BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN ROHRBAUGH, Claimant, vs. COOPERATIVE FARMERS ELEVATOR, Employer, and RIVERPORT INSURANCE CO., Insurance Carrier, Defendants.	File No. 1643588.01 ARBITRATION DECISION Head Notes: 1402.40, 1803.1

STATEMENT OF THE CASE

Steven Rohrbaugh, claimant, filed a petition for arbitration against Cooperative Farmers Elevator, as the employer, and Riverport Insurance Company, as the insurance carrier. This case came before the undersigned for an arbitration hearing on February 17, 2021. This case was scheduled to be an in-person hearing occurring in Des Moines, Iowa. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall. The hearing proceeded without significant difficulties.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 1 and 2, and Defendants' Exhibits A through I. All exhibits were received without objection.

Claimant testified on his own behalf. Defendants called Sarah Ranschau to testify. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties served their post-hearing briefs on March 22, 2021, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the stipulated work injury caused a permanent injury limited to a scheduled member injury, or whether the injury extends beyond the scheduled member and should be compensated as an industrial disability; and

2. The extent of claimant's entitlement to permanent partial disability benefits; and

3. The commencement date for permanent partial disability benefits.

FINDINGS OF FACT

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

On the date of hearing, Steven Rohrbaugh, was a 66-year-old gentleman living in Missouri. (Hearing Transcript, page 8) Mr. Rohrbaugh obtained a high school diploma from Sioux Valley High School in approximately 1973. (Hearing Transcript, page 10) Mr. Rohrbaugh did not seek any additional formal education. After graduating from high school, Mr. Rohrbaugh joined the armed services. Mr. Rohrbaugh admirably served in the United States Navy from February 1974 to February 1978. (Hr. Tr., pp. 10-11) Claimant's work history includes work as a department manager, commercial truck driver, welder, and carpenter. (Hr. Tr., pp. 14-16, 58-59)

In February 2015, Mr. Rohrbaugh began working as a delivery driver for Hartley Farm & Home. (Exhibit C, page 3) The defendant employer, Cooperative Farmers Elevator, acquired Hartley Farm & Home in approximately November, 2015. (Hr. Tr., p. 80) Mr. Rohrbaugh had no problems, symptoms, or limitations with his hands, shoulders, or neck when he was hired. (See Hr. Tr., pp. 18-23) As a delivery driver, Mr. Rohrbaugh drove a company vehicle to deliver lumber, building materials, and other building supplies to customer's home, construction site, or place of business. (Ex. B, p. 1) Mr. Rohrbaugh had to load and unload the materials. (Id.) The position required claimant to occasionally lift and/or move up to 80 pounds. (Ex. B, p. 2)

Mr. Rohrbaugh sustained a work-related injury on January 12, 2018. (Hearing Report) More specifically, claimant was in the process of locking up two separate buildings on the employer's premises when he slipped on some ice, fell forward, and landed on his left shoulder. (Hr. Tr., pp. 25-26) Claimant was able to collect himself and complete his remaining job duties before returning to the store. (Hr. Tr., p. 25) Shortly after returning to the store, claimant experienced pain in his left shoulder and reported the injury to his supervisor. (Hr. Tr., p. 26)

The next day, claimant woke up in "quite a bit of pain." He called his store manager and sought medical treatment through his primary care provider. (See id.) Defendants subsequently accepted the claim and directed claimant's medical care.

Claimant's medical history includes a prior left shoulder injury. More specifically, claimant sustained a torn rotator cuff. The injury occurred in approximately 1998, while he was working for Manwarren Furniture. (Hr. Tr., pp. 20-21; see JE3, p. 20) Claimant's left rotator cuff was surgically repaired by "Dr. Follows." (See JE3, p. 20) Claimant feels the surgery was successful. (See Hr. Tr., pp. 20-21) The record does not contain any evidence of prior permanent impairment or restrictions related to the 1998 left shoulder injury.

