BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES MADDEN,

Claimant,

vs.

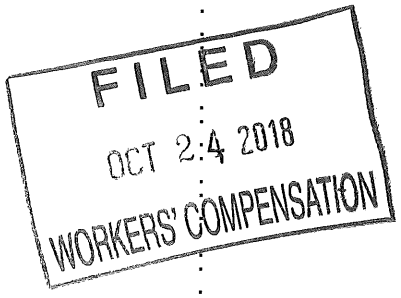
ROCK INDUSTRIES, INC.,

Employer,

and

FEDERATED,

Insurance Carrier,
Defendants.




File No. 5059710

ARBITRATION

DECISION

Head Notes: 1402.30, 2402

## STATEMENT OF THE CASE

Claimant, James Madden, filed a petition in arbitration seeking workers' compensation benefits from Rock Industries, Inc. (Rock Industries), employer and Federated, insurer, both as defendants. This matter was heard on August 21, 2018 in Sioux City, Iowa with a final submission date of September 17, 2018.

The record in this case consists of Claimant's Exhibits 1-3, Defendants' Exhibits A through I, and the testimony of claimant.

Claimant's Exhibits 4-11 were removed from the record following objections by defendants, and agreement by claimant that these exhibits should not be made a part of the record. Claimant's exhibits were not paginated. Claimant's exhibits were paginated by the undersigned for clarity of the record.

## ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether claimant's claim is barred by application of the statute of limitations under Iowa Code section 85.26(1).

3. Whether defendants are liable for providing claimant with medical care.

## FINDINGS OF FACT

Claimant was 65 years old at the time of hearing. Claimant has a GED.

Claimant worked at IBP for approximately 10 years performing various jobs on production lines.

Claimant began working for Rock Industries in 2004. Rock Industries does heat treating and machinery of parts.

At the time of hearing claimant worked as a CNC machinist for Rock Industries. A description of claimant's job as a CNC machinist is found at Exhibit D.

Claimant testified his work at Rock Industries required repetitive squeezing, pinching and work with his upper extremities. (Transcript page 44)

Claimant testified that, in December of 2011, he began to have pain in his fingers. He saw his personal doctor, Michelle Johnson, D.O. Dr. Johnson sent claimant to Sanford Hospital to be tested for carpal tunnel syndrome.

On December 9, 2011 claimant was evaluated by Dr. Johnson. Claimant had pain in his fingers for the past 1 ½ to 2 years. Claimant's pain was worsening. Claimant mostly had pain in the second through fourth fingers of the right hand. Claimant was recommended to have EMG/NCV studies. (Exhibit A, pp. 1-3)

On December 20, 2011 claimant underwent EMG/NCV studies performed by Khaled Anis, M.D. Claimant indicated to Dr. Anis his hands became stiff at night. Diagnostic testing showed evidence of bilateral median neuropathy consistent with a bilateral carpal tunnel syndrome.

Claimant returned to Dr. Johnson on January 9, 2012. Claimant indicated his job required repetitive work with his upper extremities. Nerve conduction studies were suggestive of a carpal tunnel syndrome. Claimant indicated use of wrist splints at night helped his symptoms. Claimant was told to continue using splints for his carpal tunnel syndrome. (Ex. A, pp. 4-7)

On January 23, 2012 claimant completed an employee report of injury. Claimant indicated he was told by a doctor he had carpal tunnel syndrome. He indicated the injury happened at work. (Ex. E)

In a January 24, 2012 letter to Rock Industries, Midwest Family Mutual acknowledged receipt of a claim for workers' compensation for claimant with a date of injury of December 1, 2011. (Ex. F)

Claimant testified that, in approximately in 2011 or 2012, he spoke with a representative from Midwest Family Mutual regarding his carpal tunnel syndrome, but did not request medical treatment. (Tr. p. 61)

Claimant testified at hearing that when he was diagnosed as having carpal tunnel syndrome he was told it was work related. (Tr. 30) Claimant testified in deposition that after testing Dr. Johnson told him his carpal tunnel syndrome was work related. (Ex. I, p. 37; Deposition p. 26)

Claimant testified Midwest Family Mutual may have paid for the carpal tunnel testing in 2011. He did not believe the insurer paid for any other benefits. (Tr. 31)

