

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 RICHIE WILLIAMS,

Claimant,

vs.

ARCHER DANIELS MIDLAND,

Self-Insured Employer,
Defendant.

File No. 20011866.01

ARBITRATION DECISION

Head Notes: 1106; 1402.30; 1403.30

STATEMENT OF THE CASE

Richie Williams, claimant, filed a petition in arbitration seeking workers' compensation benefits from Archer Daniels Midland, self-insured defendant employer. The hearing was held on December 15, 2022. Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using Zoom with all parties and the court reporter appearing remotely.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered various stipulations. Those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

Richie Williams, Tyler Albert, Dean Petroff, and Nydel Cromwell testified live at the trial. The evidentiary record also includes amended joint exhibits 1-7, claimant's amended exhibits 1-8, and defendants' exhibits A-N.¹ All exhibits were received into the record without objection.

The parties submitted post-hearing briefs on February 3, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

The parties identified the following disputed issues on the hearing report:

1. Whether the case is barred due to lack of timely notice under Iowa Code section 85.23.

¹At the hearing, defendants withdrew exhibits A, F, G, L, and M.

2. Whether claimant sustained an injury that arose out of and in the course of his employment with Archer Daniels Midland on May 21, 2020.
3. Whether the claimant is entitled to temporary disability or healing period benefits because of the alleged injury.
4. Whether the alleged injury resulted in any permanent disability; and if so,
5. The extent of claimant's entitlement to permanent disability benefits.
6. The commencement date for permanent partial disability benefits, if any are awarded.
7. Claimant's average weekly wage and weekly rate.
8. Whether claimant is entitled to reimbursement for medical expenses.
9. Whether claimant is entitled to reimbursement for an independent medical examination pursuant to Iowa Code section 85.39.
10. Whether claimant is entitled to alternate medical care.
11. Assessment of costs.

FINDINGS OF FACT

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

At the time of the hearing the claimant, Richie Williams (hereinafter "Williams") was 41 years old. (Hearing Tr., p. 17). He lives in Cedar Rapids, Iowa. (Id.). He graduated from Jefferson High School in 2000. (Id. at 18; Ex. K, p. 74). Following high school, Williams attended Kirkwood Community College for one semester. (Tr., p. 18). His field of study is unknown. (Id.). He did not receive a degree. (Id.).

From 2002 to 2004, Williams worked as a parts counter at Hawkeye International, filling work orders for auto parts. (CI Ex. 4, p. 47). In 2004, he took a job as a DOT inspector at First Fleet Diesel, doing general maintenance and tire repair. (Id. at 47-48). From 2006 to 2008, Williams worked at Freightliner as a DOT inspector. (Id. at 48). In 2008, he began working for CRST as a DOT inspector, performing general maintenance. (Id.). CRST laid Williams off in 2010. (Id.). While on lay-off, he worked as a night stocker at Target and drove a flatbed truck for All American Scaffolding. (Id.).

In 2013, Archer Daniels Midland (hereinafter "ADM"), the defendant employer in this action. (See CI Ex. 2, p. 33; Tr., p. 58). ADM washes and repairs railroad cars. (Tr., p. 87). Williams was hired to work in the repair shop, fixing tank and hopper cars. (Id. at

58). Williams later moved to the wash bay. (Id.). In his exhibits, Williams submitted a job description for his work at ADM. (CI Ex. 2, p. 33). The description is labeled “Repair and wash bay Physical Work Activities.” (Id.). Thus, it appears to encompass both of Williams’ positions at ADM. According to this description, he was required to walk, sit, climb stairs, reach, push, pull, kneel, squat with proper ergonomics, bend at the waist, twist, climb ladders, grind, and use a torch, spray paint, lift and carry a light-weight bucket with one hand, and two-handed carry up to 50 pounds. (Id.). However, at the hearing, Williams testified he was asked to lift up to 70 pounds, but “it’s usually, roughly, 50, maybe a little bit more.” (Id. at 59).

Williams worked at ADM in the wash bay until July 2021, when he took a new position as a material handler at Parker Hannifin. (CI Ex. 4, p. 48; Tr., p. 31; Ex. K, p. 80). He started in the Receiving Department, but prior to the hearing transferred to the Toro Department. (Tr., p. 31). In the Toro Department, Williams works in the warehouse, filling orders and stacking boxes on pallets. (Id. at 32). To do this, he uses a pallet machine and a forklift. (Id.). At the hearing, Williams testified that his job at Parker Hannifin is less physically demanding than his position at ADM. (Id. at 33). In their exhibits, defendant included a job description for Williams’ position at Parker Hannifin. (Ex. K, p. 80). According to this description, he is required to stand, bend, stoop, and twist, operate various types of assembly equipment, cutting equipment and forklifts, use measuring devices, as well as lift 20 pounds frequently, and 50 pounds occasionally.² (Id.). Prior to starting at Parker Hannifin, Williams underwent a functional employment test. (Id. at 81). This test required he lift and carry 50 pounds for 20 feet. (Id.). Williams successfully completed the employment test. (Id.). When he started in July 2021, he was working full-time and making \$17.50 an hour. (Id. at 82). However, at the time of the hearing, Williams was only working 20 hours per week—four hours a day, five days a week, because of restrictions. (Tr., p. 41). Williams was making \$18.60 an hour. (Id.).

Williams alleges an injury to his low back on May 21, 2020.³ (See Petition). Williams testified he had already clocked out of work and was in the locker room getting ready to change his clothes. (Tr., pp. 18-20). Williams testified as follows:

I was going to sit down. I felt the back of my butt cheek on the bench. I was getting up to readjust myself, I lost my balance, fell backwards towards the locker, hit my back, and then I fell to the concrete floor on my butt.

