BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MANUEL GONZALEZ,

Claimant,

vs.

WESTWIND LOGISTICS, LLC,

Employer,

and

GREAT AMERICAN ALLIANCE INS. CO.,

Insurance Carrier,
Defendants.

File Nos. 5063555, 5065811

ARBITRATION

DECISION

Head Note Nos.: 1402.10; 1402.40; 2209; 2501; 2502

STATEMENT OF THE CASE

Manuel Gonzalez, claimant, filed two petitions for arbitration against Westwind Logistics, L.L.C., as the employer and Great American Alliance Insurance Company as the insurance carrier. File No. 5065811 involves an alleged injury date of February 15, 2017. File No. 5063555 involves an alleged injury date of February 23, 2017.

An in-person hearing occurred in Des Moines on April 23, 2018. The parties filed hearing reports in each file at the commencement of the hearing. On the hearing reports, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed in either file. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 3, Claimant's Exhibits 1 through 9 and 11 through 14, and Defendants' Exhibits A through N. Claimant's proposed Exhibit 10 was excluded based upon an evidentiary ruling at the time of hearing.

Claimant testified on his own behalf, using the services of an interpreter. No other witnesses were called to testify. The evidentiary record closed at the end of the arbitration hearing.

However, counsel requested the opportunity to submit post-hearing briefs. The parties' request was granted. The case was deemed fully submitted upon the simultaneous filing of the post-hearing briefs on June 8, 2018.

ISSUES

In File No. 5065811, the parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury arising out of and in the course of his employment on February 15, 2017.

2. Whether the February 15, 2017 injury caused permanent disability and, if so, the extent of claimant's entitlement to industrial disability benefits.

3. Whether claimant is entitled to reimbursement for an independent medical evaluation pursuant to Iowa Code section 85.39.

4. Whether penalty benefits should be imposed against defendants for an alleged unreasonable delay or denial of permanent disability benefits.

5. Whether costs should be assessed against either party and, if so, in what amount.

In File No. 5063555, the parties submitted the following disputed issues for resolution:

1. Whether an employer-employee relationship existed at the time of the alleged February 23, 2017 injury.

2. Whether claimant sustained an injury that arose out of and in the course of his employment on February 23, 2017.

3. Whether the February 23, 2017 injury caused permanent disability and, if so, the extent of claimant's entitlement to industrial disability benefits.

4. Whether claimant is entitled to reimbursement for an independent medical evaluation pursuant to Iowa Code section 85.39.

5. Whether penalty benefits should be imposed against defendants for an alleged unreasonable delay or denial of permanent disability benefits.

6. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

Manuel Gonzalez moved to Iowa and began working at Westwind Logistics in July 2011. He initially worked in the mill at Westwind Logistics for a couple of months. However, for the majority of his employment with Westwind Logistics, claimant worked as a trim track operator. A video of his job duties is included at Defendants' Exhibit A.

Claimant's job duties as a trim track operator are somewhat repetitive. He manually moves pieces of wood, removed from used pallets, off of a table and places those pieces of wood onto a saw known as a trim track. Claimant also manually turned the large, round tabletop identified on the video. He estimates that he transferred between 8,000 and 10,000 pieces of lumber per shift. The work is at a relatively steady pace, as depicted on the video, but does not require constant repetitive motion of any body part.

Mr. Gonzalez testified that he developed pain in his left shoulder, left arm, and neck on about February 15, 2017. He testified that he spoke with his manager, Top, and reported the symptoms. Claimant testified that he requested some Tylenol, but Top did not provide him any medication. Claimant worked his full shift despite this refusal and continued to work for the employer until February 23, 2017.

On February 23, 2017, Mr. Gonzalez arrived before 6:00 a.m., and clocked-in, as usual, for work. After his second break at 12:15 p.m., Mr. Gonzalez was instructed to report to the office. He complied with that instruction.

