issue for resolution is the matter of medical benefits pursuant to Iowa Code section 85.27. 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).

Defendants shall provide reasonable and necessary medical expenses, including medical mileage, to treat claimant's RLE condition pursuant to Iowa Code section 85.27. Defendants shall also provide future medical care to treat the work-related condition. Claimant shall select the medical provider for any future medical care.

Claimant submitted an itemization of causally related medical bills claimant had incurred prior to the date of the hearing. The total costs equaled $2,006.34. Defendants are liable for those medical costs and for all future medical expenses to treat the work injury.

Defendants are also liable for the costs to litigate the claim, including the $100.00 filing fee and the service fee.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay unto claimant healing period benefits from April 5, 2016, to July 28, 2016, at the weekly benefit rate of four hundred eighty-seven and 09/100 dollars ($487.09) per week.

Defendants shall pay unto claimant, thirty three (33) weeks of permanent partial disability benefits commencing from July 28, 2016 and payable at the rate of four hundred eighty-seven and 09/100 dollars ($487.09) per week.

Defendants shall pay for past due medical expenses in the amount of two thousand six and 34/100 dollars ($2,006.34).

Defendants shall pay for reasonable and necessary future medical care that is causally related to the work injury, and claimant shall select the medical provider for the care.

Past due benefits shall be paid in a lump sum, with interest, as allowed by law.

Costs to litigate the claim, including the one hundred and 00/100 dollars ($100.00) filing fee are assessed against defendants.

Defendants shall file all reports in a timely fashion, as required by this agency, including, but not limited to, a first report of injury.

Signed and filed this 15th day of November, 2016.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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CERTIFIED AND REGULAR MAIL

SRM/sam

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.