(Id. 18-19). Williams testified that two of his co-workers witnessed the fall—Tyler Dange and Seth, last name unknown.⁴ (Id. at 19). He did not feel any pain immediately after the fall and did not report the incident right away. (Id.). Williams, however, testified that his

²Parker Hannifin’s functional employment test lists Williams’ position as being in the heavy demand category. (Ex. K, p. 81). During his 2020 deposition, Williams testified he is required to lift up to 70 pounds in his current job. (CI Ex. 3, p. 40).

³ During the hearing, Williams also indicated the fall may have happened in February 2020. (Tr., p. 18).

⁴According to defendants’ exhibits, the fall was actually witnessed by three of Williams’ co-workers. (Ex. C).

supervisor, Tyler Albert, asked him about the fall the next day, but his testimony did not provide any specifics about this conversation. (Id. at 20). The hearing transcript reads,

Q. Okay. In your deposition, you testified that your supervisor, Tyler Albert, came and talked to you about the fall the next day. Is that accurate?

A. Yes.

Q. Okay. And what did you guys talk about?

A. We talked about the fall in the locker room.

Q. Did he ask you questions?

A. No, he just told me to take it easy for now.

(Id.). Williams testified he did not think the fall qualified as a work injury because he was not on the clock. (Id. at 20-21). He indicated he did not report it as a work injury to Mr. Albert. (Id. at 21). Williams returned to work the next day full duty, full time. (See id. at 20).

Williams' deposition was taken on September 29, 2020. (Ex. D, p. 11). During the deposition, he was asked about his alleged conversation with Mr. Albert. Portions of that deposition transcript were submitted into evidence. It reads:

Q. And the next day was it Tyler Albert, did he ask you about this fall?

A. That I can remember, he did, but I'm not for sure if he – if somebody – who told him, but I'm thinking that he's the one that asked me about it.

Q. From what you remember, Tyler asked you about it the day after the fall?

A. Correct.

(Id. at 13).

Tyler Albert testified at the hearing. (Tr., p. 86). He is a supervisor at ADM; He was Williams' direct supervisor. (Id. at 87). Mr. Albert has worked there since 2005. (Id.). He confirmed that Williams started out working as a welder in the repair shop, and later transferred to the wash bay, where he put on and took off valves. (Id. at 87-88). Mr. Albert also confirmed that the job description submitted by Williams was accurate but clarified that if an employee is asked to lift anything over 50 pounds, it is done as a team lift or with a crane. (Id. at 89). He testified that employees at ADM receive annual training on how to handle work injuries. (Id. at 90). According to Albert, in this training employees are instructed to immediately report any injury incurred on ADM's premises to their direct supervisor. (Id.). If their direct supervisor is unavailable, they are instructed to notify the plant manager or the safety director. (Id. at 91).

Mr. Albert testified that Williams had suffered previous work-related injuries while employed at ADM. (Tr., p. 91). On November 19, 2018, Williams suffered an injury to his right shoulder while working for ADM. See Williams v. Archer Daniels Midland, File No. 5067813.02, 2021 WL 5235571 (Arb. Decision, Nov. 3, 2021). Williams reported that injury right away and received treatment the same day. Id. Given this, Mr. Albert believed

that Williams knew how to report injuries occurring at ADM. (Tr., p. 91). Mr. Albert testified that he was not notified about Williams' fall until October 1, 2020. (Id. at 94). He stated that the next-day conversation described by Williams never occurred. (Id. at 94). According to Albert, on October 1, 2020, Williams "[w]alks into my office and said that he fell in the locker room and that he had told me. And I – I was – I was dumbfounded and confused. I'm like, I don't even know what you're talking about." (Id. at 92). Mr. Albert then called the plant manager, Dean Petroff, and asked him to come to his office. (Id.). According to Mr. Albert, once both supervisors were present, Williams "proceeded to tell us that he fell in the locker room and that he had told me a couple months ago. And I was, like, you never told me anything about falling in the locker room, ever. I don't know where this is coming from." (Id. at 93). Williams then presented the supervisors with a handwritten document labeled "Injury Report." (Id.). A copy of it was submitted into evidence. (Ex. B, p. 4). It states,

About 4 or 5 months ago I was in the locker room to sit on the bench to change. When I starting to sit down I miss the bench fell down hitting my back on the locker, then my butt hit the floor. I was punch out at the time, did not think because I was punch out that I would have to fill out a report.

(Id.). The day after the conversation with Williams, Mr. Albert sent an email documenting the exchange. (Id. at 6). In the email Albert writes that when Williams was challenged about the occurrence of the alleged next-day discussion, he stated "oh well I thought I did . . . well maybe I told somebody else, the other Tyler that is an hourly employee." (Id.).

In October 2022, defendants took Williams' deposition a second time. (CI Ex. 3, p. 38). At this deposition, he was once again asked whether he reported the locker room fall to ADM. (Id. at 42). The transcript reads as follows:

Q. Did you report the fall off of that bench or that you just described to Tyler Albert or somebody else at the company?

A. I think somebody told him, and if I remember correctly, he asked me the next day, but I'm not exactly for sure what day he actually said -- what day he actually came and talked to me about it.

Q. Do you know who told Tyler Albert that you had fallen?

A. No, I don't know who.

Q. All right. And tell me to the best of your recollection where the conversation with Tyler Albert took place at work. Where were you?

