

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEROY PRESSLEY III,

Claimant,

vs.

JOHN DEERE HARVESTER WORKS,

Employer,
Self-Insured,
Defendant.

File No. 5050446

ARBITRATION

DECISION

Head Note Nos.: 1802, 1803, 2500

STATEMENT OF THE CASE

Leroy Pressley III, claimant, filed a petition in arbitration seeking workers' compensation benefits from the self-insured employer, John Deere Harvester Works (John Deere), as a result of an alleged injury he sustained on January 4, 2013 that allegedly arose out of and in the course of his employment. This case was heard in Des Moines, Iowa and was fully submitted on December 3, 2015. The evidence in this case consists of the testimony of claimant and claimant's Exhibits 1 through 14 and defendant's Exhibits A through Y. Both parties submitted briefs.

The fighting issue in this case is whether the claimant's January 4, 2013 injury was the cause of or exacerbated the need for his total knee replacement. The parties agree that the January 4, 2013 incident caused an injury, a torn meniscus, which was repaired, and defendant has paid the rating for that injury.

ISSUES

The parties identified the following issues in the hearing report:

1. Whether claimant sustained an injury on January 4, 2013 which arose out of and in the course of employment that led to the total knee replacement.
2. Whether the alleged injury is a cause of temporary disability and, if so, the extent.
3. Whether the alleged injury is a cause of permanent disability and, if so;
4. The extent of claimant's disability.
5. Whether claimant is entitled to payment of medical expenses.

6. Assessment of costs.

STIPULATIONS

The parties stipulated to the following:

1. The existence of an employer-employee relationship at the time of the hearing.
2. Claimant sustained an injury on January 4, 2013 that arose out of and in the course of employment.
3. That the claimant's January 4, 2013 injury resulted in an arthroscopic procedure on April 2, 2013.
4. If defendant is liable for the total knee replacement, the defendant is liable for healing period benefits from February 27, 2014 through November 9, 2014, and the defendant is entitled to a credit under Iowa Code section 85.38.
5. That the claimant's injury is to a scheduled member; the left lower extremity.
6. The commencement date, if benefits are awarded, is November 10, 2014.
7. The claimant's gross earning at the time of injury was \$1,098.62 and that he was married and entitled to two exemptions. His weekly rate for permanent partial disability benefits is \$704.74.
8. No affirmative defenses are being asserted.
9. Regarding medical expenses, while not admitting liability defendant stipulated the fees or prices were reasonable: the treatment was reasonable and necessary; although disputed, the medical providers would testify the treatment and fees were reasonable and necessary. That the expenses are related to the alleged work injury.
10. Prior to the hearing claimant was paid 4.4 weeks of compensation at the rate of \$704.74 (\$3,100.86), which defendant is entitled to a credit.
11. Defendant is entitled to a credit of \$10,670.66 under Iowa Code section 85.38(2).
12. The costs which claimant has attached to the hearing report have been paid by the claimant.

All of the above stipulations are accepted by the undersigned.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Leroy (a/k/a Chuck) Pressley III, claimant, was 57 years old at the time of the hearing. He began his employment with John Deere in 2004 and was still employed at John Deere at the time of the hearing. On the date of his injury, January 4, 2013, claimant's job at John Deere was an assembler on the front end equipment. At the time of the hearing claimant was a fork truck driver.

On January 4, 2013 claimant was at work and some metal plates fell on his knee. (Transcript page 13) Claimant reported his injury and was seen at occupational health. He was returned to work. Claimant had an MRI which showed a torn meniscus. (Tr. p. 15) Claimant was referred to Tuvi Mendel, M.D. for an orthopedic evaluation on February 20, 2013. (Exhibit 4, pp. 1, 2) Dr. Mendel wrote:

Of note is that in the mid-80's he had initial femur fracture for which he underwent nailing and subsequent hardware removal. He also had a scope done in 1997 for medial meniscus tear by Dr. Tomac. He was doing reasonably well. He states that he didn't have any major issues prior to this recent injury.

He had an MRI done which revealed evidence of medial patellofemoral compartment wear with evidence of posterior horn medial meniscus tear and subsequently was referred to us for additional evaluation and management.

(Ex. 4, p. 1) Dr. Mendel's assessment was, "Left knee acute on chronic injury with evidence of posttraumatic degenerative changes followed by previous arthroscopy in 1997 with exacerbation as a result of twisting injury and moderate medial and patellofemoral compartment wear and posterior horn medial meniscus tear." (Ex. 4, p. 2) Dr. Mendel commented on the claimant's eventual need for a total knee replacement. He wrote:

He stated he did not have any pain prior to the injury and it is possible that we might be able to get him relief with the scope and I think that as a result of the injury we can justify a scope and possibly one course of lubricating injection postop, however, eventually he is going to need a total knee which is not related to his current injury.

