

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD WILLIAM BRINCK,

Claimant,

vs.

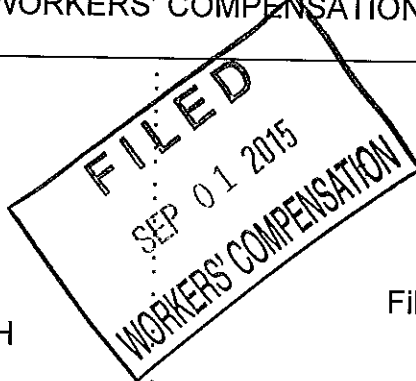
SIOUXLAND MENTAL HEALTH
CENTER,

Employer,

and

THE CINCINNATI INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5038759

REVIEW-REOPENING
DECISION

Head Note No.: 3000

STATEMENT OF THE CASE

Claimant, Ronald William Brinck has filed a petition in review-reopening and seeks additional permanent disability benefits from Siouxland Mental Health Center, employer, and The Cincinnati Insurance Company, insurance carrier.

This matter was heard by Deputy Workers' Compensation Commissioner Ron Pohlman on March 17, 2015 at Sioux City, Iowa. The record in the case consists of claimant's exhibits I-III; defendants' exhibits A through T as well as the testimony of claimant, Carol Roge, M.D., Mitzi Wasserstein, Kevin Vest, Karen Brinck, Pamela Vickers, Danielle Fulton and Tammy Jaques. This matter was fully submitted May 4, 2015.

ISSUES

1. The issue in this case is whether the claimant is entitled to additional benefits for permanent disability for his work injury after his agreement for settlement approved November 27, 2012;
2. Whether this claim is barred by res judicata.

FINDINGS OF FACT

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

Claimant filed an arbitration petition in November 2011 with an injury date of April 14, 2009 indicating that he had fallen and hit his head on the right side of a door. As a result of this injury the claimant had staring spells and seizures as well as some depression. The claimant's treating physician prescribed Lamictal, which put his staring spells under control, but he continued to have cognitive difficulty. The parties reached an agreement to settle this matter on an agreement for settlement basis, which was approved on November 27, 2012 by the commissioner. The agreement for settlement provided that the claimant had sustained an injury arising out of and in the course of his employment on April 14, 2009 and that he was entitled to benefits for permanent partial disability for a 50 percent industrial disability or 250 weeks pursuant to Iowa Code section 85.34(2)(u). Defendants paid benefits due pursuant to the agreement for settlement. See Exhibit Q, page 7.

The claimant worked for the employer from February 15, 2010 to November 4, 2013 full time and on full duty. On November 4, 2013 the claimant voluntarily admitted himself to Avera McKennan Hospital in Sioux Falls, South Dakota for protection from harm to himself and others. See Exhibit I, page 11. He also indicated that he had had delusions of reference and persecution and thought insertion for two years and that he had hid them from others, as he worried that others would be under suspicion from being associated with him. See Exhibit I, page 10. Finally, he indicated that for the past two or more years he had been struggling with extreme paranoia. See Exhibit 1, page 3. Further, the claimant reported that he had a father with a history of depression and hoarding, a paternal uncle with a history of schizophrenia, and a paternal great-grandmother with a history of schizophrenia and a mother that had attempted suicide one year prior or approximately November 4, 2012. See Exhibit I, page 5. Further, the claimant indicated that he had a sister with a history of depression and a suicide attempt, a brother with a history of post-traumatic stress disorder, an oldest daughter with severe depression and ADHD, a middle child with a history of depression and ADHD and a youngest daughter with questionable autism spectrum disorder. See Exhibit I, page 5.

The claimant was discharged from Avera McKennan Hospital on November 19, 2013, and the discharge summary noted that the claimant had had delusions of reference and persecution as well as thought insertion for almost two years, which he had hidden from others because he was worried they would be under suspicion because they were associated with him. See Exhibit 1, page 161.

On November 26, 2013 the claimant returned to Sanjay Singh, M.D. for followup of his seizures. Dr. Singh was the claimant's treating physician for this condition. The claimant reported he was seizure free and continuing to take Lamictal. See Exhibit F,

page 37. The claimant advised the nurse case manager at this appointment that he had had recent psychiatric issues and had been hospitalized two weeks but had not called her because he did not believe the condition was related to his work injury.