Upon reporting to the office, claimant was notified that his employment was terminated. Mr. Gonzalez told his manager, Top, that he was going to go onto the shop floor to obtain some personal belongings, including a work apron and a mask. Claimant's manager, Top, instructed him not to return to the shop floor. However, the supervisor at the termination meeting indicated that claimant could return to the shop floor to collect his belongings.

A surveillance video demonstrates claimant's return to the shop floor. It is apparent that upon returning to the shop floor, claimant was grandstanding for co-workers, waving around his final check, which he had been provided while in the office. Claimant's supervisor ultimately became angry with claimant's demonstration, confronts him, and ultimately assaults claimant. Although the exchange cannot be heard and is somewhat difficult to clearly view on the video, it is apparent that claimant is not the aggressor in the altercation and that claimant is struck during the incident.

Mr. Gonzalez ultimately left the premises without his belongings. He asserts that he sustained acute injuries as a result of the February 23, 2017 assault.

I find that claimant was authorized or permitted to return to the shop floor to collect his personal belongings. I find that prior to being able to collect his personal belongings, claimant is confronted by a supervisor and ultimately is struck by that supervisor. Claimant was not given a reasonable period of time to retrieve his personal

belongings and exit the employer's premises before the physical altercation with his supervisor occurred on the shop floor.

Mr. Gonzalez testified that he did not have any troubles, injuries, or symptoms in his left arm, left shoulder, or neck prior to commencing his employment at Westwind Logistics. He testified that he had no prior worker's compensation claims before these alleged injuries.

Mr. Gonzalez acknowledged that he did have some pain in his left shoulder before February 15, 2017. However, the pain in the left shoulder was always related to work activities and resolved prior to February 15, 2017. Claimant acknowledges that he returned to work and continued to work in his regular job after reporting the February 15, 2017 injury and continued to work without restrictions or further complaints to management through the date of his termination on February 23, 2017. However, Mr. Gonzalez testified that he was using Excedrin to control his left shoulder symptoms between February 15, 2017 and February 23, 2017 to continue to work.

On March 8, 2017, Mr. Gonzalez presents to his family physician with complaints ultimately diagnosed as strep throat. Although claimant reported pain as 8 out of 10 on a pain scale, the location of his pain was his throat. (Joint Exhibit 1, page 11) Claimant offers no complaints to his personal physical on March 8, 2017 regarding his neck, left shoulder or left arm and advised his physician that, in general, he considered his health to be good. (Joint Ex. 1, p. 11) His physician specifically notes that claimant denied any body aches during that evaluation. (Joint Ex. 1, p. 12)

Mr. Gonzalez testified that he did not tell his personal physician about his left arm and shoulder complaints because he sought care for a sore throat and for prostate medications. He testified that the physician did not ever inquire about his use of over-the-counter medications during the March 8, 2017 evaluation. Yet, the physician's office note indicated that a medication list was reviewed and updated during that visit, "including review of any over-the-counter medications." (Joint Ex. 1, p. 12)

On April 26, 2017, claimant was evaluated by an orthopaedic surgeon, Steven A. Aviles, M.D., for his complaints of left shoulder pain. At that evaluation, claimant reported to Dr. Aviles that the onset of pain in his left shoulder was "6 months ago." (Joint Ex. 2, p. 20) At that time, Dr. Aviles noted that claimant "does show some evidence of LEFT shoulder SLAP tear" and recommended an MR arthrogram be performed on claimant's left shoulder. (Joint Ex. 2, p. 18)

No reference of neck symptoms was recorded in the April 26, 2017 office note. However, there is note by Dr. Aviles that claimant reported symptoms of numbness, paresthesia and tingling in his arms at that appointment. (Joint Ex. 2, p. 21) Dr. Aviles' physical examination on April 26, 2017 noted tenderness on palpation of the left shoulder and painful range of motion of the left shoulder. He also noted positive Speeds and O'Brien's testing of the left shoulder. (Joint Ex. 2, p. 24)

