BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RUSSELL KRAMER, Claimant, vs. RYDELL OF INDEPENDENCE a/k/a RYDELL MOTOR CO., L.L.C., Employer, and WEST BEND MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 20001561.01 ARBITRATION DECISION Head Note Nos.: 1402.30, 1402.40, 1803, 2502

STATEMENT OF THE CASE

Russell Kramer, claimant, filed a petition for arbitration against Rydell of Independence a/k/a Rydell Motor Co., L.L.C. (hereinafter referred to as "Rydell") and its workers' compensation insurance carrier, West Bend Mutual Insurance Company. This case came before the undersigned for an arbitration hearing on March 25, 2021. Due to the ongoing pandemic in the state of Iowa and pursuant to an order of the Iowa Workers' Compensation Commissioner, this case was tried using the CourtCall videoconference platform.

The parties filed a hearing report before the scheduled 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. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 4, Claimant's Exhibit 1, and Defendants' Exhibit A.

Claimant testified on his own behalf. No other witnesses testified at trial. The evidentiary record closed at the conclusion of the evidentiary hearing and the case was considered fully submitted.

STATEMENT OF THE ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury, which arose out of and in the course of employment, on January 25, 2020.

2. Whether the alleged January 25, 2020 work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

3. The proper date for commencement of permanent disability benefits, if any.

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

FINDINGS OF FACT

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

Russell Kramer is a 64-year-old gentleman, who alleged he sustained a left knee injury arising out of and in the course of his employment with Rydell. Specifically, Mr. Kramer asserts that he was working as a car salesman for Rydell on January 25, 2020. The car sales representatives were moving cars so that the sales lot could be plowed. As Mr. Kramer exited a car at work while performing these duties, he slipped and fell, sustaining an injury to his left knee. (Claimant's testimony)

Mr. Kramer noticed pain in his left knee when he got up and reported the incident to the general manager on the same day. Claimant was on crutches for approximately 8 weeks after the incident. Rydell laid him off on March 23, 2020. (Claimant's testimony)

Mr. Kramer testified that he continues to have pain and has a "catching" sensation in his left knee since the January 25, 2020 date of injury. He now uses a cane some days, but did not use a cane before the January 25, 2020 fall. (Claimant's testimony)

However, Mr. Kramer's left knee complaints and symptoms did not begin on January 25, 2020. Mr. Kramer admitted on cross-examination that he had treatment for his left knee several times before the January 25, 2020 incident and that a total left knee replacement was recommended to him before the January 25, 2020 incident at work. Indeed, he had an extensive history with left knee pain. The evidentiary record clearly does not have all of the pertinent medical records prior to claimant's January 25, 2020 incident. However, it is apparent that Mr. Kramer had significant left knee symptoms prior to January 25, 2020.

Mr. Kramer conceded at trial that he had viscosupplementation injections into his left knee by at least 2017. (Claimant's testimony) In March 2018, a pain specialist, Stanley Mathew, M.D., evaluated claimant. On March 5, 2018, Dr. Mathew noted claimant's left knee pain and noted that claimant "will likely have a joint replacement on the left total knee replacement done in May 2018." (Joint Exhibit 1, page 1) Claimant put that knee replacement off because his wife was having surgery in May 2018. (Claimant's testimony) However, on August 28, 2018, Dr. Mathew again noted that it was likely claimant would have total left knee replacement at some point. He offered claimant a steroid injection in the left knee on that date to help alleviate symptoms. (Joint Ex. 1, p. 7)

The medical records document that claimant submitted to an ongoing series of steroid injections into his left knee, including an injection in November 2018. (Joint Ex. 1, p. 13) By March 1, 2019, Dr. Mathew was documenting that left total knee replacement was scheduled for May 2019. Mr. Kramer disputes whether the knee replacement was scheduled again for May 2019, but I accept the contemporaneous medical record as accurate in this regard. Again, claimant extended the timeframe for that surgery. In May 2019, Dr. Mathew noted that the knee replacement was scheduled for November 2019. (Joint Ex. 1, p. 16)

Claimant did not submit to that left total knee replacement as recommended in November 2019. Once again, claimant denies the accuracy of the medical records about rescheduling of his left total knee replacement. Again, I find the contemporaneous medical record of his long-time treating pain specialist to be accurate that the knee replacement was rescheduled for November 2019 and later cancelled. Instead, his treating physician was attempting alternative treatments, including the use of Orthovisc injections. The day before the alleged work injury claimant submitted to the second of three scheduled Orthovisc injections. (Joint Ex. 1, pp. 26-29) Claimant was clearly experiencing significant and chronic symptoms in his left knee prior to January 25, 2020. In fact, his pain physician had recommended on more than one occasion that he submit to a left total knee replacement prior to January 25, 2020.

Two days after the fall at work, Mr. Kramer called his pain specialist noting that he was "having a lot of problems after his knee injection on Friday. He is in a lot of pain and is having trouble walking. He wants to know if this is normal and what he should do." (Joint Ex. 1, p. 30) Interestingly, the medical records from two days after his fall make no mention of the work incident as a cause of Mr. Kramer's left knee symptoms.