No changes were made in the claimant's medication for seizure management, and no work restrictions were given by Dr. Singh at the November 26, 2013 appointment. See Exhibit M, page 47. The claimant then filed this petition for review-reopening.

The claimant was sent by defendants to Bruce Gutnik, M.D., a psychiatrist for evaluation on October 7, 2014. Dr. Gutnik opined that he could not relate the claimant's current symptomatology to the April 14, 2009 work injury because:

As noted above, Dr. Brinck had a number of sequelae to his reported fall of April 14, 2009. These include seizure disorder, cognitive impairment, and memory problems. With appropriate treatment, Dr. Brinck returned to work. His seizures had stopped and he was able to work around his cognitive impairment. In early 2013, Dr. Brinck began experiencing psychotic symptoms in the form of delusions, and hallucinations. In reviewing the literature, it appears that psychotic disorders due to concussion can occur as far out as 48 years following concussion. Interestingly, Dr. Brinck denied having any prior concussions when evaluated by me. However, past records indicate a number of head injuries during childhood, at least three of which had loss of consciousness. Further, it should be noted that his most recent described concussion on April 14, 2009 was evaluated in an emergency room. He had no trauma to his head and there were no objective findings such as MRI's, CT scans or EEG's since then to confirm an injury. Assuming however that Dr. Brinck did have a concussion on April 14, 2009, it would be impossible to determine if the concussions he experienced as a child verses the concussion on April 14, 2009 is the cause of his psychosis.

I could not rule out the possibility that Dr. Brinck suffers from Psychotic Disorder due to Sleep Apnea. The literature indicates that individuals with sleep apnea can develop a psychotic disorder as a result of that sleep apnea.

I can not rule out the possibility that Dr. Brinck suffers from Psychotic Disorder due to Hypothyroidism. Myxedema Madness is a well known condition in which individuals with hypothyroidism can develop psychotic symptoms including cognitive dysfunction, hallucinations, delusions, and depression. Myxedema Madness can cause irreversible symptoms of dementia. Although Dr. Brinck is treating his hypothyroidism, we have no way of knowing how long he went with hypothyroidism prior to treatment. Also, psychiatric symptoms as a result of hypothyroidism can be present in the absence of hypothyroidism per lab tests. Thyroid hormone

resistance syndromes are well known and can result in hypothyroidism despite normal lab values in some cases.

I can not rule out the possibility that Dr. Brinck suffers from Paranoid Schizophrenia. He has a family history of schizophrenia and meets the basic criteria for a diagnosis of schizophrenia having both hallucinations and delusions. Admittedly, it would be highly unusual for someone of his age to develop schizophrenia, but this can not be excluded from the differential diagnosis.

As noted above, Dr. Brinck has three potential known causes of psychosis. I should note that psychotic disorders can begin for no reason. Once [sic] does not have to have a known pre-existing condition to develop psychotic symptoms.

I should further note that Dr. Brinck has significant secondary gain issues surrounding his psychotic symptoms. He earned about \$200,000.00 per year prior to his injury. He reported to me that he is currently receiving about \$180,000 per year in disability payments. Obviously this could result in a strong unconscious secondary gain to maintain or continue reporting psychotic symptoms.

Dr. Brinck's current psychiatrist believes that Dr. Brinck developed psychotic symptoms four years following his reported concussion as a result of that concussion. However, based on the above, with a reasonable degree of medical certainty, I can not relate Dr. Brinck's psychosis to his work injury. There are at least three other prior concussions, sleep apnea, and hypothyroidism, which all could cause his current symptoms. Further, although rare, it is possible that he has developed mild Paranoid Schizophrenia based on family genetics. Finally, people can develop psychotic symptoms with no known pre-existing cause.

With all of these potential causes for psychotic symptoms, I can not relate Dr. Brinck's current symptomatology to his April 14, 2009 injury.