On April 26, 2017, Mr. Gonzalez was also evaluated by Benjamin Paulson, M.D., an orthopaedic hand specialist. Dr. Paulson noted concerns that claimant's reported symptoms did not follow or demonstrate a physiologic pattern and noted that his reported symptoms did "not make medical sense." (Joint Ex. 2, p. 26) Nevertheless, Dr. Paulson opined that claimant may have left carpal tunnel syndrome and recommended claimant get a nerve conduction study performed. (Joint Ex. 2, p. 26) Dr. Paulson also performed an injection in claimant's left carpal tunnel on April 26, 2017. (Joint Ex. 2, p 29)

An EMG was performed on claimant's left hand and arm on May 2, 2017. The EMG confirmed the diagnosis of left carpal tunnel syndrome. (Joint Ex. 2, p. 43)

On May 3, 2017, a spine surgeon, Trevor Schmitz, M.D., evaluated Mr. Gonzalez. Dr. Schmitz recorded a history that claimant's symptoms began on February 15, 2017. Claimant offered no history to Dr. Schmitz of being injured as part of an assault on February 23, 2017. (Joint Ex. 2, p. 47) Dr. Schmitz noted pain with rotator cuff testing in the left shoulder. (Joint Ex. 2, p. 48) He also diagnosed claimant with a left C6 radiculopathy as a result of moderate to severe disk degeneration at the C5-6 level. He also opined "I do think he has some element of LEFT shoulder rotator cuff dysfunction, some LEFT carpal tunnel syndrome." (Joint Ex. 2, p. 49)

Claimant submitted to the left shoulder MR arthrogram on May 9, 2017. It demonstrated some tendinopathy in two tendons in claimant's left shoulder, but no evidence of a rotator cuff tear and no evidence of a labral tear. (Joint Ex. 2, p. 67; Joint Ex. 3)

Each of the treating physicians was asked whether claimant's medical conditions are causally related to his employment activities at Westwind Logistics. Dr. Schmitz authored a report dated June 2, 2017, and opined that claimant's neck condition was attributable to age and genetic-related factors. He opined that he could not attribute claimant's neck condition to his cumulative work duties at Westwind Logistics. (Defendants' Ex. B, p. 1) Dr. Schmitz opined that he could not within a reasonable degree of medical certainty attribute claimant's left shoulder condition to the altercation that occurred on February 23, 2017, but he ultimately deferred the shoulder causation issue to Dr. Aviles. (Defendants' Ex. B, p. 1)

Dr. Aviles authored a report dated June 12, 2017. He opined, "[w]ithin a reasonable degree of medical certainty, I do not believe that there is any cumulative or repetitive work injury to his left shoulder, left elbow, left hand, or neck regarding duties on February 15, 2017. (Defendants' Ex. D, p. 1)

Dr. Aviles also addressed the February 23, 2017 injury claim. Dr. Aviles notes that claimant did not even report the February 23, 2017 incident as something of concern or importance during his April 26, 2017 evaluation of claimant. He also notes that claimant's history and physical examination on that date demonstrated "nonphysiologic symptoms with nonanatomic distributions of pain, tingling, and

numbness making it extremely unlikely that the claimant sustained any injury to his left shoulder as a result of the physical altercation with his former supervisor on February 23, 2017." (Defendants' Ex. D, p. 1)

Dr. Paulson also offered a causation opinion on claimant's left carpal tunnel and left arm complaints. He also noted inconsistencies on his evaluation, stating that claimant's reported symptoms were "not typical of carpal tunnel syndrome." (Defendants' Ex. F, p. 1) Dr. Paulson noted that claimant has evidence of left carpal tunnel syndrome. However, he opined, "I do not believe his carpal tunnel syndrome is either caused or materially aggravated by his work injury on February 15, 2017." (Defendants' Ex. F, p. 1) He deferred any causation questions about claimant's left shoulder or neck to other experts' opinions.

