

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM THOMPSON,

Claimant,

vs.

LEHIGH PORTLAND CEMENT CO.,

Employer,

and

LIBERTY MUTUAL INSURANCE,

Insurance Carrier,  
Defendants.

**FILED**

**JUL 28 2016**

**WORKERS' COMPENSATION**

File No. 5046383

**A P P E A L**

**D E C I S I O N**

Head Note Nos.: 1108.50, 1402.30, 2602

Claimant William Thompson appeals from an arbitration decision of January 16, 2015. Defendants Lehigh Portland Cement Co., employer, and Liberty Mutual Insurance, insurance carrier, respond to the appeal urging affirmation of the underlying decision.

The case was heard on November 4, 2014 and it was considered fully submitted on December 9, 2014. The claimant sought a finding that he sustained a compensable work injury beyond his right lower extremity. The deputy commissioner determined that claimant had not carried his burden and awarded claimant nothing. The deputy commissioner ordered the parties to pay their own costs.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove that he had sustained an industrial disability.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

The case was initially delegated to William H. Grell on January 21, 2016, and upon finding a conflict, the case was re-delegated to the undersigned on March 17, 2016.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm the deputy's decision with the following analysis:

Claimant was injured on April 10, 2013, when he hyperextended his right knee. He immediately began treatment the following day. For four months, claimant sought and received treatment from five different medical providers and none documented any back pain until August 21, 2013, when Steven D. Drake M.D., noted right lumbosacral point tenderness. (Exhibit D, page 41) Claimant had a past history of mild herniation L5-S1 disc impingement in 1997.

Claimant maintained he sustained knee pain, ankle pain, right leg tremors, hip and back pain as a result of the April 10, 2013, injury.

John D. Kuhnlein, M.D., was retained by the claimant to perform an independent medical evaluation. This was conducted on July 21, 2014. At the conclusion, Dr. Kuhnlein opined that claimant sustained a right knee strain superimposed over a previous right total knee arthroplasty, iliotibial band tendinitis, and right ankle strain. (Ex. B, p. 9) Upon further questioning, Dr. Kuhnlein agreed that claimant described moderate back pain with the incident. (Ex. B, p. 13) Dr. Kuhnlein did not connect the leg tremors to the injury, said that the iliotibial band tendinitis did not affect the right knee arthroplasty, and made no mention of the hip pain.

Thus, Dr. Kuhnlein provided causation for only the back pain, as it related to the issue at hand.

Charles Mooney, M.D., performed an IME at the request of the defendants. The examination was conducted on September 23, 2013. Dr. Mooney initially connected claimant's back pain to the work injury. (Ex. A, p. 5) In a subsequent report of November 15, 2014, Dr. Mooney opined differently. During this examination, Dr. Mooney did not find any evidence of radiculopathy and that the temporal lapse between the complaints and the injury pointed to the prior chronic back pain being the cause of claimant's current symptoms.

Both Dr. Mooney and Dr. Kuhnlein changed their minds. Dr. Kuhnlein's subsequent opinion referred to additional records or notes but made no mention of what those notes and records were. Dr. Mooney, on the other hand, re-examined the claimant and reviewed additional medical records and testing.

Dr. Kuhnlein's causation was based on the claimant's subjective reports of pain as well as the explanations claimant provided as to why the back pain wasn't reported in those first few months following the injury.

The deputy commissioner made specific credibility findings in relation to the claimant. To wit, the claimant's numerous inconsistencies rendered his testimony less reliable and therefore the opinions of Dr. Kuhnlein, based on the complaints of the claimant, were also given less weight.

While the claimant's human resources manager identified claimant as a good and reliable worker, it does not diminish the inconsistencies in testimony, particularly between the work claimant performed post-injury and the work he performed pre-injury. Claimant testified in his deposition to carrying out most of his regular duty tasks except for stair climbing and very heavy-duty work. This was corroborated by the testimony of the human resources manager, Michelle Vaske, who confirmed that she was not told at any time that claimant's work was being accommodated or that he needed accommodation other than the elimination of stair climbing. Thus, Ms. Vaske's testimony was not viewed in isolation, but rather as confirmation of claimant's deposition testimony (which varied from his hearing testimony).

Claimant argues that the fact that defendants paid for treatment of claimant's back reveals that the care was deemed to be work-related by the doctors. Payment of medical bills is not an admission of liability. The fact that the doctors continued to provide care does not create a presumption that the injury for which they treated claimant was work-related. The doctors are not responsible for payment; that is the decision of the defendants. It should be noted that claimant provides no citation for this claim of presumption. The citation provided relates only to the reasonable nature of a physician's care and not whether care rendered gives rise to a presumption of causation.

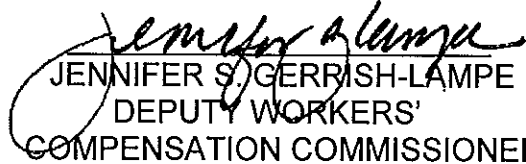
I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained a work-related cumulative trauma injury to his back on or about April 10, 2013. I affirm the deputy commissioner's award of nothing. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision of January 16, 2015, is affirmed in its entirety.

Pursuant to rule 876 IAC 4.33, each party is responsible for their own costs of the arbitration proceeding and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 28<sup>th</sup> day of July, 2016.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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