(Exhibit K, pages 15, 16)

The claimant sought the expert evaluation of James Gallagher, M.D., a psychiatrist. Dr. Gallagher opines that the claimant's current psychosis was caused by the work injury of April 2009, but Dr. Gallagher did not explain why that injury was the proximate cause of the claimant's condition as opposed to the other reasons Dr. Gutnik had offered. Dr. Gallagher's report noted a family history of depression but makes no reference to schizophrenia, so it is not really known whether Dr. Gallagher was aware of the claimant's family history of schizophrenia or that his mother had had a vascular dementia with paranoid projections.

Arun Sharma, M.D. is the claimant's current medical treater for psychosis, and Dr. Sharma opines that the claimant's current psychosis was caused by the work injury of April 2009, but it is not known what information Dr. Sharma had upon which to make his opinion. Dr. Sharma's opinion did not include records provided for the claimant's treatment prior to the April 14, 2009 injury; James Case, M.D.'s records in Exhibit C; John Meyer, Psy.D's neuropsychological evaluation dated May 7, 2009, Exhibit C, pages 1, 2; Robert Chad Wisco, M.D.'s records; Dr. Roge's records, Exhibit A, Dr. Singh's records, Exhibit F; Mercy Psychological Services' record, Exhibit E, and most of the claimant's treatment records after April 14, 2009. Of the 163 pages of records from Avera McKennan, Dr. Sharma was only provided with three.

Anthony Vaca, M.D. treated the claimant at Avera McKennan Hospital and indicated that the claimant's problems were related to the work injury, and Dr. Vaca was not provided the same records that Dr. Sharma was not provided.

Dr. Gutnik's opinion is given greater weight because he had access to more of claimant's medical records in formulating his opinion. Danielle Fulton worked with the claimant on a daily basis and testified that the claimant had stated a few times that he intended on getting disability.

REASONING AND CONCLUSIONS OF LAW

The first issue in this case is whether the claimant is entitled to additional permanent disability following the agreement for settlement.

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Rather, claimant's condition must have worsened or deteriorated in a manner not contemplated at the time of the initial award or settlement before an award on review-reopening is appropriate. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957). A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978).

This is a review-reopening case. "In a proceeding to reopen an award for payments or agreement for settlements . . . , inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon." Iowa Code § 86.14(2). To prevail the claimant must prove by a preponderance of the evidence that his or her current condition is proximately caused by the original injury. Simonson v. Snap-On Tools Corp., 588 N.W.2d 430, 434 (Iowa 1999).

The amount of the claimant's loss is determined by the condition as it exists at the time without speculation about some future condition. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009). Once there has been an agreement, absent an appeal and remand, the commission has no authority to review an award based on the same or substantially same set of facts as previously considered. Gosek v. Garmen & Stiles Co., 158 N.W.2d 731, 732 (Iowa 1968).

Reins v. Anderson News, No. 14-0038 November 13, 2013 (IA Ct. Appeals)

The medical evidence indicates that the claimant had symptoms and problems of psychosis for at least two years prior to his hospitalization on November 4, 2013, and thus those conditions were known to him at the time that he entered into the agreement for settlement. Yet, he had hidden them from others. As such, the defendants are correct that this condition is res judicata. Moreover, the claimant has not proven that his psychosis was caused by the work injury. The opinions of Dr. Gutnik are those that are the most reliable in this record. As the defendants have pointed out, the claimant has a high secondary gain motive in this case. The records that were provided to Dr. Gutnik were more thorough and more complete on factual matters that are at the heart of determining the causation of this case.

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); Dunlavy 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).

In as much as causation is an issue best left in a case of this type for experts, and the undersigned has concluded that Dr. Gutnik, as the expert, is the opinion that is the most persuasive in this case, the undersigned concludes the claimant has failed to meet his burden of proving that his psychosis was connected to his work injury. The

claimant's psychosis condition has not been proven to be related to his work injury, predated the settlement in this case, and is res judicata. Therefore, the issue of whether the claimant is entitled to additional permanent disability benefits is resolved unfavorably to the claimant. The issue of whether the claimant is entitled to payment of medical expenses is also moot because the claimant has failed to prove that the psychosis condition claimed in his review-reopening is related to the work injury. In as much as no additional benefits have been awarded, credit is not necessary to be determined.

ORDER

It is ordered that claimant shall take nothing further in this file based on this review-reopening petition.

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

Signed and filed this 15th day of September, 2015.



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.