BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALAN RUSH,

Claimant,

vs.

VT INDUSTRIES, INC.,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.,

Insurance Carrier,
Defendants.

File No. 5065982

A R B I T R A T I O N

D E C I S I O N

Head Notes: 1108.50, 1402.40, 1402.60

STATEMENT OF THE CASE

Alan Rush, claimant, filed a petition in arbitration seeking workers' compensation benefits from VT Industries, Inc., employer and Travelers Indemnity Company of Connecticut, insurance carrier, as defendants. Hearing was held on May 16, 2018 in Council Bluffs, Iowa.

Claimant, Alan Rush, was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE6, claimant's exhibits 1-5, and defendants' exhibits A-D. It should be noted that at the time of the hearing defendants objected to joint exhibit 4, page 114 as untimely because it was served less than 30 days before the hearing date. The exhibit was admitted into evidence, and defendants were given the opportunity to offer post-hearing rebuttal evidence. On June 13, 2018, defendants submitted a cover letter and a report received from Lynn Nelson, M.D., (JE6, p.1) which was obtained as rebuttal evidence to joint JE4, p. 114. Defendants also attached a work status received from Wesley Parker, M.D., which they offered as JE5, p. 10. The work status report was received by defendants post-hearing in response to a medical records request that was pending prior to the hearing. At the time of the arbitration hearing the record was held in recess for the sole purpose of allowing defendants to obtain the rebuttal evidence. Because the work status report (offered as exhibit JE5, p. 10) is not rebuttal evidence it is not admitted into the record and will not be considered by the undersigned.

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 submitted post-hearing briefs on May 8, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. Whether the stipulated injury was the cause of permanent disability?
2. If the stipulated injury was the cause of permanent disability, claimant's entitlement to industrial disability?
3. Whether claimant is entitled to payment of past treatment expenses?
4. Whether claimant is entitled to ongoing care with Cliff J. Meylor, D.C.?

FINDINGS OF FACT

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

Claimant, Alan Rush, sustained a work-related injury on February 25, 2017. Mr. Rush was employed at VT Industries as an assembly operator. At the time of the injury he was pushing a stile for a door through a table saw when the material suddenly stopped. Although the material suddenly stopped, the blade of the saw kept running. Mr. Rush testified that there was "a sudden jolt that went through my body, right about the T7 level, from one rib into the other . . ." (Tr. p. 30) Mr. Rush described it as pretty dramatic. Mr. Rush testified that his memory is not very good so he has to go by what he wrote down on the report that he gave to Cliff J. Meylor, D.C. Mr. Rush reported the injury right away. He believes the injury occurred around 6:00; by 8:00 he began experiencing headaches, and the employer let him go home by 10:00. (Tr. pp. 30-31)

After the accident Mr. Rush sought treatment with Dr. Meylor, a chiropractor he had been treating with for years. Mr. Rush considered Dr. Meylor to be his primary care provider. Prior to the work injury, on July 25, 2016, Mr. Rush was involved in a motor vehicle accident (MVA). Following the MVA he treated with Dr. Meylor for neck pain and headache. He continued to treat with Dr. Meylor up until a few weeks before the work injury. On February 13, 2017, Dr. Meylor noted Mr. Rush continued to have pain in his neck and a headache since the accident. He had low back pain, mid back pain, neck pain, arm problems, sore muscles, weak muscles, and shoulder pain. (JE4, pp. 5-6)

Mr. Rush saw Dr. Meylor two days after the work injury, on February 27, 2017. This was an appointment that had previously been scheduled as part of his treatment following the MVA. (Def. Ex. C; Deposition, p. 22) There is no mention of any work injury in the chiropractor's notes. The motor vehicle accident from July 25, 2016 is mentioned. At hearing Mr. Rush testified that his symptoms from the MVA had pretty much resolved prior to the work injury. However, this testimony is not supported by the chiropractic notes which were generated contemporaneously with the treatment. The chiropractor's assessment from the February 27, 2017 note is unchanged from the February 13, 2017 note. Dr. Meylor was not even aware there had been a work injury at the time of the February 27, 2017 visit. It was not until March 6, 2017 that Mr. Rush completed a patient questionnaire at the office of Dr. Meylor. Mr. Rush described the work injury and indicated on the form that he was experiencing mid back pain, pain between his shoulders, neck pain, leg problems, sore muscles, spasms, shoulder pain, loss of feeling, headaches, and insomnia. With regard to the February 25, 2017 injury Dr. Meylor noted Mr. Rush "felt pain starting from the left upper back area around the shoulder blade, shoot across to the opposite shoulder blade area. This has caused him pain in his upper back and neck area. After this injury, he has had headaches every day." (JE4, p. 14)

Mr. Rush continued to seek treatment with Dr. Meylor. He testified that the Human Resources Manager for VT Industries approved his treatment with Dr. Meylor. On March 9, 2017, Dr. Meylor recommended that Mr. Rush be excused from full-time work due to headaches and back pain. Dr. Meylor recommended he work four to five hours per day until March 20, 2017, at which time he could return to regular work. (JE4, p. 4) The treatment records do not make mention of any restrictions after March 20, 2017. (JE4)

