

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CORY SANDERS,

Claimant,

vs.

ALTER TRADING CORPORATION,

Employer,

and

SENTINEL INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

AUG 19 2015

WORKERS COMPENSATION

File No. 5046910

ARBITRATION DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant filed a petition for arbitration seeking workers' compensation benefits from Alter Trading Corporation and Sentinel Insurance Company.

The matter came on for hearing on April 9, 2015, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Davenport, Iowa. The record in the case consists of claimant's exhibits 1 through 5; defense exhibits A through S, as well as the sworn testimony of claimant, Cory Sanders and John Arthur Denkman, Jr. This matter was fully submitted on April 17, 2015. Tammy Woller was appointed custodian of the notes of the proceedings.

ISSUES

1. Whether the stipulated work injury caused any permanent partial disability.
2. If so, what is the nature and extent of the disability?

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury which arose out of and in the course of employment on May 2, 2012.

3. If any permanent partial benefits are owed, the parties stipulate that the disability is industrial and the commencement date is June 28, 2012.
4. Affirmative defenses have been waived.
5. The weekly rate of compensation is \$553.33 per week based upon gross wages of \$811.92 and being married with 4 exemptions.
6. Medical benefits are not in dispute. Prior to hearing, defendants agreed to reimburse claimant for the independent medical evaluation (IME) invoice for Dr. Hines in the amount of \$1,725.00.

FINDINGS OF FACT

The claimant, Cory Sanders, has worked for Alter Trading Corporation for the past nine years. He is a truck driver. He hauls scrap metal chained down by steel binders. On May 2, 2012, a steel binder came loose and struck him in the face with great force. He actually did not realize he had been hit at first. He was working at the Alcoa facility and was initially seen in Alcoa's medical department. (Defendant Exhibit C) Cory was treated at the emergency room at Trinity Medical Center. (Cl. Ex. 3, pp. 68-70) He was evaluated by Benjamin Van Raalte, M.D. Dr. Van Raalte documented the following.

The patient was struck by an object at the level of his mouth while at work working for Alter Corporation at the Alcoa site. He had no loss of consciousness. CT scan shows an anterior nasal spine fracture. Maxilla is nontender and is not movable. There is a degloving injury though of the whole interior intraoral sulcus extending up to the nose much like an approach to the interior of the nose or sinuses. There is a full-thickness lip vermilion laceration.

(Cl. Ex. 3, p. 70) Dr. Van Raalte repaired the claimant's lip laceration and intraoral laceration as best he could using sutures.

Cory followed up with Dr. Van Raalte. After the swelling had subsided, Cory was still having difficulty breathing. On May 25, 2012, Dr. Van Raalte performed a septoplasty to repair the "anterior nasal spine fracture." (Cl. Ex. 4, p. 82) Cory followed up in May and June and had the septal splints removed. He was released from treatment around June 28, 2012 and has not been back to see Dr. Van Raalte. (Cl. Ex. 4, p. 28) Dr. Van Raalte provided no impairment rating.

Cory testified that since the injury he has experienced a constellation of minor symptoms which affect his daily activities. He discussed problems sleeping, however, ultimately did not relate his sleeping issues to this injury. He describes some numbness in his lip. It is really best described as a loss of feeling in his upper teeth and gums. He has difficulty drinking cold beverages without a straw. He testified he now has nose

bleeds and a constant case of the "sniffles." (Claimant testimony) Cory also described a loss of his sense of smell and taste. He has a small scar over his lip. He also described occasional headaches or migraines. He is worried about his teeth falling out and he has an unusual sensitivity to toothpastes.

Cory has not seen any doctors for his symptoms since Dr. Van Raalte in June 2012, indicating that his ongoing symptoms are minor and insignificant.

Cory had not researched his medical records prior to hearing. Defense counsel peppered him with questions from his medical history prior to his injury, for which he was ill-prepared. It is apparent that Cory had a history of some nasal issues and headaches prior to his work injury, including descriptions of migraines, cephalgia, sinusitis and photophobia. (Def. Ex. B, pp. 22-28)

The only work Cory missed was the day of his surgery. He was released immediately. He was given no restrictions, no permanent impairment rating and no follow up after June 28, 2012. Cory passed a Department of Transportation physical on June 29, 2012 without any issues. (Def. Ex. F) By all accounts, Cory recovered from the injury quite well. He is earning more now than he was at the time of injury and his ongoing symptoms are not significantly inhibiting his employability.

John Arthur Denkman, Jr., is the facility manager at Alter Bettendorf Warehouse. He is Cory's supervisor. He testified that Cory's main job is to drive between the employer's facility and Alcoa, a three-mile stretch. Cory hauls essentially scrap back and forth. He testified he was unaware Cory had any kind of ongoing problems doing his job or any symptoms related to the injury. He was unaware of any symptoms at all.

