

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES JOHNSON,

Claimant,

vs.

IOWA HOME CARE, LLC,

Employer,

and

BERKSHIRE HATHAWAY
HOMESTATE COMPANY,

Insurance Carrier,
Defendants.

FILED

SEP 07 2018

WORKERS COMPENSATION

File No. 5060065

ARBITRATION DECISION

Head Note Nos.: 1803, 1803.1, 2907

STATEMENT OF THE CASE

James Johnson, claimant, filed a petition for arbitration against Iowa Home Care, L.L.C., as the employer and Berkshire Hathaway Homestate Company as the insurance carrier. An in-person hearing occurred in Des Moines on April 17, 2018.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed in either file. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7 and Defendants' Exhibits A through G. All exhibits were received without objection.

Claimant testified on his own behalf. No other witnesses were called to testify. The evidentiary record closed at the end of the arbitration hearing.

However, defense counsel requested the opportunity to submit a post-hearing brief. Defendants' request was granted. The case was deemed fully submitted upon the filing of the post-hearing brief on May 18, 2018.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's July 26, 2013 injury is limited to the left leg or extends into the body as a whole?
2. The extent of claimant's entitlement to permanent disability benefits.
3. The proper commencement date for permanent disability benefits.
4. Whether claimant's filing fee should be assessed as a cost.

FINDINGS OF FACT

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

James Johnson sustained a stipulated left knee injury while performing his work duties as a certified nursing assistant performing in-home care for a patient of Iowa Home Care, L.L.C. Mr. Johnson was attempting to transfer his patient from the toilet to a wheelchair when the patient began to fall and pushed claimant's left knee inward and backward. Mr. Johnson experienced immediate pain and requested treatment through the employer. (Transcript, pages 25-26)

Claimant was referred to an orthopaedic surgeon, Stephen G. Taylor, M.D., who evaluated Mr. Johnson on October 31, 2013. Dr. Taylor recommended against any aggressive surgical intervention. Instead, an injection was performed and physical therapy was prescribed. (Joint Exhibit 4, p. 16) Dr. Taylor retired and claimant testified that he was subsequently evaluated by another orthopaedic surgeon at Dr. Taylor's office, Matthew DeWall, M.D. Dr. DeWall recommended against any aggressive surgical intervention as well. (Joint Ex. 5, p. 22; Defendants' Ex. A)

Ultimately, claimant desired additional treatment and was directed for further orthopaedic care through Mark K. Palit, M.D. Dr. Palit diagnosed claimant with left knee osteoarthritis. He also recommended against any arthroscopic surgical intervention. Instead, Dr. Palit recommended a left total knee replacement. (Joint Ex. 5, pp. 22-23)

Claimant submitted to a left total knee replacement performed by Dr. Palit on February 24, 2016. (Joint Ex. 6, p. 40) Unfortunately, the left total knee replacement did not entirely relieve claimant's symptoms. Mr. Johnson testified that he continues to experience significant pain symptoms in the left knee. Mr. Johnson describes difficulties with prolonged sitting, standing, and walking. He testified that he uses a crutch for ambulation unless he is at home and can utilize walls and furniture to support himself.

(Tr., pp. 38-41) Mr. Johnson also describes significant limitations and difficulties with traversing stairs and with lifting and carrying items. (Tr., pp. 41-42)

Mr. Johnson continues to receive pain medications for his left knee symptoms. He is believable when he testifies that he has ongoing left knee symptoms.

In addition to his left knee symptoms, claimant testifies that he now experiences low back pain, as well as right knee pain and an altered gait. During his testimony, Mr. Johnson concedes that he has experienced chronic back pain since the 1990's. (Tr., p. 55) Joint Exhibits 1 and 3 demonstrate a long-standing, chronic low back injury and symptoms. However, claimant testifies that his low back pain is now different since the July 26, 2013 work injury. (Tr., pp. 44-45)

Mr. Johnson discussed his low back complaints with Dr. Palit. Dr. Palit told claimant that he could not identify any pathology that would causally connect claimant's low back pain to his left knee injury. (Tr., p. 63) Claimant conceded on cross-examination that there are no medical opinions in this evidentiary record that causally connect his current right knee difficulties or his low back symptoms to the July 26, 2013 work injury. (Tr., pp. 51, 60)

Review of the medical evidence in this case demonstrates several key pieces of evidence. On January 8, 2015, Dr. Palit evaluated claimant. He specifically evaluated claimant's lumbar spine while performing a physical examination. No symptoms were elicited and no back abnormalities were identified during this evaluation. (Joint Ex. 5, p. 22) On July 21, 2016, Dr. Palit recommended claimant discontinue use of a crutch as an ambulatory aid. (Joint Ex. 5, p. 31)

