

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRADLEY ALLEN BOLYARD,

Claimant,

vs.

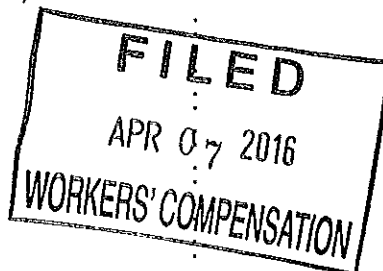
CHAD LINDSAY d/b/a
LINDSAY TRUCKING,

Employer,

and

UNINSURED,

Insurance Carrier,
Defendants.



File No. 5045283

ARBITRATION

DECISION

Head Note Nos.: 1402.30; 1802;
1803; 2501

STATEMENT OF THE CASE

Bradley Bolyard, claimant, filed a petition for arbitration against defendant, Chad Lindsay d/b/a Lindsay Trucking, as the employer. The employer filed a pre-answer motion to dismiss. After the motion to dismiss was denied, defense counsel sought to withdraw. After three attempts to withdraw, this agency allowed defense counsel to withdraw via order filed July 9, 2014.

The employer failed to comply with the provisions of the July 9, 2014 order. On August 15, 2014, another deputy commissioner entered an order imposing sanctions against the employer for its failure to comply with the July 9, 2014 order. In the August 15, 2014 order, the deputy commissioner cut off all evidence and activity for the defendant. No further appearances or filings have been made by defendant.

An in-person hearing occurred on March 22, 2016. Claimant appeared personally and through his attorney. Defendant failed to appear for the arbitration hearing. Consequently, defendant also failed to secure a court reporter for the hearing, as required by the hearing assignment order. Claimant waived any right to have a court reporter and the arbitration hearing was digitally recorded.

The evidentiary record includes claimant's exhibits 1 through 3. Claimant offered a motion for default and proposed findings, which he presented in affidavit form rather than offering live testimony. Claimant's motion and affidavit were accepted in lieu of

testimony and the evidentiary record closed at the conclusion of the March 22, 2016 hearing.

ISSUES

Claimant asserts the following claims, which are all considered disputed since the employer offered no stipulations:

1. Claimant sustained a right shoulder injury that arose out of and in the course of his employment with Lindsay Trucking on August 15, 2013.
2. Claimant is entitled to temporary total disability, or healing period, benefits from August 23, 2013 through April 1, 2014.
3. Claimant is entitled to permanent partial disability benefits as a result of an industrial disability sustained from the August 15, 2013 injury.
4. Claimant is entitled to an order that defendants indemnify and hold claimant harmless for any past medical expenses paid by Medicaid.
5. Claimant is entitled to reimbursement for the 150 miles he traveled to obtain medical care as a result of his August 15, 2013 work injury.
6. Claimant is entitled to payment of interest pursuant to Iowa Code section 85.30.

FINDINGS OF FACTS

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

Bradley Bolyard is a 59 year old gentleman. He has an 11th grade education, but did not graduate from high school. Mr. Bolyard attended bus training school and truck driving school. His primary employment throughout his work life has been as a truck driver. (Claimant's Motion for Default, page 3)

Mr. Bolyard was employed by Chad Lindsay d/b/a Lindsay Trucking on August 15, 2013, when he sustained a right shoulder injury. (Claimant's Motion for Default, p. 1) He sought orthopaedic medical care through Christopher Rierson, D.O. Dr. Rierson evaluated claimant on September 10, 2013 and diagnosed claimant with a likely rotator cuff tear or re-tear since claimant had a prior right shoulder rotator cuff tear repaired in 2011. (Exhibit 1, pp. 1-2)

Dr. Rierson recommended an MRI of the right shoulder, which was performed on September 12, 2013. Dr. Rierson re-evaluated claimant on September 17, 2013 and diagnosed claimant with a right shoulder rotator cuff tear and right acromioclavicular

joint arthritis. Dr. Rierson opined that claimant was unable to work driving a truck and recommended physical therapy and surgical intervention. (Ex. 1, pp. 5-7)

Dr. Rierson took claimant to surgery on November 20, 2013 and performed a right shoulder arthroscopy with debridement of the rotator cuff and debridement of the labrum. He also performed a subacromial decompression and acromioplasty as well as excising the distal clavicle in claimant's right shoulder. (Ex. 1, pp. 8-10) Claimant continues to have right shoulder stiffness as of the last medical record in the evidentiary record dated November 24, 2015. (Ex. 1, p. 11) Claimant continues to suffer from a loss of range of motion and loss of strength in his right upper extremity.

