BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH WATKINS,	FILED	
Claimant,	MAR 17 2015	File No. 5041118
vs.	WORKERS COMPENSATION	ARBITRATION
JOHN DEERE DAVENPORT WORKS,	:	DECISION
Employer, Self-Insured, Defendant.	:	Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Joseph Watkins, has filed a petition in arbitration and seeks workers' compensation benefits from John Deere Davenport Works, self-insured employer, defendant.

Deputy workers' compensation commissioner, Stan McElderry, heard this matter in Des Moines, Iowa.

ISSUES

The parties have submitted the following issues for determination:

1. Whether the claimant suffered a left arm injury (scheduled member) arising out of and in the course of his employment on May 31, 2011; and

2. Temporary benefits.

The parties stipulated that the defendant will pay/reimburse medical expenses for the left arm if this decision causally connects the injury to work.

FINDINGS OF FACT

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

On May 31, 2011, the claimant was an employee of John Deere Davenport Works when he reported an injury to his left arm while picking up metal pieces that the employer and employees refer to as "hockey sticks." The claimant testified that he did

not know if he was picking up one or two of these metal pieces when he states he was hurt.

Within hours of the alleged incident the claimant went to Joseph Molnar, M.D. The claimant states that he went over everything that had happened at work with Dr. Molnar. However, Dr. Molnar or office staff logged once "L arm pain injury wrestling around[.] Hurt L side X 8 days[.] Hurts to sneeze or any activity. (Exhibit N, page 99) And then Dr. Molnar or staff logged "L Forearm pop same symptoms as (illegible) w/R forearm. Wrestling around 1 week ago after trauma – severe pain." (Ex. N, p. 99) The entries are in two different hands, so one is probably the doctor and the other the nurse who interviewed the claimant before he was seen by the doctor. Claimant testified that he did tell the doctor of a bear hug from his brother. However, no bear hug or work incident is noted by Dr. Molnar's office.

Christopher "Chris" Watkins, claimant's brother, was deposed on November 21, 2014. (Ex. B) Chris Watkins denies any bear hug or other act causing any pain to his brother. Chris Watkins also stated that he brother told him on November 12, 2014 "something about jumping off a table, that he might have done it there at John Deere." (Ex. B, p. 33)

Christine Deignan, M.D., examined the claimant on October 7, 2014. (Ex. J) Dr. Deignan opined, based on her examination, and the records of Dr. Molnar's office, that the alleged arm injury did not occur at John Deere. (Ex. J, pp. 71-72) The views of Dr. Deignan are convincing. Otherwise, one has to ignore two medical notations of the day in question; accept a not credible claimant whose own brother does not support his story that he was injured at work in a non-witnessed accident. The claimant did not establish that he was hurt at work. The claimant has medical providers that assert a work injury, but those opinions fail as they rely on claimant having told the truth about where and how he was injured.

On the date of injury, based on the claimant's gross earnings, single status, and entitlement to 2 exemptions, his weekly benefit rate is $604.18.

REASONING AND CONCLUSIONS OF LAW

The first issue to be resolved is whether claimant sustained an injury that arose out of and in the course of his employment.

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 Rule of Appellate Procedure 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 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 Iowa Supreme Court issued its decision in Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001). In Herrera the court held at 633 N.W.2d 288 that "by virtue of the discovery rule, the statute of limitations will not begin to run until the employee also knows that the physical condition is serious enough to have a permanent adverse impact on the claimant's employment or employability . . . ." The court rejected a finding in Herrera that the claimant, as a reasonable person, should have been aware of the seriousness of her condition and its impact on her employment when she had had pain, sought medical treatment and was placed on light duty and into work hardening.

It was found that the claimant had not met his burden of establishing an injury arising out of and in the course of his employment to his left arm on or about May 31, 2011. The claimant's version is contradicted by contemporaneous medical records, was not witnessed, and not supported by his own brother. All other issues are therefore moot.

ORDER

THEREFORE, IT IS ORDERED:

That claimant take nothing.

Defendant shall receive credit for all benefits previously paid.

Costs are taxed to the claimant pursuant to rule 876 IAC 4.33.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Signed and filed this 17th day of March, 2015.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.