Then, Dr. Palit noted in his January 3, 2017 office note that claimant was observed outside the examination room and ambulated without a limp. (Joint Ex. 5, p. 32) In Dr. Palit's absence, claimant was apparently evaluated by Emile Li, M.D. on September 12, 2016. At that time, Dr. Li noted excellent stability and range of motion in claimant's left knee. Dr. Li recommended a return evaluation in February 2016, though claimant indicated he would not be returning because he was moving. (Joint Ex. 6, pp. 46-47)

Defendants subsequently had claimant evaluated by Kary R. Schulte, M.D., for purposes of obtaining a permanent impairment rating on claimant's left knee. Dr. Schulte noted some reduction in claimant's left knee range of motion and indicated that claimant "walked without a limp." (Defendants' Ex. B, p. 18) He concluded that the left knee replacement was in good alignment and position with no evidence of loosening of any components. (Defendants' Ex. B, pp. 18-19) Dr. Schulte opined that claimant sustained a 37 percent permanent impairment of the left lower extremity as a result of the left total knee replacement. (Defendants' Ex. B, p. 19) Dr. Schulte opined that claimant reached maximum medical improvement as of his evaluation on January 12, 2017. (Defendants' Ex. B, p. 19)

Defendants also had claimant evaluated by Brian M. Crites, M.D., on January 24, 2018. Like Dr. Schulte, Dr. Crites is a board-certified orthopaedic surgeon. (Defendants' Ex. A, pp. 6-16; Defendants' Ex. B, pp. 20-24) Dr. Crites evaluated both claimant's left knee and his low back. With respect to the left knee, Dr. Crites noted that claimant complained of fairly significant and constant pain in his left knee. (Defendants' Ex. A, p. 2) Dr. Crites noted reduced range of motion in claimant's left knee.

Dr. Crites noted that claimant's "gait is normal without the crutch from the chair to exam table, but he uses a single crutch to walk into the exam room from the waiting room. No noticeable antalgic gait is seen." (Defendants' Ex. A, p. 3) Dr. Crites opines that claimant aggravated his left knee osteoarthritis as a result of his work injury, necessitating the left total knee replacement. He concurred with Dr. Schulte that the proper date for maximum medical improvement was January 12, 2017. (Defendants' Ex. A, p. 4)

However, Dr. Crites notes claimant's constant left knee pain. He concludes that claimant achieved only a fair result from the left knee replacement, when utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 17-35. Review of Table 17-35 demonstrates that Dr. Crites offered reasonable assessments using the maximum number of points (which would reduce the impairment rating) for range of motion and stability. Therefore, it appears that the main difference between Dr. Crites' impairment rating and that offered by Dr. Schulte is that Dr. Crites identified and assigned only 10 "points" under the AMA Guides, Table 17-35 for claimant's constant left knee pain. Dr. Schulte necessarily determined that claimant had something less than "constant" pain to reach his "good" result and corresponding impairment rating under Table 17-33.

Having found that claimant's complaints of constant pain were credible, I find Dr. Crites' impairment rating to be more convincing and representative of claimant's post-surgical left knee condition. Therefore, I find that claimant has proven he sustained a 50 percent permanent impairment of the left leg as a result of the July 26, 2013 left knee injury at work.

With respect to Mr. Johnson's low back complaints, Dr. Crites identified "no tenderness about his low back." (Defendants' Ex. A, p. 3) Dr. Crites identified no spasms, no motor deficits, or reductions in strength in claimant's low back. (Defendants' Ex. A, p. 3) However, Dr. Crites noted that it "is well documented in his medical records that he had extensive prior low back symptoms and treatments." (Defendants' Ex. A, p. 4) Dr. Crites noted that no immediate complaints of increased low back symptoms appear after claimant's work injury. Instead, he noted that no increase in low back symptoms occurred until 11 months after the injury date.

Dr. Crites opines specifically that claimant did not injure or aggravate his low back condition as a result of the July 26, 2013 work injury. Although claimant testifies to the contrary, no other medical opinion appears in this evidentiary record to refute

Dr. Crites' analysis or opinions. I find Dr. Crites' opinions to be convincing and accurate. Therefore, I find that claimant failed to prove he sustained an injury to or an aggravation of any pre-existing low back condition as a result of the July 26, 2013 work injury.

I find that claimant failed to prove by a preponderance of the evidence that his current right knee symptoms are causally related to the July 26, 2013 work injury or resulting left knee injury. Similarly, I find that claimant failed to prove he sustained a permanent altered gait, or that he sustained any permanent impairment or permanent disability as a result of any alleged altered gait. Instead, I find that all functional and permanent impairment sustained as a result of the July 26, 2013 work injury is confined and limited to the left leg.

