BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FRANCISCO MANCILLA RUIZ, Claimant, vs. REVSTONE CASTING INDUSTRIES, LLC, Employer, and TRAVELERS INDEMNITY CO. OF CT., Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5050063 REMAND DECISION Head Note No: 1402.30

STATEMENT OF THE CASE

This case is before this division on remand from the Iowa Court of Appeals.

On September 9, 2014, an arbitration decision was issued in this matter. That decision denied claimant's claim for benefits for all three files. That decision was affirmed on intra-agency appeal on December 2, 2015.

On judicial review, the Iowa District Court affirmed the commissioner's decision as to File No. 5041967 (date of injury September 30, 2011, carpal tunnel syndrome and Second Injury Fund claim). The District Court affirmed the commissioner's decision as to File No. 5050064 (date of injury September 30, 2011, hearing loss). The District Court remanded File No. 5050063 (date of injury September 30, 2011, back injury) to the commissioner to consider the opinions of David Larson, M.D. in determining liability.

The case was then appealed to the Iowa Court of Appeals. The Court of Appeals affirmed the District Court regarding File Nos. 5041967 and 5050064. The Court of Appeals also affirmed the District Court's ruling regarding File No. 5050063 remanding

this case back to the commission to consider the opinions of Dr. Larson in determining liability and to make a ruling on the cause of claimant's back injury.

ISSUES

For File No. 5050063 (date of injury September 30, 2011):

1. Whether claimant sustained an injury to his back on September 30, 2011, that arose out of and in the course his employment.

2. Whether claimant's claim is barred for lack of timely notice under Iowa Code section 85.23.

3. Whether the injury resulted in temporary disability.

4. Whether the injury resulted in permanent disability; and if so

5. The extent of claimant's entitlement to permanent partial disability benefits.

6. Whether there is a causal connection between the injury and the claimed medical expenses.

FINDINGS OF FACT

As detailed in the arbitration decision, claimant was hired in 1988 as a grinder with the Dexter Company. The Dexter Company was later acquired by Revstone. (Arbitration Decision, page 3)

Claimant testified his job as a parts grinder consisted of grinding small parts with a stationary grinder at a work station. Claimant said the parts were put in a box that was located on his right side. Claimant would twist, grab a few parts, grind the parts, and place the finished parts in a box on his left. Claimant said the job required continuous reaching and twisting. He said figures shown in Exhibit 8, page 2 were an example of the type of parts he worked with. Claimant said he usually worked a 60-hour work week. (Hearing Transcript pages 25-29)

On February 17, 2010, claimant was evaluated by Dr. Larson. Dr. Larson specializes in family practice. Claimant complained of his hands hurting. Claimant complained of back pain and pain going down his legs. Dr. Larson noted at that visit:

> Dr. Hunter told him it was partly due from arthritis in his back, the other part due to diabetes & peripheral neuropathy. I think that is correct. We'll get MRI of the low back and then see what the anatomy was of the low back.

(Exhibit 3, p. 7)

On February 22, 2010, claimant underwent a lumbar MRI. Testing suggested a disc bulge with moderate facet arthropathy at L5-S1 and spinal stenosis for levels L3-L5. (Ex. 4, p. 7)

There is no evidence in the record claimant returned for follow up treatment with Dr. Larson following the February 22, 2010, MRI.

Claimant left his employment with Revstone on September 30, 2011. Claimant testified at hearing he left Revstone because he believed he was no longer physically able to do the job. After leaving Revstone, claimant moved to Texas for approximately six months. He testified he only received treatment in Texas for his diabetes. (Tr. pp., 42, 57-59, 63; Arb. Dec., p. 4)

Claimant's wife testified, by deposition, that claimant drove all the way to Texas. She testified claimant drove the return trip back from Texas. (Ex. 19; Deposition pp. 15-16, 23)

