

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES TEAGUE,

Claimant,

vs.

VT INDUSTRIES, INC.,

Employer,

TRAVELERS INDEMNITY
COMPANY OF CONNECTICUT,Insurance Carrier,
Defendants.

File No. 21008970.01

ARBITRATION

DECISION

Head Note Nos.: 1402.40, 1803,
1803.1, 2502, 2907

STATEMENT OF THE CASE

James Teague, claimant, filed a petition in arbitration and seeks workers' compensation benefits from defendant, VT Industries, Inc., as the employer, and Travelers Indemnity Company of Connecticut, as the workers' compensation insurance carrier. Hearing was held on May 1, 2023, via Zoom videoconference.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report and at the commencement of hearing, 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 Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 4, and Employer's Exhibits A through C. All exhibits were received into the evidentiary record without objection.

Claimant testified on his own behalf. Defendant employer called Kyle Recker, its General Manager, to testify. No other witnesses testified at the hearing. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested an opportunity to file post-hearing briefs. Their request was granted. Both parties filed briefs on May 19, 2023, and the case was considered fully submitted on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's work injury is limited to a left shoulder scheduled member or should be compensated as an unscheduled injury pursuant to Iowa Code section 85.34(2)(v).
2. The extent of claimant's entitlement to permanent disability.
3. Whether claimant is entitled to reimbursement of his independent medical evaluation.

FINDINGS OF FACT

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

Claimant, James Teague, is a 61-year-old gentleman, who lives in Holstein, Iowa. Mr. Teague is a 23-year employee of VT Industries, also located in Holstein, Iowa. On April, 29, 2021, claimant sustained an admitted injury to his left shoulder while working at VT Industries. He caught a piece of wood that was sliding off a table. In doing so, the wood jammed claimant's left elbow upward into his shoulder. Mr. Teague sustained a full thickness tear of the supraspinatus tendon and a tear of the infraspinatus tendon as a result of the accident.

Defendants admitted the left shoulder injury and provided claimant necessary medical care. Ultimately, claimant was evaluated by Ryan C. Meis, M.D., an orthopaedic surgeon. Dr. Meis reviewed claimant's left shoulder MRI and diagnosed claimant with the above rotator cuff tear in his left shoulder. Dr. Meis recommended surgical intervention for the rotator cuff tear and took claimant to surgery on July 8, 2021.

In addition to performing the rotator cuff repair, Dr. Meis also diagnosed claimant with adhesive capsulitis in the left shoulder and performed a manipulation of the shoulder joint under anesthesia. Dr. Meis also diagnosed a labral tear intraoperatively and debrided the labrum. Finally, Dr. Meis performed a subacromial decompression during his surgical intervention. Dr. Meis' surgery was technically successful.

Unfortunately, Mr. Teague developed a deep vein thrombosis (blood clot) that traveled to his lungs causing a pulmonary embolism. Claimant required additional hospitalization for the pulmonary embolism and anti-coagulation therapy for three months.

In May 2022, claimant fell in the shower at home and sustained an injury to his right shoulder. He ultimately required surgical intervention for that non-work-related injury. Mr. Teague selected Dr. Meis as his treating surgeon for the right shoulder injury, demonstrating his satisfaction with Dr. Meis' care for the prior left shoulder work injury.

Because of his history of a pulmonary embolism after his left shoulder surgery, claimant required prophylactic use of blood thinners for his subsequent right shoulder surgery. A pulmonologist, Jitendrakumar S. Gupta, M.D., treated claimant for his pulmonary embolism. Fortunately, Dr. Gupta released claimant from his care and claimant was ultimately able to discontinue use of blood thinners after the right shoulder surgery on November 8, 2021.

Dr. Meis ultimately declared maximum medical improvement (MMI) for the work injury on February 4, 2022 and released claimant to return to his employment with VT Industries. Mr. Teague has not obtained additional treatment for his left shoulder since February 2022. Claimant returned to work and continues to work for the employer in the same job he held at the time of his work injury. Claimant now earns more than he did at the time of his work injury. In fact, according to Kyle Recker, the employer's General Manager, claimant earned \$18.51 per hour at the time of his work injury. He currently earns \$21.43 per hour in the same position with the employer.

Dr. Meis opined that claimant requires no permanent work restrictions and released claimant to return to work full duty. As noted, claimant followed this recommendation and returned to full duty work for the employer. Dr. Meis further opined that Mr. Teague sustained a four percent permanent functional impairment of the left upper extremity as a result of the April 29, 2021 work injury.

