BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GEORGE GROSVENOR, Claimant, vs. HUSSMAN CORP., Employer, and TOKIO MARINE AMERICA INS. CO., Insurance Carrier, Defendants.	:	File No. 5067686.01 ARBITRATION DECISION Head Note Nos.: 1100, 1108, 1801, 2500

STATEMENT OF THE CASE

Claimant, George Grosvenor, has filed a petition for arbitration seeking workers' compensation benefits against Hussman Corp., employer, and Tokio Marine American Ins. Co., insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on October 22, 2020, via CourtCall. The case was considered fully submitted on November 12, 2020, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-2, Claimant's Exhibits 1-4, Defendants' Exhibits A-D and the testimony of the claimant.

ISSUES

Whether claimant sustained an injury arising out of and in the course of his employment;

And, if so, whether the injury resulted in a permanent disability;

The extent of claimant's permanent disability, if any;

The commencement date of said benefits;

Whether claimant is entitled to reimbursement of medical expenses itemized in Exhibit 2 and mileage reimbursement in Exhibit 3;

The assessment of costs.

STIPUATIONS

The parties agree that at the time of the alleged injury, claimant was an employee of the defendant employer. While causation to disability is in dispute, the parties agree that if an injury is found to be the cause of a permanent disability, it is a scheduled member disability to the bilateral upper extremities per Iowa Code section 85.34(2)(a).

At the time of the alleged injury, claimant's gross earnings were $1.745.66 per week. He was married and entitled to 2 exemptions. Based on the foregoing, the weekly benefit rate is $1,081.41.

While the parties dispute the claimant is entitled to reimbursement of medical expenses, they will agree that the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and will not offer contrary evidence.

FINDINGS OF FACT

Claimant, George Grosvenor was a 59-year-old person at the time of the hearing. He was married at all relevant times. His educational background consists of a high school education.

He was initially hired as an Estimator 3 and was promoted to project developer in 2014, which was somewhat the same job as Estimator without onsite visits. As an estimator, his duties were primarily computer work. Around the summer of 2018, claimant was left to work the estimator position by himself including all states that bordered Iowa. This had the effect of doubling his workload and claimant maintains he was working a minimum of 80 hours a week for approximately 6 months. As a result of this increased workload, claimant asserts he began to develop symptoms in both of his hands on or about November 5, 2018.

When his symptoms did not abate, he reported them to human resources. After this, he was referred to corporate. In the meantime, claimant sought out treatment with Dallas Sanders, PA-C.

Claimant has a number of comorbidities including type II diabetes for which he had been treating for over a decade. (JE 1:1) Since 2011 or earlier, claimant has been managing his diabetes with an insulin pump. (JE 1:1) Approximately 30 years ago, he sustained a back injury during an industrial accident. He also fractured both wrists when he fell off a roof at age 11. (DE C:17)

On November 9, 2018, claimant was seen in follow-up for his type II diabetes with PA Sanders. (JE 1:12) During this appointment he brought up pain in his hands and forearms extending into his upper arms. (JE 1:12) Claimant attributed this to working with multiple screens on a computer and all day long runs with the mouse in his right hand and keyboard use with both hands. (JE 1:12) Sanders suspected claimant may be suffering from bilateral carpal tunnel syndrome and scheduled an EMG. (JE 1:16)

At the request of the claimant, PA Sanders wrote an opinion letter on behalf of the claimant. (JE 1:17) In the January 23, 2019, letter, PA Sanders wrote in his opinion, claimant developed carpal tunnel syndrome from overuse of his hands and wrists with typing and working with a mouse. (JE 1:17)

The employer continued to deny compensability.

The EMG test revealed claimant was suffering from nerve damage in both wrists bilaterally. Claimant was referred to a hand specialist ZeHui Han, M.D., who scheduled surgery. (JE 2:22. 24) However, claimant's hemoglobin levels were too high for him to safely undergo surgery. (JE 1:18) Once that was managed, claimant was cleared for surgery.

Claimant underwent left carpal tunnel surgery on September 5, 2019 and then right on October 29, 2019. (JE 2:28, 34) By December 4, 2019, claimant had full range of motion in his hands and was able to make composite fists with full extension. (JE 2:39) Claimant still complained of bilateral thumb triggering which Dr. Han advised could be treated at a later date. (JE 2:38)

On June 25, 2019, Dr. Han issued a letter wherein he opined claimant's work activities played a definitive factor for the development of bilateral carpal tunnel syndrome. (JE 2:27) Dr. Han acknowledged that medical conditions such as claimant's diabetes placed claimant at a high risk to develop carpal tunnel syndrome regardless of his work, but based on the claimant's history of keyboard use, Dr. Han concluded that the work claimant was performing for over ten years was a substantial factor in developing carpal tunnel syndrome. (JE 2:27)

In a follow-up letter dated September 29, 2020, Dr. Han opined that claimant reached maximum medical improvement for his bilateral wrist on December 4, 2019. (JE 2:40) That was the last date of Dr. Han’s treatment. (JE 2:38) Because of residual numbness and tingling, Dr. Han assessed a one percent impairment of the right upper extremity and one percent impairment of the left upper extremity. (JE 2:40)

While he was recovering, claimant continued to work. He did not miss any time following the day of the surgery. He would use a couple of fingers and peck at the keyboard.