A. I think I was -- actually, I don't know exactly where. I just remember him saying something about it. I just --

Q. Was that the following day that you felt that Mr. Albert approached you about this accident?

A. That I can remember, yes, that I can recall.

Q. And I just need you to be as specific as you can recall. What did Mr. Tyler Albert say to you at that time?

A. Just asked if I was okay. I can't remember too much more than that, what he said that day exactly.

Q. And what did you tell Mr. Albert in response?

A. I can't remember exactly what I said that day either. I think --

Q. Did you tell him you were okay, or did you tell him that you needed medical care, or what do you recall?

A. The only thing I can recall is I told him my back hurts. But I can't remember exactly if I told him I needed medical attention or not for sure.

(Id.). Williams was asked this same series of questions on cross-examination at the hearing. (Tr., p. 64). However, at the hearing, Williams testified the conversation took place outside of the locker room, and Tyler Albert approached him and stated, "I heard you fell in the locker room." (Id.). Williams was asked if he was certain, it was Tyler Albert that approached him. (Id.). He replied, "No, I'm pretty sure it was Tyler Albert that next day, but I know Tyler Dange was in that locker room at the time I fell. So I could have talked to him. I just got two days mixed up." (Id.).

Dean Petroff also testified at the hearing. (Tr., p. 108). Mr. Petroff is the plant manager at the ADM workshop in Cedar Rapids. (Id. at 92, 109). He has been with ADM since 2005. (Id. at 108). Petroff hired Williams in 2013. (Id. at 109). He testified that ADM employees receive training each year on how to report work injuries. (Id.). The training was set-up by Nydel Cromwell, the environmental health and safety coordinator at ADM. (Id. at 110, 121). According to Petroff, Williams participated in the training each year and knew how to report a work injury at ADM. (Id. at 111).

Mr. Petroff testified that he received notification of Williams' alleged May 21, 2020 fall on October 1, 2020. (Tr., p. 112). On that date, he received a phone call from Tyler Albert, asking him to come back to his office. (Id.). When he arrived there, Williams was in Albert's office. (Id.). Williams presented him and Mr. Albert with his handwritten injury report, which detailed his fall in the locker room four or five months prior. (Id.). Prior to October 1, 2020, Mr. Petroff was unaware of Williams' fall and alleged low back injury. (Id. at 113). Petroff testified that when an injury is reported at ADM, the protocol is to first seek any necessary medical care for the employee, then fill out a first report of injury, and start an investigation into the claim. (Id. at 116-117). Mr. Petroff testified Williams did not request any medical care during the meeting. (Id. at 115).

Nydel Cromwell was the final hearing witness. (Tr., p. 121). Mr. Cromwell is the environmental health and safety coordinator at the ADM plant in Cedar Rapids. (Id. at 122). He was hired in 2006. (Id. at 121). Mr. Cromwell is responsible for environmental reporting, safety training, shop safety, and health screenings such as hearing and respiratory testing. (Id. at 122). He testified Williams participated in injury investigation and reporting training each year he was employed at ADM. (Id. at 123). Cromwell reported that in the training, employees are instructed to report all injuries, minor or major, immediately. (Id. at 124).

Mr. Cromwell is also responsible for investigating work-related injuries at ADM. (Tr., p. 122). He testified that he first heard about Williams' alleged fall on October 1, 2020, when Mr. Albert and Mr. Petroff gave him a copy of Williams' handwritten injury

report. (Id. at 124-125). After receiving the report, Cromwell started an investigation into the alleged injury. (Id.). During this investigation, he discovered that there were three witnesses to Williams' fall: Brandon Sortland, Seth Dunlin, and Tyler Dange. (Id. at 125). They were all co-workers of Williams. (Id. at 126). At Mr. Cromwell's request, all three filled out statements on October 21, 2020. (Id. at 125). Those are contained in defendants' hearing exhibits. (Ex. C, pp. 8-10). Two of the statements agree that Williams was looking at his cell phone and not paying attention, tried to sit down, missed the bench, and fell to the ground. (Id.). None of them mention him hitting the locker before falling to the ground.⁵ Tyler's statement indicates the incident took place sometime in May 2020, Seth states it was in May or June 2020, and Brandon reports the incident took place four to five months prior. (Id.). Cromwell testified none of the three witnesses informed him of the incident prior to October 1, 2020. (Tr., p. 126). I find that Williams was looking at his cell phone and attempted to sit down without looking, missed the bench, and fell to the ground.

Williams' testimony about the alleged next-day conversation with Tyler Albert is sparse and inconsistent. In contrast, Mr. Albert, Mr. Petroff, and Mr. Cromwell all credibly testified that Williams did not notify ADM about his May 21, 2020 fall until October 1, 2020. Their testimony is supported by all three witness statements from Williams' co-workers, none of which mention informing Mr. Albert about the incident. Given this, I determine that there is insufficient evidence showing Williams notified Tyler Albert about the work injury the day after it occurred.

According to the medical records, Williams did not seek medical care for his low back until July 2020. (JE 6, p. 146). On July 24, 2020, he presented to his family physician, Qadnana Anwar, M.D., for a medication check. (Id.). At the appointment, he told Dr. Anwar that he fell two months ago and hurt his tailbone, and he was still experiencing intermittent pain. (Id.). Dr. Anwar ordered x-rays of his lumbar spine and coccyx. (Id. at 147). They were normal—they did not show any fractures. (Id. at 149-150). Dr. Anwar did not recommend any treatment for his low back complaints. (Id. at 146-150).