Mr. Gonzalez obtained an independent medical evaluation with Sunil Bansal, M.D. Dr. Bansal evaluated claimant on September 8, 2017. Dr. Bansal addressed claimant's neck condition, stating, "It is my opinion that the work duties he performed at Westwind Logistics were a significant contributing factor, on a cumulative basis, for the aggravation of his cervical spondylosis and discogenic disease.... He was repetitively grabbing heavy piles of wood and constructing almost 1000 pallets a day." (Claimant's Ex. 1, p. 9)

With respect to claimant's left shoulder, Dr. Bansal opined,

> Mr. Gonzalez incurred an acute on chronic injury to his left shoulder. It is my opinion that he occurred wear and tear to his shoulder labrum from the repetitive lifting of pieces over shoulder level with his left arm. Against that backdrop, he was assaulted by his supervisor at termination. He was hit directly onto the shoulder.

(Claimant's Ex. 1, p. 10)

Finally, with respect to the left wrist, Dr. Bansal opined that "Mr. Gonzalez developed left carpal tunnel syndrome form [sic] repetitively grasping piles of wood and then cutting the wood at Westwind Logistics. Based on repetition and forces, these tasks are highly pathognomonic for carpal tunnel syndrome." (Claimant's Ex. 1, p. 10) Dr. Bansal cited two medical research articles as support for his opinion.

In a supplemental report, Dr. Aviles reviews Dr. Bansal's independent medical evaluation. Dr. Aviles makes it clear that Dr. Bansal's findings and opinions do not change his medical opinions. Dr. Aviles notes that claimant's "pains were not in the proper locations." He also noted significant inconsistencies that do not make any sense for diagnosing an injury to the left shoulder. Therefore, Dr. Aviles reiterated his opinion that claimant did not sustain a cumulative trauma injury to the left shoulder on February 15, 2017 or a traumatic injury to the left shoulder on February 23, 2017.

Defendants also provided Dr. Bansal's report to Dr. Paulson for his comment. Dr. Paulson noted his disagreement with Dr. Bansal's opinions and provided citation to a competing medical research study. Ultimately, having considered Dr. Bansal's opinion and the competing research articles, Dr. Paulson opines, "the repetitive nature of Mr. Gonzalez's work was not a material aggravating or causative agent in his development of carpal tunnel syndrome." (Defendants' Ex. F, p. 4)

Claimant also asked Dr. Bansal to review and comment upon the supplemental opinions offered by the three orthopaedic surgeons. Dr. Bansal authored a report he signed on March 26, 2018. Having reviewed the supplemental reports of Dr. Schmitz, Dr. Aviles, and Dr. Paulson, Dr. Bansal reiterated his causation opinions and critiqued the opinions of each surgeon.

Considering all of the medical opinions, I can find concerns with each. Dr. Schmitz's opinion seems to suggest that he never thinks that cumulative work duties can be a cause of injury or aggravation of degenerative disc disease in the cervical spine. Such a medical opinion would be contrary to numerous prior decisions of this agency.

Dr. Aviles's treatment records note some positive physical examination tests, which tend to suggest some shoulder pathology is present. Dr. Paulson's opinions suggest that repetitive use of the arms cannot be medically causally connected to the development of carpal tunnel syndrome. Again, such an opinion would be contrary to numerous prior decisions of this agency.

Yet, each of these physicians is an orthopaedic specialist regarding the body part for which they are offering a causation opinion. Each of these orthopaedic surgeons is well-trained and highly qualified.

Dr. Bansal is an occupational medicine specialist. He is also well-qualified, but he is not specifically trained on the treatment of a neck, or a shoulder, or carpal tunnel. He does not have the specific training, or treatment experience, of consistently treating each individual orthopaedic concern.

I have specific concern about Dr. Bansal's history and his understanding of how the injuries are alleged to have occurred. Specifically, Dr. Bansal records in his original report that claimant "was repetitively grabbing heavy piles of wood and constructing almost 1000 pallets a day." (Claimant's Ex. 1, p. 9) First, claimant was not constructing pallets. He was moving pieces of lumber removed from used pallets and placing those pieces of wood into a saw.

Dr. Bansal also recorded a history that claimant "grabbed 50 to 60 pieces of wood with both hands and placed them in front of him. He then picked up each piece of wood with his left hand. Each piece of wood weighed approximately 10 pounds." (Claimant's Ex. 1, p. 9) This history recorded by Dr. Bansal makes it appear as though

claimant lifted 500-600 pounds of lumber at a time. This is clearly not accurate based upon review of the job video introduced by defendants.

