BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDALL DWIGHT COOPER, Claimant, vs. CASE NEW HOLLAND, Employer, Self-Insured, Defendant.	: : : : : : : : : : : :	File No. 5013530 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1100; 1802; 1803; 2500

STATEMENT OF THE CASE

Claimant, Randall Dwight Cooper, has filed a petition in arbitration and seeks worker's compensation benefits from Case New Holland (hereinafter referred to as Case), self-insured, defendant.

Deputy workers' compensation commissioner, Stan McElderry, heard this matter on November 16, 2005 in Burlington, Iowa. The record in the case consists of joint exhibits A-T, as well as the testimony of Rex Mynatt, Gina Cooper, and of the claimant.

ISSUES

The parties have submitted the following issues for determination:

1. Whether the claimant sustained an injury on May 15, 2004, September 27, 2004, or September 30, 2004, which arose out of and in the course of employment;

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

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

4. Payment of medical expenses.

FINDINGS OF FACT

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

The claimant was 54 years old at the time of hearing. The claimant is a high school graduate and has taken some post-high school training in welding.

The claimant began his employment with Case in August of 1973. The claimant has worked in a variety of positions including shear operator, punches, lathes, inspector, and assembly for Case.

The claimant initially saw Rick Garrels, M.D., for a consultation on September 30, 2004. At that time, the claimant reported ". . . a gradual onset of bilateral knee pain which has been more symptomatic with climbing and kneeling in his work activities. He essentially knows that the symptoms have gotten so bad that he is not able to tolerate his work activities." (Joint Exhibit D, page 3) Dr. Garrels ordered X-rays, which Dr. Garrels assessed as showing bilateral moderate to severe osteoarthritis. (Ex. D, p 3.5) Dr. Garrels also opined that the claimant's condition was "a non-work related condition." (Ex. D, p. 3.5)

The claimant was credible in his testimony. His demeanor was appropriate and he truthfully answered questions even when the answers were against his perceived interest. Rex Mynatt, co-worker of the claimant, was also credible in his testimony that the claimant told him that the job at Case was causing pain.

An MRI performed on October 19, 2004 of the claimant's right knee showed a tear of the posterior horn of the medial meniscus extending to the inferior articular surface, moderate to severe osteoarthritis, bipartite patella, and chrondromalacia patellae. (Ex. E, p. 1)

The claimant saw Mitchell Paul, D.O., on October 29, 2004. (Ex. A, p. 1) At that time the claimant reported that recently his pain had become continuous and that he associated the pain with "squatting, kneeling and repetitive ladder climbing" at work. (Ex. A, p. 1) Dr. Paul recorded that "We did discuss for a period of time whether this is a work or non-work related injury. I do feel that with his type of job as he describes it to me would result in a significant amount of trauma, albeit micro-trauma to the knees with squatting, kneeling and ladder climbing. I feel comfortable indicating to him that I feel the mast [sic] majority of his symptoms are related specifically to his work activities, particularly since he does not perform any repetitive activities on an off duty basis." (Ex. A, p. 1)

On November 3, 2004, Dr. Paul performed a partial medial meniscectomy and auto-cartilaginous transplant on the claimant's left knee. (Ex. G, p. 4) Postoperative diagnosis was "torn medial meniscus of the posterior horn with osteochondral defect of the weight bear surface of the medial femoral condyle." (Ex. G, p. 4)

Dr. Paul opined on November 19, 2004 that the claimant's right and left leg injuries were work related and that the surgeries performed on the claimant's left and right knees were a result of work activities. (Ex. A, p. 5) On August 19, 2005, Dr. Paul opined that the claimant would have permanent restrictions of no squatting, kneeling, or

ladder climbing. (Ex. A, p. 16) On October 20, 2005, Dr. Paul opined that the claimant had nine percent impairment to both his left and right lower extremities as a result of the injuries that the claimant had suffered at work. (Ex. A, pp. 14-15) A nine percent impairment of a lower extremity equates to a four percent body as a whole injury per the AMA guides. Based on the AMA combined values chart, four percent plus four percent equals an eight percent body as the whole impairment. The opinions of Dr. Paul as to causation and impairment are accepted. Those opinions are more consistent with the credible testimony of the claimant than the opinions of Dr. Garrels. The claimant has suffered an eight percent body as the whole loss due to the bilateral knee injuries, which manifested on September 30, 2004. It is found that the injuries to both knees, which manifested on September 30, 2004, arose out of and in the course of employment with Case.

