

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS RIHA,
Claimant,

vs.

NESTLE BEVERAGE,
Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

FILED
APR 18 2019
WORKERS' COMPENSATION

File No. 5060925

ARBITRATION

DECISION

Head Notes: 1108.50, 1402.20, 2502

STATEMENT OF THE CASE

Dennis Riha, claimant, filed a petition in arbitration seeking workers' compensation benefits from Nestle Beverage, employer and Indemnity Insurance Company of North America, insurance carrier, as defendants. Hearing was held on April 17, 2019 in Des Moines, Iowa.

Claimant, Dennis Riha, was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE4 and defendants' exhibits A-C.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, 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 parties declined an opportunity to submit post-hearing briefs. The case was fully submitted as of April 17, 2019.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury on May 1, 2017 which arose out of and in the course of employment.
2. Whether claimant sustained any permanent disability as a result of the alleged injury.
3. Whether claimant is entitled to reimbursement pursuant to Iowa Code section 85.39 for the independent medical evaluation (IME).

FINDINGS OF FACT

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

Claimant, Dennis Riha, has alleged he sustained a repetitive, cumulative injury to his back which arose out of and in the course of his employment with Nestle Beverage. He has alleged an injury date of May 1, 2017. Mr. Riha testified that he worked for Nestle for a total of approximately three years. On May 1, 2017, he began to feel pain in his spine that did not go away. According to Mr. Riha, the pain was not a normal ache. He reported his pain to his shift supervisor. During this timeframe, Mr. Riha was working in the dry blend department. His job involved making a dry blend that eventually went into the liquid creamer. His duties included lifting bags or boxes that weighed anywhere from 5 to 50 pounds. He estimated that he would lift approximately 1000 or more bags or boxes per day. (Testimony)

Mr. Riha first sought treatment with his primary care physician. The doctor prescribed what Mr. Riha described as slow release Tylenol and eventually recommended he see a chiropractor. Mr. Riha selected a chiropractor. He saw the chiropractor for approximately three months. (Testimony)

Defendants referred Mr. Riha to a physical therapist of their choosing. The first record in evidence from Rock Valley Physical Therapy is dated June 26, 2017. Mr. Riha was seen for low back pain. He reported that about three weeks ago he had to stay over on line nine where there was lifting involved. Mr. Riha felt that his regular job, plus the overtime made his back sore. He could not recall a time when he felt a specific lifting injury. The treatment plan included three visits per week for two weeks. Mr. Riha continued to attend physical therapy. He was discharged from physical therapy on July 20, 2017. The discharge note states Mr. Riha feels he is "doing pretty good overall." (JE1, p. 9) He reported difficulty with walking, sitting greater than 60 minutes, standing greater than 30 minutes, difficulty with bending and lifting and difficulty with work ability. The therapist noted full range of motion and strength with slight muscle tightness. During this time Mr. Riha continued working at Nestle. (Joint Exhibit 1; testimony)

At the request of the defendants, Mr. Riha was seen by Scott B. Neff, D.O. at Central Iowa Orthopaedics, for an IME on September 25, 2018. Dr. Neff examined Mr. Riha, reviewed the records provided to him, and issued a report containing his

understanding of the history, findings, and opinions. Dr. Neff was asked if there was any evidence of work-related injury to Mr. Riha's back. Dr. Neff responded that Mr. Riha's biggest complaint was aching and stiffness at the T9-10 area. However, Dr. Neff felt that Mr. Riha had not had a complete workup of his primarily thoracic spine pain. He recommended an MRI of the thoracic spine. Dr. Neff could not attribute any permanent impairment to Mr. Riha. He noted that Mr. Riha's motion was fairly normal, but did show some mild stiffness. Dr. Neff also noted that Mr. Riha had a new job that involved less lifting and less intense work. Because Mr. Riha was doing so well at his new job Dr. Neff did not recommend any specific work restrictions. (JE3)

Mr. Riha voluntarily quit his employment at Nestle in October of 2017. He testified that the company was scheduled to have layoffs and because he was low on the totem pole he did not want to work there any longer. He also testified that his back still hurt him and he felt that he could not keep going any longer. Under cross-examination, he admitted that at the time he voluntarily quit he was under investigation at Nestle for a disciplinary matter and the union recommended to Mr. Riha that he voluntarily quit so the investigation would end. At the time he voluntarily quit he was back to work, full-duty. (Testimony)

