BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSHUA POLLOCK,

Claimant,

vs.

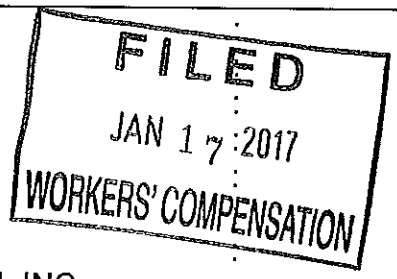
WALTER G. ANDERSON, INC.,

Employer,

and

SFM MUTUAL INSURANCE CO.,

Insurance Carrier,
Defendants.



File Nos. 5053624
5057396

ARBITRATION

DECISION

Head Note Nos.: 1402.20; 2501; 2502

STATEMENT OF THE CASE

Claimant, Joshua Pollock, filed petitions in arbitration seeking workers' compensation benefits from Walter G. Anderson, Inc. (Anderson), employer, and SFM Mutual Insurance Company, insurer, both as defendants. This case was heard in Des Moines, Iowa, on September 29, 2016 with a final submission date of October 21, 2016.

At hearing, claimant was requested to file a second petition regarding a date of injury of September 24, 2015. On October 5, 2016, claimant complied with that request.

The record in this case consists of claimant's exhibits 1 through 15, defendants exhibits A through I, and the testimony of claimant.

ISSUES

For File No. 5053624 (Date of Injury, March 11, 2014):

1. Whether the injury resulted in a permanent disability; and if so,
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. Whether there is a causal connection between the injury and the claimed medical expenses;

4. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

For File No. 5057396 (Date of Injury, September 24, 2015):

1. Whether the injury resulted in a permanent disability; and if so,
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. Whether there is a causal connection between the injury and the claimed medical expenses;
4. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

FINDINGS OF FACT

Claimant was 33 years old at the time of hearing. Claimant graduated from high school. He completed a one year course at a community college and received a certificate in building trades. Claimant testified he is dyslexic.

Claimant has worked in construction. He has also worked in a factory that made windows and doors. Claimant has also worked as a shipping clerk. (Exhibit 10, page 61)

Claimant began in January 2013 as a production assistant with Anderson. While working as a production assistant claimant did two different jobs: packing and taco machine operator.

Working in packing, claimant separated and fed boxes through a taping machine. At approximately mid-shift, claimant switched with a coworker and then began stacking boxes on a pallet.

As a taco machine operator, claimant would put large rolls of paper on spindles to be used in a die-cut machine. Claimant used equipment to help put the rollers of paper on the spindles, but sometimes the paper would get stuck requiring the operator to push rolls onto the spindles.

Claimant's medical history is relevant. In February 2013, claimant was lifting a 50-60 pound box and developed left groin pain. Claimant was evaluated by Matt Morgan, D.O. Dr. Morgan did not believe claimant had a hernia. (Ex. 1, pp. 1-3; Ex. F, pp. 1-3; Ex. G, pp. 1-2) Claimant was evaluated in March 2013 for a recheck of a left groin strain. Claimant had improved symptoms but still had some left groin pain. Claimant was continued in physical therapy. (Ex. G, p. 3)

On March 11, 2014, claimant was doing the taco machine job when he felt a sharp burning pain in his groin.

On March 11, 2014, claimant was evaluated by Karen Emmert, PA-C. Claimant had a left groin injury after pushing heavy rolls of paper. Claimant was assessed as having a left hip flexor strain. Claimant was given temporary restrictions and pain medications. (Ex. 1, pp. 4-6)

Claimant was seen by Matthew Doty, M.D., with complaints of pain. Claimant was assessed as having a muscle strain in the left groin area. Claimant was given medications and referred to a physical therapist. (Ex. 1, p. 7)

On April 7, 2014, claimant was evaluated by Michael Thompson, D.O. Claimant had no significant improvement in his pain in his left groin. He was assessed as having a small occult hernia or a recurrent groin strain. Claimant was referred for a CT scan. (Ex. 1, pp. 9-11)

Claimant returned to Dr. Thompson on April 21, 2014. A CT scan showed no evidence of a hernia. Claimant was returned to physical therapy. (Ex. 1, p. 12)

On June 5, 2014, claimant was evaluated by Charles Mooney, M.D. Claimant had continued left groin pain. Diagnostic testing did not reveal a hernia, but claimant's symptoms were symptomatic for a hernia. Claimant was limited to lifting 20 pounds. (Ex. 3, p. 21)

