

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CRAIG GULLETT,

Claimant,

vs.

WORLD WIDE TECH SERVICES,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,

Defendants.

File Nos. 5060274, 5060275

A R B I T R A T I O N

D E C I S I O N

Head Note No.: 1108

STATEMENT OF THE CASE

Craig Gullett filed two petitions for arbitration seeking workers' compensation benefits from the employer, World Wide Tech Services, and Zurich American Insurance Company, the insurance carrier. File No. 5060275 is hereby dismissed without prejudice.

The matter came on for hearing on January 24, 2019, before deputy workers' compensation commissioner, Joseph L. Walsh, in Des Moines, Iowa. The record in the case consists of Joint Exhibits 1 through 8; Claimant's Exhibits 1 through 11; and Defense Exhibits A through G; as well the sworn testimony of claimant. The record was held open for a period of time to allow claimant an opportunity to obtain updated lien records from the Veterans Administration. No additional documents, however, were ever secured or entered into the record of evidence. Melissa Burns was appointed court reporter. The parties argued this case and the matter was fully submitted on March 4, 2019.

ISSUES AND STIPULATIONS

The parties have stipulated that the parties had an employer-employee relationship at the time of the alleged injury. Claimant alleges that he sustained an injury on March 15, 2016, which arose out of and in the course of his employment. The defendants dispute this. The defendants further deny the alleged injury is a cause of any permanent or temporary disability.

The claimant is seeking healing period benefits from March 16, 2016, through May 13, 2018. The defendants deny any responsibility for healing period benefits during this timeframe, however, admit that claimant was off work during this period of time. The claimant is also seeking permanent partial disability benefits. Defendants again deny any responsibility for such benefits. There is a stipulation that if the defendants are found to be responsible for the alleged injury, that any permanent disability is industrial. The parties do not agree upon the appropriate commencement date for any benefits, if awarded.

The parties were able to stipulate to the elements comprising the rate of compensation and agree the appropriate compensation rate would be \$755.24.

The claimant is seeking medical expenses under section 85.27 as set forth in Claimant's Exhibit 10. Claimant is seeking an independent medical evaluation under section 85.39. There is a stipulation regarding a credit for group disability insurance payments under section 85.38.

FINDINGS OF FACT

Craig Gullet was 65 years old at the time of hearing. He testified live and under oath at hearing. Some of his testimony is contradicted or clouded by other evidence in the record, including his own statements. Some of his testimony, particularly in key areas, was quite vague. I do not find him to be a reliable historian regarding his alleged injury or condition.

Mr. Gullett has a high school diploma and an Associate of Applied Science degree. He resides in Mason City, Iowa. He has worked for World Wide Tech Services (hereafter, "WWTS") for a total of approximately 18 years. He most recently started working as a technician for the predecessor company of WWTS in 2003. He worked without any medical restrictions. The job of technician is well-described in the record. He worked on servers, computers, satellite equipment, hardware and software, in both residential and commercial settings. (Defendants' Exhibit E, pages 5-6) The position of technician broke down into two separate types of work for Mr. Gullett. He worked on the "Hughes" account which involved working on satellites and satellite equipment. He testified that he replaced various types of light equipment and cable and he had to adjust satellite dishes. This required the use of a ladder occasionally. The other aspect of his job was traditional IT technician work with laptops, desktops, servers and modems in private homes and businesses. This involved a significant amount of diagnosing IT problems and some lifting of light replacement parts up to 20 pounds.

Mr. Gullett testified the job entailed a significant amount of driving. Mr. Gullett testified that driving was the most physically demanding part of his job. (Transcript, pp. 59-60) He also contended this work was the hardest on his back. He generally worked 40 hours per week with occasional overtime. Mr. Gullett's supervisor, Brian Van Deventer testified credibly that claimant spent roughly half his workday driving. He estimated he drove around 200 miles per day, although some days were more in the

400 to 600 roundtrip mile range. (Tr., p. 17) The van he drove was generally in good condition. It had automatic transmission, cruise control and an adjustable seat. (Tr., p. 60)

Prior to his alleged work injury, Mr. Gullett had serious, well-documented health conditions involving his arms and thoracic area from a work injury at Hormel. He had multiple surgeries to both upper extremities as well as four thoracic surgeries. (Tr., p. 24) In 1991, Dr. Hines assigned a 39 percent whole person impairment rating and recommended a lifting restriction of 30 pounds. (Joint Ex. 1, pp. 2-3) He experienced chronic headaches. (Jt. Ex. 1, p. 6)

Mr. Gullett also testified, vaguely, that he experienced low back symptoms from time to time, which he attributed to the significant driving for WWTS.