Dr. Bansal also records in his history "[h]e did this repetitively all day long" and that "he had to work as fast as he could." (Claimant's Ex. 1, p. 9) Again, review of the video demonstrates that claimant had to work at a steady pace to perform his job duties, but his job duties were not constant or as repetitive as recorded by Dr. Bansal. Although the video was made available, it does not appear from his history that Dr. Bansal had an accurate understanding of claimant's job duties. This causes me to question the accuracy of his assumptions as they pertain to causation issues.

At the end of my analysis, I find that Drs. Schmitz, Aviles, and Paulson have superior training, experience, and credentials as to each of their respective specialties and body parts. I find that the analyses and opinions offered by Dr. Schmitz, Aviles, and Paulson are more convincing in this evidentiary record than those offered by Dr. Bansal.

While the opinions of Dr. Bansal are cogent and understandable by a lay person, I have concerns about the history he recorded and the accuracy of his understanding of claimant's job duties. Therefore, I find the causation opinions offered by Drs. Schmitz, Aviles, and Paulson to be most credible and convincing in this evidentiary record. I specifically find that claimant has not proven by a preponderance of the evidence that his neck, left shoulder, or left arm conditions are causally related to his work activities, either on a cumulative or traumatic basis, at Westwind Logistics.

CONCLUSIONS OF LAW

The initial dispute for resolution is whether an employer-employee relationship existed at the time of the alleged February 23, 2017 injury. Defendants dispute whether claimant was an employee at the time of the alleged February 23, 2017 work injury because he was formally terminated prior to the occurrence of the incident claimant alleges caused him injury.

There is no real factual dispute about this issue. Mr. Gonzalez was terminated on February 23, 2017. After his termination occurred, he returned to the production floor and was confronted by his supervisor. An altercation occurred and claimant alleges he was injured as a result of that confrontation. Instead, this is a legal question about claimant's employment status and legal right to make a worker's compensation claim for his alleged injuries.

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.

Claimant contends that he should be considered to be within the scope and course of his employment because he was injured before leaving the production facility after his termination. Defendants contend that the employer-employee relationship formally ended upon claimant's termination and that any injury occurring after claimant's formal termination cannot be within the employer-employee relationship. Neither party has identified any controlling authority on this issue, nor provided a definitive legal argument on the issue.

The Iowa Supreme Court has addressed similar issues and arguments twice. First, in Mitchell v. Consolidated Coal Co., 195 Iowa 415, 192 N.W. 145 (1923), the Iowa Supreme Court held that a miner, who had terminated his work continued to be within the scope and course of his employment as he finished the agreed upon work and collected his tools. Mr. Mitchell was injured returning into the mine to check on the retrieval of his tools. His claim was held compensable because it "was the custom at that mine and all other mines over the district" that a miner should complete his work and be allowed to retrieve his tools before leaving the work site. Mitchell, 195 Iowa at 417; 192 N.W. at 145. The Court concluded that this was a factual issue and deferred to the findings of the agency.

However, in Johnson v. City of Albia, 203 Iowa 1171, 212 N.W. 419 (1927), the Court revisited this issue under different factual circumstances. In Johnson, the injured worker "had accomplished *all* the work he was required or expected to do under his employment. He had no orders whatever that required him to ever return to the premises. His duties had fully terminated." Johnson, 203 Iowa at 1176, 212 N.W. at 422. In fact, Mr. Johnson completed his shift, left for the day, and only returned to the job site to collect his tools. He kindly attempted to assist his replacement when he was injured. The Court concluded, however, that he was not in the course and scope of his employment and, at best, was a casual employee at the time of his injury.

The relevant Iowa cases are quite old and consider significantly varying factual scenarios. This case is much more like Mitchell, where the worker remained on the employer's site to finish work and collect tools than is the worker who left the work site and returned the next day. On the other hand, Mr. Gonzalez was not completing any work at the time of his alleged injury on February 23, 2017. Neither Iowa precedent is entirely on point or clearly dispositive.