Marc Hines, M.D., a neurologist, evaluated Cory on July 31, 2014. (Cl. Ex. 5) He reviewed a limited number of medical records and performed a thorough evaluation of Cory on that date. Dr. Hines documented a complete loss of smell from Cory's right nostril. (Cl. Ex. 5, p. 92) He diagnosed anosmia (loss of smell) and assigned a one percent whole body rating for that. (Cl. Ex. 5, p. 94) He documented Cory's other subjective complaints including headaches, loss of sensation in his gums, sinus fullness and bloody nose. (Cl. Ex. 5, pp. 91-92) Dr. Hines did not review Cory's personal medical records from his family physician which documented his history with migraines, cephalgia, sinusitis and photophobia. Dr. Hines concluded Cory has "allodynic sensation in the upper gum and upper lip, in addition to sensory loss on formal examination." (Cl. Ex. 5, p. 93) He also diagnosed daily migraines, nasal stuffiness and bloody nose. He related all of these conditions to the work injury and assigned a 21 percent whole body impairment rating.

Dr. Van Raalte prepared a report at the end of July 2014 as well, indicating no impairment, no restrictions and no ongoing symptoms related to the original injury.

I believe both witnesses testified truthfully and credibly.

CONCLUSIONS OF LAW

The issues in this case revolve around the causal connection and nature and extent of disability. The defendant has paid no permanency benefits and claims that Cory healed fully after his injury. They argue he is entitled to no disability benefits. The claimant argues Cory did not fully heal and that his disability should be evaluated industrially under section 85.34(2)(u).

The threshold issue therefore is whether the admitted injury of May 2, 2012, is a cause of any permanent disability.

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).

There are two expert opinions in this case. Dr. Van Raalte treated Cory and performed sinoplasty. He last saw Cory on June 28, 2012 and released him with the understanding that there were no ongoing problems. Dr. Hines, after receiving a history from Cory, opined Cory has a functional impairment rating of 21 percent of the body as a whole for a constellation of symptoms. Both opinions are flawed.

The opinion of Dr. Van Raalte is flawed because he never saw Cory again after June 28, 2012. In fairness to Dr. Van Raalte, this is because Cory reported he was doing fine. There was no reason to see him again. Dr. Van Raalte, however, had no opportunity to evaluate Cory, as Dr. Hines did in July 2014. Dr. Hines, for example, actually tested Cory's loss of smell and documented that it was real. Dr. Van Raalte never had an opportunity to do that.

The opinion of Dr. Hines is flawed in that he did not have all of the records or the correct medical history relating to his findings about Cory's migraine headaches. Because Cory had a documented history of migraine headaches prior to the work accident, he has not met his burden of proof on causation, as to that diagnosis/symptom. This comprised the majority of the massive 21 percent whole body rating assigned by Dr. Hines.

Nevertheless, based upon the record before me, I do not believe Cory fully healed from his work injury. I find that Cory has a complete loss of smell in his right nostril and has a loss of sensation in his upper gums and teeth. I further find that Cory has met his burden that his nasal fullness and bloody noses are causally connected to his work injury. These are certainly the more minor symptoms Cory complained of in comparison to the migraine headaches and anxiety rated by Dr. Hines. I do not have enough evidence in this record to conclude that his migraine headaches were caused or materially worsened by his work injury. There is contemporaneous documentation that he had headaches during his course of treatment. (Def. Ex. D, p. 30) With his prior history, however, he has failed to carry his burden that the condition was materially aggravated or changed by the work injury.

As I stated in the findings of fact, I find and believe that Cory testified credibly. I do not believe that Cory testified dishonestly. In his own mind, Cory distinguished between the types of headaches he had prior to his work injury and the type of headaches he has now. And he may be correct. Nevertheless, the inconsistency is fatal to his efforts to prove medical causation of any headaches.

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 shown that he has a minor permanent functional impairment associated with anosmia, numbness in his upper teeth and gums and bloody noses, Cory is entitled to have his disability evaluated for loss of earning capacity.

Cory has a minimal functional impairment. Dr. Hines related a one percent functional disability rating to Cory's condition (other than headaches and anxiety). His ongoing symptoms are certainly annoying and frustrating, but they are not severely disabling. Cory has lost his sense of smell completely in the right nostril. He has lost sensation in his upper gums and teeth. He gets frequent bloody noses and has feelings of sinus fullness.

Cory is appropriately employed securely in a long-term job. He is a good worker, highly motivated. He has suffered no loss of earnings. He has no restrictions. He had a very brief period of recuperation which did not, in any way, interfere with his employment. Thus far, his medical impairment caused by the work injury has not adversely impacted his employment in any meaningful way. The impact of this injury on Cory's earning capacity is extremely small. Considering all of the factors of industrial disability, I find that Cory has suffered a five (5) percent loss of earning capacity, entitling him to twenty-five (25) weeks of benefits.

ORDER

THEREFORE IT IS ORDERED

Defendants shall pay the claimant twenty-five (25) weeks of permanent partial disability benefits at the rate of five hundred fifty-three and 33/100 dollars (\$553.33) per week commencing June 28, 2012.

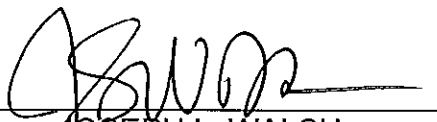
Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants.

Signed and filed this 19th day of August, 2015.


JOSEPH L. WALSH
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.