Williams returned to Dr. Anwar on August 7, 2020. (JE 6, p. 151). He complained of increasing lower back pain, with pressure and radiating pain in his left buttock. (Id.). He told Dr. Anwar that he was unable to go to work that day because of his symptoms. (Id.). Dr. Anwar diagnosed him with lumbar back pain with radiculopathy affecting the left lower back and left upper leg. (Id. at 153). He ordered physical therapy and an MRI, as well as prescribed anti-inflammatory medication and a muscle relaxer. (Id.). He also provided Williams with a 20-pound lifting restriction and referred him to the pain clinic for further treatment. (Id.).

Williams was evaluated by Kyle Morrissey, D.O. at the CRS Pain Clinic on August 21, 2020. (JE 4, p. 91). He told Dr. Morrissey that he had experienced back pain for years and had previously dealt with some radicular pain back in 2015, but never required any "interventions." (Id.). A review of the medical records submitted at hearing shows Williams was first treated for low back and left buttock pain in February 2007 at Westside Family

⁵ Locker contact is also not mentioned in any of his treatment records. See fact finding below.

Medicine. (JE 7, p. 174). At that time, he was diagnosed with lumbosacral back spasms and prescribed pain medication and muscle relaxers. (Id.). He returned in May 2007, with similar low back complaints after working on a pond. (Id. at 175). He was diagnosed with lumbago, given pain medication, and briefly taken off work. (Id.).

Williams continued to receive sporadic treatment for low back pain and radicular leg symptoms at Westside Family Medicine. (JE 7, pp. 174-194). He had appointments on August 1, 2007; April 12, 2008; October 28, 2008; February 16, 2011; November 26, 2014; November 14, 2016; and August 28, 2017. (Id. at 176-189). In the fall of 2015, Dr. Anwar referred him to Kevin Eck, M.D., at Physicians' Clinic of Iowa (PCI) for further treatment of his back symptoms. (JE 1, pp. 1-3). Dr. Eck diagnosed him with lumbar spondylosis and ordered an MRI of his spine. (Id. at 2-3). The MRI was performed on September 23, 2015. (Id. at 4). It showed moderate desiccation at L4-5 with a diffuse disc bulge, a small disc protrusion at L2-3, and mild degenerative changes. (Id. at 5). Dr. Eck reviewed the MRI on September 28, 2015. (Id. at 6). He recommended conservative care including weight loss, exercise, stretching, and core strengthening. (Id. at 7). Dr. Eck also referred Williams to pain management. (Id.). It is not clear whether Williams ever attended pain management for his back complaints back in 2015. Neither party submitted any pre-injury pain management records at hearing. The last pre-injury treatment note in the record is an emergency room visit on October 8, 2019. (JE 2, p. 23). On that date, Williams presented at the St. Luke's ER, complaining of right-sided low back pain that radiated down his right upper leg. (Id. at 24). He was also experiencing spasms. (Id.). He was given a Toradol injection and sent home. (Id. at 27-28).

Dr. Morrissey diagnosed Williams with lumbar radiculopathy secondary to disc degeneration. He recommended and administered a trial epidural steroid injection at L4-L5. (JE 4, pp. 92-93). At hearing, Williams testified the injection helped with his back pain for a while, but then the pain returned. (Tr., p. 26). On August 26, 2020, Williams underwent a second MRI of his lumbar spine. (JE 4, p. 96). It showed mild degenerative changes, like those seen in his 2015 MRI. (Id.). There were no areas of severe spinal canal or foraminal narrowing. (Id.). Williams underwent a second epidural steroid injection with Dr. Morrissey on September 17, 2020. (Id. at 98). He testified this injection also helped with his pain complains for a time, but the pain returned. (Tr., p. 26).

At some point, Dr. Anwar referred Williams to the Neurosurgery Clinic at Unity Point. (JE 3, p. 67). On December 7, 2020, he was evaluated by Jeremy Glawatz, PA-C. (Id.). PA Glawatz diagnosed him with lumbar spondylosis and back pain. (Id. at 70). He recommended a trial of facet injections. (Id.). Those were performed on December 16, 2020 by Dr. Morrissey. (JE 4, pp. 99-101). On December 17, 2020, claimant's counsel met with PA Glawatz to discuss his back complaints. (JE 3, pp. 72-74). After this conference, his counsel asked Glawatz to fill out a check the box report. (Id.). This report states Williams told Glawatz that he had missed a chair and fell onto the floor on his buttocks at work. (Id. at 72). It also stated that Williams had experienced back symptoms prior to the work fall, but those mostly resolved prior to this incident after receiving injections and physical therapy. (Id.). Williams told Glawatz that after the fall he started having pain down the back of his left leg. (Id.). Glawatz indicated that his back pain may

have been flared up by the fall. (Id. at 73). He recommended lumbar facet injections, as well as a work restriction of no lifting more than 30 pounds (Id.).

The injections relieved Williams' pain symptoms for approximately three months. (See Tr., p. 27). Williams returned to PA Glawatz on March 5, 2021. (JE 3, p. 75). At that visit, he complained of increasing left-sided low back pain with occasional discomfort in his right leg to his knee. (Id. at 76). Glawatz assessed him with increasing low back pain and radicular pain in his legs. (Id. at 80). He ordered a new MRI, as well as prescribed Flexeril and anti-inflammatories. (Id.). He also provided a note taking him out of work for one week. (Id.). The MRI was performed on March 12, 2021. (Id. at 81). It revealed mild degenerative changes, similar to his prior MRI. (Id. at 82). It did not show any areas of severe spinal canal or foraminal narrowing. (Id.). On April 7, 2021, Williams underwent bilateral L4-L5 facet joint injections. (JE 4, pp. 103-104). Williams testified these helped with his pain, but also wore off. (Tr., p. 29).

