

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES ELLIOTT,

Claimant,

vs.

ARCONIC, INC.,

Employer,

and

INDEMNITY INS. CO. OF N. AMERICA,

Insurance Carrier,
Defendants.

File No. 5064006.01

ARBITRATION DECISION

Head Notes: 1402.40, 1801, 1802,
1803, 2501**STATEMENT OF THE CASE**

James Elliott seeks workers' compensation benefits from the defendants, employer Arconic, Inc. (Arconic) and insurance carrier Indemnity Insurance Company of North America (Indemnity). The undersigned presided over an arbitration hearing on July 6, 2021, held by internet-based video under order of the Commissioner. Elliott participated personally and through attorney Mark A. Tarnow. The defendants participated by and through attorney Troy A. Howell.

ISSUES

Under rule 876 IAC 4.19(3)(f), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

- 1) Is Elliott entitled to temporary disability or healing period benefits from May 1, 2018, through September 3, 2018?
- 2) What is the nature and extent of permanent disability, if any, caused by the stipulated injury?
- 3) Is Elliott entitled to payment of medical expenses as listed in Claimant's Exhibit 1?

- 4) Is Elliott entitled to taxation of the costs against the defendants?

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

- 1) An employer-employee relationship existed between Elliott and Arconic at the time of the injury.
- 2) Elliott sustained an injury on May 1, 2018, which arose out of and in the course of his employment with Arconic.
- 3) The commencement date for permanent partial disability (PPD) benefits, if any are awarded, is September 4, 2018.
- 4) At the time of the stipulated injury:
 - a) Elliott's gross earnings were nine hundred eighty-six and 76/100 dollars (\$986.76) per week.
 - b) Elliott was married.
 - c) Elliott was entitled to two exemptions.
- 5) Prior to hearing, the defendants paid to Elliott four thousand seven hundred thirty-seven and 34/100 dollars in short-term disability benefits.
- 6) With reference to the disputed medical expenses:
 - a) Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and the defendants are not offering contrary evidence.
 - b) Although causal connection of the expenses to a work injury cannot be stipulated, the listed expenses are at least causally connected to the medical condition(s) upon which the claim of injury is based.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

FINDINGS OF FACTS

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 8;

- Claimant's Exhibit (Cl. Ex.) 1;
- Defendants' Exhibits (Def. Ex.) A through M; and
- Hearing testimony by Elliott.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

Elliott was fifty-one years of age at the time of hearing. He graduated from high school in 1985. (Hrg. Tr. p. 12) Elliott obtained an associate's degree in law enforcement, but has never worked in the field. (Hrg. Tr. p. 13)

Elliott worked for Holtz Company cleaning carpets. (Hrg. Tr. p. 13) Arconic¹ hired Elliott in 1994. (Hrg. Tr. pp. 13–14) He has worked for Arconic for twenty-seven years. (Hrg. Tr. p. 13)

United Auto Workers (UAW) Local 105 is a labor union that represents Arconic employees at the job site where Elliott is employed. (Hrg. Tr. p. 14) He has been a member of the union during the entirety of his employment with Arconic. (Hrg. Tr. pp. 13–14) A collective bargaining agreement (CBA) between Arconic and the union governs labor relations. (Hrg. Tr. p. 56)

Under the CBA, Elliott's worked twelve hours per day and the number of days per week he worked were staggered. (Hrg. Tr. pp. 15–16) One week he would work thirty-six hours and the next forty-eight hours. (Hrg. Tr. p. 15) Any overtime he would work would be on a scheduled off-day. (Hrg. Tr. pp. 16–17) The CBA limits the number of hours an employee may work in a week to sixty-six. (Hrg. Tr. p. 17)

Seniority dictates what priority an employee has to work overtime or bid into another job under the CBA. (Hrg. Tr. p. 17) The employee with the most seniority has the first opportunity to work overtime. (Hrg. Tr. p. 17) The same is true with bidding into another job. (Hrg. Tr. p. 17)

Beginning in or around 2008, Elliott worked as a fork truck driver in Inspect, Shipping, and Packing (IPS). (Hrg. Tr. p. 14) His job duties consisted of locating coils, transporting them for weighing, and then transporting the coils to the rack station. (Hrg. Tr. p. 15) Elliott worked in the coil group. (Hrg. Tr. p. 17)

At the time of hearing, Elliott was the employee with the most seniority in the coil group. (Hrg. Tr. p. 17) As the employee with the most seniority, he had the right under the CBA to work available overtime if he wanted to put in for it. (Hrg. Tr. p. 17) Elliott also had the right to bid into another group. (Hrg. Tr. p. 17)

¹ Arconic was formerly known as the Aluminum Company of America or ALCOA. For clarity, this decision refers to the entity only by its name at the time of hearing, Arconic.

