

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TODD HARTMAN,

Claimant,

vs.

THE WITTERN GROUP d/b/a FAWN
ENGINEERING CORPORATION,

Employer,

and

GREAT AMERICAN ALLIANCE
INS. CO.,

Insurance Carrier,
Defendants.

File No. 5068482

ARBITRATION DECISION

Head Note Nos.: 1108.50, 1402.20
1402.30, 2907

STATEMENT OF THE CASE

Todd R. Hartman, claimant, filed a petition in arbitration seeking workers' compensation benefits from Wittern International Group, employer and Strategic Comp. Inc., a Division of Great American Alliance Insurance Company, insurance carrier as defendants. Hearing was held on September 16, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely.

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.

Todd Hartman was the only witnesses to testify live at trial. The evidentiary record also includes Joint Exhibits JE1-JE3, Claimant's Exhibits 1-10, and Defendants' Exhibits A-I. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on October 30, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury which arose out of and in the course of his employment on October 11, 2018.
2. Whether claimant is entitled to healing period benefits from November 15, 2018 through February 11, 2019.
3. Whether claimant is entitled to permanent partial disability benefits. If so, to what extent.
4. Whether claimant's claim is barred by operation of section 85.23, Code of Iowa for lack of timely notice.
5. Whether claimant is entitled to payment of past medical expenses.
6. Whether claimant is entitled to reimbursement of an independent medical evaluation (IME).
7. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Todd Hartman, was 51 years old at the time of the hearing. Mr. Hartman alleges an injury date of October 1, 2018 and that he injured his right shoulder as the result of his work at The Wittern Group (hereinafter "Wittern"). Defendants deny that claimant's right shoulder condition arose out of and in the course of employment and also raise notice as an affirmative defense.

Mr. Hartman began working for Wittern in 2017. He had problems with his right shoulder prior to his job at Wittern. Mr. Hartman explained that he had problems that dated back to 2016. The medical records reflect that on November 1, 2016 he sought treatment at Broadlawns Medical Center. He reported right shoulder pain for the past month, that became much worse this morning. Mr. Hartman reported that it hurt to try and lift his right arm. X-rays were taken which showed moderate hypertrophic changes about the right shoulder, calcific tendinitis of the rotator cuff, and mild degenerative changes in the acromioclavicular joint. The impression was right shoulder pain,

unspecified chronicity and calcific tendinitis of right shoulder. He was given prescriptions for ibuprofen and baclofen. (JE1, pp. 1-4)

On November 14, 2016, Mr. Hartman saw Timothy Rankin, M.D., an orthopedic surgeon at Broadlawns. Mr. Hartman reported right shoulder pain and limited range of motion. He has difficulty raising arm above his head. Sometimes his shoulder wakes him up at night. The assessment was calcific tendinitis. He was given a subacromial corticosteroid injection. If symptoms persisted, he was to return to the clinic and discuss whether surgical intervention would be appropriate. (JE1, pp. 6-8)

Mr. Hartman was hired by Wittern in October of 2017. He was required to undergo a pre-employment physical with Richard McCaughey, D.O. on September 25, 2017. Dr. McCaughey found that Mr. Hartman was medically qualified to perform the essential functions of the job at Wittern. He did note that Mr. Hartman had "some afflictions." (JE2, p. 1) Mr. Hartman identified those afflictions as issues with his hip joints and his right shoulder. (Testimony)

Mr. Hartman began working for Wittern in assembly. He assembled vending machine shelves. He did assembly work for approximately two weeks until he began working in the press room as a press operator. As a press operator he took parts, put them on the brakes, and bent them into pieces of metal to make a machine. As a press operator he worked on pieces that varied in size. He lifted 10 to 20 pounds on an occasional basis. He was able to work extra hours on the weekends cleaning tanks in the paint room with a power washer. Mr. Hartman testified that he cannot pinpoint a specific time when he began having recurring problems with his right shoulder, it just developed over time. During Mr. Hartman's testimony it was difficult to ascertain what job duties or activities Mr. Hartman alleges caused his shoulder problems. (Testimony)

On August 21, 2018, Mr. Hartman went to Broadlawns Medical Center. He reported chronic right shoulder pain for years that had worsened the last few weeks. He does a lot of overhead lifting at work and that seems to aggravate the pain. He had a steroid injection a few months ago and that seemed to help for a few months. X-rays showed no significant change since November 1, 2016 other than a slight increase in size of the small osteophyte arising off the distal aspect of the right clavicle. The assessment was calcific tendinitis of right shoulder and chronic right shoulder pain. He was referred to physical therapy. (JE1, pp. 9-14)

On August 29, 2018, Mr. Hartman began physical therapy at Broadlawns. He reported that two years ago he had right shoulder pain and was told by a doctor that it was tendinitis. He had an injection which helped for approximately six months. Over time his shoulder is slowly getting worse and over the last two months he has had great difficulty lifting it up over his head. Lifting now causes a lot of pain with all movements. (JE1, pp. 15-17)