Turning to the more recent injury, defendants referred claimant to John Leupold, M.D., an orthopedic surgeon with NWIA Bone, Joint & Sports Surgeons. (See JE3, p. 20) Claimant first presented to Dr. Leupold on February 1, 2018, with complaints of dull-aching shoulder pain, mainly posteriorly and in the trapezial area. (JE3, p. 20) When a conservative course of treatment, including medication management, physical therapy, and a subacromial steroid injection failed to alleviate claimant's symptoms, Dr. Leupold recommended and performed a diagnostic arthroscopy. (See JE3, pp. 27, 29; see also JE6, pp. 140-142)

During the May 10, 2018, diagnostic arthroscopy, Dr. Leupold discovered a full-thickness rotator cuff tear involving the leading edge of the subscapularis, supraspinatus, and infraspinatus, as well as a ruptured long head biceps tendon. (JE6, p. 140) Ultimately, Dr. Leupold performed a subacromial decompression and 4-anchor rotator cuff repair. (Id.)

Claimant made slow but steady improvement with post-op physical therapy through October, 2018, when he began work hardening. (See JE3, pp. 44, 53) He experienced very good pain relief; however, his left shoulder remained stiff and weak. (See JE3, p. 44)

Claimant last presented to Dr. Leupold on February 1, 2019. (JE3, p. 60) At that point in time, claimant had some persistent weakness and stiffness, with fairly good pain relief. (Id.) As predicted at his November 15, 2018, appointment, Dr. Leupold placed claimant at maximum medical improvement (MMI) and released him from his care. (Id.; see JE3, p. 56)

Defendants scheduled claimant to present for an independent medical examination (IME) with Douglas Martin, M.D., on March 20, 2019. (Ex. I, p. 1) Dr. Martin assigned 11 percent upper extremity impairment based upon claimant's shoulder range of motion. (Ex. I, p. 7) Dr. Martin recommended claimant keep any type of work activity between the mid-torso level and the beltline, and as close to the body as possible. He further recommended that claimant avoid reaching above shoulder level with the left arm on anything other than an occasional basis. (Id.)

Following Dr. Martin's evaluation, Mr. Rohrbaugh sought an independent medical examination, which was performed by Robin Sassman, M.D., on November 26, 2019. (Ex. 1) Dr. Sassman placed claimant at maximum medical improvement (MMI) as of May 10, 2019, and assigned 12 percent upper extremity impairment as a result of the left shoulder injury. (Ex. 1, pp. 8-9) In terms of permanent restrictions, Dr. Sassman recommended claimant limit his lifting, pushing, pulling, and carrying to 20 pounds, on an occasional basis. (Ex. 1, p. 9) She further recommended he limit the use of vibratory

or power tools to a rare basis. (Id.) These restrictions are substantially similar to the restrictions temporarily assigned by Dr. Leupold when he referred claimant for an IME. (See JE3, p. 60)

Cooperative Farmers Elevator was able to return claimant to work in a light duty capacity following the January 12, 2018, work injury. (Hr. Tr., p. 28) Claimant worked in a light duty capacity until December 5, 2019, when he voluntarily retired. (Hr. Tr., p. 29; see Hr. Tr., p. 42) Sarah Ranschau, a human resources manager for Cooperative Farmers Elevator, testified that claimant was a good employee. (Hr. Tr., p. 85) Claimant has not worked in any capacity since retiring from the defendant employer. He is open to part-time employment; however, he is concerned about working during the COVID-19 pandemic. (Hr. Tr., p. 43)

At hearing, claimant testified he does not experience pain in his left shoulder at rest; however, he does experience pain with some activities. (Hr. Tr., pp. 38-39) He tries not to reach or lift overhead with his left arm. (See Hr. Tr., pp. 40, 45) Claimant takes Tylenol or Tramadol if his pain is "real bad." (Hr. Tr., p. 46) Outside of chiropractic adjustments, claimant has not presented for medical treatment related to his left shoulder since Dr. Leupold released him in February, 2019. (See Hr. Tr., p. 62)

The parties agree claimant sustained permanent impairment as a result of the January 12, 2018, work injury. However, there is a dispute as to whether said permanent impairment is confined to the left shoulder, or whether it extends into the cervical spine. Mr. Rohrbaugh asserts that he sustained both a neck and a left shoulder injury on January 12, 2018. Defendants deny the January 12, 2018, injury resulted in any permanent disability to claimant's cervical spine. Instead, defendants assert claimant's complaints of neck pain resolved with conservative treatment.

