BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM GRAGG,

Claimant,

vs.

DIAMOND CRYSTAL BRANDS,

Employer,
Self-Insured,
Defendants.

File No. 5047252

ARBITRATION

DECISION

Head Note No.: 1402.30; 2502

STATEMENT OF THE CASE

Claimant, William Gragg, filed a petition in arbitration seeking workers' compensation benefits from Diamond Crystal Brands (Crystal), self-insured employer. This case was heard in Des Moines, Iowa, on June 3, 2015 with the final submission date of June 26, 2015.

The record in this case consists of claimant's exhibits 1 through 3, defendants exhibits A through N, and the testimony of claimant, Corey Baker, and Doug Enabnit.

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of his employment on June 1, 2012;

2. Whether the alleged injury is the cause of a mental injury;

3. Whether claimant's claim is barred for lack of timely notice under Iowa Code section 85.23;

4. Whether the alleged injury is a cause of temporary disability;

5. Whether the alleged injury is the cause of permanent disability; and if so,

6. The extent of claimant's entitlement to permanent partial disability benefits;

7. Whether the claimant is entitled to reimbursement for an independent medical evaluation (IME), under Iowa Code section 85.39.

FINDINGS OF FACT

Claimant was 44 years old at the time of the hearing. Claimant went up to the 11th grade. He does not have a GED. (Exhibit M, pages 2-3) Claimant has worked at Wal-Mart, and at a Farm & Home store. Claimant began at Crystal in 2002 as a forklift operator (Ex. M, p. 2)

Claimant's prior medical history is relevant. Claimant's 19 year old son, Austin Gragg, died on August 27, 2011. Claimant testified he witnessed CPR efforts in the emergency room on his son and made the decision to stop CPR. (Ex. C, p. 1) Claimant testified that prior to death, Austin was disabled and needed 24 hour care. (Ex. B, p. 28) Claimant returned to his work at Crystal in approximately September 2011, a few weeks after the death of his son. (Ex. N, p. 7)

On May 22, 2012, claimant was evaluated by his family doctor, Laura Ferguson, M.D. Claimant indicated he was depressed and irritable. Claimant was assessed as having a major depressive disorder. The death of claimant's son was noted to be the cause of the depression. (Ex. B, pp. 29-30)

On May 29, 2012, Dr. Ferguson faxed a Family Medical Leave Application (FMLA) to Crystal. FMLA was granted for claimant's anxiety. (Ex. B, p. 31; Ex. H, pp. 1-5)

Claimant testified that on June1, 2005, he was cutting a sugar bag with a knife when he accidently cut his right thumb. He testified he saw the blood from his cut pool on the floor at work. He said this reminded him of blood on the floor by his son when he decided to stop CPR. He said this recollection caused him to go into a panic attack. Claimant testified he initially thought his panic attack was a heart attack.

Claimant testified his crew leader helped him wash his hands. He said he was later taken for care. Claimant said that he had three stitches put in the laceration to help it heal. He said the stitches were put in by Dr. Ferguson. Claimant said he would have had the stitches put in his hand on either June 1, 2012 or June 2, 2012. (Ex. M, Deposition page 21) Claimant also testified that he later saw Dr. Ferguson to have the stitches taken out of his hand.

In deposition, claimant testified the laceration at work happened on his left thumb. (Ex. M, Dep. pp. 16-17) In an answer to an interrogatory, claimant indicated the cut happened on his right hand. (Ex. M, p. 6)

Corey Baker testified in June 2012 he was the packaging facility superintendent for the Crystal plant where claimant worked. Mr. Baker testified he knows the claimant. He said there was no report of claimant cutting his thumb on June 1, 2012. He said that if blood would have pooled on the plant floor, as testified to by claimant, a biohazard kit would have been used to clean up the blood. Mr. Baker said that no biohazard kits were used on June 1, 2012 at Crystal.

Mr. Baker testified Cliff Huff was claimant's supervisor. Mr. Baker said Mr. Huff did not tell him about an incident where claimant cut his thumb at work.