On or about July 17, 2012, claimant fell from a ladder. Claimant fell approximately 12 feet, front first from the ladder. Records indicate claimant was painting his garage when he fell. (Ex. 1; Tr. pp. 46-47, 59-64)

Claimant testified that before he fell while painting his garage, he scraped and painted his entire house. (Tr. pp. 60-61, 63)

Claimant was taken by helicopter to the University of Iowa Hospitals and Clinics (UIHC). He was assessed as having several fractures to his facial and cranial areas, a right distal radius fracture, a left distal humerus fracture, and a right patella fracture. (Ex. 1; Ex. BB)

In a disability determination explanation, claimant was found to be disabled from July 17, 2012, when he fell from a ladder. The disability determination explanation found claimant did not have a severe medical problem that prevented him from working until his July 17, 2012, fall. (Ex. K)

In a February 10, 2013, letter, written by claimant's attorney, Dr. Larson opined claimant's repetitive standing, bending and twisting was a contributing factor to the L2-L4 disc bulges and the facet arthropathy found in the February 2010 MRI. Dr. Larson opined claimant's work at Revstone was a contributing factor in claimant's lower back and leg symptoms. (Ex. 3, pp. 8-9)

In a report dated February 25, 2014 Joshua Kimelman, D.O., gave his opinions of claimant's condition following an independent medical evaluation (IME). Dr. Kimelman is an orthopedic surgeon. Claimant reported back pain. Dr. Kimelman reviewed a number of claimant's records, including the UIHC records concerning claimant's fall while painting. Dr. Kimelman also reviewed the February 2010 MRI. X-rays taken on the date of exam showed a normal spine with no acute injury or marked

degenerative osteophytes. Dr. Kimelman did not believe claimant's degenerative arthritis in the lumbar spine was causally related to his work at Revstone. (Ex. L)

In a report dated April 9, 2014, Robin Sassman, M.D., gave her opinions of claimant's condition following an IME. Dr. Sassman specializes in occupational medicine. Claimant was assessed as having lumbago. Claimant indicated lower back pain that had begun around 2006. (Ex. 1)

Regarding causation of claimant's back problems, Dr. Sassman opined:

> While it is not accurate to say that the degenerative changes were caused by his work, the fact that he had [sic] stand, lift and twist for his job could act as a substantial aggravating factor for his lumbar spine degenerative issues. I believe this to be the case for Mr. Ruiz.

(Ex. 1, p. 11)

Dr. Sassman found claimant at maximum medical improvement (MMI) on February 6, 2014. She opined claimant had a five percent permanent impairment of the body as a whole for his lumbar spine issues based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Ex. 1, p. 12)

Claimant testified he spent a long time with both Dr. Sassman and Dr. Kimelman. He said he explained his job in detail to both doctors. (Tr. pp. 50-52)

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained a back injury on September 30, 2011, that arose out of and in the course of employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Claimant testified at hearing his back began to hurt in approximately 2005. Records from Dr. Sassman's office indicate claimant began experiencing back pain sometime in 2006. Claimant left his employment with Revstone in September 2011. There is little evidence claimant reported a back injury to his employer during the time of his employment.

After claimant left his employment at Revstone in September 2011, claimant moved to Texas for approximately six months. The records indicate claimant drove the

entire way to Texas. The records also indicate claimant drove the entire way back from Texas by himself. (Tr. pp. 42-58; Ex. 19; Depo. pp. 15-16, 23) The only treatment claimant received in Texas was for diabetes. (Tr. pp. 42, 57-59, 63)

Sometime in 2012, claimant scraped and painted his entire house. In July of 2012, after painting his house, claimant fell approximately 12 feet, face first from a ladder while painting his garage. Claimant was hospitalized at UIHC for multiple fractures to his face, cranial area, arms and leg.

