

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MANUEL BANUELOS,	:	FILED
Claimant,	:	AUG 24 2015
vs.	:	WORKERS' COMPENSATION
CUSTOM PRECAST COMPANY,	:	File No. 5044388
Employer,	:	A P P E A L
and	:	D E C I S I O N
THE CINCINNATI INSURANCE	:	
COMPANIES,	:	
Insurance Carrier,	:	Head Note Nos.: 1108.50; 1402.30;
Defendants.	:	1803; 2209

Claimant Manuel Banuelos appeals from an arbitration decision filed on September 9, 2014. The case was heard on June 26, 2014, and it was considered fully submitted on August 12, 2014, in front of the deputy workers' compensation commissioner.

The deputy commissioner determined claimant sustained a right shoulder injury on or about April 18, 2012, arising out of and in the course of his employment with the defendant-employer. The deputy commissioner determined claimant failed to carry his burden of proof to establish that he also sustained a neck injury on or about April 18, 2012, arising out of and in the course of his employment. The deputy commissioner awarded claimant 15 percent industrial disability for his right shoulder injury.

Claimant asserts on appeal that the deputy commissioner erred in determining that claimant did not sustain an injury to his neck in addition to the right shoulder injury. Claimant also asserts that the deputy commissioner erred in not awarding more than 15 percent industrial disability. Defendants assert that the findings of the deputy commissioner should be affirmed.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on September 9, 2014, that relate to issues properly raised on intra-agency appeal with the following additional analysis:

I agree with the deputy commissioner's finding that the opinions of Drs. David S. Tearse, Timothy J. Miller and Erin Kennedy, authorized treating physicians, should be given greater weight than the opinions of Drs. Robert W. Milas and Robin L. Sassman, claimant's IME physicians, which therefore leads to the conclusion that claimant's work injury sustained on or about April 18, 2012, is confined to his right shoulder and did not extend to his neck.

I agree with the deputy commissioner's determination that Dr. Tearse's permanent impairment rating of 7% body as a whole for claimant's right shoulder injury and his determination that claimant needs no permanent work restrictions for his shoulder (Exhibit 9, p. 38) should be given greater weight over the opinions of Drs. Milas and Sassman because Dr. Tearse performed claimant's shoulder surgery on October 25, 2012, he continued to follow claimant after the surgery and his opinions are supported by the record as a whole.

Regarding the alleged injury to claimant's neck, Dr. Miller stated the following, in pertinent part, in his report for his April 18, 2013, evaluation of claimant:

. . . This is an unusual story. I need to review the MRI on this gentleman, but my general impression is he does not have any significant cervical pathology. I must admit I am not impressed that he has any pathology active at this time. The shoulder has been cleared and it is my belief again without having actually seen the MRI films of his neck that he has no cervical pathology. I believe that he is at a point where he should be placed at maximal medical improvement, but we would like to assess his MRI before stating that, but I do not see a reasonable case to look at cervical epidural injection nor do I see any other likely injection site here at this time. His exam to me with a light touch hypersensitivity and the extremely poor effort on motor testing are not consistent with underlying pathology. He also has report of neck pain with direct pressure down through the head, which is also considered an atypical sign for pathology and I generally do not believe that there is anything that needs to be addressed here. I will review his MRI and see if there is anything further that needs to be addressed, but at this point my impression is he is at maximum medical improvement and should be moved forward aggressively to full duty.

(Ex. D, pp. 1-2)

On June 17, 2013, following his review of Mr. Banuelos' cervical MRI films, Dr. Miller issued his Addendum to Note of 4/18/2013, in which he stated the following, in pertinent part:

. . . He does indeed have a small disk bulge at C5-C6 and C6-C7, which appear to be just parasagittal. They are not compressing into the cord . . . I have two opinions within a reasonable degree of medical certainty regarding this patient. Number one is his pain symptoms, I do not believe are consistent with disk bulge and are not associated with the current complaint, which are likely related to shoulder discomfort, for which he has been cleared after treatment. Secondly, I do not think there is any evidence within a reasonable degree of medical certainty that the disk bulges present and noted on this MRI are related to his work complaint. In other words, I believe they are either predated or occurred after the event, but are unlikely to be associated with his complaint. Previous diagnoses of tendinosis of the shoulder and possible chest strain are most consistent with his complaints. A small osteophyte at C5-C6 and a small disk protrusion at C6-C7 are present on the MRI, which I have had a chance to evaluate today, 06/17/2013, and could have easily predated the date of complaint and are likely asymptomatic.

I do not believe Mr. Banuelos needs any treatment for his neck and would consider maximum medical improvement regarding his neck problems . . .

(Ex. D, p.3)

In her report dated April 16, 2014, Dr. Kennedy provided an excellent analysis of all of the medical evidence in this case. She stated the following, in pertinent part:

. . . IMPRESSION:

Mr. Banuelos is a 43-year-old gentleman who reported injury while working at Custom Precast on April 18, 2012. He reported repeatedly throwing multiple 15 pound rocks into a bin with his right arm at the time of alleged injury, something he had done for approximately 15 months prior to reported injury. He initially presented with right pectoralis pain. This then migrated to the right shoulder and to the neck. It was reasonable to consider an overuse injury. However, his reported symptoms became more and more bizarre and migratory, lacking consistency. His presentation at any given anatomic location was also highly variable visit to visit and provider to provider and not associated with expected factors such as activity level. Complaints were refractory to usual care such as medication, restrictions to unload the affected structures, and physical therapy . . . Multiple providers who had multiple contacts with Mr.

Banuelos expressed concern for validity including Dan Focht, OT; Dr. Timothy Miller, Pain Specialist; and me . . .

(Ex. C, p. 6)

In his appeal brief, claimant asserts that even if it is determined he did not sustain an injury to his neck, the functional capacity evaluation (FCE) he underwent on May 12, 2014, determined that he has permanent restrictions which support his assertion that his industrial disability is greater than the 15 percent awarded by the deputy commissioner. I disagree with that assertion because on page one of the FCE report, the following appears:

. . . Overall Level of Work: Due to the incomplete nature of the testing, an overall level of work could not be determined. Please note that the dynamic strength/manual materials handling section of the report indicates a higher level of work than that determined by considering the client's performance on the entire test . . .

(Ex. K, p. 1)

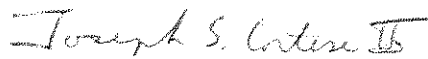
Many of the findings by the presiding deputy were based on claimant's testimony which the deputy apparently found lacking in credibility. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of September 9, 2014, is AFFIRMED in all respects.

Claimant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 24th day of August, 2015.



JOSEPH S. CORTESE II
IOWA WORKERS'
COMPENSATION COMMISSIONER

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