Rebecca Bollin, D.O. saw Mr. Hartman on October 11, 2018. He reported right shoulder pain with intermittent symptoms. Sometimes he is fine, but other times his activity is severely limited. Dr. Bollin ordered an MRI. (JE1, pp. 18-21)

Mr. Hartman underwent a right shoulder MRI on November 1, 2018. Evidently, Mr. Hartman coughed a few times during the MRI and as a result the imaging is not the best. The impression on the MRI report states that there was calcific tendinitis and a possible peripheral supraspinatus tear, as well as presumed degenerative subcortical cysts. (JE1, pp. 24-25)

On November 15, 2018, Mr. Hartman returned to see Dr. Bollin. She assessed him with acute pain of the right shoulder and referred him to orthopedics. (JE1, pp. 26-27-29)

Mr. Hartman was seen by Timothy Rankin, M.D., in Ortho at Broadlawns on November 26, 2018. Mr. Hartman chose to see Dr. Rankin because he had seen him for his shoulder problem in the past. Dr. Rankin noted that Mr. Hartman was previously diagnosed with calcific tendinitis of the right shoulder. Mr. Hartman had received an injection that worked for approximately ten months. However, now he has a recurrence of pain that has gotten worse over the last few weeks. Mr. Hartman reported that he changed jobs and that his job has exacerbated his underlying condition. Dr. Rankin noted that it was difficult or impossible to tell whether that was truly the case. Dr. Rankin explained that calcific tendinitis "can certainly become recurrent in and of its own." (JE1, p. 32) Dr. Rankin noted that the x-ray showed calcific tendinitis and that there was possibly a little bit more accumulation of the calcific material, otherwise the x-ray was unchanged. He did not see any obvious tears on the MRI. Dr. Rankin gave him an injection of Kenalog in the subacromial space. Dr. Rankin was hopeful the injection would provide Mr. Harman with relief. If there was a recurrence he suggested a bone scan. The assessment was calcific tendinitis of right shoulder. (JE1, pp. 30-34)

Mr. Hartman returned on December 3, 2018. Mr. Hartman reported that about three days after the injection he received good relief, but he is starting to have pain localized lateral within the rotator cuff. Dr. Rankin's assessment was calcific tendinitis. Dr. Rankin ordered a bone scan to see if there was an active lesion. Dr. Rankin felt that if they tried to resect the calcium deposit on an active lesion it would likely just come back. Additionally, a lot of his symptoms were from muscles surrounding the scapula and were not going to respond to any kind of surgical intervention to the rotator cuff. Mr. Hartman felt that surgery would be his saving grace. Dr. Rankin explained to him multiple times that this was not necessarily this case. (JE1, pp. 35-38) The bone scan took place on December 10, 2018. (JE1, p. 39)

On December 13, 2018, Mr. Hartman saw Kary R. Schulte, M.D. at DMOS for a second opinion. Mr. Hartman reported approximately two years ago he had an onset of right shoulder and upper extremity complaints. He was previously diagnosed with impingement syndrome and calcific tendinitis. He received relief with a right shoulder

injection. In the spring of 2018, he again noted right shoulder symptoms. He reported no new injury. No decreased range of motion and loss of strength. He had an injection two years ago with ten months' relief and another injection in November 2018 with some relief of his symptoms. Dr. Schulte reviewed the MRI from Broadlawns. Dr. Schulte assessed Mr. Hartman with right shoulder impingement syndrome. He recommended physical therapy. Mr. Hartman stated that he would contact DMOS for a work release when he felt ready to resume his normal work activities. (JE2, pp. 1-4)

Mr. Hartman returned to Dr. Rankin on December 17, 2018. Dr. Rankin noted Mr. Hartman had calcific tendinitis. Dr. Rankin noted that these can usually be resected if the bone scan is quiet. Unfortunately, the bone scan showed increased uptake at the calcium deposit in the rotator cuff. Dr. Rankin explained to Mr. Hartman that he could attempt aspiration and even excision of the calcific area. The recurrence of the disease process is increased if the area is still active on a bone scan such as his. Dr. Rankin felt he could provide him with some temporary relief, but the disease may come back just as bad in spite of surgery. Mr. Hartman wanted to think about it. In the meantime, he could continue getting injections. (JE1, p. 40-43)

Mr. Hartman began physical therapy at DMOS on December 18, 20218. The plan was for him to attend therapy two times a week for six weeks. (JE3, p. 8)

Mr. Hartman's employment with Wittern ended on January 16, 2019. (CE5, p. 1)

On February 11, 2019, Mr. Hartman returned to Dr. Schulte. He reported some improvement in his right shoulder symptoms during the two weeks he attended physical therapy. However, unfortunately he had to cease physical therapy because his insurance was canceled while he was between jobs. Dr. Schulte's assessed right shoulder impingement syndrome and mild adhesive capsulitis. Dr. Schulte recommended a home exercise program. Mr. Hartman told Dr. Schulte he would contact him when he had insurance. Mr. Hartman was advised to ice the shoulder, use ibuprofen or Tylenol as needed. He was to progress with full activity as tolerated. Mr. Hartman was to return to Dr. Schulte on an as-needed basis. (JE3, p. 14)

The first issue that must be addressed in this case is whether Mr. Hartman sustained an injury which arose out of and in the course of his employment with Wittern. Several doctors have rendered their opinions regarding causation in this case.