Williams returned to PA Glawatz on May 19, 2021. (JE 3, p. 83). He complained of increased pain in his low back since that Sunday, "a lot worse now than what it has ever been." (Id. at 84). He indicated he was also having issues voiding and had been to the emergency room the day before and they did not find any red flags.⁶ (Id.). Glawatz assessed Williams with an acute onset of increased back pain, lumbar radiculopathy, and abnormal voiding. (Id. at 87). He ordered a new MRI due to Williams' acute symptoms. (Id. at 88). The MRI was performed that day. (Id. at 89-90). It showed mild to moderate degenerative changes of the lumbar spine, most prominent at L4-L5. (Id. at 90). Glawatz did not see any acute changes. (Id. at 88). He prescribed a prednisone burst and taper. (Id.).

On May 24, 2021, Williams returned to Dr. Anwar with back pain. (JE 6, p. 161). Dr. Anwar referred him to Kevin Eck, M.D. at PCI. (JE 1, p. 10). Dr. Eck evaluated him on June 8, 2021. (Id.). His treatment note states Williams was there for another opinion. (Id.). Dr. Eck diagnosed Williams with low back pain, lumbar spondylosis, and left leg pain. (Id. at 11). After reviewing his prior MRIs, Dr. Eck opined that Williams' back and leg symptoms might be caused by a posterolateral disc bulge at L4-L5. (Id.). Dr. Eck questioned whether he had some degree of lateral recess stenosis and possible impingement of the L5 nerve root. (Id.). He recommended a left-sided diagnostic L5 nerve block. (Id.).

On September 7, 2021, Williams presented to the Unity Point Urgent Care Clinic with low back pain. (JE 7, pp. 190-191). He was diagnosed with acute bilateral low back pain with right-sided sciatica. (Id. at 191). He was given a Toradol injection and taken off work for two days. (Id.). Williams returned back to Dr. Eck on September 9, 2021. (JE 1, p. 13). He stated, "his back pain intensified after starting a new job recently." (Id.). Williams complained of increased low back and buttock pain when he tried to return to an

⁶ According to the records, Williams presented to the St. Luke's ER on May 18, 2021, complaining of worsening lower back pain, radicular pain in both legs, and intermittent numbness in his left leg. (JE 2, p. 31). The ER note states he had "no red flag symptoms". (Id. at 32). He was given pain medication and told to follow-up with PA Glawatz. (Id. at 33).

upright position from sitting or when he stood for long periods of time, as well as when he repetitively lifted heavy objects. (Id.). Dr. Eck diagnosed lumbar facet joint irritation and recommended a period of rest. (Id. at 14). He also took Williams off work for one week. (Id.).

Dr. Morrissey performed medial branch nerve blocks at L4-L5 on September 29, 2021, and October 27, 2021. (JE 4, pp. 107-111). Williams reported these improved his pain. (Id. at 111). On November 30, 2021, Dr. Morrissey performed radiofrequency ablation of Williams' medial branch nerves at L4 and L5 bilaterally. (Id. at 116). This helped Williams' pain. (See JE 2, p. 35).

Williams did not seek medical treatment again until March 2022. (JE 2, p. 35). On March 9, 2022, he went to the St. Luke's ER for acute low back pain. (Id.). Williams reported he stepped down off a forklift at work and turned to the left when he felt extreme pain in his lower back. (Id.). The pain radiated down his right leg and he also had weakness in the leg. (Id.). He was diagnosed with acute midline low back pain with right-sided sciatica. (Id. at 38). A new MRI was performed. (Id. at 41). It showed mild to moderate degenerative disc disease with disc desiccation and posterior annular disc bulging, broad based annular disc bulging at multiple levels, a shallow left paracentral disc protrusion at L1-L2, a posterior annular broad-based disc bulge at L2-L3, and a disc bulge and annular fissure at L4-L5. (Id. at 41-42). Williams was given pain medication, a Lidoderm patch, and referred to Joshua Barber, M.D., an orthopedic spine doctor at PCI. (Id. at 38). He was also provided with a work note. (Id.).

Dr. Barber evaluated Williams on March 11, 2022. (JE 1, p. 16). Williams told Dr. Barber he was that he was lifting something at work on March 10, 2022, and had a sharp pain in his lower back when he stepped off the forklift. (Id.). He reported stabbing pain in his back, pain in the medial right thigh, and left leg paresthesias that went into the lateral aspect of his left foot. (Id.). Dr. Barber diagnosed him with musculoskeletal back pain. (Id. at 17). He recommended pain medications, Gabapentin and Meloxicam. (Id. at 17). He did not think surgery was indicated. (Id.). Dr. Barber referred Williams to Justin Gilbert, M.D., for consideration of repeat medial branch blocks and radiofrequency ablation. (Id. at 17-18). Williams saw Dr. Gilbert on March 30, 2022. (Id. at 21). Dr. Gilbert diagnosed him with chronic pain, and lumbago with sciatica, left side. (Id.). He recommended a bilateral L5-S1 transforaminal epidural steroid injection for diagnostic purposes. (Id.). His treatment note states, "in the absence of any benefits, we can consider updating his MRI given new onset injury." (Id.). Dr. Gilbert performed the injection that day. (Id.). Williams testified the injection helped with his pain complaints, but later wore off. (Tr., p. 36).

