BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRETT SULLIVAN, Claimant, vs. WEST CENTRAL COOPERATIVE, Employer, and FARMLAND MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5050594 APPEAL DECISION Head Note No.: 1402.60

Claimant Brett Sullivan appeals from an arbitration decision filed on June 5, 2020 and a ruling on motion for rehearing filed on June 29, 2020. The hearing was held on May 6, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 15, 2020.

On January 21, 2021, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

In the arbitration decision, the deputy commissioner found claimant's left knee meniscus injury and requested surgery were not caused by the October 2, 2011 work incident. The deputy commissioner also found claimant failed to carry his burden to prove his entitlement to the care requested for his back condition—specifically a spinal cord stimulator. The deputy commissioner declined to assess claimant's costs to defendants.

In a motion for rehearing, claimant sought clarification regarding the issue of causation. The deputy commissioner denied claimant's motion, indicating causation was addressed with regard to the left knee and that the spinal cord stimulator was found to be not necessary, meaning causation was moot.

On appeal, claimant asserts there is a causal relationship between his 2011 work injury and his back condition for which a spinal cord stimulator is appropriate. Claimant also asserts the requested left knee surgery is related to his 2011 work injury. Finally, claimant seeks reimbursement for his costs.

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

I 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, the decision filed on June 5, 2020 and ruling on motion for rehearing filed on June 29, 2020 are respectfully reversed.

I turn first to claimant's left knee. Claimant is seeking a scope to address a possible left lateral meniscus tear, as recommended by Jason Sullivan, M.D. (Joint Exhibit 3, p. 30) For the reasons that follow, the deputy commissioner's finding that claimant's left meniscal injury and requested surgery are not causally related to the 2011 work injury is respectfully reversed.

The deputy commissioner found there were no physicians who attributed claimant's possible meniscus tear to the 2011 work incident, but this finding is in error.

John Kuhnlein, D.O., evaluated claimant for purposes of an independent medical examination (IME) at claimant's request and opined that "it is more likely than not that the left knee complaints are related to the October 2, 2011, significant injury where [claimant] was struck by a train." (Claimant's Ex. 2, p. 5) In support of this opinion, Dr. Kuhnlein pointed to an MRI done in 2011, shortly after claimant's work-related injury, that showed an abnormal lateral meniscus. (Cl. Ex. 2, p. 5; JE 2, p. 5) The MRI report indicated the abnormal appearance "could represent an acute meniscal injury but could also be due to prior [non-work-related] ACL tear." (JE 2, p. 5) As such, the report stated the age of the abnormality was "indeterminate." (JE 2, p. 5)

Importantly, however, claimant was asymptomatic after his 1999 ACL surgery. (Hearing Transcript, pp. 15-16) It was not until after his 2011 work injury that he began having persistent pain. This fact makes it difficult to understand Dr. Sullivan's opinion that claimant's ongoing knee conditions and recommended treatment (including the scope Dr. Sullivan recommended) are related to the original 1999 ACL repair and not the 2011 work injury. (Defendants' Ex. B, p. 9) Of note, Dr. Sullivan did not offer any further explanation of this opinion. Devon Goetz, M.D., deferred to Dr. Sullivan's opinion. (Def. Ex. B, p. 11)

Thomas Dulaney, M.D., who last examined claimant in 2013, opined that claimant's degenerative changes and meniscal changes were not caused or aggravated by the 2011 work injury. (Def. Ex. B, p. 13) He indicated there was no meniscal tear found during the surgery he performed in 2012. (Def. Ex. B, p. 13) As discussed above, however, while there may not have been a tear at the time of the 2012 surgery, the 2011 MRI indicated an abnormality. Dr. Dulaney does not consider in his opinion whether that abnormality could have progressed over time due claimant's 2011 work-related injury. He offers little explanation at all for his opinions.

Again, it is difficult to reconcile these opinions with the fact that claimant was essentially symptom free from 1999 through 2011 and only became symptomatic after his 2011 work injury. Dr. Sullivan, Dr. Goetz, and Dr. Dulaney all failed to address this important fact. Only Dr. Kuhnlein's opinion is consistent with the onset and continuation of claimant's symptoms after 2011, and I find it to be most persuasive. Thus, relying on the opinion of Dr. Kuhnlein, along with claimant's testimony, I find claimant's left knee complaints are related to his 2011 work injury.