On February 7, 2020, Dr. Schulte authored an opinion letter to the defendants. He stated that his diagnoses were right shoulder impingement syndrome and mild adhesive capsulitis. He opined within a reasonable degree of medical certainty, that Mr. Hartman's right shoulder condition and and/or need for treatment from November 18 through February 2019 is not causally connected to the work activities at the Wittern Group. (Def. Ex. A, p. 1)

At the request of his attorney, Mr. Hartman saw Charles Wenzel, D.O. for an IME in May of 2020. In his report Dr. Wenzel noted that Mr. Hartman was a poor historian. He was not able to describe how his chronic right shoulder pain changed in 2018. Mr. Hartman was also unable to state whether or not the range of motion in his shoulder had been affected. Mr. Hartman admitted that he had decreased range of motion in his right shoulder prior to his employment with Wittern Group that has worsened over time, but he was unable to provide any specifics. Mr. Hartman reported to Dr. Wenzel that he had occasional right shoulder pain with weather changes, but denied any current right shoulder pain at the time of the examination. Dr. Wenzel's diagnoses were right shoulder area aggravated calcific tendinosis versus right impingement syndrome and mild adhesive capsulitis versus right supraspinatus tear. On the issue of causation Dr. Wenzel felt, based on Mr. Hartman's increased pain and range of motion/functional deficits, he sustained an aggravation of his chronic right shoulder area pain that began in July/August 2018 due to increased overhead lifting at work. Dr. Wenzel recommended a repeat MRI and a third orthopedic opinion by Kyle Galles, M.D. (Cl. Ex. 1, p. 9)

Dr. Schulte had an opportunity to review Dr. Wenzel's IME report. On May 28, 2020, Dr. Schulte authored a missive to defendants. Dr. Schulte continued to believe that Mr. Hartman was suffering from right shoulder impingement syndrome and mild adhesive capsulitis. He reiterated his opinion that Mr. Hartman's right shoulder condition and/or need for treatment with him was not causally related to his work activities at the Wittern Group. (Def. Ex. A, p. 2)

Dr. Rankin treated Mr. Hartman both before and after Mr. Hartman began working at Wittern. In his November 26, 2018 clinical note, Dr. Rankin stated that the x-ray showed calcific tendinitis and that there was possibly a little bit more accumulation of the calcific material, otherwise the 2018 x-ray was unchanged from the 2016 x-ray. Dr. Rankin opined it was difficult or impossible to tell whether Mr. Hartman's job exacerbated his shoulder condition. Dr. Rankin explained that calcific tendinitis "can certainly become recurrent in and of its own". (JE1, p. 32)

I find Dr. Rankin's opinions to be persuasive because he treated Mr. Hartman before and after he began working at Wittern. Furthermore, Mr. Hartman selected Dr. Rankin and therefore, it can hardly be said that Dr. Rankin is somehow biased against Mr. Hartman. I also find the opinions of Dr. Schulte to be persuasive. Like Dr. Rankin, Mr. Hartman selected Dr. Schulte. Dr. Schulte was not selected by the defendants. Neither Dr. Rankin, nor Dr. Schulte opine that Mr. Hartman's shoulder condition is related to his work at Wittern. Thus, I find Mr. Hartman failed to demonstrate by a preponderance of the evidence that his right shoulder condition was caused or exacerbated by his work at Wittern.

Because claimant has failed to demonstrate that he sustained an injury which arose out of and in the course of his employment with Wittern, all other issues are rendered moot.

CONCLUSIONS OF LAW

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 Rule of Appellate Procedure 6.14(6).

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.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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).

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).

Based on the above findings of fact, I conclude that Mr. Hartman failed to demonstrate by a preponderance of the evidence that he sustained an injury which arose out of and in the course of his employment with Wittern. There is simply a lack of objective evidence to support his claim. Additionally, the more persuasive opinions of the experts in this case do not support his claim that his work caused or aggravated his right shoulder condition.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the Workers' Compensation Commissioner or at the discretion of the deputy hearing the case. 876 IAC 4.33. I conclude that claimant was not successful in his case. Because he was not successful, I exercise my discretion and do not assess costs against the defendants. Each party shall bear their own costs.

Because claimant failed to demonstrate by a preponderance of the evidence that he sustained an injury which arose out of and in the course of his employment, all other issues are rendered moot.


ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

Defendant 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 6th day of January, 2021.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jordan E. Christensen (via WCES)

Lindsey E. Mills (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.