(Ex. 4, p. 2) Dr. Mendel then requested authorization for a left knee arthroscopy evaluation.

Claimant had surgery on his left knee on April 2, 2013. The postoperative diagnosis was "Left knee medial tear." (Ex. 5, p. 1; Ex. L, p 131) After surgery claimant underwent physical therapy and work hardening. (Tr. p. 19) Claimant was released to

return to work as of May 19, 2013. (Tr. p. 20) Claimant was able to work, but experienced pain in performing his job and engaging in physical activities outside of work. (Tr. p. 20)

Claimant's knee continued to hurt him after the April 2, 2013 surgery. He had difficulty climbing, walking stairs and used a stool at work. (Tr. p. 27) Claimant also had difficulty in doing recreation activities such as golf and walking his dog as well as driving.

On May 29, 2013 claimant was performing full duty work in the morning and light duty work in the afternoon. Claimant was still complaining of pain and discomfort. He was provided an injection in the left knee. (Ex. 4, p. 5) On June 6, 2013 Dr. Mendel examined claimant. His assessment was "Left knee degenerative joint disease." (Ex. 4, p. 6) He noted claimant had significant degenerative changes and would be a candidate for a total knee replacement. Dr. Mendel wrote, "We will get him scheduled in the near future pending work comp approval for a left total knee arthroplasty." (Ex. 4, p. 6; Ex. K, p. 113)

The request for approval for the total knee replacement was reviewed by Christine Deignan, M.D. on June 17, 2013. Dr. Deignan wrote,

After discussion, it was determined the need for the total knee is for the underlying arthritic condition and not for the meniscus tear. The work injury could not have resulted in the arthritic condition that is the reason for treatment with the total knee arthroplasty.

A request for total knee arthroplasty has been received.

Since arthritis is pre-existing and had already been treated even before hire at John Deere the request for this surgery will be denied under WC.

(Ex. D, pp. 58, 59; Ex. K, p. 114)

Claimant returned to Dr. Deignan on February 10, 2014 for an impairment rating. Dr. Deignan found claimant at maximum medical improvement for the left knee medial meniscus tear with partial removal and provided a 2 percent impairment rating. (Ex. 6, p. 3) Defendant paid this rating. (Hearing Report)

On February 27, 2014 Dr. Mendel performed a total knee replacement. Dr. Mendel's postoperative diagnosis was "Left knee degenerative arthritis." (Ex. 7, p. 1)

Claimant continued to have pain in his knee after his total knee replacement. Dr. Mendel performed a manipulation under anesthesia. This was performed in June 2014. (Tr. p. 29; Ex. 4, p. 11; Ex. K, p. 118) Claimant testified he was off work from

February 27, 2014 through November 9, 2014 and that he returned to work on November 10, 2014¹. (Tr. pp. 31, 32)

Claimant's past medical history is relevant to his current claim. Claimant had a motor vehicle accident in 1988. Claimant testified that in that accident he had a broken left humerus and broken femur. (Tr. p. 27) Claimant disputed Dr. Deignan's diagnosis, found in Exhibit 6, page 2, that he had a left knee fracture and knee trauma in a motor vehicle accident in 1988. (Tr. p. 26) There is evidence of a fracture to the distal metaphysis of the femur. (Ex. C, p. 47) Claimant had a rod and screws inserted into his lower femur. This was later removed. (Tr. pp. 34, 35)

Claimant had arthroscopic surgery to the left knee in 1997. (Ex. D, p. 58; Ex. K, p. 105) Claimant was diagnosed with arthritis in his left knee in 1999. (Ex. A, p. 1) He had bilateral knee pain with the impression of possible severe arthritis in April 2001. (Ex. B, p. 2) He had left knee surgery in 2002. (Ex. B, p. 1; Ex. C, p. 39) Claimant returned to work after this surgery. (Tr. p. 34) Claimant continued to treat for pain in his left knee between 2003 and 2008. (Ex. B, p. 24; Ex. C, p. 42; Ex. 8, p. 4) Claimant was diagnosed with degenerative joint disease in the left knee on July 9, 2006 as well as a diagnosis of an acute episode of gout. (Ex. C, pp. 45, 47) The last treatment for gout was in 2006. (Tr. p. 35) In May 2008 claimant received treatment after being assaulted. His left knee was injured in this assault. (Tr. p. 36) May 2008 was the last treatment for pain caused by the assault. (Tr. p. 37) From May 2008 through January 4, 2013 claimant received no treatments for his left knee. (Tr. p. 37) Claimant was able to work and play golf and basketball before January 4, 2013. (Tr. p. 37)

The following chart shows the claimant's surgical history:

Ankle Surgery	1999	rt ankle
Arm Fracture	1988	lft humus [sic] fx care
Carpal tunnel	2007	Lft carpal tunnel
Femur fracture	1988	left fx care
Knee Manipulation	06/2014	left knee
Knee Scope	2002/04/2013	Rt knee, left knee
Toe	1999	rt little toe
Total Knee Arthroplasty	02/2014	Lft knee

¹ Dr. Mendel released claimant to return to full duty as of September 16, 2014. (Ex. K, p. 125) However, the parties stipulated in the hearing report that any permanency benefits would commence on November 10, 2014, and as such I find that the parties agreed that claimant did not return to work until November 9 2014.