Elliott has a history of back issues. In 1991, Elliott fell off a roof and hurt his back. He saw Dr. Thomas Ade because the fall caused him to feel lower back pain that radiated into his buttocks. (Jt. Ex. 1, pp. 1–2) He underwent surgery with Dr. David Udehn for a ruptured L4-5 disc in 1997 or 1998. (Hrg. Tr. p. 18; Jt. Ex. 1, p. 3; Jt. Ex. 2, pp. 24, 28, 33)

Throughout most of 1998, Elliott had complaints relating to his back for which he sought care. They included pain, numbness, and radiculopathy. (Jt. Ex. 2, pp. 19–21) Elliott was off work from early February to early May due to a lumbar laminectomy. (Jt. Ex. 2, p. 21) Elliott also strained his back in a 1998 car crash. (Jt. Ex. 1, p. 4) In 2004, Elliott experienced more symptoms, including back pain that radiated into his leg and numbness in his right foot. (Jt. Ex. 1, pp. 5–10) His complaints continued into 2005 and 2006. (Jt. Ex. 1, pp. 10–11; Jt. Ex. 2, p. 30; Jt. Ex. 5, p. 76)

In 2009, he sustained a low back strain while working at Arconic with radiculopathy. (Jt. Ex. 2, p. 33) Elliott underwent an exam because of back pain in 2011. (Jt. Ex. 1, p. 12) He sought care in 2012 due to ongoing back symptoms as well as numbness in his right big toe. (Jt. Ex. 2, p. 34) Elliott participated in physical therapy in 2015 because of pain in his back and legs and numbness in his left foot. (Jt. Ex. 1, p. 13; Jt. Ex. 6, p. 86) On February 14, 2018, Elliott received a work restriction limiting him to twelve hours of work per day, which meant no overtime under the Arconic schedule, because of degenerative disc disease and arthritis in his neck and back. (Jt. Ex. 2, p. 39)

Elliott was working as a fork truck driver on the morning of May 1, 2018. (Hrg. Tr. p. 20) He was looking for aluminum coils to transport for staging so they could be wrapped. (Hrg. Tr. pp. 20, 53–54) Elliott cut the lightweight plastic banding off the coils. (Hrg. Tr. pp. 21, 54) The banding fell to the floor. (Hrg. Tr. p. 21) Elliott bent down to pick up the banding when he heard a pop in his back and felt a sharp pain down his right leg. (Hrg. Tr. p. 21; Jt. Ex. 2, p. 41)

Elliott felt pain in his back and right leg. (Hrg. Tr. pp. 21–22) He tried to straighten back to stand straight up but could not immediately do so due to the pain. (Hrg. Tr. p. 22) After Elliott eventually was able to straighten his back, he went to an inspector, Kevin Johansson, and asked him to call his supervisor, Steve Cocklin, right away so he could get medical care. (Hrg. Tr. p. 22)

Cocklin transported Elliott to get medical care in a golf cart. (Hrg. Tr. p. 22) He also helped Elliott walk up the steps to get to the medical office. (Hrg. Tr. p. 23) Arconic medical staff took a reading of Elliott's blood pressure, which was high. (Hrg. Tr. p. 23) Darcy Jacobsen, DAV, recommended ice and heat, ibuprofen, and to follow up with Arconic Medical after he received care for his high blood pressure. (Jt. Ex. 2, pp. 41, 46; Hrg. Tr. p. 25)

On May 2, 2018, Elliott returned to Arconic Medical and reported sharp pain in his back and burning pain in his back that radiated down the front of his leg. (Jt. Ex. 2, p. 46) The pain caused him to have trouble walking. (Jt. Ex. 2, p. 46) Elliott stated he

was not experiencing numbness or tingling at the time. (Jt. Ex. 2, p. 46) On May 5, 2018, Elliott telephoned Arconic Medical to report he had fallen at home and was in pain. (Hrg. Tr. p. 26)

The defendants arranged for an examination by Dr. Waqas Hussain at ORA Orthopedics on May 24, 2018, for an opinion on causation. (Hrg. Tr. p. 28; Jt. Ex. 8, pp. 111–16) Dr. Hussain reviewed medical records, performed an in-person physical examination of Elliott, watched video surveillance of him, and reviewed imaging of Elliott's lumbosacral spine that he had ordered. (Hrg. Tr. pp. 28–29; Jt. Ex. 8, pp. 111–13) Dr. Hussain diagnosed Elliott with a lumbosacral sprain and underlying lumbar spondylosis or arthritis and a right paracentral L3-L4 disc herniation with radiculopathy. (Jt. Ex. 8, p. 113) On the question of causation, Dr. Hussain opined:

There are several factors to consider when answering this question. Mr. Elliott describes the work injury as bending over to pick up a coil. As noted in the included and reviewed attachments, the coil is a small, lightweight piece of metal banding. Likewise, this did not involve repetition or heavy strain. I do not believe that the simple job requirement of bending over to pick up a lightweight coil would lead to the patient's aforementioned symptoms. I do believe that there are several pre-existing underlying factors that have contributed to the patient's current ongoing problems. Firstly, the patient has had a long history of spine problems in both the cervical and lumbosacral spine. The patient had previously undergone a right L4-L5 hemilaminotomy and foraminectomy with disectomy on February 20, 1998. Likewise, based on his lumbosacral x-rays, there is evidence of significant underlying chronic lumbar spondylosis or arthritis involving the low lumbosacral spine, including L1-L2, L2-L3, L3-L4, L4-5, and L5-S1. This lumbosacral arthritis is most prevalent at L4-L5 and L5-S1 and can be a result of the patient's past injury and the surgery to manage this old problem. This arthritis can lead to diminished mobility along the affected vertebral segments, which can place a higher degree of stress on the adjacent segments, including L3-L4. Thus, the pathology at the distribution of L3-L4 can be the consequence of this underlying pre-existing arthritis. A second factor to consider is the patient's weight. He not only has an elevated BMI, but much of that weight is demonstrated in the form of truncal obesity. Based on the simple dynamics of bending over to pick up an object off the ground, this body distribution can influence or change the way in which a person does so and can place a higher degree of strain along the distribution of the adjacent lower lumbar segments, which can, in turn, lead to the patient's diagnosis. This underlying pre-existing patient factor can have a significant consequence in terms of the patient's current diagnosis. Thirdly, the patient also has a history of bilateral knee replacements. Patients typically undergo total joint arthroplasty due to a history of primary osteoarthritis in the knees, which can consequently lead to diminished range of motion, pain and swelling. Following knee replacement, patients are often unable to kneel directly on

the knees and demonstrate difficulty in regard to squatting and types of bending activities and postures. This pre-existing underlying patient factor can also provide a significant contribution to the patient's ongoing underlying symptoms. Lastly, surveillance video of the patient walking both before and after his injury demonstrated a normal, nonantalgic gait. One would expect an acute injury as such to lead to sudden and immediate changes in his ambulatory profile.

(Jt. Ex. 8, p. 114)

For these reasons, Dr. Hussain opined Elliott's lumbar spondylosis, L3-L4 disk herniation, lower extremity radiculopathy, and numbness are not due to his work at Arconic. (Jt. Ex. 8, p. 114) He stated only Elliott's lumbosacral muscular strain was caused by his employment. (Jt. Ex. 8, p. 114) Dr. Hussain further opined Elliott's lumbosacral muscular strain was temporary in nature and he had reached maximum medical improvement (MMI) from it. (Jt. Ex. 8, p. 115)

Because of Dr. Hussain's opinion on causation, the defendants accepted liability for only Elliott's lumbosacral muscular strain and denied liability for lumbar spondylosis, L3-L4 disc herniation, lower extremity radiculopathy and numbness. (Ex. F) This denial meant Elliott was free to seek care with a doctor of his choosing and pay for it. (Hrg. Tr. pp. 32–33) In consultation with his wife, Elliott chose Dr. Michael Berry at ORA. (Hrg. Tr. pp. 32–33; Jt. Ex. 8, pp. 117–18) By the time Elliott saw Dr. Berry, he was using a cane to help him walk because of problems with his leg that were causing him to suffer falls. (Hrg. Tr. p. 35)

On July 2, 2018, Dr. Berry performed a right L3-4 microlumbar discectomy on Elliott. (Hrg. Tr. pp. 36–37; Jt. Ex. 5, pp. 77–79) Elliott participated in post-surgery physical therapy while on leave from Arconic for about three months, during which time he received short-term disability benefits. (Hrg. Tr. pp. 57–58; Jt. Ex. 5, p. 83; Jt. Ex. 6, pp. 84–107; Jt. Ex. 8, pp. 119–22) The surgery and Elliott's work in physical therapy eliminated his radicular symptoms and reduced his pain levels. (Hrg. Tr. p. 57; Ex. I, p. 42; Jt. Ex. 8, p. 121) Ultimately, Dr. Berry released Elliott to return to work without restrictions. (Hrg. Tr. pp. 36, 50; Jt. Ex. 8, p. 122)

Elliott returned to his job as a fork truck driver at Arconic. (Hrg. Tr. pp. 37, 49, 51) He was able to work full time and without restrictions between Dr. Berry's release and the time of hearing. (Hrg. Tr. pp. 51–52) Elliott has not missed work due to back issues. (Hrg. Tr. pp. 38, 51)