Mr. Teague sought an independent medical evaluation performed by Sunil Bansal, M.D., on March 18, 2023. Dr. Bansal confirmed the diagnosis of a full-thickness rotator cuff tear, a degenerative labral tear with debridement, adhesive capsulitis, and a subacromial decompression with subsequent pulmonary embolism. Dr. Bansal concurred with Dr. Meis that MMI occurred on February 4, 2022. Dr. Bansal opined that claimant sustained an eight percent permanent functional impairment of the left upper extremity as a result of the work injury, surgery, and resulting loss of range of motion. Dr. Bansal also opined that claimant qualifies for five percent permanent functional impairment of the whole person as a result of the pulmonary embolism and claimant's "lifetime need for prophylactic anticoagulation." (Claimant's Exhibit, 3, pages 9-10)

Dr. Bansal disagreed with Dr. Meis' full duty release to return to work. Instead, Dr. Bansal assigned fairly significant work restrictions. Specifically, Dr. Bansal opined that claimant should not lift greater than 10 pounds with the left arm and only to chest level. Dr. Bansal also opined that claimant should not lift his left arm above shoulder level and should avoid prolonged sedentary positions to reduce his risk for future deep vein thromboembolus. (CE. 3, p. 10)

Defendants deposed Dr. Meis and inquired about his opinion regarding claimant's pulmonary embolism. Ultimately, Dr. Meis opined that a pulmonary embolism, or blood clot, was uncommon for a shoulder surgery. However, he opined that the pulmonary embolism experienced by Mr. Teague likely was the result of the left shoulder surgery after this work injury. Accordingly, both Dr. Meis and Dr. Bansal concur that the pulmonary embolism is causally related to the work injury and resulting

left shoulder surgery. I accept those opinions and find that the pulmonary embolism is related to the left shoulder surgery caused by claimant's April 29, 2021 work injury.

Dr. Meis opines that claimant's blood clot has resolved and there is no permanent impairment related to the pulmonary embolism. (Defendants' Exhibit, B, page 10 (deposition transcript p. 7)) Dr. Gupta's impression on November 8, 2021 was, "Pulmonary embolism resolved." He recommended discontinuance of the anticoagulation. However, Dr. Gupta's notes do not indicate whether he recommended future prophylactic anticoagulation treatment before any surgeries or procedures. Nor does Dr. Gupta offer an opinion about whether claimant sustained any permanent impairment or requires any permanent restrictions as a result of the pulmonary embolism. (JE. 5, pp. 1-2) Dr. Bansal assigns permanent restrictions, recommends prophylactic anticoagulation therapy before future surgeries, and assigns a permanent restriction for the pulmonary embolism, even though it resolved, to prevent future deep vein thrombosis.

The primary dispute between the parties is whether the pulmonary embolism caused permanent impairment, requires future prophylactic treatment, or resulted in the need for permanent restrictions. Claimant asserts that he was told he would need a blood thinner if he had future surgeries by his treating doctors. He further asserts Dr. Bansal's opinion should be accepted.

Defendants contend that claimant's pulmonary embolism resolved per the opinion of Dr. Gupta. Defendants contend that Dr. Meis opined there is no permanency related to the pulmonary embolism. Defendants challenge Dr. Bansal's interpretation and application of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, related to the pulmonary embolism issue. Specifically, defendants challenge Dr. Bansal's underlying assumption and premise in his report that claimant continued using anticoagulation medications at the time of his evaluation. In fact, claimant was not using such medication at the time of that evaluation. Defendants further challenge the credibility of Dr. Bansal, pointing out that he performs independent medical evaluations almost exclusively on behalf of claimants in the State of Iowa and earned more than \$2,000,000.00 doing so in 2022.

I consider the arguments of all parties on this issue. Ultimately, I note that Dr. Meis and Dr. Gupta opined that the pulmonary embolism resolved. However, their opinions and analysis of the permanency issue were not terribly thorough. Dr. Meis offered an agreement that there was not permanency during his deposition but no explanation for his conclusion. Dr. Meis offered no analysis of whether claimant would require prophylactic anticoagulation therapy if he had future surgeries.

Similarly, Dr. Gupta released claimant and declared the pulmonary embolism to be resolved. However, he did not offer an opinion on permanent impairment or permanent restrictions related to the pulmonary embolism or future need for prophylactic treatment if claimant required additional surgery.

