BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN BARACH, Claimant, vs. CITY OF DES MOINES, Employer, Self-Insured, Defendant.	:	File No. 22700162.01 ARBITRATION DECISION Head Note: 1402.20

STATEMENT OF THE CASE

John Barach, claimant, filed a petition for arbitration seeking workers' compensation benefits against City of Des Moines, a self-insured employer. This case came before the undersigned for an arbitration hearing on April 13, 2023. The case proceeded to a live video hearing via Zoom.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted, and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 3, and Defendant's Exhibits A through C. All exhibits were received without objection.

Claimant testified on his own behalf. No other witnesses testified at hearing. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties served their post-hearing briefs on May 12, 2023, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury, which arose out of and in the course of employment, on January 1, 2020;

2. Whether the alleged January 1, 2020, injury is a cause of temporary disability during a period of recovery;

3. Whether the alleged injuries were a cause of permanent disability;

4. The extent of claimant's entitlement to permanent partial disability benefits, if any; and

5. Costs.

FINDINGS OF FACT

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

The instant case involves alleged injuries occurring on January 1, 2020, and November 19, 2021. This decision will also discuss an injury that occurred on November 20, 2019; however, the November 20, 2019, injury is not a matter in dispute within the current case. The claimant at the center of this case is John Barach. At the time of the evidentiary hearing, Barach was 43 years old. (Hearing Transcript, page 9) He attended high school in Des Moines, Iowa and graduated with a diploma in 1998. (Id.) Barach subsequently completed an apprenticeship with Cement Finishers Local 21 and received training through Des Moines Area Community College. (Id.)

Barach's employment history largely consists of manual labor work involving concrete. (Hr. Tr., p. 10) In 2014, Barach applied for and ultimately accepted a maintenance position in the Streets Department for the City of Des Moines. (Hr. Tr., p. 10) In this role, claimant performed semi-skilled work in connection with the maintenance and construction of roads and other City facilities. (Defendant's Exhibit A, p. 1) In 2018, Barach made the switch from working in the Streets Department to working in the Sewers Department. (Hr. Tr., p. 10) In the Sewers Department, Barach tears out and rebuilds broken sewer structures. (Hr. Tr., p. 11) The job involves "very heavy" work. (Id.)

The first injury that will be discussed in this decision occurred on November 19, 2021. On this date of injury, Barach was on his hands and knees finishing concrete. (Hr. Tr., p. 12) Barach slipped in the process and extended his hands in an attempt to break his fall. (Id.) Regrettably, during this maneuver, his left ring finger became ensnared on a form and pulled away from his middle finger. (Joint Exhibit 2, p. 20) Defendant accepted the injury and directed claimant's care to ZeHui Han, M.D.

An MRI, dated February 10, 2022, revealed a small amount of fluid along the volar margin of the fourth metacarpal head; however, there was no evidence of a high-grade muscular strain or injury. (JE3, p. 27) Based on the MRI report, Dr. Han opined he did not have a good answer for what was causing claimant's pain. (JE4, p. 29)

Nevertheless, Dr. Han referred claimant to occupational therapy in an attempt to improve his pain. (Id.)

Dr. Han discharged Barach on March 11, 2022, following a verbal altercation that will be discussed in greater detail below. (JE4, p. 31)

Following his release from Dr. Han's care, Barach presented to Shane Cook, M.D. for a second opinion on April 5, 2022. (JE5, p. 37) Claimant complained of a sore left ring finger, with additional soreness in the palm under the finger. (Id.) Dr. Cook reviewed the February 10, 2022, imaging and diagnosed Barach with left ring finger and small finger stenosing flexor tenosynovitis. (Id.) Dr. Cook recommended a corticosteroid injection of the left ring finger. (Id.)

The injection was performed on April 21, 2022, but provided no benefit. (JE5, pp. 40, 44) In response, Dr. Cook provided,

> I did state it is very unusual to not have any triggering and have the injection not be helpful. His MRI was reviewed again. I do not see any reason why he is having this level of pain. He does have a small fluid collection deep to the flexor tendons of the fourth digit but no collateral ligament injury or volar plate injury.

(Id.) Dr. Cook then opined he did not have any further treatment to offer and placed Barach at maximum medical improvement, without restrictions. (Id.)