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).

For the above-stated reasons, I conclude claimant satisfied his burden to prove his left knee condition is casually related to his 2011 work injury. The deputy commissioner's finding that claimant's meniscus injury is not work related is therefore respectfully reversed.

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. See Iowa Code § 85.27.

Having determined claimant's knee condition is causally related to his 2011 work injury, I likewise find the scope recommended by Dr. Sullivan is related to claimant's 2011 work injury. The deputy commissioner's determination that this requested surgery is not causally related to claimant's work injury is therefore respectfully reversed. I conclude claimant proved his entitlement to the left knee scope as recommended by Dr. Sullivan.

I now turn to claimant's back condition and the request for a spinal cord stimulator. Although the deputy commissioner set forth claimant's treatment at length in the arbitration decision, a brief review of claimant's more recent treatment and the competing expert opinions is appropriate.

As correctly noted by the deputy commissioner, claimant has consistently complained of lower back pain. Claimant underwent conservative treatment for this pain in 2015 and 2016, including epidural steroid injections and an ablation, yet his symptoms persisted. (See JE 3, 5, 6) When claimant returned to Dr. Goetz in March of 2018, he continued to report chronic low back pain; in fact, his worst pain was his low back pain. (JE 3, p. 25) Given the persistent pain, Dr. Goetz referred claimant for a second opinion in pain management. (JE 3, p. 27)

That referral was to Christian Ledet, M.D. After roughly six months of treatment with Dr. Ledet, claimant continued to experience "moderate to severe pain" that was not responsive to medication and "cannot be treated by a curative surgical procedure." (JE 7, p. 74) As a result, claimant considered and decided to move forward with the process to obtain a spinal cord stimulator (SCS) trial. (JE 7, p. 74) Claimant participated in a biopsychosocial evaluation on February 12, 2019 to determine his appropriateness for the trial. (JE 7, p. 80)

Before the SCS trial, however, defendants obtained a second opinion from Joseph Chen, M.D. In a report dated March 11, 2019, Dr. Chen opined the SCS trial was not causally related to the 2011 work injury with the following explanation: "There are many pathways that one can develop chronic back pain even in the absence of trauma that Mr. Sullivan experienced in 2011." (Def. Ex. C, p. 23)

Dr. Chen also opined that the SCS trial was not a reasonable and necessary treatment for claimant's work-related back injury given claimant's expectations about his improvement. (Def. Ex. C, p. 24) Dr. Chen also questioned whether an SCS was appropriate for claimant's pattern of pain complaints. (Def. Ex. C, pp. 23-24)

After a records review, William Boulden, M.D., issued a letter to defendants' counsel indicating his agreement with Dr. Chen's report. Like Dr. Chen, he stated he did not believe an SCS would be causally related to claimant's work-related back injury. He

seemingly attributed claimant's ongoing back pain to smoking: "The reason I think [claimant] continues to have significant back problems is multifactorial, but I think smoking is a major contributor to his back problems in general, besides the minimal trauma that he has had to the lumbar spine." (Def. Ex. D, pp. 29-30) Dr. Boulden also agreed with Dr. Chen that an SCS was not reasonable and necessary: "Dr. Ledet states that his neuropathic pain is related to his back trauma, which I totally disagree with . . . ." (Def. Ex. D, p. 30)

Dr. Ledet reviewed these opinions and offered his own in a November 11, 2019 report. With respect to causation, Dr. Ledet stated the following:

> In history [claimant] describes pain onset directly associated with the work injury events wherein he was struck by the train. I am not aware of any other injury that contributed to his current condition. It is my opinion that his chronic pain symptoms are causally related to the work injury. My recommendation for trial of SCS is made to treat his chronic pain symptoms. Given that the pain and presentation are causally related to his work injury, I believe the recommendation of SCS is also related to his work injury. SCS is commonly recommended when patients have a poorly differentiated neuropathic pain pattern consistent with the presentation of [claimant].
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> (Cl. Ex. 1, p. 5)

