BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| BERNARD PENELTON,<br><br>Claimant,<br><br>vs.<br><br>HORMEL FOODS CORPORATION,<br><br>Employer,<br>Self-Insured,<br>Defendant. | : | File No. 5067974<br><br>ARBITRATION DECISION<br><br>Head Note No.: 1402.30 |

## STATEMENT OF THE CASE

Claimant, Bernard Penelton, filed a petition for arbitration seeking worker's compensation benefits from Hormel Foods, self-insured, employer-defendant. This matter was heard on November 18, 2020.

The record in this case consists of Joint Exhibits 1-2, Claimant's Exhibit 1, Defendants' Exhibits A-H, and the testimony of claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

## ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether the injury is a cause of temporary disability.

3. Whether the injury is a cause of permanent disability; and if so,

4. The extent of claimant's entitlement to permanent partial disability benefits.

5. The commencement date of benefits.

## FINDINGS OF FACT

Claimant was 29 years old at the time of hearing. Claimant testified he has associate's degrees in electronics and industrial maintenance. (TR pp. 18-19)

Claimant has worked as a route driver for a vending machine company. He worked for Vermeer. Claimant worked for a fiberglass manufacturer. He has worked in a foundry. Claimant worked as a machine operator for a company that made auto parts. (Ex. E, Ex. F, deposition pp. 39-44)

Claimant began with Hormel in April, 2018. Claimant testified that he began at Hormel as a production worker. He said he was transferred into a maintenance position. (Ex. F, deposition pp. 12-13)

Claimant testified that on March 11, 2019, he was doing a lot of bending and lifting at work. He said he was holding conveyors and motors. Claimant said that at the end of his shift he felt fatigued. (TR pp. 10-11)

Claimant said that about 3:00 a.m. the next morning he woke up with excruciating pain in his testicles. Claimant said his left testicle was very swollen and he was unable to urinate. (TR pp. 11-12)

On March 12, 2019, claimant was evaluated at Mahaska Health Partnership Emergency Department with complaints of 1-2 months of a lump in his left lower abdomen. Claimant indicated pain had increased over the past two days with pain in the testicle. Claimant was assessed as having epididymal orchitis and prescribed Levaquin. (JE 1, pp. 2-5)

Claimant followed up with Eric Miller, D.O., in the Mahaska Health Partnership Clinic on March 14, 2019. Claimant was diagnosed with a bladder hernia and referred to a surgeon. (JE 1, pp. 11-14)

On March 19, 2019, claimant was terminated from Hormel for excessive absenteeism. (Ex. B, p. 14)

On March 20, 2019, claimant was seen by Timothy Breon, M.D., for a possible left inguinal hernia. Claimant indicated he had been doing strenuous activity at work. Claimant was assessed as having bilateral inguinal hernias and surgery was recommended. (JE 1, pp. 15-17)

On April 9, 2019, claimant completed a first report of injury indicating he might have tweaked his groin while assembling shelving in the shop on March 11, 2019. (Ex. H, p. 58)

On April 16, 2019, claimant underwent bilateral inguinal hernia repairs. Surgery was performed by Dr. Breon. (Ex. 1, p. 3)

Claimant returned to Dr. Breon on April 29, 2019, with complaints of some numbness in the right thigh. Dr. Breon found no evidence of a recurrent hernia and prescribed anti-inflammatories. (Ex. 1, pp. 3-4)

On May 20, 2019, claimant saw Dr. Breon. Claimant's symptoms had resolved. Claimant was returned to work with no restrictions. (JE 1, pp.18-21)

Claimant testified that between August 2019 and October 2019 he was in jail. (TR 26)

On October 24, 2019, claimant was seen in the emergency department with complaints of severe abdominal pain. Claimant tested positive for methamphetamine, benzodiazepine and amphetamine use. Claimant was given medications for his GI tract. Claimant was assessed as having a peptic ulcer. (JE 1, pp. 22-30)

In an April 6, 2020, report, Robin Sassman, M.D., gave her opinions of claimant's condition following a records review. Dr. Sassman diagnosed claimant with bilateral inguinal hernias, status post bilateral inguinal hernia surgery. (Ex. 1, p. 4) Dr. Sassman opined that based upon her review of the records and a statement from claimant, claimant's work on March 11, 2019, was a causal factor in the development of claimant's hernias. (Ex. 1, p. 4) Claimant's statement, referred to by Dr. Sassman in the report, is not a part of the record in this case.