In a letter dated May 23, 2022, Dr. Cook summarized his treatment of claimant and assessed claimant's permanent impairment. (See JE5, p. 47) Dr. Cook noted that claimant had no mechanical signs of triggering in the left ring or small fingers. (JE5, p. 47) He further noted that claimant had full range of motion of the MP, PIP and DIP joints of the left ring and small fingers. (Id.) Dr. Cook confirmed that claimant had reached MMI and assigned zero percent upper extremity impairment. (Id.) Dr. Cook's rating was made pursuant to the AMA Guidelines to the Evaluation of Permanent Impairment, Fifth Edition. (Id.)

Barach returned to Dr. Cook on November 10, 2022, with complaints of ongoing pain in the palm of his hand. (JE5, p. 50) Given the claimant's significant pain with any palpation over the A1 pulley region and fullness of the area, Dr. Cook offered both surgical and non-surgical treatment options. Barach elected to pursue an A1 pulley release with flexor tenosynovectomy. (Id.)

Dr. Cook performed the recommended surgery on November 29, 2022. (JE5, p. 52) Nine weeks later, Dr. Cook placed claimant at maximum medical improvement and released him to return to work without restrictions. (JE5, p. 57) Dr. Cook did not provide an updated impairment assessment. (See id.)

In response to Dr. Cook's initial impairment assessment, claimant sought an independent medical evaluation with Sunil Bansal, M.D. (Claimant Exhibit 1) As part of the evaluation, Dr. Bansal conducted a records review and physical examination. The examination took place on November 17, 2022. (Ex. 1, p. 1)

Notably, Dr. Bansal's report primarily addresses the November 20, 2019, and January 1, 2020, injuries; it does not address the alleged November 19, 2021, work injury to claimant's left ring and small fingers. (See Ex. 1, p. 1) When addressing causation, Dr. Bansal did not describe the acute injury that claimant sustained on November 19, 2021. Instead, Dr. Bansal described the left ring trigger finger injury as, "[T]he cumulative mechanism of injury of repetitively gripping and lifting heavy objects, as well as frequent use of a jackhammer, is consistent with his left ring trigger finger, and the need for surgery." (Ex. 1, p. 12)

While Dr. Bansal's report does briefly allude to the claimant slipping and falling on his hand, it intertwines this reference with a description of the left hand pain as a continuation of the November 20, 2019, left arm injury within the same paragraph. (See Exhibit 1, page 8) Furthermore, Dr. Bansal's report seems to conflate the November 19, 2021, date of injury with the date when the claimant underwent a left trigger finger release. (See Ex. 1, p. 8) ("He continued to have pain in his hand, and underwent a trigger finger release at the end of November 2021.") It is possible Dr. Bansal meant to convey the trigger finger release occurred at the end of November 2022; however, such an interpretation would still not result in a coherent opinion.

Although Dr. Bansal did not specifically address the November 19, 2021, injury, he nevertheless assigned impairment to the left ring finger and small finger. (Ex. 1, p. 11) He assigned 6 percent impairment to the ring finger and 3 percent impairment to the small finger. (Id.) He then converted these ratings to 1 percent hand impairment. (Id.)

Claimant asserts Dr. Cook's impairment rating is not credible as it was assigned prior to the November 29, 2022, left trigger finger release. While claimant's assertion is correct, the same can be said of Dr. Bansal's impairment rating. Dr. Cook performed the left trigger finger release on November 29, 2022. (JE5, p. 52) Although Dr. Bansal produced his report on March 13, 2023, he conducted his physical examination of claimant on November 17, 2022. (Ex. 1, p. 1) While Dr. Bansal's report makes reference to the November 29, 2022, procedure, there is no indication that Dr. Bansal reexamined the claimant following the November 29, 2022, procedure. This raises legitimate questions regarding the range of motion measurements Dr. Bansal relied upon to formulate his impairment rating.

Given the noted issues with both impairment assessments, I decline the opportunity to adopt either impairment rating. Instead, I find claimant provided insufficient evidence to establish the November 19, 2021, injury is a cause of permanent disability.

As mentioned, claimant is also alleging he sustained a cumulative injury to his right arm on or about January 1, 2020.