It is well documented that claimant initially complained of both neck and shoulder pain when presenting for medical treatment. However, as defendants point out, Mr. Rohrbaugh reported that his neck pain had completely resolved by his April 19, 2018, appointment with Dr. Leupold. (JE3, p. 27) At the same appointment, claimant demonstrated painless cervical range of motion. (Id.) However, claimant has sporadically reported neck discomfort when presenting to Rex Jones, D.C., his chiropractor. (See JE4, pp. 68, 72, 74) Most notably, claimant experienced temporary exacerbations in neck discomfort after sleeping in his recliner, driving to Kansas City, Missouri, and having a tooth pulled. (JE4, pp. 68, 72, 74) At hearing, claimant refuted defendants' assertion that his neck pain resolved. (Hr. Tr., p. 61)

Review of the medical evidence does not disclose any medical opinions causally connecting claimant's asserted ongoing neck symptoms to the January 12, 2018, work injury. As previously mentioned, claimant obtained an IME report from Dr. Sassman. (Ex. 1) Claimant specifically reported pain over the deltoid area and in the neck area to Dr. Sassman. (Ex. 1, p. 5) Yet, Dr. Sassman provided no diagnosis of a neck injury, assigned no permanent impairment, and made no recommendations for further treatment of claimant's asserted neck pain. (Ex. 1, pp. 8-9)

Given claimant's assertion that he sustained a neck injury as a result of the January 12, 2018, incident, defendants conducted a conference call with Dr. Leupold

and subsequently requested he produce a summary of the treatment claimant received for the cervical spine. (See Ex. H) According to Dr. Leupold, Mr. Rohrbaugh initially presented with some superior shoulder pain and discomfort in the base of his neck; however, as noted in his April 19, 2018, medical record, said discomfort completely resolved in the spring of 2018. (Ex. H, p. 1) There is no evidence claimant reported ongoing neck pain to Dr. Leupold during subsequent appointments. In his report, Dr. Leupold opined it is more likely than not that claimant may have sustained a cervical strain-type injury which resolved with time. (Id.) He opined, "Certainly, it is plausible that he is having some referred pain along his supraspinatus fossa and subtrapezial region generated from his shoulder that he is calling neck discomfort[.]" Dr. Leupold further opined it is also plausible that residual shoulder dysfunction could be utilizing some compensatory motion and accessory muscles in the cervical spine region, which could give him some discomfort; however, such discomfort would be secondary to the shoulder injury and not a specific cervical spine injury. (Ex. H, pp. 1-2) Regardless, no physician has assigned a permanent impairment rating or permanent restrictions as a result of claimant's alleged neck injury.

Given that no physician assigned a permanent impairment rating or permanent restrictions to the cervical spine as a result of the January 12, 2018, work injury, I find that Mr. Rohrbaugh failed to prove by a preponderance of the evidence that he sustained a permanent injury to his neck.

With respect to the left shoulder, I find the opinions of Dr. Leupold to be most convincing. Dr. Leupold was claimant's treating orthopaedic surgeon. He had the opportunity to examine claimant before, during, and after surgical intervention. He opined that claimant achieved maximum medical improvement on February 1, 2019. I accept his date of maximum medical improvement as convincing. Unfortunately, Dr. Leupold declined to address permanency and/or permanent restrictions for claimant's left shoulder injury. (See JE3, p. 60) As such, the undersigned is left to assess the expert medical opinions of Dr. Martin and Dr. Sassman.

In this case, I find the opinions of Dr. Sassman are well reasoned and supported by the opinions of Dr. Leupold. I further find that Dr. Sassman's conclusions, and her justifications for the same, are more thorough and convincing than those of Dr. Martin. Dr. Sassman recommended permanent restrictions that are substantially similar to those previously assigned by Dr. Leupold. The restrictions are well defined and easy to follow. In contrast, Dr. Martin's restrictions are vague and imprecise.

I accept Dr. Sassman's permanent impairment rating and restrictions as most convincing with respect to the left shoulder injury. Therefore, I find that claimant proved he sustained twelve percent (12%) upper extremity impairment as a result of the left shoulder injury. (Ex. 1, pp. 8-9)

CONCLUSIONS OF LAW

The fighting issue in this case is whether claimant's disability is a scheduled disability to his "shoulder" under Iowa Code section 85.34(2)(n) or an unscheduled disability under Section 85.34(2)(v). In this regard, claimant asserts that his left shoulder injury extends into the body as a whole. Claimant asserts he is suffering from

the effects of his shoulder injury in an area of the body separate and distinct from any possible definition of the term "shoulder."