Mr. Bolyard remained unable to work from August 23, 2013 through April 1, 2014 as a result of the August 15, 2013 work injury. He received no temporary disability, or healing period, benefits during his 32 weeks off work. Claimant was able to locate work as a truck driver subsequent to his release from care for the right shoulder.

No impairment rating appears within this evidentiary record nor is there clarification of any permanent restrictions. Nevertheless, the undisputed evidence demonstrates that claimant continues to experience stiffness, loss of range of motion and reduced strength as a result of his right shoulder work injury on August 15, 2013. Therefore, I find that claimant has proven he sustained a permanent disability as a result of the August 15, 2013 right shoulder injury.

Considering the available evidence concerning claimant's age, the situs and severity of his injury, as well as his educational background, employment history, ability to return to truck driving after this injury, as well as all other factors of industrial disability for which there is evidence in this record, I find that claimant asserts a claim for and has proven a 20 percent loss of future earning capacity as a result of the August 15, 2013 work injury for Chad Lindsay d/b/a Lindsay Trucking.

Claimant's average weekly wage during his employment with the employer was \$935.00. Claimant was single and entitled to one exemption.

Mr. Bolyard incurred medical charges for treatment of his August 15, 2013 right shoulder injury. Those charges were paid by Medicaid.

CONCLUSIONS OF LAW

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); 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).

Having found that claimant established by undisputed evidence that he sustained a right shoulder injury as a result of his work activities for the employer, I conclude that claimant has proven he sustained an injury that arose out of and in the course of his employment with Chad Lindsay d/b/a Lindsay Trucking on August 15, 2013.

Claimant asserts a claim for healing period benefits from August 23, 2013 through April 1, 2014. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

The un rebutted evidence in this record is that claimant was off work and on work restrictions from August 23, 2013 through April 1, 2014 as a result of his August 15, 2013 work injury. There is no evidence in this record to suggest or demonstrate that claimant was capable of substantially similar work during the claimed healing period. Therefore, claimant has established entitlement to an award of healing period benefits from August 23, 2013 through April 1, 2014.

Mr. Bolyard also seeks an award of permanent disability benefits. Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). Claimant has proven an injury to his right shoulder.

When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Commissioner Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Having considered the relevant industrial disability factors outlined by the Iowa Supreme Court, I found that claimant proved a 20 percent loss of future earning capacity. This entitles claimant to a 20 percent industrial disability award, or 100 weeks of permanent partial disability. Having determined that the healing period terminated April 1, 2014, I conclude claimant's entitlement to permanent partial disability benefits commenced on April 2, 2014.

Claimant proved that his average gross weekly earnings prior to the date of injury were \$935.00. Claimant was single and entitled to only one exemption. Utilizing the Iowa Workers' Compensation Manual (rate book), I conclude that claimant is entitled to worker's compensation benefits at the rate of \$555.61 per week. All healing period benefits and permanent partial disability benefits will be awarded at this rate.

Claimant is entitled to statutory interest on all unpaid or late-paid weekly benefits pursuant to Iowa Code section 85.30.

Claimant also seeks an award of past medical expenses paid by Medicaid. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant has not introduced specific medical expenses or sought specific reimbursement for out-of-pocket expenses. Instead, claimant proves that his medical expenses were paid through Medicaid. Medicaid would be entitled to a lien for any recovery of those medical expenses. Therefore, claimant asks only for an order that compels defendant to hold claimant harmless and indemnify claimant for any expenses paid by Medicaid. Claimant is entitled to such an order.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant healing period benefits from August 23, 2013 through April 1, 2014.

Defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing on April 2, 2014.

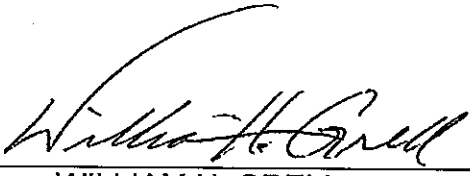
All weekly benefits shall be paid at the rate of five hundred fifty-five and 61/100 dollars (\$555.61).

Defendant shall pay interest on all accrued weekly benefits pursuant to Iowa Code section 85.30.

Defendant shall indemnify and hold claimant harmless against any claims for reimbursement or any liens for payment of past medical expenses related to treatment of claimant's right shoulder injury of August 15, 2013 paid by Medicaid.

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 7th day of April, 2016.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/kjw

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.