On November 20, 2019, Barach was tasked with loading a particular manhole cover into a vehicle with his supervisor. (JE2, p. 10) After locating the manhole cover, Barach picked it up with both hands and carried it to his vehicle. While performing this activity, Barach felt a burning sensation in his left elbow. (Id.) Barach reported the injury to his supervisor but did not immediately seek medical treatment. (Id.) Importantly, the claimant is not requesting that the undersigned address the left elbow injury sustained on November 20, 2019, within the scope of this proceeding.

Barach first presented for medical care for his left elbow on January 2, 2020. (See Ex. 1, p. 2; Ex. B, p. 2) While the medical records are not in evidence, Dr. Bansal's IME report provides a summary of some of the medical treatment claimant received for his left elbow. (See Ex. 1, pp. 2-8; see also Ex. B, pp. 2-4) Conservative treatment was recommended, which included physical therapy, ice packs, and activity restrictions. (See Ex. 1, p. 2; Ex. B, p. 2) There is no evidence claimant reported right elbow pain at this initial visit.

When conservative measures failed, claimant sought a second opinion from Dr. Cook. Dr. Cook believed that claimant most likely had a partially torn distal biceps tendon and recommended surgery to address the same. (See JE2, p. 10) The surgery was performed on July 27, 2020. (See Ex. 1, p.3)

According to a medical records summary in evidence, claimant first reported right elbow pain on March 9, 2020. (See Ex. B, p. 3) However, the medical record is not in evidence. In any event, claimant did not formally request medical treatment for his right elbow until September 10, 2020. (See Ex. B, p. 4)

Defendants directed claimant to UnityPoint Health Des Moines Occupational Medicine where he saw Jon Yankey, M.D. (See JE2, p. 10) Dr. Yankey first evaluated claimant on September 22, 2020. (JE2, p. 10) After detailing his course of treatment following the November 20, 2019, left elbow injury, claimant reported a gradual onset of right elbow pain that presented in February or March 2020. (Id.) The record provides, "[T]he patient claims that his right elbow pain is the result of his injury on 11/20/2019." (JE2, p. 11) Barach asserted that he reported his right elbow pain to a provider at Occupational Medicine in February or March 2020. He further asserted that he reported his right elbow pain to his physical therapist and to Dr. Cook. (JE2, p. 11) Barach did not submit medical records to substantiate these claims.

Dr. Yankey assessed right elbow pain, but noted a diagnosis was not clear at the time. (JE2, p. 12) Dr. Yankey opined that claimant's right elbow examination was objectively negative, and further diagnostic evaluation would be necessary before he could address causation. As such, Dr. Yankey recommended an MRI of the right elbow. (Id.)

Defendants scheduled claimant for a right arm MRI on October 1, 2020, and October 19, 2020, but claimant cancelled both appointments. (JE2, p. 18) On October 21, 2020, claimant told a representative with the defendant insurer that his right arm

was feeling better, and he did not want to pursue treatment for the same. (Id.) He did not present for or request any medical care for his right elbow between October 21, 2020, and May 3, 2021.

Barach returned to Dr. Yankey on May 4, 2021. (JE2, p. 13) Although claimant reported persistent right elbow pain since the November 20, 2019, work injury, he also described a recent, acute increase in pain. Claimant reported that he developed pain in his right elbow when he attempted to lift a "mop" on May 3, 2021. (Id.) The "mop" claimant is referring to is a device used to level and smooth out cement. (See id.) Claimant believes the mop weighs between 10 and 15 pounds. (See JE2, p. 13) Upon lifting the mop, claimant's right elbow pain significantly increased. (Id.) X-rays obtained of the right elbow revealed no evidence of fracture, dislocation, or other bony abnormality. (JE2, p. 14) Dr. Yankey again opined that the cause of claimant's right elbow pain was still not clear and recommended an MRI for further evaluation. (Id.)