In July 2012, claimant was found to be disabled by the disability determination services. The disability determination explanation indicated claimant did not have a severe medical problem that prevented him from working until his fall from the ladder on July 17, 2012. (Ex. K)

In a letter dated February 10, 2013, written by claimant's attorney, Dr. Larson opined claimant's repetitive standing, bending and twisting at Revstone was a contributing factor to claimant's lower back and leg symptoms. (Ex. 3, pp. 8-9)

Dr. Larson's opinion regarding causation is problematic for several reasons. First, it does not appear Dr. Larson was aware claimant fell 12 feet, face first from a ladder in July 2012. As a result, Dr. Larson is unable to address or analyze what impact claimant's July 2012 fall had on his back condition.

Second, the record suggests the last time Dr. Larson evaluated claimant for back pain was in February 2010. His opinion regarding causation is dated three years later. There is no indication Dr. Larson treated or evaluated claimant during that three-year period. The record indicates Dr. Larson has no knowledge that after claimant left Revstone, he drove back and forth from Texas by himself. The record indicates Dr. Larson has no knowledge claimant scraped and painted his house. Along with the July 2012 fall, Dr. Larson is unable to address what effect these intervening events had on claimant's back condition.

Finally, in February 2010, Dr. Larson believed the cause of claimant's lower back and leg pain was arthritis and his peripheral neuropathy from diabetes. (Ex. 3, p. 7) He did not treat claimant for three years. Following that three-year lapse, in 2013, Dr. Larson then opined claimant's back and leg pain was caused by his work at Revstone. There is no explanation in the record for Dr. Larson's dramatic change in his opinion of causation.

The last time Dr. Larson evaluated claimant was in 2010. Dr. Larson's causation opinion fails to address what effect claimant's fall from a ladder in July 2012 had on his back condition. Dr. Larson's opinion fails to address other potentially intervening causes for claimant's back condition. Dr. Larson's causation opinion in 2013 varies dramatically from his opinion in 2010. Dr. Larson's opinion regarding causation was made three years after the last time he treated claimant. For all of these reasons, the

opinions of Dr. Larson regarding causation of claimant's back condition are found not convincing.

Dr. Kimelman reviewed claimant's MRI and spent substantial time talking with claimant and examining him. Dr. Kimelman was aware of claimant's July 2012 fall from the ladder. Dr. Kimelman opined claimant's symptoms were due to arthritis and were neither caused nor materially aggravated by claimant's work at Revstone. (Ex. L)

Dr. Sassman also evaluated claimant for a substantial period of time. Dr. Sassman was not provided with claimant's MRI and had no opportunity to evaluate it. Dr. Sassman's report did not address or analyze what, if any, impact claimant's July 2012 fall had on his back condition. Because of these deficiencies in Dr. Sassman's opinion, the opinions regarding causation are found to be less convincing than Dr. Kimelman's opinions.

Dr. Larson's opinions regarding causation are found not convincing. Dr. Sassman's opinions regarding causation are found to be not convincing. Dr. Kimelman reviewed claimant's MRI. Dr. Kimelman is an orthopedic surgeon. Given his area of expertise, his opinions regarding causation of claimant's lumbar spine condition are more convincing than the opinions of Dr. Larson or Dr. Sassman. Based on these facts and the others as detailed above, it is found Dr. Kimelman's opinions regarding causation of claimant's back condition are found to be more convincing than those of Drs. Sassman or Larson.

For this reason, and as detailed above, I find claimant failed to carry his burden of proof that he sustained a back injury on September 30, 2011, which arose out of and in the course of his employment with Revstone.

Because claimant failed to carry his burden of proof that he sustained a back injury on September 30, 2011, which arose out of and in the course of his employment with Revstone, all other issues related to File No. 5050063 are moot.

ORDER

Therefore, it is ordered:

Regarding File No. 5050063 (date of injury, September 30, 2011 concerning an alleged back injury), claimant shall take nothing from these proceedings.

Both parties shall pay their own costs.

Signed and filed this 1st day of August, 2019.

Joseph S. Cortese II

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WORKERS' COMPENSATION
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