Williams did not seek medical attention for his back again until August 17, 2022. (JE 7, p. 192). On that date, Williams presented to the UnityPoint Urgent Care Clinic with low back pain. (Id. at 193). The note states that his back started bothering him two days prior, he wasn't sure what exactly what he had done, but he "went to work the last 2 days and does a lot of lifting and today just could not do it." (Id.). He requested a work excuse until Monday when he could see his family provider. (Id.). He was diagnosed with acute bilateral low back pain without sciatica and given a work excuse. (Id. at 193-195).

Williams saw Dr. Anwar on August 22, 2022. (JE 6, pp. 165-168). Dr. Anwar diagnosed him with acute right-sided low back pain, lumbar back pain with radiculopathy affecting his left lower extremity, and foraminal stenosis of the lumbar region. (Id. at 167). Dr. Anwar advised him to increase his use of Celebrex and prescribed a seven-day dose of prednisone. (Id. at 168). Williams requested a note taking him off work for the week. (Id.). It was provided. (Id.).

On September 6, 2022, Dr. Morrissey performed another radiofrequency ablation of Williams' medial branch nerves at L4 and L5. (JE 4, pp. 118-121). Williams also had a follow-up visit with Dr. Anwar on that date. (JE 7, p. 169). Dr. Anwar returned him back to work with restrictions of no repeated lifting or bending and avoid lifting more than 20 pounds for the next two weeks. (Id. at 173).

On October 13, 2022, Williams presented to the St. Luke's ER with worsening low back pain, which had radiated to his left thigh and lateral leg for the past two days.⁷ (JE 2, p. 44). He was having trouble walking secondary to pain. (Id.). Williams was diagnosed with lumbar back pain with radiculopathy affecting his left lower extremity and admitted to the hospital. (Id. at 47). His intake paperwork notes he had experienced some trauma to the low back about a year ago and was diagnosed with some bulging discs, but "thinks this is different from then." (Id. at 48). He reported tingling and pain in his lower legs with movement. (Id. at 50). A new MRI was obtained. (Id. at 52-53). It showed relatively mild multilevel lumbar spondylosis, mild to moderate spondylosis at L4-L5, and multilevel disc bulge/shallow central disc protrusions. (Id.). There was no significant spinal canal or foraminal narrowing. (Id.). Williams was given several rounds of Dilaudid and Valium. (Id. at 50). His pain did not improve. (Id.). He was evaluated by Stanley Mathew, M.D., a pain management physician. (Id.). Dr. Mathew started him on a Medrol dose pack, methocarbamol, and tramadol. (Id.). He was also sent to physical therapy. (Id.). Williams has a history of kidney stones, so CT scans of his abdomen and pelvis were taken. (Id.). They were normal. (Id.). His pain improved. (Id.). He was discharged from the hospital on October 15, 2022, with restrictions of no lifting more than 5 pounds and take frequent rest breaks.⁸ (Id.). He was instructed to follow-up with CRS Physical Medicine and Rehabilitation (CRS) in two weeks. (Id. at 50).

On November 4, 2022, Williams was evaluated by Jennifer Driscoll, ARNP, at CRS. (JE 5, p. 127). He was still experiencing back pain with bending and twisting. (Id. at 129). He also noticed left leg weakness when walking longer distances. (Id.). Williams reported that he worked at a warehouse with "a lot of lifting, twisting and bending," and he felt "unable to return to work as any type of twisting or bending at home will flare-up his pain." (Id.). Nurse Driscoll diagnosed him with lumbar spondylosis, chronic bilateral low back pain with left-sided sciatica, and protrusion of the lumbar intervertebral disc. (Id. at 132). She recommended he continue using his pain medications. (Id.). She also suggested a trial of Lyrica, a referral to Clark and Associates for a lumbar spine orthosis

⁷ This note indicates that Williams was also receiving treatment for chronic fatigue, migraines, nocturia, hepatomegaly, and morbid obesity. (JE 2, p. 54).

⁸ The ER note states that Williams works in a warehouse where he is required to perform heavy lifting. (JE 2, p. 50).

evaluation, and another injection. (Id. at 130-132). She provided Williams with a note taking him off work until November 18, 2022. (Id. at 134). Williams had a follow-up visit with Nurse Driscoll on November 18, 2022. (Id. at 135-137). His back pain had improved, and he was no longer having shooting pain down his leg. (Id. at 137). Williams requested a note returning him to work. (Id.). Nurse Driscoll returned him to work three days a week working four-hour shifts. (Id. at 137-141). She also gave him restrictions of not lifting greater than 10 pounds, no twisting or bending at the waist, and no sitting or standing for longer than 30 minutes at a time. (Id. at 141).

On November 30, 2022, Dr. Morrissey performed another lumbar epidural steroid injection. (JE 4, p. 122). Williams had a follow-up appointment with Nurse Driscoll on December 7, 2022. (JE 5, p. 142). Williams indicated that the treatments she and Dr. Morrissey provided had “been helping to control his back pain,” and he was “no longer having the shooting leg pains as he was prior.” (Id.). Williams thought he could increase his work hours to five days a week with four-hour shifts. (Id.). Nurse Driscoll provided him with a new work note increasing his permissible work hours as requested. (Id. at 145). She maintained the same physical restrictions she had given on November 18, 2022. (Id.). This is the last treatment note in the record prior to the hearing date. (Id.). The note indicates that Williams was to return to her office on January 4, 2023 to reevaluate his symptoms and see how he is tolerating work. (Id.).