Dr. Ledet also disagreed with Dr. Chen and Dr. Boulden's opinion that claimant's pain distribution was not appropriate for an SCS: "I frequently find that poorly differentiated neuropathic pain is best treated with neuromodulation." (Cl. Ex. 1, p. 6) Dr. Ledet went on to state that while Dr. Chen and Dr. Boulden presented legitimate concerns, Dr. Ledet's expertise and specialization make him better suited to address the concerns. (C. Ex. 1, p. 6)

In his report, Dr. Kuhnlein agreed with Dr. Ledet's recommendations: "Given that [claimant] has been through all other forms of treatment for chronic pain, Dr. Ledet's request for a spinal cord stimulator trial is reasonable." (Cl. Ex. 2, p. 5)

After reviewing the reports of Dr. Boulden and Dr. Ledet, Dr. Chen reaffirmed his earlier opinions. (Def. Ex. C, pp. 26-30)

Dr. Boulden also reviewed Dr. Ledet's opinions and offered a response in a January 20, 2020 letter. Dr. Boulden again stated he did not believe claimant's neurotropic pain was related to his work-related injury because it "came on much later than the accident." Dr. Boulden instead attributed this pain to claimant's diabetes. He

also indicated his concern with an SCS given the non-dermatomal distribution of claimant's pain and his psychological state. (Def. Ex. D, pp. 31-32)

Both Dr. Goetz and Eden Wheeler, M.D., signed off on letters drafted by defendants' attorney indicating they did not recommend a spinal cord stimulator for claimant because it would likely not improve claimant's symptoms. (Def. Ex. B, p. 12; Def. Ex. E, p. 34)

In the arbitration decision, the deputy commissioner leapfrogged the issue of whether the spinal cord stimulator is causally related to claimant's back condition and instead found the SCS trial was not necessary based on the opinions of Dr. Chen, Dr. Boulden, Dr. Goetz and Dr. Wheeler. Before I address the deputy commissioner's finding regarding the reasonableness and necessity of the SCS trial, I will first address the issue of whether it is causally related to claimant's back condition.[1]

I am not persuaded by the opinions of Dr. Chen and Dr. Boulden that claimant's chronic back pain is not related to his 2011 work injury. Dr. Chen's rationale was simply that there are many pathways from which to develop chronic back pain even in the absence of trauma; while this is undoubtedly true, claimant in this case had a specific, documented trauma—he was struck by a train. Dr. Boulden's opinion that claimant's chronic pain is attributable to other factors, including smoking and diabetes, suffers from the same shortcoming. Again, while the smoking and diabetes may contribute to claimant's back pain, it is undisputed that claimant's back pain did not begin until after that incident and was chronic thereafter. For these reasons, I find the causation opinions of Dr. Ledet and Dr. Kuhnlein to be more persuasive. I find claimant's chronic pain symptoms are causally related to claimant's 2011 work injury. Because the SCS trial is intended to treat claimant's work-related chronic pain symptoms, I likewise find the SCS trial is causally related to claimant's work injury.

The question then becomes whether the SCS trial is reasonable and necessary. For the reasons that follow, the deputy commissioner's finding that the SCS trial is not necessary is respectfully reversed.

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[1] Defendants argue this issue is moot because even if claimant prevails on the issue of causation, he waived the issue of reasonableness by not raising it in his brief. While claimant did not directly address the issue of reasonableness and necessity in its own separate brief point, the issue was indirectly raised throughout his argument in Brief Point III. Thus, I conclude claimant did not waive the issue of reasonableness and necessity, meaning the issue of causation is not moot.

Both Dr. Chen and Dr. Boulden questioned whether an SCS trial was appropriate given claimant's pain distribution. Dr. Ledet specifically refuted these concerns in his November 11, 2019 report. While Dr. Chen and Dr. Boulden both have some experience with SCS implants and treatment of chronic pain, neither have the specific expertise of Dr. Ledet when it comes to treatment of chronic pain and implementation of neuromodulation devices. (See Cl. Ex. 1, p. 6; Def. Ex. D, p. 31) Thus, I find Dr. Ledet's belief that an SCS trial is appropriate for claimant's pain distribution to be more persuasive.