The May 18, 2021, MRI revealed minimal adjacent soft tissue edema at the biceps insertion consistent with a mild strain. (See JE2, p. 15)

Dr. Yankey discussed the findings of the MRI report with claimant on May 24, 2021. (JE2, p. 15) He advised claimant that there was no evidence of either a structural soft tissue injury or a structural bone injury. (Id.) He further advised claimant that he did not believe the right elbow pain was causally related to the reported work injury on November 20, 2019. (Id.) According to Dr. Yankey's medical record, claimant became very upset and angry during the discussion. The record provides, "In the exam room, he verbally used a profanity directed at me. Consequently, the office visit was then ended immediately and abruptly." (Id.) According to claimant, the two "had a couple of words back and forth" after Dr. Yankey told him his injury was not work-related. Claimant believes he called Dr. Yankey an "ass" before electing to walk out of his office. (Hr. Tr., pp. 19-20)

A similar verbal altercation occurred between claimant and Dr. Han in March 2022. While collecting a verbal history from claimant, Dr. Han asked claimant about his recent physical therapy sessions. Believing claimant provided a hesitated response, Dr. Han inquired further about physical therapy. According to the medical record, claimant started using profanity, stating "let's just get to the fucking reason why I am here." (JE4, p. 30) Dr. Han told claimant he would be released from care if he continued to use profanity. Claimant became "very aggressive and combative." Claimant allegedly approached Dr. Han and told him he was a "fucking prick." (JE4, p. 31) Dr. Han advised claimant he was released from care and instructed him to leave the office. (Id.)

Claimant testified to his version of events at the evidentiary hearing. According to claimant, Dr. Han asked him, "Do you like your physical therapist?" (Hr. Tr., p. 21) When claimant responded, "She's okay," Dr. Han sat up in his chair and "started going on a rant of why would I say she's okay[.]" (Id.) Claimant replied with a series of his own questions, such as, "What do you mean do I like her? Am I attracted to her? Do I think I'm getting good medical treatment? What do you mean?" (Id.) Finally, claimant asserts he told Dr. Han he was there to talk about his hand, not his physical therapist. (Id.) From there, an argument ensued, and claimant confirmed that Dr. Han told him not

to use profanity in his office. However, according to claimant, Dr. Han told him, "Don't you fucking say fuck in my fucking office again. Do you fucking understand me?" (Hr. Tr., p. 22)

Claimant makes several other claims regarding Dr. Han's behavior during appointments. He asserts that when he asked Dr. Han questions, Dr. Han would reply, "That's one of the dumbest things anybody has ever asked me." (Hr. Tr., p. 22) Additionally, claimant asserts that during his examinations, Dr. Han would only touch the tip of his finger before stating, "There's nothing wrong with you." (Id.)

Megan Frizzell, a physician extender who attended the appointment in question, provided a recorded statement in this case. (JE4, pp. 33-36) Ms. Frizzell confirmed the altercation began when Dr. Han asked claimant about physical therapy. (JE4, p. 34) Ms. Frizzell confirmed claimant responded with profanity noting, "he wanted to get to the effing reason why he was there and that he didn't want to play games." (Id.) According to Ms. Frizzell, "Dr. Han told the patient that he didn't appreciate the language and said that if it continued that way, he was gonna [*sic*] be released from his care as he does not tolerate that behavior and the patient stood up and approached Dr. Han, uh, in aggressive behavior and he was asked to leave the office." (Id.) Ms. Frizzell added that the claimant was "up in his face." (Id.) Ms. Frizzell also confirmed that Dr. Han used profanity and asked the claimant if he was going to hit him. (JE4, pp. 34-35)

Claimant concedes that he overreacted in the above situations; however, he notes his reactions were consistent with his diagnosed mental health issues. Mental health conditions can understandably impact behavior and interactions. While it is important to acknowledge claimant's mental health conditions as potential factors contributing to his verbal altercations with Dr. Han and Dr. Yankey, the veracity of the allegations made against Dr. Han and Dr. Yankey must be evaluated independently, based on available evidence and objective assessments. Claimant asserts the statements made by Dr. Han and Dr. Yankey during these verbal altercations diminish their overall credibility. I do not reach the same conclusion.