Q. When did your low back pain start?

A. Oh, I suppose my back hurt from driving hundreds of miles quite often. I just never thought much about it. I just worked through it. Didn't seem like a big deal at the time.

Q. Well, you testified earlier, and there's lots of other evidence in the record, that you didn't have any low back pain until sometime in early 2016.

A. The dramatic low back pain, yes.

Q. So, you're saying that you had back pain before then?

A. I went to chiropractors.

(Tr., pp. 70-71) Other than some chiropractic treatment, however, Mr. Gullett did not seek treatment for his low back.

On February 19, 2016, Mr. Gullett was run off the road by a semi, while driving for WWTS. He drove down a frozen embankment. "My back started [to] hurt a few days later. Pretty good actually." (Tr., p. 22) He testified that his "dramatic back pain" began within a week after this incident. (Tr., p. 72; see also Def. Ex. F, Gullett Deposition, p. 51) He testified the pain was dramatic and severe and the pain radiated up and down both his legs. Even though he was symptomatic, he continued to work without restrictions. He testified it was a "little rough" but he "toughed it out." (Tr., p. 23) His email to his supervisor did not reflect that he was injured. (Def. Ex. D, p. 2)

The alleged work injury occurred on March 15, 2016, a month after the auto accident. On that day, he emailed his supervisor, Mr. Van Deventer. "Threw my back out today. I am out tomorrow at least." (Def. Ex. D, p. 6) Mr. Van Deventer replied. "Craig, sorry to hear ... please explain what happened. Is this a work-related injury, and if so, please provide the details?" (Def. Ex. D, p. 6) Mr. Gullett responded, "Just pullin

up on my trousers a bit” (Def. Ex. D, p. 6) Mr. Gullett testified he never returned to work after this. Two weeks later, on March 29, 2016, Mr. Gullett wrote the following email to Mr. Van Deventer.

I'm sorry to have to say this but I have been having serious health issues for quite some time. My back has been hurting for quite some time with pain radiating down both legs. I have other issues as well. I don't know where to go from here exactly, but I am in some serious pain. I have an appointment with my neurologist April 7th to talk to him about this. I am on pain killers (narcotic), and have been since Dec. of 2015. This is much more involved than just back pain. I know this is a little shocking but needed to say something months ago. This is not the whole story on my pain but need to say something now. I am definitely having trouble doing my job. I barely get through each day. I know this is inconvenient to say the least, and am sorry for the inconvenience this will cause. I will be waiting for your direction in this matter.

(Def. Ex. D, p. 7)

Mr. Gullett was evaluated by a chiropractor, Bruce Lindberg, D.C., on March 15, 2016, the day of the accident. Mr. Gullett described severe low back pain to Dr. Lindberg. Dr. Lindberg diagnosed sacroiliac and somatic dysfunction, low back pain and sciatica and further documented the following. “The mechanism of injury described by the patient involved a slip and fall injury.” (Jt. Ex. 3, p. 86) Chad Lindberg, D.C., provided another adjustment a few days later on March 19, 2016, and again documented the slip and fall injury. (Jt. Ex. 3, p. 88)

On March 31, 2016, Mr. Gullett was evaluated by Jonathon Hennings, NP at Ottumwa Health Group. The following is documented.

Mr. Gullett presents today for an initial visit because of right knee pain for the past two months, low back pain for the past 3 days and chronic median and ulnar nerve pain for many years. Mr. Gullett reports that was no specific accident that caused his right knee pain. He said the pain started behind and on the outer (lateral) edge of the right knee and has progressed to the point of shooting pains above and below the knee.

He states that his back pain started while working. His pants had started to 'sag' and he reached to bring them back upon his waist and he had instant sever [*sic*] pain. . . . He says the pain is tight and will spasm. Ice is the only thing that really providers [*sic*] comfort – along with his current prescription for hydrocodone.

(Jt. Ex. 4, p. 90) Mr. Hennings also noted significant bilateral arm difficulties. He ordered low back x-rays. Later in Mr. Hennings' medical note, he documented the following: “Note to Imaging Facility: Low back pain for the past 3-4 days, no specific

injury.” (Jt. Ex. 4, p. 92) He ultimately took Mr. Gullett off work for a combination of all his medical conditions and ordered physical therapy. (Jt. Ex. 4, pp. 92-93) X-rays taken showed degenerative changes. (Jt. Ex. 4, p. 94)

On April 1, 2016, the insurance carrier took a recorded statement of the claimant. (Cl. Ex. 9) He described the pain in that statement from pulling up his trousers. (Cl. Ex. 9, p. 59)

On April 12, 2016, Mr. Gullett prepared a written “Proof of Claim” statement for the insurance carrier, where he wrote the following.

