BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

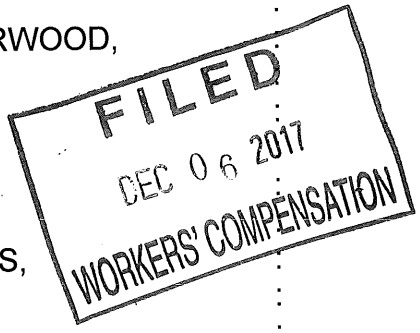
NICHOLAS C. UNDERWOOD,

Claimant,

vs.

CITY OF DES MOINES,

Employer,
Self-Insured,
Defendant.



File No. 5057188

ARBITRATION

DECISION

Head Note No.: 1402.30

STATEMENT OF THE CASE

Claimant, Nicholas Underwood, filed a petition in arbitration seeking workers' compensation benefits from City of Des Moines (Des Moines), self-insured employer. This matter was heard on August 9, 2017 with a final submission date of August 30, 2017.

The record in this case consists of Joint Exhibits 1-8, Claimant's Exhibits 1-7, Defendant's Exhibits A through E, and the testimony of claimant.

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.

ISSUES

1. Whether claimant's back injury arose out of and in the course of employment.
2. Whether the injury resulted in a temporary disability.
3. Whether the injury resulted in a permanent disability; and if so
4. The extent of claimant's entitlement to permanent partial disability benefits.
5. Whether there is a causal connection between the injury and the claimed medical expenses.

In the hearing report, the parties stipulated a work-related injury occurring on December 31, 2015. After listening to the testimony and considering briefs from both parties, it is clear defendant stipulated claimant sustained an injury to his left lower extremity occurring on December 31, 2015, but disputed that claimant sustained a back injury occurring on December 31, 2015.

FINDINGS OF FACT

Claimant was 38 years old at the time of hearing. Claimant has a GED. Claimant has worked in concrete construction prior to working for Des Moines. Claimant began employment with Des Moines in 2007, working approximately seven months a year as a temporary laborer. Claimant began full-time employment with Des Moines in approximately 2010.

At the time of hearing claimant was employed with Des Moines as a sewer maintenance worker. In that job claimant tears out and replaces manholes, sewer intakes, and pours concrete boxes for intakes. (Exhibit E, page 2; Deposition p. 4) A job description for claimant's job is found at Exhibit A. Claimant testified, in deposition, his job occasionally requires him to lift more than 100 pounds. (Ex. 2, Depo. pp. 4-5)

On December 31, 2015 claimant was called to repair a manhole. Claimant said there was a piece of plywood across the manhole. Claimant said he bent over to pick up the plywood when he slipped on ice and did the splits. Claimant said he initially injured his left calf. Claimant worked the next day. From Friday through Sunday, claimant said the condition became worse. On January 4, 2016 claimant reported his injury.

On January 4, 2016 claimant was evaluated by Von Miller, PA-C. Claimant slipped on ice replacing a manhole cover. Claimant felt pain in his left calf. Claimant was assessed as having a left calf strain. Claimant was returned to work with sitting and standing as needed. Claimant was told to use ice and heat. (Joint Ex. 4, p. 4)

Claimant testified he told PA Miller he had back pain.

On January 7, 2016 claimant was evaluated by Steven Strang, D.O. for intermittent lower back pain with no specific injury. Claimant was referred to physical therapy. (Jt. Ex. 5, pp. 7-9)

On January 11, 2018 claimant returned to PA Miller. Claimant's left calf strain was almost completely resolved. Claimant was returned to full duty and discharged from care. (Jt. Ex. 4, p. 3)

In a January 15, 2016 incident report claimant indicated a work injury to the left calf. Claimant indicated the left calf still hurt, but the pain had improved. (Ex. 5, p. 1)

On January 18, 2016 claimant was seen at Mercy East Physical Therapy for a two-month history of lower lumbar pain. Claimant completed a patient questionnaire

indicating the pain was in the upper leg and hip down to the back. Claimant did not know what caused his symptoms. (Jt. Ex. 6, p. 13) Claimant denied any specific mechanism of injury (MOI). Claimant complained of several knots in his lower back that his wife had been trying to massage out for a year. Claimant was assessed as having lower back pain. He was recommended to have physical therapy two times a week. (Jt. Ex. 6, pp. 10-11)

Claimant was treated at Mercy East Physical Therapy until February 2016. (Jt. Ex. 6, pp. 1-19)

On February 29, 2016 claimant underwent a lumbar MRI recommended by Dr. Strang. It showed herniated disc with nerve irritation at the L4-5 levels. (Jt. Ex. 2, p. 3)

On March 3, 2016 claimant was evaluated by PA Miller with lower back pain and radicular symptoms. Claimant thought his back pain was related to his December 2015 fall at work. PA Miller noted records indicated a seven-week period between the most recent problems and the last date of care. Claimant was sent to his primary care physician for further care. (Ex. 4, p. 1)

On March 7, 2016 claimant was evaluated by Dr. Strang. Claimant said he hurt his back at work on January 4, 2016. Claimant was unable to work due to low back pain. He was assessed as having a lumbar herniated disc. Claimant was referred to pain management. (Jt. Ex. 5, pp. 1-3)

Dr. Strang completed an FMLA form for claimant on March 10, 2016 indicating claimant had lower back pain with radiculopathy and had limited ability to lift due to pain. (Ex. 6, p. 4)