Claimant returned to Dr. Doty on July 18, 2014. An MRI of the lumbar spine was recommended. (Ex. 1, p. 13) On July 28, 2014, claimant underwent an MRI. It showed mild degenerative changes at the L4-5 levels with no nerve root impingement or disc herniation. Claimant was referred to a pain management specialist. (Ex. 1, p. 14; Ex. 2)

Claimant was evaluated by James Sykes, D.O., a pain specialist. Claimant was assessed as having chronic inguinal region pain on the left. Claimant was given trigger point injections. (Ex. 4, pp. 23-24)

Claimant returned to Dr. Sykes on October 30, 2014 with continued groin pain. Claimant was assessed as having groin pain and prescribed gabapentin. (Ex. 4, pp. 25-27)

Claimant returned to Dr. Thompson on November 25, 2014. Claimant had continued groin pain. He did not take the gabapentin as prescribed by Dr. Sykes. Claimant was assessed as having left groin pain. Dr. Thompson recommended claimant take medication as prescribed. (Ex. 1, p. 15)

On January 9, 2015, claimant was evaluated by Jeffrey Maire, D.O., with left groin pain for eight months. Dr. Maire could not locate a palpable hernia. Claimant was assessed as having left inguinal pain. (Ex. I)

Claimant was seen by Kurt Smith, D.O., on February 23, 2015. Claimant had no evidence of a hernia. An MRI arthrogram of the left hip was recommended. (Ex. 5, pp. 28-30)

On March 5, 2015, claimant underwent an MRI. It showed the left hip labrum was within normal limitations with no evidence of an internal derangement. (Ex. 6)

Claimant was evaluated by Steven Aviles, M.D., on March 24, 2015. Dr. Aviles suspected a psoas tendinitis of the left hip flexor. Claimant was returned to work without restrictions. (Ex. 5, pp.35-37) Claimant was discharged from Dr. Aviles care on April 1, 2015 and returned to work with no restrictions. (Ex. 5, pp.38-40)

In a May 26, 2015 note, Dr. Smith indicated claimant had reached the end of his healing period as of April 1, 2015 and that claimant had no permanent impairment. (Ex. H, p. 4)

Claimant returned to Dr. Smith on September 30, 2015 with complaints of pain in the left interior hip. Dr. Smith did not believe claimant was compliant with the home exercise program recommended in physical therapy. Claimant contended he did not receive any exercises in physical therapy. Claimant was discharged from care and returned to work at full duty. (Ex. H, pp. 5-9)

On October 4, 2015, claimant was involved in an altercation with a coworker. As a result of the altercation, claimant was terminated from employment with Anderson. (Ex. B, pp. 23-27; Ex. 12)

In an April 5, 2016 report, (incorrectly dated as April 5, 2015) John Kuhnlein, D.O., gave his opinions of claimant's condition following an IME. Claimant had ongoing left-sided groin pain. Dr. Kuhnlein opined claimant was at maximum medical improvement (MMI) on April 1, 2015. Dr. Kuhnlein opined claimant's March 11, 2014 injury was a work-related aggravation of a preexisting condition. He opined that the September 24, 2015 event was a short-term exacerbation of a preexisting condition. Based on Chapter 18 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Kuhnlein found claimant had a two percent permanent impairment to the body as a whole. He limited claimant to lifting 20 pounds occasionally. (Ex. 7)

In a report, Peter Matos, D.O., gave his opinions of claimant's condition following an August 4, 2016 IME. Claimant complained of left groin pain getting worse with physical activity. Dr. Matos opined that claimant had a temporary left groin strain occurring on March 11, 2014. He opined claimant did not have any permanent impairment for the injury based on diagnostic testing, medical documents and examination. He believed claimant reached MMI as of September 30, 2015. He gave no permanent restrictions and opined claimant did not require further medical care. (Ex. E, pp. 1-4)

Dr. Matos opined claimant had a temporary left groin injury sustained on September 24, 2015. He indicated claimant did not have any permanent impairment regarding this injury. He gave claimant no permanent restrictions and opined claimant did not require further medical care. Dr. Matos found that Dr. Kuhnlein's attempts to find that claimant had a permanent impairment unconvincing, as the rating was based on Chapter 18 of the Guides. This is because Chapter 18 indicates permanent impairment assessed pain should be based on some objective findings. Dr. Matos noted that there was neither physical nor medical findings supporting the finding of permanent impairment under Chapter 18. (Ex. E, pp. 4-7)

Claimant testified he did not believe he could return to work to most of his prior jobs given his pain limitations. He said he still has ongoing pain. He says he takes over-the-counter medication twice a day for pain.

