BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL LARSON,

Claimant,

vs.

IMPERIAL ROOFING SYSTEMS,

Employer,

and

CNA,

Insurance Carrier,
Defendants.

File No. 5049316

ARBITRATION DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Michael Larson (Michael), claimant, filed a petition in arbitration seeking workers' compensation benefits from Imperial Roofing Systems (Imperial) and its insurer, CNA as a result of an injury he allegedly sustained on January 25, 2013 that allegedly arose out of and in the course of his employment. This case was heard in Des Moines, Iowa and fully submitted on February 24, 2013. The evidence in this case consists of the testimony of claimant, Claimant's Exhibits 1 – 3 and Defendants' Exhibits A – F. Both parties submitted briefs.

ISSUES

Whether claimant sustained an injury on January 25, 2013, which arose out of and in the course of employment;

Whether the alleged injury is a cause of permanent disability and, if so;

Whether the alleged disability is a scheduled member disability or an unscheduled disability.

The extent of claimant's disability.

Assessment of costs

STIPULATIONS

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.

In the hearing report, the parties stipulate to a rate of $392.41. Upon review of the rate book it appears the parties chose the wrong figure and Michael's rate is actually $373.34. The attorneys were notified of this via email on February 23, 2014 and on February 24, 2017 agreed via email that the rate was $373.34. As such, the rate stipulated in the hearing report is not accepted and the rate of $373.34 will be used.

RULING ON MOTION TO AMEND PLEADINGS TO CONFIRM TO THE PROOF

Michael moved to amend the petition filed in this case to include a claim that Michael has an injury to the whole body—that Michael has an industrial disability.

Defendants objected on two grounds. The first objection was that Michael has never notified the defendants he was asserting an industrial disability and that a change would be prejudicial and unfair.

Michael asserts that the defendants received a copy of Michael Taylor, M.D.'s, independent medical examination (IME) which converted the left upper extremity impairment to the whole body rating. Michael also asserts that the pain from his carpal tunnel syndrome shoots to his elbow and into his shoulder.

I sustain defendants' objection on two grounds. First the defendants were never notified before the hearing that there was a claim for an industrial disability. The identification of this issue at the hearing unfairly prejudices the rights of the defendants. The evidence in an industrial disability case can be significantly different than a scheduled member case. Defendants were not provided a reasonable opportunity to respond.

The second reason for sustaining the objection is that there is no competent evidence to show Michael has an industrial disability.

Any scheduled member rating can be converted to a rating for the whole body. (See AMA Guides for the Evaluation of Permanent Impairment, Fifth Edition, Table 16 – 3, p. 439) The conversion of a rating in no way equates to any determination that a scheduled member injury is an industrial disability.

Additionally, the fact is pain that goes from his wrists into his elbow and shoulder from his carpal tunnel does not make carpal tunnel syndrome an injury to the shoulder and a body as a whole. While some systemic nerve disease, CRPS, and phantom pain

can be industrial disabilities, Michael's evidence falls short of showing an industrial disability.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record finds that:

Michael Larson was 38 years old at the time of the hearing. Michael did not complete high school. He obtained a GED a number of years after he left high school.

Michael has worked for Imperial for two different periods. He first worked from 1990 through 1998. His second period of employment was from June 2011 through August 2013.

At the time of the hearing Michael was working for Karl Tyler Chevrolet in Montana. He is a service technician, primarily working on transmission and drivetrain issues. (Exhibit 3, page 4) Michael has received ongoing training from General Motors. This is Michael's only post-GED education or training.

Michael testified that on January 25, 2013 he was hand rolling and using a heat welder when he noticed pain in his left hand. (Ex. 3, p. 6) Michael reported this injury and was referred for care. Michael said that he had an EMG in February. Michael said he went to physical therapy when he could, as his employer had him working out of state and he could not attend physical therapy.

Michael stated that he has pain in his left arm all the time. He has pain in the wrist that shoots to the elbow and shoulder. He credibly testified that he has to take additional breaks at work due to his pain. He had difficulty with sleep as he will have numbness and pain in his hand. He has stopped riding motorcycles and pushing lawnmowers due to the vibration.