In an April 7, 2016 letter, PA Miller indicated he first saw claimant on January 4, 2016 for calf muscle pain after replacing a manhole cover. Claimant had no complaints of back pain on January 4, 2016 or January 11, 2016. Claimant was discharged from care on January 11, 2016 with no complaints of back pain. PA Miller indicated he reviewed approximately 170 pages of claimant's medical records. Based upon his experience with claimant and the review of medical records, he could not relate claimant's herniated disc on the MRI of February 29, 2016 to claimant's injury of December 31, 2015. (Ex. C)

On March 7, 2016 claimant was evaluated by Troy Munson, M.D. Claimant had calf pain on December 31, 2015 while at work. Claimant had indicated no problems before December 31, 2015. Claimant was assessed as having left lumbar radiculopathy. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 7, pp. 3-7)

On April 8, 2016 claimant underwent surgery consisting of an L4-5 laminotomy and mesial facetectomy for excision of a herniated disc. Surgery was performed by Dr. Munson. (Jt. Ex. 1)

On the same date, claimant's workers' compensation claim was denied based upon PA Miller's April 7, 2016 letter. (Ex. 4)

In an April 29, 2016 letter, City of Des Moines approved claimant's FMLA leave. (Ex. 6)

In a May 17, 2016 note, written by claimant's counsel, Dr. Strang opined claimant's work injury of December 31, 2015 was the cause of claimant's herniated disc at the L4-5 level. He also opined the work injury of December 31, 2015 caused the need for surgery. (Ex. 2)

In a May 20, 2016 note, written by claimant's counsel, Dr. Munson indicated he agreed with Dr. Strang that claimant's work injury of December 31, 2015 was a cause of claimant's herniated disc at the L4-5 levels. He also opined the work injury of December 31, 2015 caused the need for surgery. (Ex. 3)

In a July 19, 2016 note, Jon Yankey, M.D. indicated he reviewed claimant's medical records. Based on his review of medical records, he opined the MRI of claimant's lumbar spine, and the need for claimant's back surgery was not the result of claimant's work injury of December 31, 2015. (Ex. D)

On October 21, 2016 claimant underwent an independent medical evaluation (IME) with Daniel McGuire, M.D. Dr. McGuire opined claimant's injury started out as a manifestation of sciatica on the left calf caused by the 2015 work injury. Dr. McGuire found claimant had an 11 percent permanent impairment to the body as a whole due to the injury. (Claimant's Ex. 1)

Claimant testified he works approximately 40 hours a week at his job with the city. Claimant testified he earned $26.20 at the time of hearing. At the time of injury claimant earned $25.50 an hour. Claimant testified his job with The City is very strenuous. Claimant says his job requires him to use a skid loader, chipping hammers, and air hammers. Claimant said he is attempting to look for less physically strenuous jobs with City.

Claimant testified the back surgery helped his symptoms. He testified he still has some leg pain. Claimant takes prescription medication for back pain approximately two to three times a week.

Claimant said his back injury limits his ability to move furniture and to play sports with his son.

CONCLUSIONS OF LAW

The first issue to be determined is did claimant sustain an injury to his lower back on December 31, 2015 that arose out of and in the course of employment?

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 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); 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).

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.

Five experts have opined regarding the causal connection between claimant's December 31, 2015 work injury and his lumbar problems and the later need for surgery.

Dr. Strang and Dr. Munson both opine claimant's lumbar injury and the need for surgery was caused by the December 31, 2015 work injury. (Ex. 2; Ex. 3) However, there is no indication, in either opinion by Dr. Strang or Dr. Munson, that they reviewed claimant's prior medical records, including the records of PA Miller and the records from Mercy East Physical Therapy. Neither Dr. Strang or Dr. Munson offered any explanation why claimant indicated lower back pain with no specific injury on January 7, 2016 (Joint Exhibit 5, pages 7-9), and why physical therapy notes indicate no mechanism of injury on January 18, 2017. (Jt. Ex. 6, p. 10) Because of the apparent lack of review of prior medical records, and because of discrepancies, as noted above, neither Dr. Strang's nor Dr. Munson's opinion regarding causation are found convincing.

Dr. McGuire suggested claimant's lumbar spine injury and the need for surgery was caused by the December 31, 2015 work incident. (Ex. 1) However, Dr. McGuire offered no explanation for the January 7, 2016 and January 18, 2016 notes indicating no specific cause of injury. Because Dr. McGuire's causation opinion does not address this problem in the chronology of medical records, his opinion regarding causation is found not convincing.

Claimant saw PA Miller on January 4, 2016 and January 11, 2016 with complaints of a calf injury caused by a December 31, 2015 work injury. There is no evidence in either report of a back condition. (Jt. Ex. 4, pp. 3-4)

Claimant saw Dr. Strang on January 7, 2016 complaining of lower back pain with no specific injury. (Jt. Ex. 5, pp. 7-9) Physical therapy records from January 18, 2016 note no specific mechanism of injury. (Jt. Ex. 6, pp. 10-11) When claimant completed his intake form for physical therapy he also indicated he did not know what caused his back pain. (Jt. Ex. 6, p. 13)

Based on details above, both PA Miller and Dr. Yankey opined claimant's December 31, 2015 incident at work did not cause his lumbar condition or the need for surgery. (Ex. C; Ex. D) The opinions of PA Miller and Dr. Yankey are consistent with the medical records for claimant's December 31, 2015 injury. Based on these facts, claimant has failed to carry his burden of proof his lower back injury and subsequent need for surgery, arose out of and in the course of his December 31, 2015 work injury with Des Moines.

As claimant has failed to carry his burden of proof his lower back injury and subsequent need for surgery arose out of and in the course of the December 31, 2015 work injury, all other issues are moot.

ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

That defendant shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2) only as it relates to claimant's December 31, 2015 injury to the left calf.

Signed and filed this 6th day of December, 2017.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFC/sam

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.