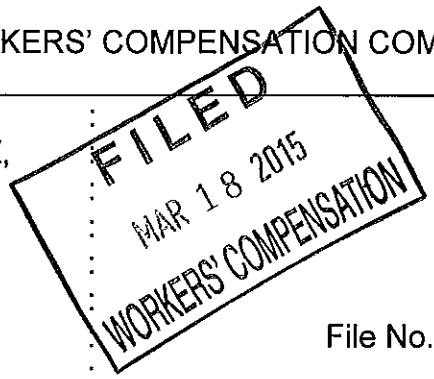
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



EUFEMIO VAZQUEZ-VELAZQUEZ,

Claimant,

vs.

PAUL PARK CONSTRUCTION,

Employer,

and

FARM BUREAU,

Insurance Carrier,
Defendants.

File No. 5055013

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

The claimant, Eufemio Vazquez-Velazquez has filed a petition in arbitration and seeks workers' compensation benefits from Paul Park Construction, employer, and Farm Bureau, insurance carrier defendants.

This matter was heard by Deputy Workers' Compensation Commissioner Ron Pohlman on October 2 and October 10, 2014 at Sioux City, Iowa. The record in the case consists of claimant's exhibits 1-11; defendants' exhibits 101-113 as well as the testimony of Timothy Redenbaugh, D.C., the claimant through interpreter, Frank Gonzalez, Hilda Cortez-Vazquez, Steve Freeman, and Ken Rohlk.

ISSUES

The parties submitted the following issues for determination:

1. Whether the work injury of November 19, 2011 was the cause of any disability;

2. Whether the claimant is entitled to temporary total disability/healing period benefits from November 19, 2011 through June 1, 2012 and from December 1, 2012 through April 24, 2014;

3. The extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2);

4. Whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27;

5. Whether the claimant is entitled to reimbursement for an independent medical evaluation pursuant to Iowa Code section 85.39.

FINDINGS OF FACT

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

The claimant at the time of the hearing was 59 years old. He testified that he has a third grade education. His work history consists of unskilled physical labor. He has been in the United States since 1988. However, he speaks limited English and can read very little written English. The claimant was employed at Rembrandt Industries but failed to disclose this in his interrogatory answers. At hearing the claimant acknowledged that he had had a medical examination and was given a lifting restriction of 20 pounds on an occasional basis and 10 pounds on a frequent basis. The claimant underwent an independent medical evaluation by Jacqueline Stoken, D.O. on May 7, 2010 in connection with a work injury alleged February 13, 2009 at Tyson. Dr. Stoken noted the claimant was status post a work injury on February 13, 2009 with acute low back strain, left sacroiliac joint dysfunction, disc bulges, left lower extremity radiculitis and right knee pain. She opined that the claimant had sustained an eight percent whole person permanent impairment for the joint dysfunction and imposed restrictions of 20 pounds lifting on an occasional basis and 10 pounds on a frequent basis as well as to avoid repetitive bending, lifting and stooping. With respect to the right leg and knee, she opined that claimant had a four percent whole person impairment and restricted the claimant from prolonged walking, climbing, and repetitive stooping and bending with the right knee. See Exhibit 102, pages 6, 7.

After Dr. Stoken's evaluation the claimant submitted a claim for Social Security Disability, which was granted, and the claimant has continued to receive Social Security Disability ever since. Nonetheless, he applied for and was hired by Paul Park Construction in July of 2011.

On November 19, 2011 he was driving to a job site in a company truck when the truck went out of control and into a ditch.

The claimant was seen in the emergency room. There the claimant underwent a CT of the cervical spine, which was negative. The claimant was discharged with a prescription for medication and bed rest for 48 hours.

On November 28, 2011 the claimant saw his family physician who assessed the claimant with a neck sprain and noted no tenderness around the shoulder joint. The claimant's family physician recommended the claimant have some physical therapy and follow up in a week. The claimant attended physical therapy from November 30, 2011

to December 30, 2011, and his course there was unremarkable. The claimant did not seek treatment again until September 2014.