On March 21, 2018 claimant's counsel sent a letter to the chiropractor seeking his opinions regarding the work injury. Dr. Meylor responded to the letter on March 29, 2018. Dr. Meylor stated in a letter that Mr. Rush's restrictions would include hour restrictions because he was not able to work full-time hours like he did before the injury. He also noted that Mr. Rush had pain with lifting heavy weights and therefore should be restricted from lifting anything over 60 pounds at work. (JE4, p. 113)

It should be noted that on March 18, 2017 Mr. Rush presented to the emergency room at Mercy Medical Center. He had been having headaches for the prior couple of weeks and difficulty remembering things and finding words. His left hand also felt weaker than normal and very clumsy. Initially, he reported that he had not experienced any trauma, but then later he reported he had been hit in the head approximately one year ago. Another notion states Mr. Rush reported head trauma 2-1/2 months ago. An MRI was performed and revealed subacute subdural hematomas. Neurosurgeon, Quentin J. Durward, M.D. performed surgery to help drain the hematomas. (JE3, pp. 1-16)

On August 21, 2017, Dr. Durward opined that the work injury did not cause the subdural hematoma. He felt the history supported a spontaneous onset or was

secondary to a head trauma. (JE2, p. 18) Dr. Durward released Mr. Rush to return to light-duty work, no lifting greater than 10 pounds, on April 24, 2017. (JE2, p. 19) At hearing claimant did not contend that the subdural hematoma was related to the work injury.

On April 25, 2018, counsel for defendants took the deposition of Dr. Meylor. Dr. Meylor testified that from a subjective and objective standpoint, there was no change in Mr. Rush's condition between February 13 and February 27, 2017. (Def. Ex. C; Depo. pp. 25-27) During the deposition Dr. Meylor confirmed that he had not looked at any treatment records from any other provider. (Def. Ex. C; Depo. p. 30) Dr. Meylor was questioned about the impairment rating he assigned to Mr. Rush. Dr. Meylor's testimony regarding the impairment rating does not demonstrate that he has a thorough understanding of the Guides. Furthermore, he admitted that he assigned an impairment rating without looking at any treatment notes from any medical provider. (Def. Ex. C-6) Thus, I find his opinion is based on an incomplete history.

On May 3, 2018, Dr. Meylor authored a letter to claimant's counsel. Dr. Meylor confirmed that the February 27, 2017 visit was a routine adjustment and that he treated him for the same areas he had treated him in the past. However, when he saw Mr. Rush on March 6, 2017 he was told about the work injury so he took x-rays. Dr. Meylor stated that the "xray showed different areas of injury from the previous xrays. The segments I treated for the work related injury were different from the segments I treated for the automobile accident. Xrays showed anterior slippage of C4 on C5 which his previous xrays did not show." (JE4, p. 114) He went on to state that this is why he stands by his impairment and that he bases his statements on a reasonable degree of medical certainty. I find that his rationale is flawed because he assigned impairment to the thoracic spine and in support of that opinion points to changes in the cervical spine. The opinions of Dr. Meylor are not persuasive.

On July 12, 2018, Dr. Nelson authored a letter to defense counsel. He reviewed and compared the cervical films of Mr. Rush. One set of films was from May of 2018 and the other set was from June of 2018. Dr. Nelson opined that the two sets of cervical spine radiographs were not materially different. (JE6)

I find that Dr. Meylor's opinions are based on an incomplete history or record. Additionally, the Guides state, "determining whether an injury or illness results in a permanent impairment requires a medical assessment performed by a physician." (AMA Guides, p. 2) Because Dr. Meylor is not a physician I do not find his opinion regarding impairment to be persuasive. Thus, I find that Mr. Rush has failed to prove that he sustained any permanent disability as a result of the February 25, 2017 work injury.

Claimant is seeking payment for previous care provided by Dr. Meylor. However, as previously noted, Dr. Meylor's opinions are based on incomplete history and records. Additionally, as previously noted, his rationale in support of his opinions is flawed. Mr. Rush was treating for the same conditions before the injury as he did after the work

injury. I find that the claimant has failed to show by a preponderance of the evidence that the prior or ongoing treatment he received from Dr. Meylor was reasonable and necessary as a result of the work injury. The chiropractor's notes following the injury clearly demonstrate that there was no change in Mr. Rush's condition.

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 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).

Based on the above findings of fact, I conclude that the claimant has failed to carry his burden of proof to show by a preponderance of the evidence that he sustained any permanent disability as a result of the February 25, 2017 work injury. There is simply a lack of medical evidence to support claimant's claim.

Claimant is seeking payment of past medical expenses and is also seeking to have defendants responsible for ongoing treatment. Under Iowa law, the employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co.,

Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Based on the above findings of fact, I conclude that the claimant has failed to carry his burden of proof to show by a preponderance of the evidence that the treatment he received and/or is seeking to receive from Dr. Meylor was reasonable and necessary as a result of the work injury. In support of his position the claimant relies on the opinions of Dr. Meylor; however, the opinions of the chiropractor are not persuasive in this matter. For these reasons I conclude that the defendants are not responsible for past or future treatment with Dr. Meylor.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

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 28th day of September, 2018.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Al Sturgeon
Attorney at Law
911 – 6th St.
Sioux City, IA 51101
alsturgeon@siouxlan.net

James M. Ballard
Attorney at Law
14225 University Ave., Ste. 142
Waukee, IA 50263
jballard@jmbfirm.com

EQP/sam

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.