Dr. Sassman found the claimant was at maximum medical improvement (MMI) on April 16, 2020. Based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, she opined claimant had a 4 percent permanent impairment to the body as a whole due to the March 11, 2019, injury. She recommended claimant limit his bending, twisting, crawling, kneeling and squatting. (Ex. 1, pp. 5-6)

In an October 16, 2020, report, Charles Wenzel, D.O., gave his opinion of claimant's condition following a records review. Dr. Wenzel assessed the claimant as having non-work-related bilateral inguinal hernias. (Ex. H, p. 59)

Dr. Wenzel did not believe claimant's hernias were caused by work because claimant's medical treatment on March 12, 2019, and March 14, 2019, make no mention of a work-related mechanism. In his emergency room visit of March 12, 2019, claimant indicated pain began two days prior. In the March 20, 2019, medical report, claimant indicated he had pain 36-48 hours before. Dr. Wenzel noted that this indicated claimant's inguinal pain began on March 10, 2019, on a day when claimant did not work. (Ex. H, p. 60)

Based on inconsistency in the record, Dr. Wenzel did not believe claimant's hernias were work related. (Ex. H, p. 60)

Claimant testified he still has throbbing "down there." He said he has a constant tingling sensation in the right leg. (TR p. 15)

Claimant testified he was in jail from November 2019 through November 2020. (TR pp. 23-24)

## CONCLUSION OF LAW

The first issue to be determined is whether claimant sustained an injury on March 11, 2019, that arose out of and in the course of employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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).

Claimant testified that on March 11, 2019, he did a lot of lifting at work. He said that at approximately 3:00 a.m. the next morning he woke up with excruciating pain in his testicle.

Claimant went to the emergency department on March 12, 2019, the day after his alleged injury. Claimant had complaints of a 1-2 month lump in the left abdomen. There is no reference to a work injury or work duties in this record. (JE 1, pp. 2-5)

On March 14, 2019, claimant saw Dr. Miller. There is no reference in this visit to a work injury or work duties as a causal link to the injury. (JE 1, pp. 11-14)

On March 20, 2019, claimant saw Dr. Breon. At that visit claimant indicated that he had pain and testicular swelling 36-48 hours before he went to the emergency department on March 12, 2019. This record suggests that claimant actually had pain and swelling in his testicles on March 10, 2019, not March 11, 2019. (JE 1, pp. 15-17)

Two experts have opined regarding the causal link between the claimant's job at Hormel and his hernias. Dr. Sassman performed a records review. Dr. Sassman opined that the work the claimant did on March 11, 2019, at Hormel was a direct and causal factor in the bilateral hernias. (Ex. 1, p. 4) Dr. Sassman's causation opinion is problematic. As noted, claimant's first two medical visits for his hernias make no reference to work or work duties. Claimant's visit with Dr. Breon indicates that claimant's pain actually began on March 10, 2019, not March 11, 2019. Dr. Sassman offers no rationale or explanation for the discrepancies in her causation opinion when compared with the three above-described treatment records. Given this inconsistency, it is found that Dr. Sassman's opinion regarding causation is found not convincing.

Dr. Wenzel opined that claimant's bilateral hernias were not work related. This was based on the fact that the first two treatment records make no mention to a work injury or work duties. This opinion is also based upon Dr. Breon's March 20, 2019, record indicating claimant began experiencing pain on March 10, 2019, not March 11, 2019. Claimant was not at work on March 10, 2019. As Dr. Wenzel's causation opinion is corroborated by the treatment records, it is found his opinion regarding causation is more convincing than that of Dr. Sassman.

The first two treatment records for claimant's condition made no mention of a work injury or work duties. The March 20, 2019, treatment records suggest that claimant began experiencing pain on March 10, 2019, not March 11, 2019. Dr. Sassman's opinion regarding causation is found not convincing. Dr. Wenzel's opinion regarding causation is found convincing. Given this record, claimant has failed to carry his burden of proof he sustained an injury that arose out of and in the course of employment on March 11, 2019.

As claimant failed to carry his burden of proof he sustained an injury that arose out of and in the course of employment on March 11, 2019, all other issues are moot.

ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 17th day of March, 2021.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Abigail Wenninghoff (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.