Doug Enabnit, testified that he is the human resources manager at Crystal at the plant where claimant worked. He testified that in that capacity, he handles workers' compensation claims filed at Crystal. He said if there had been a pool of blood on the floor at Crystal, the incident would have been reported to him. Mr. Enabnit said he did not get notice of an injury to claimant's thumb occurring on June 1, 2012. He said Crystal did get FMLA request for claimant for depression, but not for an injury to his thumb.

Mr. Enabnit testified he discussed the alleged cut thumb incident with claimant's crew leader, Victor Allen, and another supervisor, Mr. Huff. Mr. Enabnit said that neither Mr. Allen nor Mr. Huff had any knowledge of a thumb cutting incident occurring at Crystal involving claimant.

Mr. Enabnit testified he completed a First Report of Injury regarding this injury. That First Report of Injury is marked as Exhibit J. Mr. Enabnit testified that Crystal first learned of an alleged June 1, 2012 injury on or about April 1, 2014.

Claimant testified in deposition he reported his injury to his supervisor and to Mr. Baker and to Mr. Enabnit. (Ex. N, Depo. pp. 17-22)

On June 4, 2012, claimant was evaluated by Ronald Collins, M.D. Claimant complained of coughing up blood. He was in distress due to the death of his son. Claimant was assessed as having bronchitis and stressors due to the death of a child. (Ex. E, pp. 4-7)

On June 5, 2012, claimant was evaluated by Dr. Ferguson for chest pain and hemoptysis. Claimant was given an excuse from work. (Ex. B, pp. 33-34)

Claimant returned in follow up with Dr. Ferguson on June 25, 2012. Claimant reported feeling poorly. He was not compliant with recommendations for diet, exercises, or medication. (Ex. B, pp. 35-36) He returned to Dr. Ferguson on July 11, 2012 with complaints of vertigo. (Ex. B, pp. 37-39)

Mr. Enabnit testified the last day claimant worked at Crystal was July 11, 2012. He said that claimant was terminated from employment with Crystal sometime in late 2012.

From July 24, 2012 through December 18, 2012, claimant routinely saw Dr. Ferguson for depressive symptoms. Claimant was assessed as having a major depressive disorder and provided medications. (Ex. B, pp. 40-64)

On July 25, 2012, claimant submitted an application for non-occupational sickness and accident with Crystal. Claimant indicated the leave was for a non-work-related reason. The request indicated claimant would need intermittent days off to deal with anxiety. (Ex. H, pp. 1-20)

On December 19, 2012, claimant submitted a claim for long-term disability (LTD) benefits with Crystal's disability insurer. The application indicates claimant's symptoms first appeared on May 1, 2012. The application indicates claimant's diagnosis was for a major depressive disorder. (Ex. I, pp. 1-9)

On December 26, 2012, claimant began receiving counseling with Jeff Wells, LMFT, CADC. Claimant had anxiety, anger, and depression associated with his son's death. (Ex. D, pp. 1-3)

In a letter dated February 6, 2013, to the LTD carrier, Dr. Ferguson indicated the claimant struggled with depression since the death of his son. Claimant was referred to Richard Hauser, M.D., for psychiatric care. Claimant was assessed as having major depression. (Ex. B, pp. 71-72)

In a February 8, 2013 letter, therapist Wells summarized his treatment with claimant. Therapist Wells indicated claimant had severe anxiety, depression, and anger related to the death of his son in August 2011. The letter also noted the claimant was treating with Dr. Hauser. (Ex. D, p. 10)

In a February 18, 2013 letter, claimant was denied LTD benefits. (Ex. I, p. 12)

In April 2013 claimant treated with Dr. Ferguson for a skin lesion on his leg. He also treated with Dr. Ferguson for a respiratory ailment in November 2013. (Ex. B, pp. 77-82)

On July 25, 2013, claimant began treatment with Grinnell Regional Mental Health. Claimant's chief complaint was depression and anger associated with the death of his son. Notes indicate claimant returned to work after not taking appropriate time to grieve. Claimant worked until June 2012 when the "wheels fell off." (Ex. C, pp. 1-2)