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

In this case, I found that claimant failed to prove by a preponderance of the evidence that he sustained a permanent neck injury as a result of the January 12, 2018, work accident. Dr. Sassman, claimant's expert physician, provided no diagnosis of a neck injury, assigned no permanent impairment to the cervical spine, and made no recommendations for further treatment relating to claimant's asserted neck pain. (Ex. 1, pp. 8-9) Aside from the sporadic and inconsistent complaints of neck pain that are documented in claimant's chiropractic records, there is no evidence claimant sustained a permanent injury to his neck as a result of the January 12, 2018, work injury.

Claimant's injury in this case involved a full-thickness rotator cuff tear involving the leading edge of the subscapularis, supraspinatus, and infraspinatus, as well as a ruptured long head biceps tendon. I find the claimant suffered an injury to his shoulder under Iowa Code section 85.34(2)(n). Such a finding is consistent with agency precedent. See Deng v. Farmland Foods, Inc., File No. 5061883 (Appeal September 29, 2020); Chavez v. MS Technology, LLC, File No. 5066270 (App. September 30, 2020).

There is no evidence claimant sustained a permanent injury to any body part other than the left shoulder as a result of the January 12, 2018, work injury. Therefore, I conclude that claimant failed to carry his burden of proof to establish he sustained a permanent injury to any body part other than his left shoulder. I further conclude claimant's injury should be compensated as a scheduled member injury to the left shoulder. Iowa Code section 85.34(2)(n) (2018); Deng v. Farmland Foods, Inc., File No. 5061883 (Appeal September 29, 2020).

The Iowa legislature enacted significant amendments to the Iowa workers' compensation laws, which took effect in July 2017. As part of those amendments, the legislature specified that injuries to the shoulder should be compensated as a scheduled member injury on a 400-week schedule. Iowa Code section 85.34(2)(n) (2018).

In 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(2)(x)

I found that claimant sustained a twelve percent loss of function in his left shoulder as a result of the January 12, 2018, work injury. Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of his shoulder. Iowa Code section 85.34(2)(w); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969). Twelve percent (12%) of 400 weeks is 48 weeks. Claimant is therefore entitled to an award of 48 weeks of permanent partial disability benefits against defendants as a result of the January 12, 2018, left shoulder injury.

The last issue to be decided is the commencement date of PPD benefits. Claimant asserts a commencement date of May 10, 2019, while defendants assert a commencement date of February 2, 2019.

For injuries occurring on or after July 1, 2017, the commencement date for permanent partial disability benefits is the date of maximum medical improvement. Iowa Code section 85.34(2) provides compensation for permanent partial disability shall begin when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of 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.

In this case, Dr. Leupold twice estimated that claimant would reach maximum medical improvement in January or February, 2019. (JE3, pp. 56, 58) Dr. Leupold subsequently placed claimant at maximum medical improvement on February 1, 2019. (JE3, p. 60) Claimant asserts Dr. Leupold's MMI date is premature, as claimant was still experiencing persistent weakness and stiffness in his left shoulder at the time of his February 1, 2019, appointment. I do not find claimant's argument persuasive. Claimant's persistent weakness and stiffness would not preclude a finding of maximum recuperation. Moreover, claimant was still experiencing the same weakness and stiffness at the time of his evaluation with Dr. Sassman, and Dr. Sassman confirmed claimant had reached maximum medical improvement. Claimant did not request or receive any additional treatment between February 1, 2019, and May 10, 2019, and there were no recommended or pending treatment modalities for claimant to pursue during this time period. Dr. Leupold's MMI date is not premature. As referenced above, Dr. Leupold began anticipating the February 1, 2019, MMI date back in November and December, 2018. For these reasons, I found that Mr. Rohrbaugh achieved maximum medical improvement on or about February 1, 2019. Accordingly, I conclude permanent partial disability shall commence on February 2, 2019.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant forty-eight (48) weeks of permanent partial disability benefits commencing on February 2, 2019.

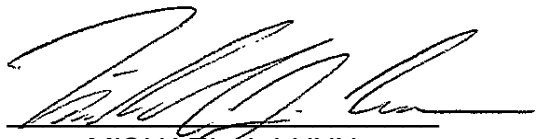
All weekly benefits shall be paid at the stipulated weekly rate of four hundred forty-nine and 42/100 dollars ($449.42).

Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall timely file all reports as required by 876 IAC 11.7.

Signed and filed this ____8th_____ day of December, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Willis Hamilton (via WCES)

Thomas Shires (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.