In August 2013, Michael moved to Montana. In Montana the defendants referred Michael to Treasure State Occupational Health. On October 1, 2013, Char Lewis, ARNP, examined Michael. Her impression was bilateral carpal tunnel syndrome, rule out median nerve compression. (Ex. 2, p. 3) Restrictions were recommended as occasional bilateral hand and wrist work, occasional bilateral grasping, pushing, pulling, fine manipulation and reaching. (Ex, 2, p. 4) A request was made for an additional EMG. That request was denied by defendant CNA as it was a request for bilateral EMG and it was not the insurance carrier for the right hand issue. (Ex. 2, p. 14)

The medical records show that Michael was complaining of left hand pain before January 25, 2013. On April 18, 2012, Michael was seen by Lana Schmitt, ARNP, for left hand pain. The assessment was "[g]anglion cyst left hand." (Ex. A, p. 1) He was given a wrist brace and advised to return as needed. He was returned to work with no restrictions. (Ex. A, p. 2) On January 26, 2013, Michael was seen at the Palmer Urgent Care Clinic with chronic pain to the fourth flexor tendon of his left hand. The report

states that this has been present for over a year. The assessment was "[l]ikely ganglion cyst." (Ex. B, p. 1)

Michael was seen again by ARNP Schmitt on January 28, 2013 and was assessed with left hand pain. Richard Hutter, M.D., saw Michael on January 29, 2013. Michael described his symptoms that had been going on for about a year involved pain in the left wrist circumferentially, radiating toward the left elbow and up to the left shoulder, worse with activity, worse with driving, and awakening him at night. (Ex. A, p. 4) While the rest of Dr. Hutter's report was not in the exhibits, Dr. Taylor wrote that Dr. Hutter diagnosed possible ulnar neuropathy and requested an EMG. (Ex.1, p. 3) According to Dr. Taylor, the EMG revealed mild carpal tunnel syndrome and that Dr. Hutter thought Michael's problem was most likely left carpal tunnel syndrome and tendinitis. (Ex. 1, p. 3) The EMG results reported,

> 1. Left medial sensorimotor neuropathy at the wrist (carpal tunnel syndrome), mild in degree.
>
> 2. Normal left ulnar nerve motor and sensory study. Normal EMG left FDI muscle.

(Ex. 2, p. 18)

On July 16, 2015, Michael Gainer, M.D., performed an IME. (Ex. D, pp. 1 - 4) Dr. Gainer's impression was "[l]eft elbow ulnar neuropathy." (Ex. D, p. 4) Dr. Gainer's diagnosis was "[l]eft cubital tunnel and [l]eft palm Dupuytren's Nodule." (Ex. D, p. 3) Dr. Gainer noted the Dupuytren's nodule is genetic and not work related.

He wrote "[t]here is insufficient evidence that would support his occupation as a causation for his cubital tunnel syndrome." (Ex. D, p. 3) He did not place claimant at maximum medical improvement, as he recommended another EMG. He did not provide a rating as he did not consider the injury to be work related. (Ex. D, p. 3) He did not recommend any permanent work restrictions. (Ex. D, p. 4)

On August 15, 2015, Dr. Taylor performed an IME. (Ex. 1, pp. 1 – 11) Dr. Taylor evaluated both the right and left upper extremities. The right upper extremity is not part of this case as Michael and Imperial reached a settlement of his alleged right extremity injury. (Ex. F)

Dr. Taylor detailed the type of work Michael did for Imperial. He wrote,

> He generally worked as a "detailer". On most of these roofs, they would work a certain amount of square footage per day, often between 100 and 120 square foot [*sic*]. Initially, he would drill screws to hold the insulation and roofing material in place. These screws were of varying lengths and he used an electric drill to place the screws. They had to be placed every six inches on the perimeter, but in other areas they had to place a certain number per sheet. He would perform that task several

hours per day and tended to use both hands. At some point, he would then switch to completing the detailing tasks on the "curbs" and around pipes. He was the main (but not the only) one performing this task. This basically entailed using an electric hot air welder and a hand roller. The welder would provide heat at approximately 400 degrees and then he would hold the plastic welding material in the other hand and weld around these areas and would have to use the roller and apply a significant of pressure to mold the seams. He was frequently switching hands. He generally started out using the left hand to apply the pressure for the rolling, which also required awkward wrist positions including flexion, extension and radial/ulnar deviation. Once his left hand started to hurt, then he had to start using his right hand for these tasks. He would perform those tasks generally until the end of the workday, which could include up to 10 or 12 hours total. He estimated that a Super Target would take approximately one month to re-roof.