Similar cases have arisen in numerous other jurisdictions. Professor Larson has considered this issue and urges, "[c]ompensation coverage is not automatically and instantaneously terminated by the firing or quitting of the employee. The employee is deemed to be within the course of employment for a reasonable period while winding up his or her affairs and leaving the premises." Arthur Larson, Larson's Workers' Compensation Law, Volume 2, § 26.01 (2008).

> Many courts ... reason that whether an employee voluntarily quits the employment or is discharged by his or her employer, he or she is entitled to a "reasonable time" to leave the premises before it can be said that the relation of employer and employee is so completely severed as to render inapplicable the law which governs that relation.

10 A.L.R. 245, *Right to workers' compensation for injuries suffered after termination of employment,* § 2[b].

"The English rule is that where a workman remains on the premises or returns thereto to obtain his pay after work ceases, he is still acting in the course of his employment." Parrott v. Industrial Comm'r of Ohio, 60 N.E.2d 660 (Ohio 1945). The Supreme Court of Tennessee recently performed a survey of the law on this issue and concluded, "the great majority" of jurisdictions hold that "leaving the workplace is incidental to the employment relationship" such that "a terminated employee who 'sustains injuries while leaving the premises within a reasonable time after termination' of the employment is deemed to have suffered a compensable injury." Duck v. Cox Oil Co., 2017 WL 5713077 at 4 (Tennessee 2017) (unpublished as of this date) (citing Price v. R & A Sales, 773 N.E.2d 873 (Ind. Ct. App. 2002); Ventura v. Albertson's, Inc., 856 P.2d 35 (Colo. App. 1992); Ardoin v. Cleco Power, 38 So. 264 (La. 2010)).

The Alabama Civil Appellate Court faced a situation similar the facts presented in this case. In Cook v. AFC Enterprises, Inc., 826 So.2d 174 (Ala. Civ. App. 2002), the worker was terminated. However, a heated discussion continued after the termination occurred. Ultimately, the claimant's manager threw hot water on the claimant and the claimant was burned. The Alabama court held that the exclusive remedy for this injury was via workers' compensation. The Court offered a good explanation and summary of the majority rule, stating:

> However, even following an employee's termination, the employee must be given a reasonable time to leave the premises before the employer-employee relationship is considered severed and the Workers' Compensation Act is rendered inapplicable.

Id. at 177.

In Woodward v. St. Joseph's Hospital of Atlanta, Inc., 288 S.E.2d 10 (Ga. App. 1981), the Georgia Court of Appeals held that "the act of discharging an employee is an integral part of the employment relationship, making injuries arising out of discharge

causally connected to that employment." (quoting Hill v. Gregg, Gibson & Gregg, Inc., 260 So.2d 193, 195 (Fla. 1972)). The Woodward Court held, "since the aggressive acts of the defendant supervisor were part of the res gestae of the discharging of the plaintiff, the injuries which resulted from those actions arose out of and in the course of employment." Woodward, 288 S.E.2d at 11.

A California court held that a claimant remained in the scope of employment while traversing the employer's premises to leave so long as the claimant did not unreasonably delay in leaving the premises. Peterson v. Moran, 245 P.2d 540 (Cal. Dist. Ct. App. 1952). Therefore, the Court found that a worker assaulted by a foreman after termination remained within the scope of employment. Id.

The Colorado Court of Appeals concluded that the act of discharge is an integral part of the employment relationship. However, the Court concluded that the issue of whether "the claimant was injured as the result of an accident arising out of his employment must be determined on the particular facts of each case." Alpine Roofing Co. v. Dalton, 539 P.2d 487 (Colo. App. 1975).