At the behest of his attorney, Williams attended an independent medical exam (IME) with Farid Manshadi, M.D. on October 20, 2022. (CI Ex. 1, p. 12). His report was issued on November 7, 2022. (Id.). Prior to the examination, Dr. Manshadi reviewed medical records from Williams’ prior right shoulder injury, his 2015 lumbar MRI, and his post-injury-date treatment records. (Id. at 12-15). Dr. Manshadi diagnosed Williams with lumbosacral radiculopathy, most likely at L4-L5, resulting in reduced sensation along the left L4 dermatome, as well as reduced lumbar range of motion. (Id. at 17). He opined that the fall at ADM in May 2020 materially aggravated his pre-existing back condition and was a substantial contributing factor in producing his current left-sided low back pain and L4-L5 radiculopathy. (Id.). Williams told Dr. Manshadi that he had never experienced left-sided leg pain before the fall. (Id.). Dr. Manshadi recommended continued physical therapy and injections for his pain complaints. (Id. at 17). He also suggested an evaluation to see if decompression surgery was warranted. (Id.). Dr. Manshadi stated Williams was at maximum medical improvement (MMI) for his back injury, if he chose not to pursue further treatment, but he did not provide an actual MMI date. (Id.). He stated Williams fell under DRE Lumbar Category 2 and assigned him 8 percent permanent impairment to the whole body, citing to Table 15-3 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Id.). Dr. Manshadi recommended restrictions of avoiding any activities which require bending, stooping, or twisting at the waist, and no lifting more than 20 pounds (Id.).

At the request of defendants, Williams underwent a second IME with Jonathon Fields, M.D. on November 10, 2022. (Ex. H, p. 28). Prior to the examination, Dr. Fields reviewed medical records for Williams’ prior right shoulder injury, his pre-injury lumbar treatment, his 2015 lumbar MRI, his post-injury lumbar treatment records, and Dr.

Manshadi's IME report. (Id. at 29). Dr. Fields diagnosed Williams with chronic degenerative lumbar spondylosis that pre-existed the May 2020 fall at ADM. (Id. at 34). He also diagnosed him with a minor coccyx contusion as a result of the fall on May 21, 2020, which temporarily exacerbated his chronic symptomatology. (Id.). However, Dr. Fields opined that these conditions were not causally related to Williams' work at ADM because he was off work and playing on his cell phone when he fell. (Id.). According to Dr. Fields, the fall did not cause any material or permanent aggravation of Williams' pre-existing back condition, and his current complaints are related to his chronic condition, not the fall at work. (Id.). As support for this assertion, Dr. Fields points to Williams' multiple post-injury MRIs, which do not show any acute changes from his 2015 lumbar MRI. (Id.). Dr. Fields placed Williams at MMI on June 21, 2020, for the coccyx contusion. (Id. at 35). Dr. Fields noted that under the AMA Guides Fifth Edition, ambiguous or controversial pain is considered unratable. (Id.). Dr. Fields did not assign him any permanent impairment or suggest work restrictions for the May 2020 fall.⁹

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

Defendants assert a notice defense. Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence. The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Dep't of Transp., 296 N.W.2d 809 (Iowa 1980). The time period for giving notice does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness and probable compensable character of the injury. The reasonableness of claimant's conduct is to be judged in light of claimant's education and intelligence. Claimant must know enough about the condition or incident to realize that it is both serious and work connected. Positive medical information is unnecessary if information from any source give notice of the condition's probable compensability. Robinson, 296 N.W.2d at 812. Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Comm'n, 229 Iowa 700, 295 N.W. 91 (1940).

Above, I found that ADM did not have actual knowledge of Williams' May 21, 2020 fall until October 1, 2020, the day he reported it to Tyler Albert and Dean Petroff.

⁹ In November 2022, claimant's counsel asked Dr. Manshadi to review an additional pre-injury record and Dr. Field's IME report. (CI Ex. 1, p. 31). After reviewing the documents, he did not change his opinion. (Id. at 32).

However, under the law, the 90 days does not begin to run until Williams recognized the nature, seriousness, and compensability of the injury. See Robinson, 296 N.W.2d at 812. Williams returned to full duty work the day after the incident, and he did not seek any treatment for his low back until July 24, 2020. Under these facts, this is the earliest date Williams could be credited with understanding the nature and seriousness of his low back condition. July 24, 2020 to October 1, 2020, is a period of 69 days. Williams reported the injury to ADM within 90 days of the “occurrence” under the law. Defendants have failed to prove their notice defense.

The next issue that must be addressed is whether Williams sustained an injury that arose out of and in the course of his employment with ADM on May 21, 2020. In his brief, Williams argues that his fall in the ADM locker room “is a work injury as long as it was on employer premises.”¹⁰ (Claimant’s post-hearing brief, p. 15). In their brief, defendants argue his low back injury did not arise out of and in the course of his employment as he was off the clock and fell to the floor because he was distracted and looking at his personal cell phone. (Defendants’ post-hearing brief, p. 36). Defendants argue that under these facts, there was no hazard or circumstance of the work environment that caused him to fall. (*Id.*).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury 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” refer 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.