On the other hand, claimant's treating physicians did implement a prophylactic anticoagulation therapy for claimant when he required his subsequent right shoulder surgery. Claimant's treating physicians implemented the very plan that Dr. Bansal opines would be required into the future when confronted with claimant submitting to surgery on his right shoulder. This lends credibility to Dr. Bansal's explanation and opinion.

Defendants appear to suggest that claimant's discontinuance of the anticoagulation medication means that there is no permanency or need for future treatment. However, Dr. Bansal does not opine that claimant necessarily requires ongoing medication treatment. Instead, he opines that claimant requires blood thinners if claimant requires a future surgery or if he develops another blood clot in his lifetime. He also opines that claimant's likelihood of developing another blood clot is increased after this work injury and pulmonary embolism.

While acknowledging the potential financial prejudice or bias advanced by defendants in this case, I find Dr. Bansal's opinion to be convincing. It seems reasonable and likely that claimant will require prophylactic anticoagulation medications if he requires a future surgery. This would be consistent with the actions and treatments offered by claimant's treating physicians when he required the subsequent right shoulder surgery. Therefore, I accept Dr. Bansal's opinion in this respect as the most credible and convincing in this record.

Having found Dr. Bansal's opinion about future prophylactic anticoagulation treatment to be convincing, I accept his opinion that claimant sustained permanent impairment related to the pulmonary embolism and that permanent restrictions (no prolonged sedentary activity) are recommended. I find that claimant proved permanent disability related to the pulmonary embolism, a five percent permanent impairment of the whole person related to that condition, and that Dr. Bansal's recommended restriction to avoid future blood clots is appropriate and reasonable.

On the other hand, I find Dr. Meis is best situated to offer opinions regarding claimant's permanent impairment and restrictions related to the left shoulder surgery. Dr. Meis saw claimant on multiple occasions, inspected the shoulder joint intraoperatively, oversaw Mr. Teague's recovery, and has the expertise of an orthopaedic surgeon. Ultimately, I accept Dr. Meis' opinion related to the left shoulder injury. I accept Dr. Meis' permanent impairment rating and find that claimant proved he sustained a four percent permanent functional impairment of the left upper extremity. This converts to a two percent functional impairment of the whole person. AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 16-3, page 439. I also accept Dr. Meis' opinion that claimant does not require permanent restrictions related to the left shoulder condition.

I accept the concurring opinions of Dr. Meis and Dr. Bansal and find that Mr. Teague achieved MMI for his injury on February 4, 2022. Utilizing the Combined Values Chart in the AMA Guides to the Evaluation of Permanent Impairment Fifth Edition, page 604, I combine the five percent permanent impairment of the whole person for the

pulmonary embolism with a two percent whole person impairment for the left shoulder range of motion and find claimant has proven seven percent functional impairment of the whole person as a result of the April 29, 2021 work injury.

I accept the testimony of Kyle Recker and find that claimant returned to work for VT Industries in the same position he worked at the time of his April 2021 work injury. I find that claimant earns more now than he did at the time of the work injury. I find that claimant works at least the same number of hours, and likely slightly greater hours, now than he did at the time of his left shoulder injury.

The final disputed issue that requires a factual finding involves Mr. Teague's request for reimbursement of his independent medical evaluation by Dr. Bansal. In his post-hearing brief, claimant represents that the February 11, 2022 impairment rating was offered by a nurse practitioner in Dr. Meis' office. It is not clear from Joint Exhibit 4, pages 3-4, whether the impairment rating offered was prepared by the nurse practitioner or Dr. Meis. However, claimant represents in his post-hearing brief that the impairment rating was rendered by the nurse practitioner. I find that claimant has not proven that an evaluation of permanent disability was made by a physician retained by the employer prior to claimant obtaining an evaluation by Dr. Bansal. In fact, claimant represents the exact opposite in his post-hearing brief.

CONCLUSIONS OF LAW

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, both Dr. Meis and Dr. Bansal opine that the claimant's pulmonary embolism was likely the result of his left shoulder surgery. I found that the pulmonary embolism is causally related to the April 29, 2021 work injury. However, there is also dispute between the parties about whether the pulmonary embolism caused permanent disability. Ultimately, I found that claimant proved permanent disability related to the pulmonary embolism. Therefore, I must consider the ramifications of that finding of fact.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or as an unscheduled loss pursuant to Iowa Code section 85.34(2)(v). However, an injury to a scheduled member may, because of aftereffects or compensatory change, result in permanent impairment of the body as a whole and an unscheduled injury. It is the anatomical situs of the permanent injury or permanent impairment which determines whether the injury is a scheduled injury under Iowa Code section 85.34(2)(a)-(u) or an unscheduled injury compensated under Iowa Code section 85.34(2)(v). Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Daily v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

