BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDY TORNOW, Claimant, vs. JOSEPH ERTL, INC., d/b/a DYERSVILLE DIE CAST, Employer, and GREAT AMERICAN ALLIANCE INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED DEC 14 2017 WORKERS COMPENSATION	File No. 5056845 ARBITRATION DECISION Head Note Nos.: 1108.20, 1402.30, 2204, 2501

STATEMENT OF THE CASE

Randy Tornow, claimant, filed a petition in arbitration and seeks workers' compensation benefits from defendants, Joseph L. Ertl, Inc./Dyersville Die Cast ("Dyersville"), as the employer, and Strategic Comp, as the insurance carrier. Hearing was held on July 31, 2017.

At the commencement of hearing, the parties concurred that the name of the insurance carrier should be corrected to reflect the proper insurance carrier. The undersigned granted the motion to amend and verbally amended the insurance carrier to be named "Great American Alliance Insurance Company" pursuant to the parties' agreement.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

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

Claimant testified on his own behalf and called Julie Kowalewski to testify. Defendants called Jane Ertl to testify.

At the conclusion of the arbitration hearing, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted and the parties filed their briefs simultaneously on August 28, 2017, at which time the case was considered fully submitted.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a mental-mental injury that arose out of and in the course of his employment with Dyersville on July 1, 2015.

2. Whether the alleged injury caused temporary disability and, if so, the extent of claimant's entitlement to temporary disability, or healing period, benefits.

3. Whether claimant is entitled to running healing period benefits through the date of the trial.

4. Whether the alleged injury caused permanent disability and if so, the extent of claimant's entitlement to permanent disability benefits.

5. The proper commencement date for permanent disability benefits, if any.

6. Whether claimant is entitled to reimbursement, direct payment to medical providers, or an order requiring defendants to hold him harmless for past medical expenses contained in Claimant's Exhibit 1.

FINDINGS OF FACT

Having considered all of the evidence and testimony in the record, recognizing that there may be competing or contradictory facts within this evidentiary record, I find the following facts:

Randy Tornow asserts that he sustained psychological injuries as a result of stressors he experienced while working at Dyersville Die Cast. Mr. Tornow points to several issues as being stressors that caused his alleged mental injuries. First, he asserts he sustained a knee injury in 2011, which caused him to be more anxious and concerned about working conditions. He alleged he sustained an electrical shock incident in 2014, which he describes as a near-death experience. He also alleges that there were unsatisfactory and dangerous working conditions at Dyersville that caused him anxiety. Finally, he alleges that the conduct of his superior was abrasive and perhaps verbally abusive such that it constitutes a stressor that caused him mental injury.

Claimant began working for Dyersville in 2011. He was employed as a maintenance person. Mr. Tornow worked at Dyersville through July 1, 2015, at which point he resigned his employment because he did not feel that the company was adequately addressing his safety concerns. He has not been employed since that date.

Mr. Tornow describes an incident in April 2011 in which a co-worker attempted to turn on a water supply to a machine without taking the time to lock-out a machine and open a safety gate. In doing so, the co-worker caused a piece of metal to be thrown out of the safety cage. The metal piece hit claimant in the left leg, causing claimant to fall and experiencing a pop in his knee. Claimant testified that this injury affected him mentally and he noted electrical safety issues with the employer.

In 2014, claimant described an incident in which he was instructed to restart a machine that had been shut down and improperly locked out by another employee. Upon restarting the machine, claimant describes receiving an electrical shock. He describes falling after the shock and was in a daze. Claimant describes feeling anxiety and experiencing a panic attack. He also describes this as a life-threatening incident. Once again, claimant describes this incident as affecting him greatly from a mental standpoint. He began advising younger mechanics to be more careful and correcting their errors.

Mr. Tornow does not seek compensation for any physical injuries resulting from either the 2011 or 2014 injury dates. Instead, he asserts a cumulative injury claim under a mental-mental theory with an alleged manifestation date of July 1, 2015, his last day of employment at Dyersville. Indeed, Mr. Tornow continued working at Dyersville after both of the described incidents. However, he describes ongoing safety concerns at the employer. He also describes a supervisor that he describes as being verbally abusive toward employees. Claimant contends that the mental effects of the safety concerns and his supervisor caused him post-traumatic stress disorder, depression, and anxiety.

At trial, Mr. Tornow denied any history of anxiety or treatment for anxiety. However, his medical records clearly demonstrate that claimant was reporting symptoms of anxiety by 2007. (Joint Exhibit 1, page 4)

After the two asserted injuries in 2011 and 2014, claimant did seek treatment for depression and anxiety. Claimant has also been diagnosed with substance abuse difficulties. Ultimately, there is arguably a temporal relationship between claimant's employment at Dyersville and the worsening of his mental health issues.

However, none of the treating mental health professionals has specifically attributed claimant's mental health difficulties to his employment at Dyersville. Some of their notes reference claimant's statements and belief that his mental health issues are related to the claimant's work activities at Dyersville. However, none of the treating mental health providers opined that claimant's treatment or conditions are causally related to his work activities or circumstances at Dyersville.