Pain started [in] middle of January, severe pain behind right knee. Sometime in middle of Feb. pain much worse originating from back of R knee, now pain shooting up and down leg (right). Couple days later, severe pain in lower back. Bout 4 days later after doing work order #WQ03141128 on 3/15/16, I reached down grabbed belt to pull up on my trousers and my back gave way. Very severe pain.

My opinion is driving between 200-500 miles daily coupled with van seat breakdown . . . started pain in leg, traveling up to lower back.

(Def. Ex. B, p. 4) Mr. Gullett provided a second written “Proof of Claim” statement on May 2, 2016.

Was having leg pain behind R – knee since late January. Pain shooting up R leg about March 1st. March 12 pain now in lower back. Pain shooting down both legs now. On 3/15/16 my back went out totally. I was just pulling on my trousers a bit when my back went out. Went to chiropractors 5 different times (list included), which didn’t help much. Pain went into my tailbone approx. 4/20/16. Pain very bad.

(Def. Ex. C, p. 4)

Mr. Gullett went to Hunt Chiropractic on May 5, 2016. He filled out an initial intake form and stated that the pain commenced in January from “driving 300-600 miles/day.” (Jt. Ex. 5, p. 122) He also indicated a work injury of March 15, 2016. “Driving 100s of miles daily. Behind R knee for [a] couple of months then pain went into lower back and then to tailbone.” (Jt. Ex. 5, p. 125) Dr. Hunt performed multiple chiropractic adjustments in May and June 2016. (Jt. Ex. 5)

Dr. Hines evaluated Mr. Gullett on May 16, 2016. Dr. Hines documented that right knee pain had started about two months ago and started to radiate up into his back. “Has been off work since mid March because he tried to pull up [his] pants and had a sever [sic] pain in his lower back/tailbone.” (Jt. Ex. 1, p. 22) Dr. Hines ordered an MRI. At this point, his treatment stalled. The insurance carrier had refused to pay for treatment. Mr. Gullett sought treatment from Knudson Chiropractic in August 2016. In the history form, Mr. Gullett was not specific, indicating the pain “just appeared.” (Jt. Ex.

6, p. 136)

In August 2016, Mr. Gullett messaged Dr. Hines and documented that his treatment had been denied through both workers' compensation and his own insurance. (Jt. Ex. 1, p. 26) Dr. Hines reevaluated Mr. Gullett on August 24, 2016. "Knee problem began in late January and caused serious asymmetry of gait (he is now walking with a cane) and he has been off work since 3/16/16." (Jt. Ex. 1, p. 32) Dr. Hines diagnosed possible lumbar radiculopathy, possible popliteal cyst vs other intrinsic knee problem, and essential tremor. (Jt. Ex. 1, p. 33) In September 2016, an MRI was performed which showed "[b]ulging annuli L4-S1 without focal disc protrusion and without stenoses." (Jt. Ex. 4, p. 96)

In September 2016, WWTS formally terminated Mr. Gullett for failure to return from medical leave. (Def. Ex. E) Mr. Gullett testified that he no longer felt as though he could perform the work because of the driving. (Tr., p. 54)

In November 2016, Tyrus Soares, M.D., evaluated Mr. Gullett for pain management.

53yo male with c/o of low back pain since amrch [sic] 2016. Atraumatic onset. He notes the pain started in the posterior aspect of his RIGHT knee, but overtime his pain became more severe and extended to his low back. Denies LEFT lower extremity symptoms.

(Jt. Ex. 7, p. 142) Dr. Soares diagnosed lumbar spondylosis, although noted there were no radicular signs on exam. (Jt. Ex. 7, p. 144) He prescribed medications and performed a lumbar facet injection. (Jt. Ex. 7, p. 146)

In December 2016, Dr. Hines wrote a letter to The Hartford, indicating claimant was permanently disabled and was beginning the process for Supplemental Security Income (SSI). (Jt. Ex. 1, p. 37) Dr. Hines documented that much of his difficulty working involved tremors. (Jt. Ex. 1, p. 41) In January 2017, Dr. Hines documented that Mr. Gullett had violated the pain contract by receiving narcotic medications from Dr. Soares. (Jt. Ex. 1, p. 46)

Dr. Soares continued to treat Mr. Gullett throughout 2017 and 2018 for back and knee pain. (Jt. Ex. 7) His working diagnosis was "spondylosis of lumbar region without myelopathy or radiculopathy." (Jt. Ex. 7, p. 181) Mr. Gullett also received some treatment in 2017 through the VA Hospital, as well as Ottumwa Health Group. (Jt. Ex. 4, pp. 98-102; Jt. Ex. 8, pp. 183-195) No physician ever recommended surgery for Mr. Gullett's low back.