The primary disputed issue in this case is whether claimant's injury should be compensated under Iowa Code section 85.34(2)(n) as a scheduled member injury to the left shoulder or as an unscheduled member injury utilizing Iowa Code section 85.34(2)(v). Claimant's injury was initially limited to the left shoulder. However, after submitting to surgical intervention on his left shoulder, Mr. Teague developed a deep vein thrombosis that traveled to his lung causing a pulmonary embolism. A deep vein thrombosis is a blood clot occurring in the circulatory system of the body and a pulmonary embolism develops when that clot travels to the lung. Neither the circulatory system nor the lungs are scheduled injuries under Iowa's statutory scheme. Iowa Code section 85.34(2).

Having found that the pulmonary embolism is causally related to the work injury, I conclude that it an unscheduled injury. Having also found that claimant proved permanent disability related to the pulmonary embolism, I conclude that claimant carried his burden of proof to establish an unscheduled injury. I conclude this claim should be compensated pursuant to Iowa Code section 85.34(2)(v).

Iowa Code section 85.34(2)(v) provides:

Compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity that the employee possessed when the injury occurred.

This determination of the loss of earning capacity is known as industrial disability. However, Iowa Code section 85.34(2)(v) was modified in 2017 and now contains a caveat, which provides:

If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

I accepted the testimony of Kyle Recker as accurate and found that claimant returned to work in the same position for the employer after his injury. I also found that claimant earns more and works at least the same number of hours now as he did at the time of his work injury. Claimant concedes the point in his post-hearing brief. Therefore, I conclude that claimant should be compensated at this time based solely upon his functional impairment resulting from the injury and not based on his industrial disability . Iowa Code section 85.34(2)(v).

I found that Mr. Teague proved a two percent whole person functional impairment resulting from a loss of range of motion after his left shoulder injury and surgery. I found he also proved a five percent permanent functional impairment related to his development of a pulmonary embolism. In total, I found that Mr. Teague proved a 7 percent functional loss of the whole person as a result of his April 29, 2021 work injury.

As noted above, unscheduled injuries are compensated based on the proportionate loss of 500 weeks. Iowa Code section 85.34(2)(v), (w). Seven percent of 500 weeks entitles claimant to an award of 35 weeks of permanent partial disability benefits.

Both Dr. Meis and Dr. Bansal opined that claimant achieved MMI on February 4, 2022. This is the commencement date for permanent partial disability benefits. Iowa Code section 85.34(2).

The final dispute between the parties is whether claimant is entitled to reimbursement for Dr. Bansal's independent medical evaluation fee pursuant to Iowa Code section 85.39. Section 85.39(2) provides:

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall ... be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice.

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. 6.904(3). Accordingly, as the party that would suffer the loss, claimant must establish the prerequisites of Iowa Code section 85.39(2) to receive reimbursement of Dr. Bansal's

examination fee. In this case, claimant cannot establish the prerequisites of Iowa Code section 85.39(2).

The statute requires that a physician retained by the employer issue an impairment rating before claimant obtains an evaluation of his choosing. In this instance, I found that it was not clear whether Dr. Meis or his nurse practitioner issued the permanent impairment rating prior to Dr. Bansal's evaluation. In his post-hearing brief, claimant argued that it was the nurse practitioner who issued that impairment rating. Ultimately, claimant did not establish that Dr. Meis, or other physician retained by the employer, offered a permanent impairment rating prior to Dr. Bansal's evaluation.

Claimant only sought reimbursement for this evaluation under Iowa Code section 85.39(2). He failed to establish the prerequisites of Iowa Code section 85.39(2) to qualify for reimbursement. Therefore, I conclude claimant is not entitled to reimbursement for Dr. Bansal's independent medical evaluation fee.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant thirty-five (35) weeks permanent partial disability benefits commencing on February 4, 2022.

All benefits shall be paid at the stipulated rate of six hundred twelve and 44/100 dollars (\$612.44) per week.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Defendants are entitled to credit for all weekly benefits paid to date against the above award of benefits.

Defendants are entitled to the stipulated credit identified on the hearing report against this award of benefits.

Signed and filed this 18th day of September, 2023.

A handwritten signature in black ink, reading "William H. Grell", is written over a horizontal line.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Randall Schueller (via WCES)

James Bryan (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, 10A) 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.