At the time of hearing, claimant was working as a customer service representative for Windstream. Claimant says his job with Windstream allows him to sit and stand as needed.

CONCLUSIONS OF LAW

The first issue to be determined is did claimant sustain a permanent disability in either the March 11, 2014 or September 24, 2015 dates of injury.

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. 6.14(6).

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).

Four experts have opined regarding permanent disability. Claimant treated for an extended period of time with Dr. Aviles. In March 24, 2015 and April 1, 2015 notes, Dr. Aviles returned claimant to full duty with no restrictions. (Ex. 5, pp. 34-40)

In May 2015, claimant was evaluated and treated by Dr. Smith. Dr. Smith opined claimant had no permanent impairment. (Ex. H, p. 4) Claimant returned to Dr. Smith in follow up in September 2015. Dr. Smith again returned claimant to work with no restrictions and discharged him from care. (Ex. H, pp. 5-9)

Following an August 4, 2016 evaluation, Dr. Matos also opined claimant had no permanent impairment or permanent restrictions regarding either the March 11, 2014 or the September 24, 2015 date of injury. (Ex. E, pp. 1-7)

Only Dr. Kuhnlein opined claimant has any permanent disability. (Ex. 7) Dr. Kuhnlein assigned permanent impairment to claimant based on Chapter 18 of the Guides. This is a section related to rating for pain. Dr. Matos opined that rating for pain under Chapter 18 was not appropriate in this case. This is because claimant lacked physical exam findings or medical diagnostics that would support his complaints of pain. (Ex. E, p. 6)

A review of sections 18.3(a) and 18.3(b) of the Guides appear to support Dr. Matos' contentions with Dr. Kuhnlein's rating. Based upon this, it is found that Dr. Kuhnlein's opinions regarding claimant's permanent disability are found not convincing.

Dr. Aviles and Dr. Smith actively treated claimant. They both found claimant had no permanent restrictions and returned claimant to full duty work. Dr. Matos performed an IME on claimant. His opinions regarding permanent disability corroborate those of Dr. Aviles and Dr. Smith. Dr. Kuhnlein's opinion regarding permanent disability are found not convincing. Given this record, claimant has failed to carry his burden of proof that either the March 11, 2014 or September 24, 2015 date of injury resulted in a permanent disability.

As claimant failed to carry his burden of proof that either date of injury resulted in permanent disability, the issue of claimant's entitlement to permanent partial disability benefits is moot.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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 seeks payment of two medical expenses found in Exhibit 15. Defendants indicate in their brief that they believe they are liable for the bill of the CT exam with the date of service of April 10, 2014 for $171.00. (Defendants' post hearing brief, page 11) To the extent, this bill is still outstanding, defendants shall pay the expenses related to this bill.

Exhibit 15, page 85 is a bill related to St. Paul Radiology. A review of St. Paul Radiology website indicates that this group does not serve any clinics or hospitals in Iowa. https://www.stpaulradiology.com/contact/hospitals-and-clinics-we-serve

There is no evidence that claimant received treatment in Wisconsin or Minnesota. Given this record, claimant has failed to carry his burden of proof that defendants are liable for this bill.

The final issue to be determined is if claimant is due reimbursement for an IME with Dr. Kuhnlein.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Defendants indicate in their post hearing brief that they did not object to reimbursing claimant for Dr. Kuhnlein's IME (Defendants' post hearing brief, p. 12) Based on this, defendants shall reimburse claimant for costs associated with Dr. Kuhnlein's IME.

ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from these proceedings in the way of permanent partial disability benefits.

That defendants shall pay the medical bill found at Exhibit 15, page 84 concerning the CT for claimant for one hundred seventy-one and no/100 dollars ($171.00).

That defendants shall reimburse claimant for costs associated with Dr. Kuhnlein's IME.

That both parties shall pay their own costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2)

Signed and filed this 17th day of January, 2017.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Siobhan M. Schneider
Attorney at Law
PO Box 157
Newton, IA 50208
Siobhan@walklaw.com

Lee P. Hook
Attorney at Law
6800 Lake Drive, Suite 125
West Des Moines, IA 50266
lee.hook@peddicord-law.com

JFC/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.