Claimant testified he was never taken off work for his carpal tunnel syndrome. (Tr. p. 32) He said that in 2011 or 2012, a doctor told him to wear his wrist braces for carpal tunnel when he was not working. (Tr. p. 32) The doctor also told claimant if his carpal tunnel syndrome got worse, he would require surgery. (Tr. p. 32)

Claimant testified in deposition he told his employer, in approximately 2011, he thought his carpal tunnel syndrome was work related. (Ex. I, p. 35; Depo. p. 20)

Between 2011 and 2016 claimant did not have any ongoing medical treatment for his carpal tunnel syndrome. (Tr. p. 35) Claimant testified that, between 2011 through 2016 he wore his wrist splints for his carpal tunnel syndrome when not at work. (Tr. pp. 32, 83)

Claimant testified that in approximately 2016 his pain began to worsen in his hands. He said in 2016 he also heard from someone that if he let his carpal tunnel syndrome go too long, the condition could not be repaired. Claimant said in approximately 2016 his carpal tunnel syndrome began to affect his work. (Tr. pp. 35, 37, 53, 64)

On August 15, 2016 defendant Federated indicated it had completed its investigation of claimant's bilateral carpal tunnel syndrome with a date of injury of July 28, 2016. Federated denied the claim, as there were no medical records indicating Federated was liable for the injury. (Ex. G)

On August 18, 2016 claimant was evaluated by Marian Petrasko, M.D. for chest pain. Claimant was assessed as having coronary artery disease and hypertension. There is no reference in the medical record from this period of any problems with claimant's upper extremities. (Ex. B, pp. 16-20)

On February 24, 2017 claimant was evaluated by Dr. Johnson. Claimant was assessed as having pulmonary emphysema and coronary artery disease. There is no reference in this record from this time of claimant having any problem with his upper extremities. (Ex. A, pp. 8-10)

In an April 26, 2018 report, Mark Wilcox, DPT, CSCS, gave his opinions of claimant's abilities following a functional capacity evaluation (FCE). Claimant gave valid effort in the FCE. Claimant was found to be able to work in the very heavy demand level. Claimant was able to do gripping activities requiring up to 70 pounds occasionally. Claimant's testing showed mild deficits in finger dexterity. (Cl. Ex. 3)

Christopher Janssen, M.D. gave his opinions of claimant's condition in a May 18, 2018 report following an independent medical evaluation (IME). Claimant had numbness, tingling and pain in both wrists and hands. Claimant's symptoms worsened with increased activity. Claimant's symptoms improved when wearing braces. Claimant was assessed as having bilateral carpal tunnel syndrome dated July 28, 2016. (Cl. Ex. 1, pp. 1-10)

Dr. Janssen opined claimant would require follow up EMG/NCV studies to confirm the diagnosis of carpal tunnel syndrome. Claimant was not at maximum medical improvement (MMI). (Ex. 1, pp. 10-11)

## CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained an injury 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).

In December of 2011 claimant underwent diagnostic testing showing a bilateral carpal tunnel syndrome. (Ex. B, pp. 11-13) Claimant's unrebutted testimony is his job at Rock Industries required repetitive gripping, pinching and use of both hands. Claimant reported the injury to Rock Industries on January 27, 2012. At the time he reported his injury, claimant told his employer he had carpal tunnel syndrome. Claimant also indicated his injury happened at work. (Ex. E) Claimant testified he told his employer, in approximately 2011, his carpal tunnel syndrome was work related. (Ex. I, p. 35; Depo. p. 20) Claimant's unrebutted testimony is he was told by his doctor his carpal tunnel syndrome was work related. Claimant was told to wear his wrist splints for his carpal tunnel.

In an IME report Dr. Janssen opined claimant's carpal tunnel syndrome was due to his work. (Cl. Ex. 1)

Given this record, claimant has carried his burden of proof his carpal tunnel syndrome arose out of and in the course of employment.

The next issue to be determined is whether claimant's claim for benefits is barred by application of Iowa Code section 85.26(1).