The defendants arranged for Elliott to undergo an examination with Dr. Rick Garrels on May 27, 2021. (Def. Ex. K) Dr. Garrels diagnosed Elliott with "a temporary lumbosacral muscular strain which returned to baseline shortly after the incident" of May 1, 2018, "[b]ased on the mechanism of injury and clinical documentation of pre-existing right lumbar radiculopathy." (Def. Ex. K, p. 52) On causation, Dr. Garrels opined that "[t]he alleged incident of bending over to pick up a small lightweight piece of plastic banding would not have caused or substantially aggravated Mr. Elliott's pre-existing

lumbar spondylosis or arthritis, L3-L4 disk herniation, or lower extremity radiculopathy.” (Def. Ex. K, p. 53) He further opined, using the Fifth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (Guides), that Elliott did not sustain a permanent impairment due to the May 1, 2018 injury. (Def. Ex. K, p. 53)

Both Dr. Hussain and Dr. Garrels opined Elliott sustained a temporary muscle strain due to his May 1, 2018 work injury at Arconic. Both doctors also concluded the work injury did not cause or aggravate Elliott’s pre-existing lumbar spondylosis or arthritis, L3-L4 disk herniation, or lower extremity radiculopathy. There is no medical opinion to the contrary. The opinions of Drs. Hussain and Garrels are therefore adopted.

CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers’ Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers’ Compensation Act, as amended in 2017, applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

In the current case, the parties stipulated Elliott sustained a work injury on May 1, 2018. However, they disagree with respect to the nature of the injury and, by extension, whether it caused Elliott a temporary or permanent disability. Elliott contends he sustained an injury that necessitated surgery on his spine and resulted in temporary and permanent disability. The defendants assert Elliott sustained a temporary strain to his back that did not cause disability.

To establish causation, the claimant must prove by a preponderance of the evidence that the “injury has a direct causal connection with the employment.” IBP, Inc. v. Harpole, 621 N.W.2d 410, (Iowa 2001) (quoting Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)). “Medical causation ‘is essentially within the domain of expert testimony.’” Cedar Rapids Cmty. Sch. Dist. V. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Dunlavey, 526 N.W.2d at 853). The weight given an expert’s opinion may be affected by the accuracy of the facts relied upon by the expert, the completeness of the premise with which the expert is given, and other surrounding circumstances. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010); Dunlavey, 526 N.W.2d at 853.

In the current case, Drs. Hussain and Garrels opined Elliott sustained a temporary lumbosacral muscle strain on May 1, 2018, that resolved without surgery. Both concluded Elliott did not sustain a work injury on that date that caused or substantially aggravated his pre-existing lumbar spondylosis or arthritis, L3-L4 disk herniation, or lower extremity radiculopathy. No other doctor offered an opinion on the nature of Elliott’s May 1, 2018, work injury at Arconic. Therefore, the evidence shows it is more likely than not Elliott sustained a temporary lumbosacral muscle strain on May 1, 2018, that arose out of and in the course of his employment and this work injury did

not cause or aggravate his pre-existing lumbar spondylosis or arthritis, L3-L4 disk herniation, or lower extremity radiculopathy.

“A claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability.” Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002). “Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed.” Id. The same standards apply to expert opinions in the disability context as medical causation context. Id.

Here, Elliott seeks temporary disability or healing period benefits and permanent partial disability benefits for the May 1, 2018 work injury. But the weight of the evidence shows Elliott missed work from May 1, 2018, through September 3, 2018, because of symptoms unrelated to his temporary lumbosacral muscle strain. Arconic placed him on leave because of symptoms relating to his pre-existing conditions, which ultimately necessitated surgery by Dr. Berry and time off for recovery. Moreover, no doctor opined Elliott sustained a permanent disability relating to the lumbosacral muscle strain he sustained on May 1, 2018. Elliott has consequently failed to meet his burden of proof on entitlement to temporary disability or healing period benefits and permanent partial disability benefits. He is not entitled to benefits under the Iowa Workers’ Compensation Act for his May 1, 2018 work injury.


Iowa Code section 85.27 requires an employer must provide care for an employee’s work injury if it is compensable under the Iowa Workers’ Compensation Act. Elliott has proven only that he sustained a temporary lumbosacral strain on May 1, 2018. He has failed to prove by a preponderance of the evidence that the medical expenses listed in Claimant’s Exhibit 1 are related to that temporary work injury and not his pre-existing lumbar spondylosis or arthritis, L3-L4 disc herniation, or lower extremity radiculopathy. For these reasons, Elliott is not entitled to reimbursement of medical expenses under section 85.27.

ORDER

Based on the above findings of fact and conclusions of law, it is ordered:

- 1) Elliott shall take nothing more from this case.
- 2) The parties shall be responsible for paying their own hearing costs.

Signed and filed this 23rd day of March, 2022.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mark Tarnow (via WCES)

Troy Howell (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.