One of the earliest cases dealing with an assault after termination arose in Massachusetts. In Zygmuntowicz v. American Steel & Wire Co. of New Jersey, 134 N.E. 385 (Mass. 1922), the claimant was terminated but objected to the termination. The supervisor seized the claimant and threw him to the ground causing injury. In that case, the Supreme Court of Massachusetts held that the entire incident "was incident to his work" even though it occurred after the formal termination was related to the claimant. Id.

Zygmuntowicz was cited as convincing authority by the South Dakota Supreme Court in Anderson v. Hotel Cataract, 17 N.W.2d 913 (S.D. 1945). The South Dakota Court concluded that "[d]ischarge by the employer, and quitting by an employee, are but incidents of all employments. A discharged employee is allowed a reasonable time in which to leave the premises of his employer." Id. at 917. The Court held "that an employee who quits remains in the course of his employment until afforded a reasonable opportunity to leave the employer's premises." Id.

The Tennessee Supreme Court noted that the approach taken by the majority of jurisdictions is "consistent with the approach taken in Professor Larson's Workers' Compensation Law" treatise. Duck, 2017 WL 5713077 at 4. However, the Tennessee high court acknowledged that there is a minority of jurisdictions that "apply an immediate termination approach, under which workers' compensation coverage terminates immediately when an employee quits or is fired." Id. at 6. Interesting, the Tennessee Court cites the Iowa case of Johnson v. City of Albia, 203 Iowa 1171, 212 N.W. 419 (1927) as a leading authority among the "minority" jurisdictions.

The Wisconsin Supreme Court found the Zygmuntowicz Court's analysis convincing when it held, "it seems to be conceded that an employee is under the protection of the Compensation Act after his discharge, provided he be injured upon the

premises of his employer while remaining there for reasons connected with his former employment." Pederson & Voechting v. Kromrey, 231 N.W.2d 267 (Wisc. 1930). However, in the Kromrey case, the court held that the employee's injuries were not compensable because the employee had already left the premises and was returning to collect personal belongings. The court reasoned that the former employee was not rendering services under a contract of employment at the time of his injury and, therefore, not within the scope and course of his former employment.

A federal court in Missouri held that a garbage man, who was terminated and returned to the employer's main office to collect his belongings and discuss pay arrangements was not in the course of his employment when assaulted by a supervisor. Davis v. Bennett, 114 F. Supp. 790 (W.D. Mo. 1953).

It seems apparent that Iowa law is not well-developed on this issue. The two Iowa cases seemingly dealing with post-termination injuries have significantly different factual scenarios from each other and from this situation. There is no evidence in this record that there was a practice or custom that allowed terminated employees to return to the shop floor at this, or other, employer's premises. On the other hand, Mr. Gonzalez was proceeding to the area where his personal belongings were located to collect those after his termination. I conclude that the Iowa precedent are not directly on point.

The general rule in Iowa is that the workers' compensation statutes should be interpreted liberally to the benefit of the injured worker. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250 (Iowa 2010); Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009); 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995).

Construing the statutory definition of Iowa Code section 85.61 of an employee liberally to the benefit of the injured worker, I conclude that a discharged employee is allowed a reasonable time in which to collect his or her belongings and leave the premises of his employer. Anderson v. Hotel Cataract, 17 N.W.2d 913, 917 (S.D. 1945); Mitchell v. Consolidated Coal Co., 195 Iowa 415, 192 N.W. 145 (1923). Therefore, I conclude that Mr. Gonzalez, although terminated at the time of the February 23, 2017 assault, remained in the course of his employment until afforded a reasonable opportunity to leave the employer's premises. Anderson, 17 N.W.2d at 917. Having found that Mr. Gonzalez was not afforded a reasonable opportunity to leave the premises before he was assaulted, I conclude that Mr. Gonzalez has established that the February 23, 2017 assault and alleged injuries occurred within the course and scope of his employment with Westwind Logistics, L.L.C., and that an employer-employee relationship continued at the time of the alleged injuries. I conclude that claimant should be permitted to pursue a claim for a work injury occurring within the employer-employee relationship under the Iowa Workers' Compensation statutes for the results of the February 23, 2017 assault.