Iowa Code section 85.26(1) requires an employee to bring an original proceeding for benefits within two years from the date of the occurrence of the injury if the employer has paid the employee no weekly indemnity benefits for the claimed injury. If the employer has paid the employee weekly benefits on account of the claimed injury, however, the employee must bring an original proceeding within three years from the date of last payment of weekly compensation benefits.

Failure to timely commence an action under the limitation statute is an affirmative defense which defendant must prove by a preponderance of the evidence. Delong v. Highway Comm'nn, 229 Iowa 700, 295 N.W. 91 (1940); Venenga v. John Deere Component Works, 498 N.W.2d 422 (Iowa Ct. App. 1993).

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).

An original proceeding for benefits must be commenced within two years from the date of the occurrence of the injury for which benefits are claimed or within three years from the date of the last payment of weekly compensation benefits if benefits have been paid under Iowa Code section 86.13. Iowa Code section 85.26(1) Under the rule, the time during which a proceeding may be commenced does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness and probable compensable character of the condition. Failure to timely commence an action under the limitations statute is an affirmative defense, which defendants must prove by a preponderance of the evidence. Venenga v. John Deere Component Works, 498 N.W.2d 422 (Iowa Ct. App. 1993).

For a cumulative injury, the beginning of that period may not begin, under the discovery rule, until the worker knows the nature of the disability, the seriousness of the disability, and the probable compensable nature of the disability. Chapa v. John Deere Ottumwa Works, 652 N.W.2d 187 (Iowa 2002) See also Larson Mfg. Co. v. Thorson, 763 N.W.2d 842, 854–55 (Iowa 2009); Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860, 865 (Iowa 2008).

Claimant was assessed in 2011 or early 2012 that his carpal tunnel syndrome was related to his work. Claimant testified doctors told him his carpal tunnel syndrome was work related. (Ex. A, pp. 4-7; Ex. I, p. 37; Depo. p. 26; Tr. 30)

In January 2012 claimant gave notice to his employer he had a carpal tunnel syndrome that was caused by work. (Ex. E) Claimant apparently knew the injury was compensable. (Ex. F) Claimant testified he had spoken with a representative from Midwest Family Mutual Insurance Company regarding his carpal tunnel syndrome. (Tr. p. 61) Claimant was told to wear wrist splints for his injury. Claimant wore wrist splints from 2011 through 2016. (Tr. pp. 32, 35, 83) The fact that claimant wore wrist splints for five years for his carpal tunnel syndrome indicates claimant was aware of the seriousness of the condition.

Based on the above, claimant's injury manifested itself in either late 2011 or by the end of January 2012.

Dr. Janssen's report suggests claimant's carpal tunnel syndrome manifested on July 28, 2016. (Ex. 1, pp. 1-10) This opinion is problematic for several reasons. First, there is no medical record, or evidence of any kind in the record, to suggest claimant's injury began or manifested on July 28, 2016. It is unclear where Dr. Janssen got the date of July 28, 2016 for a date of injury.

Second, as noted in the findings of fact, the record indicates diagnostic testing showed, in December of 2011, claimant had bilateral carpal tunnel syndrome. The record is clear claimant knew, at least by the end of January 2012, his carpal tunnel syndrome was work related. (Ex. A, pp. 4-7; Ex. I, p. 37; Ex. E; Ex. F; Tr. p. 30) Dr. Janssen offers no explanation why claimant's carpal tunnel syndrome occurred in July of 2016, when claimant knew he had a work-related carpal tunnel syndrome in January of 2012. Given the discrepancies described above, Dr. Janssen's opinion regarding the date of injury for claimant's carpal tunnel syndrome is found not convincing.

Claimant was diagnosed as having carpal tunnel syndrome in December of 2011. He knew, at least by late January of 2012, his carpal tunnel syndrome was caused by work. Claimant knew by late January of 2012 his injury was compensable. The record indicates claimant knew or should have known of the severity of his injury, given that he wore wrist splints for the injury for approximately five years. Given this record, it is found claimant's claim for benefits is barred by application of Iowa Code section 85.26(1) as untimely.

As claimant's claim for benefits is barred by application of Iowa Code section 85.26(1), all other issues are moot.

ORDER

Therefore it is ordered:

That claimant shall take nothing from these proceedings.

That each party shall pay its own costs.

Signed and filed this 24th day of October, 2018.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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**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.