Defendants did send claimant for evaluation by a psychologist, John Brooke, Ph.D., to investigate the claim. Dr. Brooke evaluated Mr. Tornow on April 6, 2016. Dr. Brooke administered the MMPI and concluded that Mr. Tornow was providing exaggerated responses. Ultimately, Dr. Brooke opined that claimant "suffers from a pre-existing substance abuse/dependence disorder, which was not caused or

exacerbated by his work place but which made and will continue to make success at work unlikely." (Defendants' Ex. B, p. 1)

Dr. Brooke was not provided copies of claimant's mental health treatment records at the time of his evaluation. However, defendants did subsequently provide those records to Dr. Brooke. Dr. Brooke reviewed the additional records and noted that the mental health records "corroborate my findings." (Defendants' Ex. C, p. 1)

As noted, Dr. Brooke's expert causation opinion is not rebutted in this evidentiary record. I accept Dr. Brooke's opinion as accurate and find that claimant failed to prove his mental health issues are causally related to or materially aggravated by his work activities at Dyersville.

I also find that the claimant's complaints about his supervisor were experienced by similarly situated employees within Dyersville. I find that claimant failed to prove that he experienced a stress at work that was of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs.

Finally, I note that claimant has alleged two traumatic, sudden events that may have increased his anxiety and safety concerns at his employment with Dyersville. While these events were sudden, traumatic, and unexpected, I find that they were not the primary basis for claimant's alleged mental health injuries. Instead, claimant's primary complaints were about unsafe working conditions, in general, as well as the conduct of a supervisor. In this sense, claimant's mental exposures were long-standing, daily, and not truly sudden, traumatic or unexpected.

Claimant also seeks an award of past medical expenses. The medical expenses sought are contained at Claimant's Exhibit 1 and are related to claimant's treatment for mental health issues. Having found that claimant failed to prove a causal connection between his mental health condition, or injury, and his employment activities at Dyersville, I similarly find that claimant failed to prove a causal connection between the medical expenses and his employment activities at Dyersville.

CONCLUSIONS OF LAW

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 Elec. 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.

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).

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).

Mr. Tornow asserts that he sustained a mental injury as a result of two injury incidents, as well as cumulative exposure to stress and unsafe working conditions at the employer's place of business, which manifested and prevented him from working as of his last day of employment on July 1, 2015. Mr. Tornow does not assert a claim in this proceeding for any physical injuries related to his mental stressors. Instead, claimant is asserting what is referred to as a mental-mental injury.

In Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995), the Iowa Supreme Court recognized that mental-mental injuries are compensable under the Iowa workers' compensation statutes. In Dunlavey, the Court established a legal standard for mental-mental injuries that requires the claimant to prove medical causation between the mental stimulus encountered at work and the claimant's mental injury. The Dunlavey Court also established a separate legal standard that requires the claimant prove he experienced a stress at work that was "of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer." Id. at 858. Both standards must be met to establish a compensable nontraumatic, mental-mental injury.

In this case, I found that Mr. Tornow failed to carry his burden of proof to establish medical causation. Only one medical expert offered a direct causation opinion in this case and he opined that claimant's condition was not causally related to his employment at Dyersville. Having accepted that unrebutted medical opinion, I found that claimant had not proven a medical causal connection between his work at Dyersville and his claim of mental injuries. Therefore, I conclude that Mr. Tornow failed to establish the medical causation standard and failed to prove a compensable mental-mental injury.

Similarly, I made findings pertaining to the legal causation standard. Specifically, I found that claimant introduced evidence to establish that other individuals were injured, were similarly situated to the working conditions experienced by claimant at Dyersville, and that others were similarly situated and experienced similar stressors related to comments and actions of management at Dyersville. Ultimately, I found that claimant had not proven that the stress he experienced at Dyersville was of a greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs. Having reached these findings of fact, I conclude that claimant failed to carry his burden of proof on the legal causation standard to establish a compensable mental-mental injury.

In Brown v. Quik Trip Corp., 641 N.W.2d 725, 728 (Iowa 2002), the Iowa Supreme Court noted that "the proof of legal causation for recovery under a mental/mental injury does not require evidence of stress experienced by similarly situated workers if the event or events giving rise to the claim" result from a sudden traumatic event. The Court stated, "[w]hen a claim is based on a manifest happening of a sudden traumatic nature from an unexpected cause or unusual strain, the legal causation test is met irrespective of the absence of similar stress on other employees." Id. at 729. The Court noted that the legal standard is met when the events "were sudden, traumatic, and unexpected." Id.

Arguably, this standard could be applied to the two physical injury incidents as being sudden, traumatic, and unexpected. However, claimant really alleged and pursues this claim as more of a cumulative injury and did not miss work as a result of mental injury or symptoms after either the 2011 or 2014 incidents. Nor did he allege this claim as a physical-mental injury claim in which the mental injuries developed as direct result of the physical injuries.

While the physical injury incidents claimant described were likely stressful, sudden, traumatic, and unexpected, I conclude those incidents were not of the nature anticipated by the Iowa Supreme Court in Brown. Therefore, I conclude that claimant has failed to establish the legal causation standard for a compensable mental-mental injury even if the Brown legal standard is considered and applied.

Having reached these conclusions, I further conclude that Mr. Tornow has failed to prove entitlement to temporary disability, healing period, or permanent disability benefits.

Mr. Tornow also seeks award of past medical expenses. 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).

However, having concluded that claimant did not establish a compensable mental-mental work injury, I conclude that he has not established entitlement to reimbursement, payment or any other orders pertaining to his past medical expenses.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing.

Claimant's original notice and petition is dismissed with prejudice.

All parties shall bear their own costs.

Signed and filed this 14th day of December, 2017.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/srs

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.