An employer should expect a worker to be at the workplace at times during non-work hours. Consequently, being present at the workplace at such times is incidental to employment. See, e.g., Suljevic v. Dudden Farms, Inc., File No. 5031167, 2010 WL 5383984 (Arb. Decision, Dec. 23, 2010). At the time of the injury in this case, Williams was clocked out, but still in the locker room at ADM. Generally, injuries occurring while a

¹⁰ In Lakeside Casino v. Blue, the Iowa Supreme Court expressly rejected the “positional-risk” doctrine. 743 N.W.2d 169, 177 (Iowa 2007). Under the positional-risk doctrine, injuries are compensable “in situations where ‘the only connection of the employment with the injury is that its obligations placed the employee in the particular place at the particular time’ when the employee ‘was injured by some neutral force, meaning by “neutral” neither personal to the claimant nor distinctly associated with the employment.’” Ottumwa Reg. Health Ctr. v. Mitchell, 752 N.W.2d 35, 2008 WL 1699806 at *3 (Iowa Ct. App. 2008) (table) (citations omitted).

worker is going to and from work off an employer's premises are not compensable. Otto v. Independent Sch. Dist., 237 Iowa 991, 994; 23 N.W.2d 915, 916 (1946). However, injuries on an employer's premises at or near employment hours are almost always compensable. See 15 Iowa Practice Series, Workers' Compensation § 6:2 (2019). It appears Williams' injury occurred in the course of his employment. The harder question is whether his injury arose out of his employment with ADM.

The first step in this analysis is to determine whether Williams' fall was idiopathic, unexplained, or explained by a condition existing in the workplace. See Lapcheske v. Polk County, File No. 5055505, 2019 WL 7759785 (Appeal Decision, Nov. 6, 2019). Above, I found Williams was looking at his cell phone and attempted to sit down without looking, missed the bench, and fell to the ground. This finding is supported by the witness statements, and the explanations provided in Williams' medical treatment records. Given this fact pattern, Williams' fall does not appear to fit neatly into any of these categories. It is not idiopathic.¹¹ Nor can it be explained by any specific hazardous condition at ADM. Williams' employment at ADM did not subject him to the risk of falling on a level floor in the locker room. His distraction with his cell phone subjected him to that risk. This is a reason personal to him and unrelated to his employment. It appears Williams fell on a concrete floor. However, nothing in the record indicates the floor of the locker room presented a specific hazard to Williams. Unlike in Lapcheske, the hearing record does not contain any factual evidence about the hardness of the floor he fell upon, nor does it contain any medical opinions indicating that it was the floor material specifically that caused his injury. Given this, there is insufficient evidence that Williams' fall can be explained by a hazard or condition of his workplace.

The greater weight of the evidence suggests he fell due to inattention, making unexplained the most appropriate category in which to analyze this claim. Prior to July 2019, claimants with unexplained falls could satisfy their burden to prove an injury arising out of employment under the "actual risk" rule. Bluml v. Dee Jay's Inc., 920 N.W.2d 82, 91 n.1 (Iowa 2018). Under the actual-risk rule, the claimant must show " 'the employment subjected [the] claimant to the actual risk that caused the injury.' " Lakeside Casino v. Blue, 920 N.W.2d 169, 176 (Iowa 2007) (quoting 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 3.04, at 3-5 (2007)). More specifically, under the actual-risk doctrine, the injury must result from a condition, risk, or hazard of employment. Id. at 178; see also Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990) ("If the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of the employment."). In this case, Williams was injured because he got distracted by his cell phone and fell on the floor; there is insufficient evidence in the record that his injury resulted from a risk of his employment.

¹¹ An idiopathic fall is defined as "a fall due to the employee's personal condition." Bluml v. Dee Jay's Inc., 920 N.W.2d 82, 86 (Iowa 2018).

Additionally, in July of 2019, the legislature amended Iowa Code section 85.61(7)(c) to include the following paragraph, “Personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under this chapter.” Iowa Code Section 85.61(7)(c) (2019).¹² Williams’ alleged date of injury is May 21, 2020, and he suffered an unexplained fall from a level surface onto the same level surface. Accordingly, under the language of the revised statute, his claim is not compensable. Williams has not proven that his low back injury arose out of his employment with ADM.¹³ Claimant shall take nothing from these proceedings.

Williams is seeking reimbursement for his IME with Dr. Manshadi. A claimant’s right to reimbursement for an IME exam is controlled by Iowa Code section 85.39. This section permits an employee to be reimbursed for a 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. Iowa Code section 85.39(2)(2019). However, this right to reimbursement is also dependent upon the claimant’s success at hearing. Iowa Code section 85.39(2), states,

An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury.

Id.

Defendants are not liable for this claim. Williams has not established the prerequisites for reimbursement of Dr. Manshadi’s evaluation pursuant to Iowa Code section 85.39.

¹² According to the Iowa Practice Series,

In 2018, the Iowa Supreme Court clarified that the actual-risk rule adopted in *Lakeside* did not overturn the “Increased Risk Standard,” which is applicable for idiopathic falls in the work place. In *Bluml v. Dee Jay’s Inc.*, the Iowa Supreme Court held that an idiopathic fall may be compensable if the condition of the employment “increased the risk of injury” and that is a question of fact, not a question of law.

In response to *Bluml*, in 2019, the Iowa legislature amended Iowa Code section 85.61 to state that “personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under [Chapter 85].”

§ 54:10. Arising out of and in the course of employment, 3 Ia. Prac., Methods of Practice § 54:10.

¹³ The undersigned recognizes that the statute also refers to “in the course of employment,” but Williams was clearly in the ADM locker room immediately after his shift when the incident occurred.

Williams also asserts a claim for costs. Specifically, Williams seeks costs for Dr. Manshadi's supplemental report, his filing fee, and his deposition transcript. (CI Ex. 6, p. 54). Williams failed to prove a compensable claim; therefore, I conclude that none of his costs should be assessed. Defendants are also asserting a claim for costs. They are seeking the cost of Dr. Field's IME. (Ex. N). The compensability of this case was a close call that required careful legal analysis. Given this, I decline to award defendants costs and conclude that each party should bear its own costs.


ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

Signed and filed this 28th day of June, 2023.


AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Andrew Giller (via WCES)

Peter Thill (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.