BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GUY WORKMAN, Claimant, vs. W.W. TRANSPORT, INC., Employer, and ARCH INSURANCE CO., Insurance Carrier, Defendants.	File No. 1626728.01 ARBITRATION DECISION Head Note Nos: 1402.40, 2502

STATEMENT OF THE CASE

Claimant, Guy Workman, filed a petition in arbitration seeking workers' compensation benefits from W.W. Transport, Inc., (W.W. Transport), employer, and Arch Insurance Company, insurer, both as defendants. This matter was heard on May 4, 2021, with a final submission date of June 1, 2021.

The record in this case consists of Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 8, Defendants' Exhibits A through H, and the testimony of claimant.

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.

ISSUES

1. Whether the injury is a cause of permanent disability; and if so,

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

3. Whether there is a causal connection between the injury and the claimed medical expenses.

4. Costs, including reimbursement for an independent medical evaluation (IME).

FINDINGS OF FACT

Claimant worked for W.W. Transport as an over-the-road truck driver. (Testimony p. 9) Claimant testified he injured his left knee on December 16, 2016. Claimant said he injured his left knee while walking on ice and he slipped. Claimant said he did "like a split," but did not fall. (TR p. 11; Claimant's Exhibit A)

Claimant was seen at St. Mary's Medical Center Emergency Room on December 18, 2016. X-rays showed no bony abnormalities. (Joint Exhibit 1, p. 1)

On December 19, 2016, claimant was seen by Allen Young, M.D., with St. Mary's. Claimant complained of pain in the medial portion of the left knee. Claimant was assessed as having a left knee sprain and treated with medication. (JE 2, p. 8)

Claimant returned to Dr. Young on December 29, 2016. Claimant's knee was improving. Claimant was able to bear weight on the knee. Dr. Young requested an MRI of the left knee. Claimant had an estimated return to work date of January 30, 2017. (JE 2, pp. 15-17)

Claimant underwent an MRI. It showed an MCL sprain. No acute MCL tear was noted. (Ex. 1, p. 5)

Claimant was ultimately referred to John Jasko, M.D., an orthopedic specialist. On February 21, 2017, claimant was seen by Dr. Jasko. Claimant was assessed as having a left knee strain. Claimant was told the injury would improve with time. Claimant was referred to physical therapy. (JE 3, pp. 54-59)

Claimant continued conservative care with Dr. Jasko from February 2017 through April 2017. (JE 3, pp. 57-73) On April 26, 2017, claimant was returned to work with no restrictions. (JE 3, p. 74)

In a May 17, 2017 letter, Dr. Jasko indicated claimant was at maximum medical improvement (MMI) and had no permanent impairment. (JE 3, p. 75)

In approximately May of 2017, claimant left W.W. Transport and began working for LB & B, a bread company. (TR pp. 14-15) Claimant worked for LB & B from approximately May of 2017 through May of 2019.

On December 19, 2017, claimant was evaluated by Leigh Levine, D.O., for neck pain. There is no mention of knee problems in this visit. (JE 5, p. 118)

On February 27, 2018, claimant was evaluated by Dr. Levine for neck and back pain. There is no mention of a knee condition in this visit. (JE 5, p. 121)

On February 28, 2018, claimant's wife called Dr. Young's office to have Dr. Young see claimant for his knee. Claimant's wife was told to contact Dr. Jasko. (JE 2, p. 32) There is no record in evidence that Dr. Jasko's office was contacted at that time.

On March 13, 2018, claimant returned to Dr. Levine in follow-up. There is no mention of a knee condition in this visit. (JE 5, p. 127)

On June 20, 2018, claimant was seen by Felix Cheung, M.D., for bilateral groin pain worsening since October 2017. There is no mention of a knee problem in this medical record. (JE 3, p. 85)

On September 2, 2018, claimant sustained a work-related injury to his neck while working for LB & B. (JE 2, p. 33; Defendants' Exhibit G, p. 33; TR p. 15)

Claimant testified he was off for the neck injury from approximately September 2018 through February 2019. He said that during this time he had hip replacement surgery. (TR pp. 18-19, 26)

On December 12, 2018, claimant was evaluated by Dr. Young for his cervical injury. Claimant reported hip pain, but did not report any knee pain. (JE 2, pp. 37-38)

On January 3, 2019, January 24, 2019, February 21, 2019, June 28, 2019, July 15, 2019, July 29, 2019, and August 12, 2019, claimant was evaluated for his cervical condition. There is no mention in any of these records of a knee problem. (JE 2, pp. 39-53)

In approximately June of 2019, claimant began driving a truck with Active USA. Claimant's job required him to take new trucks to a dealership. Claimant testified he had another work-related neck injury while working for Active. Claimant testified he did a lot of bending and laying on the ground for his job with Active. (TR p. 30)