Claimant contends that permanent disability should commence on January 12, 2017, the date of maximum medical improvement identified by Dr. Schulte and confirmed by Dr. Crites. Defendants contend that permanent disability should commence on September 12, 2016, the date that claimant was released from further care by Dr. Palit's office.

With respect to this issue, I find that Mr. Johnson did not return to work between the date of injury and January 12, 2017. I find that he was not medically capable of returning to substantially similar employment as was performed on the date of injury before January 12, 2017.

Finally, I find that claimant was not yet at maximum medical improvement on September 12, 2016. Dr. Li evaluated claimant on September 12, 2016. Although Dr. Li noted that claimant did not intend to return for a follow-up evaluation, Dr. Li recommended claimant be re-evaluated again in February 2017. (Joint Ex. 6, pp. 48-49) Given that Dr. Li recommended additional follow-up evaluation, I cannot find that claimant's condition was such that further medical improvement was not anticipated. Rather, it appears that Dr. Li anticipated additional improvement and recommended additional evaluation at a later date.

Once that evaluation occurred, through Dr. Schulte and then through Dr. Crites, it could be determined that further substantial improvement was not anticipated and that maximum medical improvement had been achieved. Therefore, I find that maximum medical improvement did not occur until January 12, 2017.

CONCLUSIONS OF LAW

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

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Under the Iowa Workers' Compensation Act permanent partial disability is categorized as either to a scheduled member or to the body as a whole. See section 85.34(2). Section 85.34(2)(a)-(t) sets forth specific scheduled injuries and compensation payable for those injuries. The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). Compensation for scheduled injuries is not related to earning capacity. The fact-finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-

273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

In this case, I found that claimant has not proven his work injury extends beyond the left leg. Certainly, claimant testified that his back pain is different than before the July 26, 2013 work injury. He also testified that he requires the use of a crutch almost all of the time to ambulate. Finally, claimant testified that his right knee now hurts after relying upon his right leg to a greater extent since the work injury.

Yet, no physician has supported claimant's theory of the case. No physician has opined that claimant sustained a right knee or low back injury as a result of the July 26, 2013 work injury. None of the orthopaedic surgeons that have evaluated claimant has opined that claimant requires ongoing use of a crutch for ambulation or opined that claimant sustained permanent impairment or permanent disability as a result of a gait derangement following his left knee injury on July 26, 2013. Ultimately, I found that claimant failed to prove his injury extends beyond the left leg. Therefore, I conclude that the situs of the injury is limited to the left leg and that the claim should be compensated on a scheduled member basis pursuant to Iowa Code section 85.34(2)(o).

I found that claimant sustained a 50 percent loss of function in his left leg as a result of the July 26, 2013 work injury. The Iowa legislature has established a 220-week schedule for leg injuries. Iowa Code section 85.34(2)(o). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of his leg. Iowa Code section 85.34(2)(v); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969). Fifty (50) percent of 220 weeks equals 110 weeks. Claimant is, therefore, entitled to an award of 110 weeks of permanent partial disability benefits against the employer. Iowa Code section 85.34(2)(o), (v).

The parties also dispute the proper commencement date for permanent disability benefits. Claimant asserts that permanent disability should commence on January 12, 2017. Defendants contend that permanent disability should commence on September 12, 2016.

Having found that claimant did not return to work and was not capable of returning to substantially similar work before January 12, 2017, the only remaining legal question is when was it medically indicated that substantial improvement was no longer anticipated. Iowa Code section 85.34(1). Having found that claimant did not achieve maximum medical improvement until January 12, 2017, I conclude that is the earliest factor and earliest date that claimant's healing period could terminate. Therefore, I conclude that claimant's healing period terminated on January 12, 2017. Claimant's entitlement to permanent partial disability benefits commenced on January 13, 2017. Iowa Code section 85.34(1); Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016).

The only other disputed issue is assessment of costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant has received an additional award of permanent disability above what was voluntarily paid by defendants, I conclude that it is appropriate to assess claimant's filing fee totaling \$100.00. 876 IAC 4.33(7).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant one hundred ten (110) weeks of permanent partial disability benefits commencing on January 13, 2017.

All weekly benefits shall be paid at the stipulated rate of two hundred six and 06/100 dollars (\$206.06).


Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Pursuant to the stipulation contained in the hearing report, defendants are entitled to a credit for all weekly benefits paid to date against this award.

Defendants shall reimburse claimant's costs totaling one hundred 00/100 dollars (\$100.00).

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 7th day of September, 2018.



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