Claimant returned to Grinnell Regional Mental Health in September 2013. Claimant had developed depressive symptoms after the death of his son. Symptoms were aggravated on the second year anniversary of his son's death. Claimant was told anniversaries of a child's death would trigger exacerbation of depressive symptoms. (Ex. C, pp. 8-9)

On January 29, 2014, claimant returned to Dr. Ferguson for treatment of a respiratory ailment. Claimant was assessed as having bronchitis and treated with medication. (Ex. B, pp. 85-87) Claimant returned to Dr. Ferguson in August 2014 for a lesion on his nose. (Ex. B, p. 9)

On April 10, 2014, defendant employer completed a first report of injury indicating that Crystal first knew of claimant's June 1, 2012 injury on April 1, 2014. (Ex. J)

In an April 22, 2014 psychotherapy session, claimant indicated he was anxious and on the edge. Claimant noted he accidently cut himself with a razor at work. The cut resulted in claimant's blood pooling on the floor, which resulted in claimant having flashbacks regarding his son's death. (Ex. C, p. 54)

In an October 5, 2014 report, Daniel Tranel, Ph.D., gave his opinions of claimant's condition following a psychological and neuropsychological evaluation. Dr. Tranel is the chief staff of the Benton Neuropsychological Lab at the University of Iowa Hospitals and Clinics.

Dr. Tranel noted there were factual inconsistencies regarding claimant's cut thumb. He also noted that medical records contemporaneous to the alleged incident do not mention claimant cutting his thumb. Dr. Tranel opined claimant's had a persistent depressive disorder related to the death of his son. He opined the alleged work injury did not cause or aggravate claimant's mental health condition. (Ex. A)

In an October 6, 2014 report, Marc Hines, M.D., gave his opinions of claimant's condition following an IME. Claimant indicated he cut his thumb at work and this caused him to recall his son's death. Claimant complained of slight numbness in the thumb. Dr. Hines opined that claimant had Post Traumatic Stress Disorder (PTSD) related to his son's death, triggered by seeing his blood at work. He found claimant had a 15 percent permanent impairment to the body as a whole for anxiety and depression, based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Ex. 3)

Claimant testified he has a scar on his thumb. His thumb feels ok. He says his anxiety and depression are aggravated whenever he sees blood. He said that his depression has improved.

At the time of hearing, claimant was doing part-time farm work for his father-in-law. Claimant said he has been working for his father-in-law since approximately October 2014. Claimant testified he did not believe he could return to work in a factory setting.

CONCLUSIONS OF LAW

The first issue to be determined is if claimant sustained an injury on June 1, 2012 that arose out of and in the course of 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 R. App. P. 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 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.

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).

Claimant contends he cut his thumb at work. He testified blood from the cut pooled on the floor. He said that seeing blood on the floor at work caused him to recall his son's death. Claimant's expert, Dr. Hines, suggests this resulted in claimant having PTSD. (Ex. 3, p. 139)

In his deposition, claimant testified he cut his thumb of his left hand. (Ex. N, p. 5, Dep. pp. 16-17) At hearing, claimant testified he cut his right thumb.

Claimant testified that either the day of the alleged incident or the day after, claimant saw Dr. Ferguson for the laceration to his thumb. He testified Dr. Ferguson put in three stitches to help the wound heal.

On June 5, 2012, claimant was evaluated by Dr. Ferguson for chest pain. There is no mention, in the medical record, of claimant having been treated for a thumb laceration. (Ex. B, pp. 33-34)

Claimant saw Dr. Ferguson repeatedly in 2012. There is no mention of any kind in any of the 2012 medical records from Dr. Ferguson regarding claimant having, or being treated for a thumb injury. (Ex. B, pp. 35-64)

Claimant saw Dr. Collins on June 4, 2012, three days after the alleged injury. There is no mention in the June 4, 2012 visit of claimant being seen or having an injury involving a thumb laceration. (Ex. E, pp. 4-7)