(Ex. K, p. 119)

On November 7, 2014 Sunil Bansal, M.D. performed an independent medical examination of the claimant. (Ex. 8, pp. 1 – 22) Concerning claimant's January 3, 2014 left knee injury Dr. Bansal's diagnosis was;

LEFT KNEE:

Medial Meniscal Tear.

Status post left knee arthroscopy with partial medial meniscectomy, anteromedial plica resection, and patellofemoral compartment chondroplasty.

Aggravation of Left knee degenerative joint disease.

Status post left total knee arthroplasty.

Status post left knee manipulation under anesthesia, left knee injection.

(Ex. 8, pp. 16, 17) As to causation for the condition that lead to the total knee replacement Dr. Bansal wrote;

Lighting Up:

Pathophysiologically as the chart depicts, joint injury causes chondrocyte (cells that make and maintain cartilage) dysfunction and apoptosis (cell death). This causes inflammation and the production of enzymes that further degrade the cartilage. The inflammatory response is most likely what awakened or "lit up" his otherwise quiescent underlying degenerative joint disease. He was not complaining of left knee pain or seeking treatment for it prior to the injury on January 4, 2013.

Aggravation/Acceleration:

Again, as the chart depicts, chondrocyte destruction has occurred, materially altering the structural cartilaginous matrix. These are irreversible changes, and essentially the structural landscape has been altered. Furthermore, there is a decrease in anabolic (cell synthesis) activity. Without this normal synthesis and remodeling activity occurring, degenerative changes to the knee are accelerated.

(Ex. 8, p. 18) Dr. Bansal provided a rating of 37 percent to the lower extremity. (Ex. 8, p. 20)

Dr. Bansal placed claimant at MMI as of August 6, 2014, the last appointment claimant had with Dr. Mendel. (Ex. 8, p. 21)

Claimant seeks medical expenses set forth in Exhibit 9. Defendant stipulated the expenses are reasonable and related to the claimed work injury. They denied causation.

CONCLUSIONS OF LAW

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).

"When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion." Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

In this case the opinion of Dr. Deignan is that the claimant's work injury of January 3, 2014 was not causally related to his total knee replacement. Dr. Bansal did directly relate the total knee replacement to the January 4, 2013 injury. He found that the January 3, 2014 injury lighted up and aggravated claimant's knee condition. Dr. Mendel wrote that claimant would eventually need a total knee replacement but that the eventual need for a total knee replacement was not related to his current injury.

Claimant has the burden of proof in this claim to show that the work injury of January 3, 2014 is causally related to his total knee replacement. The claimant was not receiving treatment for his knee for a number of years before his injury to his knee on January 3, 2014. The evidence shows that the claimant did not mention to medical providers problems with his knee from June 2008 (Ex. 8, p. 4) until January 3, 2014. After his knee injury of January 3, 2014 claimant has continued to have pain in his knee.

What is missing from the evidence is any opinion by Dr. Mendel as to whether the January 3, 2014 injury lighted up or accelerated claimant's knee condition. He was the physician who was most familiar with claimant's knee conditions and did not provide an opinion that the need for the total knee replacement was related to the January 3, 2014 injury. Dr. Mendel's only opinion on the subject was that the need for a total knee replacement was not related to the work injury. I give little weight to the fact that Dr. Mendel asked the workers' compensation carrier to authorize the total knee replacement surgery. It is not an opinion as to causation, but rather a necessary step to get any insurance carrier to pay for the surgery. I cannot tell from Dr. Bansal's opinion if claimant's knee replacement surgery was required any sooner due to his injury or whether it would have been necessary in any case. While Dr. Bansal did opine his January 3, 2014 injury lit up his knee, the record from Dr. Mendel very shortly after the injury was that claimant needed a knee replacement. This is before the processes described by Dr. Bansal took place.


Given the burden of proof, claimant has failed to prove that the need for total knee replacement was causally related to his January 3, 2014 injury.

As claimant has not prevailed, I deny his request for medical expenses and costs.

ORDER

The claimant shall take nothing in this case.

Signed and filed this 16th day of August, 2016.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Eric J. Loney
Attorney at Law
1311 – 50th St.
West Des Moines, IA 50266
eric@loneylaw.com

Troy A. Howell
Attorney at Law
220 N. Main St., Ste. 600
Davenport, IA 52801-1987
thowell@l-wlaw.com

JFE/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.