Sunil Bansal, M.D., evaluated Mr. Gullett for purposes of an independent medical evaluation (IME) in July 2018. Dr. Bansal is a certified independent medical examiner. He reviewed medical records, took a history and examined the claimant. With regard to the low back, Dr. Bansal diagnosed aggravation of lumbar spondylosis with L4-L5 and

L5-S1 disc bulging. (Cl. Ex. 1, p. 15) With regard to causation, he provided the following answer to the question of whether the incident on March 15, 2016 was a substantial causal, contributing or aggravating factor to the diagnosis:

In my medical opinion, the incident on that date [3/15/16] represents a symptom manifestation of a cumulative process to his back occurring over the course of his job duties. Essentially that date represents the time period when his body was no longer able to adapt or sustain the pathophysiologic changes occurring from the cumulative trauma, signaling the transition to a permanent state.

(Cl. Ex. 1, p. 15) He then provided the following answer to the question of whether claimant's cumulative work activities were a substantial causal, contributing or aggravating factor to his diagnosis:

Yes.

Closer scrutiny indicates that Mr. Gullett's lumbar spine complaints are sometimes seen in the workplace, and known as 'overuse syndrome.' The job duties at [WWTS], on a cumulative basis, are highly pathognomonic for Mr. Gullett's particular type of lumbar spine pathology. Specifically, he had an aggravation of L4 through S1 bulging discs.

Mr. Gullett's job involved several risk factors that led to the aggravation of his lower lumbar disc bulging, including working in forward bent positions on servers, as well as long periods of driving in a conversion van with whole body vibration exposure.

(Cl. Ex. 1, p. 15) Dr. Bansal opined Mr. Gullett reached maximum medical improvement (MMI) on May 1, 2018, suffered from a 5 percent whole body impairment and needed permanent restrictions of no lifting more than 25 pounds. (Cl. Ex. 1, pp. 16-17)

The defendants had Mr. Gullett evaluated by William Boulden, M.D., an orthopedic surgeon, on October 29, 2018. (Def. Ex. A, p. 5) Dr. Boulden also reviewed records, took a history from claimant and performed an examination. Regarding the low back, he diagnosed degenerative changes of the lumbar spine with no nerve root impingement. (Def. Ex. A, p. 11) He then answered a series of questions from defense counsel wherein he rejected all of claimant's medical causation theories. (Def. Ex. A, pp. 10-11) Dr. Boulden's opinions are clearly colored by the fact that he did not find Mr. Gullett to be "a very good historian at all." (Def. Ex. A, p. 8)

Having reviewed all of the evidence in the record, I find that the claimant has failed to meet his burden of proof that he suffered an injury which arose out of and in the course of his employment under any of the theories advanced. Even if I assumed that the claimant did suffer some pain and injury, either from his extensive, cumulative driving or the minor incident of standing up and pulling up his pants on March 15, 2016,

he has failed to prove that these work activities substantially contributed to any of his temporary or permanent disability, or even his need for medical treatment. The record in this matter is replete with too many unexplained inconsistencies as set forth in detail above. I am certainly not finding that Mr. Gullett was deliberately dishonest at hearing. I am simply finding that, with the substantial inconsistencies in this record, he has failed to meet his burden of proof as to either the fact of an injury which arose out of and in the course of his employment or medical causation.

CONCLUSIONS OF LAW

The primary question presented is whether the claimant suffered an injury on March 15, 2016, which arose out of and in the course of his employment.

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.

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).

The claimant has pled his case as a combination incident of injury and/or a cumulative injury. In cumulative injury cases, the question of whether an injury arises out of and in the course of employment is closely related to questions of medical causation.

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).

For the reasons set forth in the findings of fact, I found as a matter of fact that claimant failed to meet his burden of proof that he sustained an injury which arose out of and in the course of his employment, or even if he did, that there is no causal connection to claimant's disability. There are simply too many inconsistencies in the

record to find in claimant's favor. While it is possible that there are valid explanations for these inconsistencies, it is not probable. As such, the claim is denied.


ORDER

THEREFORE IT IS ORDERED

The claimant shall take nothing.

Each party is responsible for their own costs.

Signed and filed this 28th day of February, 2020.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Neal (via WCES)

Mark A. Woollums (via WCES)

Edward J. Rose (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.