Both Dr. Chen and Dr. Boulden also raised concerns about claimant's psychological state. Again, however, Dr. Ledet addressed these concerns in his November 11, 2019 report. He agreed these concerns were legitimate but indicated "they are actionable" and should not prevent moving forward with the trial. (Cl. Ex. 1, p. 6) Given Dr. Ledet's expertise, I therefore find his opinions to be most persuasive.

I am likewise not persuaded by the statements of Dr. Goetz and Dr. Wheeler, in which they indicated claimant was not likely to benefit from a spinal cord stimulator. First, these opinions put the cart before the horse; at this stage, claimant is only seeking an SCS trial. As noted by Dr. Ledet, a permanent SCS would not be implanted "unless there has been a substantive improvement in the patient's ability to participate in activities of daily living during the trial of SCS." (Cl. Ex. 1, p. 5) Furthermore, Dr. Ledet specifically indicated claimant would be a good candidate for the trial. (Cl. Ex. 1, pp. 5-6) Again, given Dr. Ledet's expertise, I find his opinions to be more persuasive than the statements of Dr. Goetz and Dr. Wheeler.

Thus, relying on the opinions of Dr. Ledet, as supported by Dr. Kuhnlein, I find the requested SCS is both reasonable and necessary for treatment of claimant's work-related chronic back pain. The deputy commissioner's finding is therefore respectfully reversed. I conclude claimant satisfied his burden to prove he is entitled to medical care in the form of the SCS trial as recommended by Dr. Ledet. See Iowa Code § 85.27.

The final issue to address on appeal is claimant's costs. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Having determined on appeal that claimant is entitled to the medical care requested, I find a taxation of costs is appropriate in this case.

Claimant is seeking $13.60 for services fees; $1,625.00 for the opinion letter from Dr. Ledet, and $570.00 for the opinion letter from Dr. Kuhnlein. Claimant is entitled to $13.60 for his service fees. 876 IAC 4.33(3).

With respect to the opinion letters, Iowa Administrative Code rule 876-4.33(5) allows for the taxation of the costs of no more than two doctors' reports. Per the Iowa Supreme Court's ruling in Des Moines Area Regional Transit Authority v. Young, only the costs of preparing the actual report fall under this provision of the rules. 867 N.W.2d 839, 846-47 (Iowa 2015). In this case, the bill from Dr. Ledet's office indicates claimant was charged $1,625.00 for "Letter-Legal/Medical Opinion." (Cl. Ex. 4, p. 3) As such, I tax defendants with the entirety of the $1,625.00 for Dr. Ledet's opinion letter.

The invoice from Dr. Kuhnlein's office, however, indicates a breakdown of $475.00 for "chart review" and $95.00 for Dr. Kuhnlein's letter. (Cl. Ex. 4, p. 4) Relying on the court's holding that the "underlying medical expenses associated with the examination do not become costs of a report needed for a hearing," the Commissioner has previously determined that "the expenses for a physician's review of medical records are expenses associated with an examination and therefore cannot be taxed under rule 876 IAC 4.33(6). DART, 867 N.W.2d at 846; Kirkendall, File No. 5055494 (App. Dec. 17, 2018) Thus, I am unable to tax defendants with the $475.00 charge for Dr. Kuhnlein's chart review. Defendants are assessed $95.00 for Dr. Kuhnlein's letter.

In total, defendants are assessed $1,733.60.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 5, 2020 and a ruling on motion for rehearing filed on June 29, 2020 are respectfully reversed.

Defendants shall promptly authorize and pay for the left knee surgery recommended by Dr. Sullivan.

Defendants shall promptly authorize and pay for the spinal cord stimulator recommended by Dr. Ledet.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant for costs of the arbitration hearing in the amount of one thousand seven hundred thirty-three and 60/100 ($1,733.60), and defendants shall pay the costs of the appeal, including the hearing transcript.

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 8th day of February, 2021.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas M. Wertz (via WCES)

Jeffrey W. Lanz (via WCES)