Dr. Mathew's clinic got claimant in for an urgent examination on January 27, 2020, the day he called reporting symptoms after his injection. Nurse Practitioner Amanda R. Kuehl evaluated claimant on that date. She noted claimant's left knee x-rays were consistent with moderate joint space narrowing and osteoarthritic changes. She noted the second of three Orthovisc injections occurred three days prior, but recorded no history from claimant of a fall at work two days earlier, on January 25, 2020. (Joint Ex. 1, p. 31)

Mr. Kramer returned for follow-up evaluation with Nurse Kuehl on February 7, 2020. This note, 13 days after the alleged incident at work, is the first report of a work injury in the medical records. The mention of a fall on ice at work after the last injection is almost an afterthought in the medical record. (Joint Ex. 1, p. 35)

Thereafter, claimant was referred for a left knee MRI on February 20, 2020. The MRI demonstrated extensive, high-grade chondromalacia medially, a chronic medial meniscal tear, a chondral flap of the lateral femoral condyle, a lateral meniscal tear, as well as possible loose body in the left knee. (Joint Ex. 2, pp. 45-46) Claimant was referred to orthopaedic surgeon, Jeffrey A. Clark, D.O. for further evaluation.

Dr. Clark evaluated Mr. Kramer on February 25, 2020. At his initial evaluation, Dr. Clark diagnosed claimant with a "probable new lateral meniscus tear" as a result of the fall at work on January 25, 2020. (Joint Ex. 3, p. 51) He recommended a potential diagnostic knee arthroscopy. However, claimant wanted additional time to think about his options and any potential surgery. (Joint Ex. 3, pp. 52-53)

Defense counsel conferenced with Dr. Clark in January 2021 and sent a summary letter for Dr. Clark's consideration to clarify his medical opinions. Dr. Clark signed the letter indicating his agreement that he "cannot state within a reasonable degree of medical certainty that the fall sustained by Russell Kramer on January 25, 2020 was a substantial contributing factor to causing or materially aggravating, accelerating or worsening his left knee meniscal tears found on the February 20, 2020 MRI" (Joint Ex. 3, p. 55) Dr. Clark further opined, "I can state with a reasonable degree of medical certainty that the fall sustained by Mr. Kramer on January 25, 2020 was not a substantial contributing factor to causing or materially aggravating, accelerating, or worsening his pre-existing left knee osteoarthritis." (Joint Ex. 3, p. 55) Finally, Dr. Clark opined, "The fall sustained by Mr. Kramer on January 25, 2020 was not a substantial contributing factor to his need for left knee arthroplasty surgery." (Joint Ex. 3, p. 56)

Although it is not clear why, Mr. Kramer's orthopaedic care was transferred to Thomas S. Gorsche, M.D., who evaluated Mr. Kramer on March 12, 2020. Dr. Gorsche noted the Synvisc injections occurring prior to the January 25, 2020 fall. His operating diagnoses for claimant's left knee included degenerative joint disease with medial and lateral meniscal tears and a loose body. He recommended continued physical therapy and steroid injections, as well as use of crutches at work and light duty work. (Joint Ex. 4, p. 62)

The steroid injection administered by Dr. Gorsche was not sufficient to alleviate symptoms. Claimant returned within two weeks and was re-evaluated by Dr. Gorsche on March 26, 2020. After his examination on that date, Dr. Gorsche advised claimant "that he needs a knee replacement." (Joint Ex. 4, p. 66) Dr. Gorsche also took claimant off work at that point as a result of his left knee symptoms. (Joint Ex. 4, p. 66)

On April 2, 2020, Dr. Gorsche authored a report to the insurance carrier. He opined that claimant "has severe arthritis of his knee." (Joint Ex. 4, p. 68) Dr. Gorsche further stated:

> Therefore, in my opinion the injury he suffered at work was a temporary exacerbation of his underlying arthritis. His need for a knee replacement in the future will be related to his underlying arthritis and not to the injury. His current off work status is related to the arthritis as well.

(Joint Ex. 4, p. 68)

Mr. Kramer sought an independent medical evaluation, performed by Marc Hines, M.D. Dr. Hines is a neurologist. He evaluated claimant and ultimately opined:

> This patient clearly has had an exacerbation of a preexisting difficulty with osteoarthritis and difficulties with function of the left knee, but in view of the difficulties with the right knee, this has become an even greater problem for him. However, this exacerbation is not a temporary exacerbation, it is clearly functionally a permanent exacerbation and in fact there are new findings in the MRI which are noted a lateral meniscal tear with posterior horn-body junction inner one-third 1 cm and a loose body anterior to the root of the lateral meniscus. These are not felt to be chronic and they are mentioned at the end and distinctly discussed as current. These problems give him a functional difficulty in performing his previous work, but also cause difficulties with his gait with ambulation, particularly with stairs and it is noteworthy that in fact on the stairs, he does ascend with his right leg pushing off and bringing up his left leg 1 step at a time. Similarly going down the stairs, he bears the weight with the bending on his right leg putting his left leg forward for each step going down the stairs 1 step at a time. All findings on his examination are consistent with this being a permanent exacerbation of the underlying difficulty.