On December 21, 2018, Mr. Riha was seen by Jonathan M. Fields, M.D. at Unity Point Health. He reported that his back pain was the same and constant since 2017. He also noted that his neck was stiff at times and his lumbar region also got sore. He was there to discuss the results of his thoracic MRI which was performed on December 20, 2018. The MRI revealed a small central disc protrusion at T6-7. The diagnosis from the December 21, 2018 visit was chronic myofascial thoracic back pain, not work related. Mr. Riha was placed at MMI. The notes indicate that he did not have any permanent impairment, nor did he have any permanent restrictions. He was advised to follow-up with his primary care provider on an as-needed basis. (JE2)

At the request of his attorney, Mr. Riha saw Marc Hines, M.D. for an IME on January 25, 2019. Dr. Hines reviewed the medical records that were provided to him. His impression was that Mr. Riha had an overuse syndrome of the mid-back. With regard to impairment Dr. Hines stated:

Medical impairment: I have use [sic] the guides to evaluation of permanent medical impairment published by the AMA and the fifth addition [sic] to evaluate this patient's overuse syndrome principally of the mid back area though the pain diagram a [sic] suggests there may be intermittent sacroiliac dysfunction as well. I have used table 15-4 page 389 under this table [sic] I believe he is in DRE thoracic category to 45% impairment to the whole person.

A review of the AMA Guides to the Evaluation of Permanent Impairment, Table 15-4, page 389 reveals that Dr. Hines' impairment rating is flawed. Unfortunately, Dr. Hines does not indicate which thoracic category he believes Mr. Riha falls into. However, even if Mr. Riha were to be placed in the thoracic category V, which is the

highest category in the table, the maximum impairment Mr. Riha could be assigned is 28 percent impairment of the whole person. Dr. Hines' report fails to explain how he reached 45 percent impairment of the whole person. I do not find his opinion with regard to permanent impairment to be well-reasoned, credible or persuasive.

Dr. Hines recommended future treatment which included a thoracic MRI. Unfortunately, Dr. Hines was not made aware of the fact that Mr. Riha had recently undergone an MRI of the thoracic spine. Obviously, Dr. Hines did not have the benefit of the MRI results when he formed his opinions. Because the opinions of Dr. Hines are based on an incomplete medical history and are not well-reasoned, I do not find his opinions to be persuasive.

I find that claimant has failed to provide a reliable medical opinion to demonstrate that his back symptoms are causally connected to his work for Nestle.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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.

In the present case, there are three doctors who were given the opportunity to provide their opinion regarding whether Mr. Riha sustained a work-related injury. Defendants sent Mr. Riha to see Dr. Neff. However, Dr. Neff felt the issue was premature because Mr. Riha needed a thoracic MRI. Defendants authorized the MRI and then sent Mr. Riha to see Dr. Fields to discuss the MRI. Dr. Fields reviewed the MRI and examined Mr. Riha. Dr. Fields diagnosed Mr. Riha with chronic myofascial thoracic back pain, not work related. At the request of his own attorney, Mr. Riha saw Dr. Hines. However, for the reasons stated above I do not find the opinions of Dr. Hines to be persuasive. Based on the expert evidence in this case, I conclude that Mr. Riha

has failed to prove by a preponderance of the evidence that he sustained an injury which arose out of and in the course of his employment on May 1, 2017 with Nestle.

Because claimant failed to prove he sustained a compensable work injury it follows that he cannot prove he sustained any permanent disability from the alleged work injury.

Claimant is seeking reimbursement for the IME he underwent with Dr. Hines. The record in this case shows there was no impairment rating from any physician chosen by defendants because defendants determined there was no work-related injury. There is no evidence claimant obtained defendants' consent to the IME, nor did defendants agree to pay the cost of the IME. Thus, claimant cannot recover the cost of the IME from defendants under section 85.39. See, e.g., DART v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Because I conclude that claimant failed to carry his burden to prove he sustained a work-related injury all other issues are rendered moot.

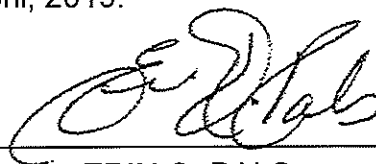
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 18th day of April, 2019.



ERIN Q. PALS
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.