Claimant relies upon the expert medical opinion of Dr. Bansal to establish causation for the right arm injury. In his report, Dr. Bansal opines that claimant injured his right arm in early 2020 from the cumulative performance of his job duties. (Ex. 1, pp. 8, 12) However, Dr. Bansal's understanding of the January 1, 2020, work injury is not in line with claimant's rendition of events. During his testimony, Barach asserted his belief that the onset of right elbow symptoms was linked to his inability to utilize his left arm effectively following the November 20, 2019, injury. He specifically contended that his engagement in light duty tasks, such as using his right arm exclusively to sweep the floor and scoop up piles of debris, directly contributed to the development of his right elbow injury. (Hr. Tr., pp. 15-16) In his post-hearing brief, Barach further asserts that he was overcompensating with his right arm. (Claimant's Brief, p. 2)

At no point does Dr. Bansal's report discuss claimant sustaining an injury as a result of overcompensation. To reconcile the two opinions, claimant's post-hearing brief provides, "Not only did the heavy manual labor performed by the Claimant on a daily basis prior to his January 1, 2020 injury contribute to his right elbow condition, but

working one-handed duty while recovering from left distal bicep repair surgery further aggravated his condition." (Claimant's Brief, p. 8) Importantly, claimant's testimony was that his right elbow pain was aggravated by his light duty work in February or March 2020, well before he underwent the left distal bicep repair surgery in July 2020. (Hr. Tr., p. 15)

Dr. Yankey addressed causation of the alleged right elbow injury in a letter dated May 28, 2021. According to Dr. Yankey's review of the medical records, claimant presented for a total of 17 appointments throughout January and February 2020. The medical records for those visits do not document any complaints of right elbow pain. (See Ex. B, p. 4) Dr. Yankey asserts the claimant first reported right elbow pain on March 9, 2020. (See Ex. B, p. 4) This was the only documented instance between November 20, 2019, and September 22, 2020, that claimant reported right elbow pain.

Ultimately, Dr. Yankey opined that claimant's right elbow pain is not causally related to an acute injury on November 20, 2019. (Ex. B, p. 5) He further opined claimant's right elbow pain was not caused by claimant overcompensating with his right arm due to the restrictions placed on his left elbow following the November 20, 2019, work injury. (Id.) Dr. Yankey added that using a broom to sweep does not require significant force and does not rise to the level of intensity that would result in a significant injury to the claimant's right elbow. (Id.)

Claimant challenges the credibility of Dr. Han and Dr. Yankey. Claimant's contention is rooted in previous instances where both medical professionals purportedly faced issues related to patient communication, rudeness, and misrepresentation of events. Additionally, claimant raises concerns about the logical soundness of Dr. Yankey's past opinions, which were rejected by this agency. Claimant is attempting to draw parallels between unrelated situations to support his argument. In the matter at hand, claimant fails to provide any substantial evidence that Dr. Han and Dr. Yankey exhibited similar behavior or provided illogical opinions. Claimant has failed to establish a valid basis for questioning the credibility of these medical professionals in the present case.

After reviewing the competing medical opinions, I find the causation opinion of Dr. Yankey to be more thorough and convincing than the causation opinion of Dr. Bansal. Unlike Dr. Bansal, Dr. Yankey specifically addressed claimant's allegations of overcompensation. Dr. Yankey also had the benefit of physically examining claimant's right elbow on a number of occasions. I do not find claimant's allegations regarding his discussions with Dr. Yankey to be credible. Therefore, I find that claimant failed to prove by a preponderance of the evidence that he sustained a right elbow injury that arose out of and in the course of his employment.

All other disputed issues with respect to the alleged January 1, 2020, work injury are rendered moot.

Costs will be addressed in the Conclusions of Law section.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" 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 Elec. 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).

In this case, I found claimant provided insufficient evidence to establish the November 19, 2021, injury is a cause of permanent disability. Accordingly, I conclude that claimant failed to prove entitlement to an award of permanent disability benefits for the November 19, 2021, work injury.

As for the alleged January 1, 2020, work injury, I found the opinions of Dr. Yankey to be the most credible and convincing. Relying upon his medical opinions, I

found that claimant failed to prove by a preponderance of the evidence that he sustained a right arm injury that arose out of and in the course of his employment. Having made this finding, I conclude that claimant failed to prove entitlement to an award of temporary or permanent disability benefits.

The final disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Exercising the agency's discretion, I conclude that neither party's costs should be assessed in this case. Rather, all parties should bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing.

All parties shall pay their own costs.

Signed and filed this __12th___ day of October, 2023.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Christopher Spaulding (via WCES)

John Haraldson (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.