(Ex. 1, p. 2) Dr. Taylor's diagnoses were,

1. Bilateral wrist and hand pain.
2. Possible de Quervain's tenosynovitis with positive Finkelstein's on the left.
3. Possible CMC joint synovitis with mildly positive CMC grind test bilaterally, worse on the left.
4. Bilateral medial epicondylitis/epicondylosis.
5. Bilateral ulnar neuritis, worse on the left.
6. Carpal tunnel syndrome on neurodiagnostic studies, left side.
7. Left palm cyst, consistent with Dupuytren's.

(Ex. 1, pp. 7, 8) Dr. Taylor's conclusion as to causation was,

Based on his description of these various job tasks and the repeated wrist, finger, hand and elbow movements for up to 10 to 12 hours per day, it is my opinion that these job tasks more than likely contributed to the development of his conditions in the elbows, wrists and hands (other than the Dupuytren's, which is not likely work-related). He never previously experienced these symptoms. He does not have nonoccupational risk factors in that he denies any known history of diabetes or thyroid problems. He is not obese. He does not spend a lot of his personal time performing activities that require the use of vibratory tools or repeated forceful gripping and grasping.

The symptoms improved to some extent once he stopped roofing and moved to Montana. Unfortunately, the symptoms did not resolve and, despite the fact that additional treatment was requested, it was apparently never approved.

(Ex. 1, pp. 8, 9) Dr. Taylor provided a four percent impairment rating for the left upper extremity. (Ex. 1, p. 10) In combining the left and right upper extremity impairment ratings, he converted the ratings to a four percent whole person rating. (Ex. 1, p. 10)

I find that Michael has an injury to his left upper extremity. There is not a sufficient factual record to find Michael has an industrial disability.

I found Michael credible based upon his demeanor. While Michael was obviously nervous at being in a hearing, he answered the questions to the best of his ability and was credible.

I find that Michael's gross earnings were $585.07 per week and that he was single and entitled to 1 exemption at the time of his injury. Using the rate book in effect at the time of the hearing, Michael's weekly rate is $373.34.

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" 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.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp.,

502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

A wrist injury is an injury to the arm, not the hand. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008).

I find that Michael has proven by a preponderance of the evidence that he has carpal tunnel syndrome in his left arm. The injury was caused by cumulative trauma while working for Imperial. He has a permanent impairment to his left upper extremity.

I find the evidence of Dr. Taylor more convincing than that of Dr. Gainer. Dr. Taylor details the repetitive and forceful arm and hand activities Michael was involved with at Imperial. Dr. Taylor's more detailed report is more convincing.

The evidence does show Michael complained of left hand pain before January 25, 2013. He has a ganglion cyst that has caused pain in his left hand. The medical evidence shows that in addition to the cyst, he developed left carpal tunnel syndrome. It is not unexpected in a cumulative trauma case that Michael may have symptoms before the manifestation date. In this case, I find January 25, 2013 is the manifestation date of Michael's left carpal tunnel injury. It was the January 26, 2013 appointment that led to the February 2013 EMG that showed the left carpal tunnel syndrome.

Based upon Dr. Taylor's opinion I find claimant has a four percent impairment to his left arm. This entitles claimant to ten weeks of permanent partial disability.

As I have found that the left carpal tunnel syndrome is a work injury, the defendants shall provide medical care for this condition. Iowa Code section 85.27.

I award claimant the cost of the filing fee pursuant to rule 876 IAC 4.33.

ORDER

Defendants shall pay claimant ten (10) weeks of permanent partial disability benefits at the weekly rate of three hundred seventy-three and 34/100 dollars ($373.34) commencing on October 31, 2013.

Defendants shall pay any past due amounts in a lump sum with interest.

Defendants shall pay claimant costs in the amount of one hundred and 00/100 dollars ($100.00).

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

Signed and filed this 2nd day of March, 2017.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/srs

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.