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 that claimant has not proven he sustained a cumulative neck or a cumulative left shoulder injury as a result of the alleged February 15, 2017 injury date. Similarly, I found that claimant did not prove by a preponderance of the evidence that he sustained an acute neck or left shoulder injuries as a result of the assault by his supervisor on February 23, 2017. Therefore, I conclude that claimant has not proven entitlement to either treatment or permanent disability benefits for his alleged left shoulder or neck injuries.

With respect to the issue of claimant's alleged left carpal tunnel, I found the opinions of Dr. Paulson to be more convincing and credible than those offered by Dr. Bansal. Having found that claimant failed to prove a causal connection between his work activities and his left carpal tunnel syndrome, I conclude that claimant has failed to prove a compensable left arm injury. Again, I conclude that claimant has failed to prove entitlement to either treatment or permanent disability benefits for his alleged left carpal tunnel syndrome or left arm conditions.

Mr. Gonzalez also asserted a claim for unreasonable delay or denial of weekly benefits. No claim for temporary disability, or hearing period, benefits was asserted at the time of hearing. (Hearing Report) No award of permanent disability benefits is made in this decision. It would not be possible for defendants to unreasonably delay or deny benefits that were never owed. Therefore, I conclude that there is no basis for award of any weekly benefits upon which a penalty benefit could be awarded. The claim for penalty benefits fails. Iowa Code section 86.13.

Mr. Gonzalez asserts a claim for payment, or reimbursement, of past medical expenses and specifically medical mileage contained in Claimant's Exhibit 12. Review of Claimant's Exhibit 12 and the hearing reports demonstrates that the treatment at Iowa Ortho represents treatment with authorized physicians. As such, defendants should be paying medical mileage for claimant's attendance at those appointments. Iowa Code section 85.27(1); 876 IAC 8.1. It appears that claimant seeks 24 miles at $0.54 per mile for those appointments, which will be ordered. The remaining 25 miles are for claimant's attendance at his independent medical evaluation, which are only owed if claimant is entitled to reimbursement of Dr. Bansal's evaluation pursuant to Iowa Code section 85.39.

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).

Dr. Bansal performed his evaluation of claimant on September 8, 2017. None of the physicians selected by defendants offered causation opinions or opinions regarding permanent impairment until after Dr. Bansal's evaluation occurred.

In Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 843 (Iowa 2015), the Iowa Supreme Court held:

> If the evaluation by the physician retained by the employer includes a permanent disability rating and 'the employee believes this evaluation to be too low,' the employee may obtain a subsequent examination by a physician of the employee's choice and be reimbursed by the employer for the reasonable fee of the examination, plus transportation expenses.

"Dr. Bansal's IME fee in this case does not qualify for reimbursement under Iowa Code section 85.39 because defendant never obtained a permanent impairment rating" before Dr. Bansal's evaluation occurred. Block v. Clarinda Treatment Complex, File No. 5046672 (App. December 2015). Therefore, I conclude that neither Dr. Bansal's fee, nor the claimed mileage to attend Dr. Bansal's evaluation, are reimbursable to claimant pursuant to Iowa Code section 85.39.

The only other disputed issue is assessment of costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant failed to prove his claim for permanent disability, I conclude that claimant's costs should not be assessed against defendants. Instead, I conclude that each party should bear its own costs in this contested case proceeding.

ORDER

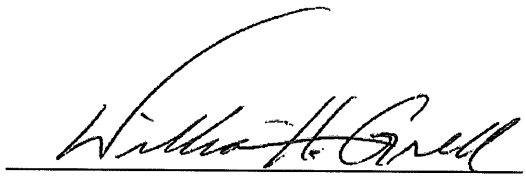
THEREFORE, IT IS ORDERED:

Claimant takes no weekly benefits in either file.

Defendants shall reimburse claimant for medical mileage for twenty-four (24) miles traveled at the rate of fifty-four cents ($0.54) per mile, or a total of twelve and 96/100 dollars ($12.96).

The parties shall bear their own costs.

Signed and filed this 26th day of September, 2018.



WILLIAM H. GRELL
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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.