There are two independent medical evaluation (IME) opinions in the record.

On July 7, 2020, claimant was seen by Mark B. Kirkland, D.O., for an independent medical examination. (CE 1:1) At the time of the examination, claimant was working for the defendant employer and due to the pandemic, claimant was working from home approximately 40 hours a week. Dr. Kirkland noted that claimant was 280 pounds and diabetic. Dr. Kirkland also recorded the claimant had multiple other comorbidities. (CE 1:3)

On examination, claimant had normal color and temperature of both extremities, good symmetrical shoulder shrugging, full and active and pain-free cervical range of motion. (CE 1:3) All other tests were negative except he had some very slight weakness with grip strength on the left compared to the right. (CE 1:3) Based on the physical examination, review of the medical records, and his own knowledge and experience, Dr. Kirkland concluded that claimant had sustained a bilateral carpal tunnel syndrome as a result of extended use of his hands working a minimum of 80 hours a week. (CE 1:4) Dr. Kirkland opined that claimant reached maximum medical improvement on December 4, 2019, the last visit he had with his hand surgeon. (CE 1:4).

Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Kirkland opined the claimant had sustained a five percent impairment to his right upper extremity and a five percent impairment to the left upper extremity based upon residuals such as constant numbness and tingling. (CE 1:4) Dr. Kirkland did not believe claimant would need future medical care. (CE 1:4)

On August 1, 2019, claimant underwent an IME with Charles Mooney, M.D. Dr. Mooney noted that claimant was able to drive, perform some household chores, but did not particpate in vacuuming, dusting, mopping, cleaning bathrooms and kitchen. (DE B:4) Claimant complained of pain in both hands, progressively worsening throughout the day with numbness in all digits but mostly the mdidle and ring finger. He reported wearing splints at night. (DE B:4) There is a history of use of power tools when he worked construction but he has not used hand tools, been exposed to vibratory machinery or performed heavy lifting in many years. (DE B:4)

On examination, claimant had difficulty with full hand closure bilaterally. (DE B:4) His grip strength was 41 kg on the dominant left hand and 34 kg on the right, non-dominant hand. There was a demonstrable widening of 2 point discrimination at 6 mm in both hands and markedly positive Tinel's test bilaterally at the carpal tunnel and slightly positive at the cubital tunnel on the right greater than left. He also demonstrated positive Durkan's test and a positive Phalen's test and had moderate decrease in light touch sensation utilizing the clear filmaent in the west filament tests indicating approximately 40 percent loss of light touch sensitivity. (DE B:4)

Dr. Mooney diagnosed claimant with bilateral carpal tunnel syndrome based on physical examination and EMG findings, long-standing poorly controlled Type 2 diabetes, long-standing obesity and history of bilateral wrist fractures. (DE B:5)

Dr. Mooney concluded that the claimant's bilateral carpal tunnel syndrome was not associated with his work, but rather developed due to his risk factors such as

insulin-dependent diabetes, obesity and prior history of wrist factures. (DE B:5) Dr. Mooney did not find claimant's extensive computer use was a significant risk factor nor a material aggravator or direct casual factor. (DE B:5) Underlying his opinions is Dr. Mooney's belief that there is low risk for any computer user or worker of highly repetitive work to develop carpal tunnel syndrome. (DE B:5) Dr. Mooney refers to the AMA Guides to the Evaluation of Disease and Injury Causation that has found computer use as a non-risk factor for the development of carpal tunnel syndrome based on 9 studies, whereas obseity and diabetes are strong risk factors. (DE B:6)

Currently, the tips of claimant's fingers are numb. He has difficulty with dexterity and low hand strength. He testified that his wife has greater hand strength.

Because his bilateral carpal tunnel, claimant has incurred $12,056.08 in medical bills of which $8,589.50 was paid by insurance and $1,336.69 was paid by the claimant. (CE 2:8) claimant also incurred 1,406 miles in traveling to his medical provider. Claimant lives in Albia but treated in Des Moines. (CE 3:9)

Claimant asserts he has incurred costs of $1,628.80. Included in the costs are the Dr. Han report for $175.00 and the Dr. Mark Kirkland report for $1,340.00. (CE 1:4)

CONCLUSIONS OF LAW

It is undisputed that claimant developed carpal tunnel syndrome sometime in 2018 and that the appropriate treatment for the carpal tunnel syndrome was bilateral carpal tunnel release surgery. Further, claimant testified unrebutted to ongoing functional problems such as numbness, tingling and loss of grip strength.

The main issue of contention is whether the bilateral carpal tunnel syndrome arose out of and in the course of his 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 Rule of Appellate Procedure 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).