The claimant underwent an independent medical evaluation on September 11, 2014 with Douglas W. Martin, M.D. at defendants' request. Dr. Martin had no recommendation for additional medical care and noted that the claimant's physical examination was largely nonphysiologic with respect to his left upper extremity and cervical spine. See Exhibit 106, page 8. Dr. Martin opined that the claimant had no permanent impairment nor any work restrictions for his left upper extremity, neck, shoulder, elbow, wrist or hand.

The claimant had a functional capacity evaluation performed April 9, 2013, which indicated that the claimant was in the light physical demand level and was deemed a valid test.

The claimant saw Richard Kreiter, M.D. for an independent medical evaluation on August 19, 2014 at claimant's attorney's request. Dr. Kreiter opined that the claimant's cervical condition with chronic pain was a permanent aggravation of a preexisting multilevel disc condition and placed him at MMI three months prior to the exam date. Dr. Kreiter opined that the claimant had a 24 percent whole person impairment. Further, he opined that the claimant could return to light or sedentary work only:

> 5. Mr. Vasquez Velazque [sic] could return to light or sedentary work. Hopefully with evaluation of his shoulder problems, and weakness of grip with treatment, would allow increased activity. He needs to avoid overhead work on the left side. Repeated pull/push/polishing, is not advised. Impact tools, or firm, repeated grasping on the left would not be tolerated. He could lift up to 10 to 15 pounds occasionally on the left, but not frequently. With the cervical condition, frequent turning of his neck from side to side or upward, such as driving vehicles, would be limited. Also, riding in a vehicle with a rough ride, would cause increased impact to the neck, and increased symptoms.

(Ex. 4, p. 2)

Dr. Kreiter acknowledged that moderate degenerative changes in the claimant's cervical spine found on the CT scan could just as easily have been the result of the aging process. See Exhibit 111, pages 5, 6. Dr. Kreiter acknowledged that the results of the September 3, 2013 MRI of the cervical spine could also just as easily be explained as the result of a natural aging process. Dr. Kreiter acknowledged in his deposition that it would be pure speculation to determine what percentage the claimant's preexisting conditions were aggravated by the work injury. See Exhibit 111, page 24. Dr. Kreiter also noted that it would be very unusual for someone to describe pain as severe as the claimant described. See Exhibit 111, pages 30, 31.

At hearing claimant presented the testimony of Dr. Redenbaugh. Dr. Redenbaugh had no opinion on causation a few days before the hearing and then at the hearing had an opinion that causation was possible and then finally said that it was probable. Dr. Redenbaugh was primarily offended by Dr. Martin's comments regarding his notes. At deposition Dr. Redenbaugh acknowledged that he had never done any tests to determine activity restrictions. The last date of Dr. Redenbaugh's treatment he noted the claimant had full cervical range of motion without pain.

It is found that the claimant has not sustained permanent impairment or permanent disability as a result of his work injury in this case.

REASONING AND CONCLUSIONS OF LAW

The first issue in this case is whether the work injury was the cause of any disability.

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).

The record in this case indicates that the claimant had a relatively minor injury, underwent some physical therapy but was never restricted from returning to work for more than 48 hours. The claimant has provided no credible evidence that this work injury caused any permanent disability. The claimant was already under restrictions that had qualified him for Social Security Disability that he was receiving at the time of his employment at Paul Park Construction and apparently at the time of the hearing. There is nothing in the record even viewed in the light most favorable to the claimant that would indicate that he was in any way worse. In fact, the greater weight of

evidence indicates that this work incident was minor and of no consequence. The claimant is not entitled to additional healing period or permanent disability.

The next issue is whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27. The only medical expenses that the claimant has shown are related to his work injury are the emergency room visit and the brief period of physical therapy thereafter. Beyond that, he is not entitled to reimbursement or payment of any medical expenses.

The claimant is entitled to reimbursement for an independent medical evaluation pursuant to Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

ORDER

THEREFORE IT IS ORDERED:

That claimant take nothing from this file.

Costs of this action are taxed to the claimant pursuant to rule 876 IAC 4.33.

Signed and filed this 18th day of March, 2015.

Ron Pohlman

RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.