The claimant was off work from October 7, 2004 through March 28, 2005 due to his knee injuries. The claimant also seeks payment of medical expenses. The employer did not dispute that the expenses were reasonable and necessary, only whether they were for an injury arising out of and in the course of employment. The medical expenses are listed in Joint Exhibit H.

The parties stipulated that the claimant received $420.00 per week ($360.14 net after taxes) of sick pay/disability income from October 7, 2004 through March 28, 2005 and that the defendant is entitled to a credit of $360.14 per week during the period the claimant received sick pay/disability income.

The parties stipulated that the claimant had gross earnings of $1,057.00 per week, that he was married, and that he was entitled to four exemptions on the date of injury. As such, the claimant's weekly benefit rate is $665.58. The parties additionally stipulated that the commencement date of any permanent partial disability (PPD) is March 28, 2005.

REASONING AND CONCLUSIONS OF LAW

The first issue is whether the claimant sustained an injury arising out of and in the course of employment on May 15, 2004, September 27, 2004, or September 30, 2004.

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. of App. P. 6.14(6).

The claimant has the burden of proving by of 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. Chia, 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.

I found that the claimant's bilateral knee injuries, which manifested on September 30, 2004, arose out of and in the course of employment with Case. Those injuries may have existed on May 15, 2004 and September 27, 2004, but on September 30, 2004 the seriousness of the claimant's bilateral knee conditions, and possible effect on the claimant's employment became apparent.

The next issue is whether the injury, which manifested on September 30, 2004 is the cause of any permanent disability.

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. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 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).

The burden of showing that disability is attributable to a preexisting condition is placed upon the defendant. Where evidence to establish a proper apportionment is absent, the defendant is responsible for the entire disability that exists. Bearce v. FMC Corp., 465 N.W.2d at 531 (1991); Varied Enterprises v. Sumner, 353 N.W.2d at 407 (1984).

The claimant has permanent restrictions of no squatting, kneeling, or ladder climbing due to his bilateral knee injuries. Therefore the claimant has suffered permanent disability.

The next issue is the extent of the claimant's entitlement to permanent partial disability.

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

It was found that claimant has lost the use of eight (8) percent of the body as a whole due to the bilateral injuries which manifested on September 30, 2004. As such he is entitled to 40 weeks of benefits pursuant to Iowa Code Section 85.34(2)(s).

The next issue is whether the claimant is entitled to temporary total, temporary partial, or healing period benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker could not work. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33 (1).

The claimant missed work from October 7, 2004 through March 28, 2005 due to the work injury which manifested on September 30, 2004. The injury resulted in permanent partial disability so the period was a healing period. The claimant is entitled to healing period benefits for the period sought of October 7, 2004 through March 28, 2005.

The claimant also seeks payment of medical expenses. Since causation has now been established, and the employer did not dispute that the expenses were reasonable and necessary, the claimant is entitled to payment of the medical expenses necessary to treat his injury arising out of and in the course of employment. Exhibit H lists the medical expenses.

ORDER

THEREFORE IT IS ORDERED:

That the defendants pay claimant healing period from October 7, 2004 through March 28, 2005, at the rate of six hundred sixty five and 58/100 dollars ($665.58).

That the defendants pay claimant forty (40) weeks of permanent partial disability commencing March 28, 2005, at the rate of six hundred sixty five and 58/100 dollars ($665.58).

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Defendants shall receive credit for all benefits previously paid.

Defendants shall receive credit for sick pay/disability income as addressed above.

Costs are taxed to the defendant's pursuant to 876 IAC 4.33.

Defendants shall file subsequent reports of injury as required by the agency.

Defendants shall pay those medical expenses as set forth in Joint Exhibit H.

Signed and filed this __30th___ day of March, 2006.

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STAN MCELDERRY
DEPUTY WORKERS'
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