(Claimant's Ex. 1, p. 9)

Accordingly, there is a distinct difference of opinion among the medical professionals that must be resolved. Defendants contest whether claimant sustained an injury that arose out of and in the course of his employment. However, I find that claimant did fall on January 25, 2020 and that the fall did cause symptoms in his left knee. Dr. Hines obviously ascribes to this theory. However, it also appears that Dr. Clark believes a temporary aggravation is possible and Dr. Gorsche similarly opines that claimant sustained a temporary aggravation as a result of the fall on January 25, 2020. Therefore, I find that the medical evidence establishes claimant sustained an injury of some kind to his left knee as a result of his work activities on January 25, 2020. Accordingly, I find that Mr. Kramer has proven he sustained an injury to his left knee as a result of his work duties and a resulting fall on January 25, 2020.

With respect to determining whether the January 25, 2020 fall is the cause or materially aggravated, accelerated, or exacerbated the underlying left knee condition, the medical opinions of Drs. Hines, Clark, and Gorsche diverge. As I weigh the competing medical opinions, I find three pieces of information, or evidence, to be enlightening. First, Dr. Hines acknowledges that he has minimal records prior to the alleged injury date. He indicates there "is no evidence in the records which I have in which any knee replacement was discussed prior to the injury." (Claimant's Ex. 1, p. 10) Claimant conceded on cross-examination that this is an error in Dr. Hines' history and report. (Claimant's testimony) I find that Dr. Hines did not have or understand the entire medical history pre-dating the January 25, 2020 fall.

I also note that Dr. Hines is a neurologist, while Dr. Clark and Dr. Gorsche are orthopaedic specialists. While that does not automatically make the opinions of Dr. Clark and Dr. Gorsche more credible or entitled to greater weight, their credentials to offer an opinion on causation of an orthopaedic condition are superior to those of a neurologist.

Finally, given that claimant was recommended to submit to a left total knee replacement by at least March 2018, I find it difficult to attribute the need for a knee replacement to the January 25, 2020 fall. Rather, the opinions of Dr. Gorsche and Dr. Clark are more logical and consistent with the pre-existing medical condition and records. Claimant was in need of a left total knee replacement before his fall in January 2020. The fall may have caused some temporary increase in symptoms, but claimant still needs the knee replacement that was recommended to him nearly two years before the fall.

Ultimately, I find the opinions of Dr. Gorsche to be the most credible. To the extent that Dr. Clark's opinions are similar, or may support those of Dr. Gorsche, they are also accepted. I find that claimant failed to prove his need for a left total knee replacement is causally related to or materially aggravated, exacerbated, or accelerated by the January 25, 2020 fall at work. I find that claimant has proven he sustained a temporary aggravation of his left knee condition as a result of the January 25, 2020 fall, but has not proven he sustained any permanent disability as a result of the fall.

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" refer 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 opinions of Dr. Gorsche, as supported by Dr. Clark's opinions, to be the most convincing. Relying upon those medical opinions, I found that claimant proved he sustained an injury arising out of and in the course of his employment with Rydell on January 25, 2020. However, I found that claimant failed to prove that his need for a left total knee replacement is causally related to, or materially aggravated, exacerbated, or accelerated by the fall at work. I similarly found that Mr. Kramer failed to prove he sustained any permanent disability as a result of the January 25, 2020 work injury. Accordingly, I conclude that claimant failed to prove entitlement to an award of permanent disability benefits.

Mr. Kramer also seeks reimbursement of his independent medical evaluation fee 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). However, pursuant to a 2017 statutory change, defendants are "not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury." Iowa Code section 85.39(2).

In this case, I concluded that claimant proved he sustained a left knee injury that arose out of and in the course of his employment. Having concluded that claimant proved a compensable injury, he was entitled to an evaluation pursuant to Iowa Code section 85.39 to try to prove permanent disability, if the other pre-requisites of the statute were met. However, in this case, none of the treating physicians offered an opinion about permanent impairment. Accordingly, I conclude claimant failed to establish the necessary pre-requisites of Iowa Code section 85.39(2) were met to qualify for reimbursement of his independent medical evaluation fees.

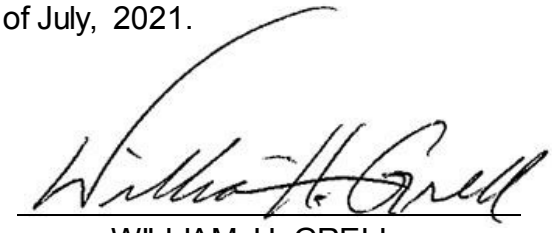
ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing.

All parties shall bear their own costs.

Signed and filed this 13th day of July, 2021.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

James Hoffman (via WCES)

James Ballard (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, 86) 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.