In July 2012, claimant submitted an application for non-occupational sickness with defendant employer. There is no mention in the application of a thumb laceration. (Ex. H, pp. 1-20)

In December 2012, claimant submitted an application for LTD benefits. The application indicates claimant's symptoms first appeared on May 1, 2012 and that claimant's diagnosis was major depressive disorder. There is no mention in the application of an incident involving a laceration to the thumb. (Ex. I, pp. 1-9)

In December 2012, claimant began receiving counseling with Mr. Wells. There is no mention in any of the initial counseling records regarding a laceration of the thumb. (Ex. D, pp. 1-3)

Claimant continued to see Dr. Ferguson in 2013 and 2014. There is no mention in any of the medical records for this period of time of a laceration to the thumb. (Ex. B, pp. 77-90)

In July 2013, claimant began treatment with Grinnell Regional Mental Health. Claimant's chief complaint was a depressive disorder associated with the death of his son. There is no mention in any of the initial materials regarding an incident involving a laceration of the thumb. (Ex. C, pp. 1-9)

The first mention of the laceration incident to the thumb in any of the medical records does not occur until April 22, 2014, nearly two years after the date of the alleged injury. This occurs when claimant tells a counselor he cut his thumb at work resulting in a flashback incident regarding his son. (Ex. C, p. 54)

Both Mr. Baker and Mr. Enabnit testified that they were unaware of any incident at Crystal, occurring in early June 2012, involving claimant where claimant cut his thumb and blood pooled on the floor at work. Mr. Enabnit testified that neither of claimant's supervisors were aware of any such incident.

Dr. Hines opined claimant's bleeding incident at work resulted in claimant having PTSD. However, there is no reference in any of Dr. Hines' report of the factual inconsistencies regarding the alleged incident. There is no analysis on why these inconsistencies occur or how they impact Dr. Hines' opinions. Based on this, it is found that Dr. Hines' opinions regarding causation of claimant's alleged PTSD and his depressive and anxiety disorders, is found not convincing.

Claimant testified at hearing he cut his right thumb. In deposition, he testified he cut his left thumb. Claimant testified that on the date of injury, or next day, he received care for the cut from Dr. Ferguson. He testified Dr. Ferguson stitched his hand and later removed the stitches. There is no mention in any of Dr. Ferguson's records detailing any medical care to claimant's thumb. There is no reference in the medical records, until approximately two years after the alleged incident, of a laceration injury to the thumb. Claimant applied for FMLA, and LTD benefits at approximately the same time as the alleged injury. The FMLA application makes no reference to a thumb injury. The LTD application also makes no reference to a thumb injury. Mr. Enabnit and Mr. Baker both testified Crystal had no record of a thumb injury occurring in June 2012 involving claimant. Mr. Enabnit testified that neither of claimant's supervisors knew of an incident at Crystal occurring in June 2012 involving claimant cutting his thumb at work. Dr. Hines' report regarding causation of claimant's PTSD, anxiety, and depression, is found not convincing.

Given this record above, it is found that claimant has failed to carry his burden of proof he sustained an injury that arose out of and in the course of employment on June 1, 2012.

As claimant failed to carry his burden of proof he sustained an injury that arose out of and in the course of employment on June 1, 2012, all other issues, except reimbursement of the IME, are moot.

The final issue to be determined is if claimant is due reimbursement for the IME from Dr. Hines.

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).

In a report dated October 5, 2014, Dr. Tranel, the employer-retained physician, gave his opinions regarding causation of claimant's alleged injury. In an October 6, 2014 report, Dr. Hines, the employee-retained physician, gave his opinions regarding causation and impairment of claimant's alleged work injury. Given this record, claimant has carried his burden of proof he is due reimbursement for the IME by Dr. Hines.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing in the way of any benefits from this proceeding.

That both parties shall pay their own costs.

That defendants shall reimburse claimant for the costs associated with Dr. Hines' IME report.

Signed and filed this 14th day of September, 2015.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
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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.