There are two expert opinions in this case: one from Dr. Mooney and one from Dr. Kirkland. The two opinions are in opposition. Dr. Mooney concludes that claimant's CTS developed from his co-morbidities such as the bilateral wrist fractures, insulin-dependent diabetes, and obesity. Dr. Kirkland opines that claimant's carpal tunnel syndrome developed from his extensive keyboarding use.

Dr. Mooney's opinions identify only certain occupational work as contributing significantly to carpal tunnel syndrome including force-repetition and force-posture and that individuals who are exposed to vibratory work and repetitive work without force are not likely to develop carpal tunnel syndrome or are at low risk for developing carpal tunnel syndrome. Dr. Mooney's opinions are inconsistent with the holdings and findings of the agency and the appellate courts where in individuals who are exposed to repetitive work and/or keyboarding have been found to have sustained work related injuries. See Eaton Corp. v. Archer, 872 N.W.2d 194 (Iowa Ct. App. 2015) (finding claimant's repetitive work on an assembly line caused carpal tunnel syndrome); Saltern v. HNI Corporation, 940 N.W.2d 441 (Iowa Ct. App. 2019) (holding that the bilateral carpal tunnel syndrome sustained by claimant arose out of years of repetitive sewing); Gillespie v. Wellmark, Inc., 759 N.W.2d 2 (Iowa Ct. App. 2008) (re-affirming the agency decision which found claimant sustained a bilateral carpal tunnel syndrome arising from her keyboarding work but not extending to her whole body).

Dr. Han, claimant's treating hand surgeon, opined that the keyboarding work was a definitive factor and a substantial factor in claimant's development of bilateral carpal tunnel syndrome. Defendants refer to this opinion as inconsistent given that Dr. Han noted in the medical records that claimant's bilateral thumb triggering problems were due to claimant's poorly controlled diabetes. While there is not an explanation from Dr. Han as to why the bilateral thumb triggering issue could be related to the diabetes and the bilateral carpal tunnel syndrome was related to claimant's keyboarding use, the bilateral thumb triggering issue is a different injury than the bilateral carpal tunnel syndrome, albeit involving some of the same or similar nerve damage.

The claimant's co-morbidities are much like a degenerative back condition. While they exist, they do not preclude a finding that an asymptomatic pre-existing condition was lit up by work factors. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000) (citing with approval that pre-existing disease or infirmity of the employee does not disqualify a claim under the "arising out of employment" from 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 9.02 [1], at 9–17 to 9–18 (1999) (footnotes omitted)).

The opinions of the two orthopaedic surgeons are given greater weight in this case and both opined claimant's carpal tunnel syndrome resulted from the work he performed. Thus it is held claimant sustained a bilateral carpal tunnel syndrome injury arising out of and in the course of his employment.

The next issue is the extent of disability. Bilateral carpal tunnel syndrome is considered a scheduled member injury. Second Injury Fund of Iowa v. Shank, 516 N.W.2d 808, 813 (Iowa 1994).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union Coal Mining Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code section 85.34(2)(u) the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

Benefits for a permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(t). 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). Further, "all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or

paragraph "v" when determining functional disability and not loss of earning capacity." Iowa Code Section 85.34(x)

Dr. Han assessed a one percent impairment of the upper extremities and Dr. Kirkland assessed five percent bilaterally to the upper extremities. Dr. Kirkland saw claimant on July 7, 2020, and the last visit claimant had with Dr. Han was December 4, 2019. Claimant's condition was largely unchanged from the December 4, 2019, visit when he was seen by Dr. Kirkland.

Claimant's ongoing problems include numbness, tingling and loss of grip strength. Given that there is little change in condition between Dr. Han's last visit and Dr. Kirkland's independent medical examination, claimant's residual problems of numbness and tingling, and Dr. Han's specialty as a hand surgeon, Dr. Han's impairment assessments are adopted herein. Claimant is entitled to two percent upper extremity impairment rating which translates into ten weeks of benefits.

Permanent benefits are triggered when claimant's entitlement to temporary or healing period benefits ends.

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, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

In the present case, claimant returned to work even after surgery. He did not miss one day. Thus, the earliest date of entitlement to permanent disability would be when claimant returned to work. The commencement date of permanent partial disability is November 5, 2018.

Because of the finding of compensability, claimant is entitled to reimbursement of mileage and medical bills.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Claimant also requests an assessment of costs. 876 IAC 5.33 allows for the assessment of costs at the discretion of the deputy. Given that claimant has prevailed in

this matter, the assessment of costs against defendant employer and insurer are appropriate as articulated in Claimant's Exhibit 4.

ORDER

THEREFORE, it is ordered:

That defendants employer and insurer are to pay unto claimant ten (10) weeks of permanent partial disability benefits at the rate of one thousand eighty-one and 41/100 dollars ($1,081.41) per week from November 5, 2018.

That defendants employer and insurer are to pay medical expenses itemized in Exhibits 2 and 3.

That defendants employer and insurer shall pay accrued weekly benefits in a lump sum.

That defendants employer and insurer shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendants employer and insurer shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 9th day of March, 2021.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James M. Ballard (via WCES)

Kent M. Smith (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.