Claimant left Active USA in August 2019 and began working for Van Wyk. Claimant worked as an over-the-road truck driver for Van Wyk. As a part of the application process with Van Wyk, claimant took a physical. The physical indicated claimant could safely squat, crouch, kneel and lift 60 pounds. Claimant listed cardiac issues and acid reflux as health problems in his application. Claimant also indicated he had no joint problems. (TR pp. 34-35; Ex. C, pp. 12-14)

In January 2020 claimant began a job with Barr-Nunn as an over-the-road truck driver. Claimant worked for Barr-Nunn until November 2020 when he left due to heart issues. At the time of hearing, claimant had not worked due to heart issues since leaving Barr-Nunn. (TR pp. 36-37; Ex. D)

On January 14, 2020, claimant was evaluated by Dr. Jasko. Claimant had recurrent knee pain over the last few months. Claimant denied any specific injury. Claimant was given an injection in the knee for pain. (JE 3, pp. 100-101)

In a February 9, 2021 report, Bruce Guberman, M.D., gave his opinions of claimant's condition following an IME. Claimant indicated constant pain in the left knee in the medial and lateral aspects. He also reported swelling, instability and weakness. Dr. Guberman assessed claimant as having a sprain of the MCL on the left with aggravation and acceleration of the degenerative joint disease in the left knee. He opined claimant's ongoing symptoms were consistent with and attributable to the December 2016 work injury. (Ex. 1, pp. 4-8)

Dr. Guberman found claimant at MMI as of January 14, 2020. He indicated claimant would require additional future treatment. He found claimant had 8 percent

permanent impairment to the left lower extremity according to the AMA Guides to the Evaluation of Permanent Impairment, fifth edition. He restricted claimant to standing or walking no more than 30 minutes at a time. He also recommended claimant avoid using stairs and ladders and to avoid crawling, kneeling or squatting. (Ex. 1, pp. 8-9)

In a March 4, 2021 report, Charles Wenzel, D.O., gave his opinions of claimant's condition following a records review. Dr. Wenzel opined claimant's neck, back, hip and groin injuries were not related to the December 2016 work injury. (Ex. F, pp. 23-30)

Dr. Wenzel opined that claimant's current complaints of left knee pain were unrelated to the December 2016 work injury. This was because claimant was found to be at MMI with no impairment in April 2017 and did not see another physician for knee pain until almost three years later. Dr. Wenzel agreed with Dr. Jasko that claimant's date of MMI for the knee was April 26, 2017, and that claimant had no permanent impairment to the left knee. (Ex. F, pp. 30-31)

CONCLUSION OF LAW

The first issue to be determined is if claimant's injury resulted in a permanent disability.

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. 6.904(3).

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).

Claimant alleges he has a permanent disability for his December 16, 2016 injury to his left knee.

Claimant treated with Dr. Jasko, an orthopedic specialist, for approximately two months for his left knee sprain. In a May 17, 2017 letter, Dr. Jasko found claimant at MMI and that claimant had no permanent impairment. (JE 3, p. 75)

Claimant did not treat for his left knee condition for almost three years from that date. (JE 3, p. 100)

After he left W.W. Transport, claimant was employed by four other employers. Claimant had no work restrictions to his left knee with any subsequent employers. There is no indication in any of the records claimant had any knee problems with any of those four other employers. On his employment forms for Van Wyk, claimant did not indicate he had problems with knee pain and indicated he had no joint pain. Claimant's physical with Van Wyk indicated claimant could safely squat, crawl and kneel. (Ex. C, pp. 12-14)

Claimant saw physicians on approximately two dozen occasions for conditions including, but not limited to, problems with his neck, back, hip and heart. There is no reference in any of these records that claimant had any knee problems. (JE 2, pp. 37-53)

Dr. Guberman opined that claimant's current symptoms and permanent impairment with the left knee were caused by the December 16, 2016 knee sprain. (Ex. 1, pp. 4-8)

Dr. Guberman's opinions regarding causation of claimant's alleged permanent impairment to the knee are problematic. As noted above, claimant did not see a medical provider for knee problems for almost three years from the date he was released from care by Dr. Jasko. Claimant was employed with four other employers during that period of time. Claimant had no work restrictions with any of those employers for his left knee during that period of time. There is no record with any of the other employers that claimant had any knee problems. Claimant treated on multiple occasions with providers for neck, back, hip and cardiac issues between 2017 and 2020. There is no record in any of these medical records that claimant had any knee problems. Dr. Guberman provides no rationale why claimant's alleged permanent impairment to his left knee is causally connected to the 2016 injury when there is no indication in any record claimant had a problem from 2017 to 2020. Dr. Guberman provides no rationale for his causation opinion given that claimant had approximately a three-year period without any treatment for his left knee and ability to work in four other jobs with no restrictions. Given this discrepancy, Dr. Guberman's opinion regarding permanent impairment are found not convincing.

Dr. Wenzel reviewed claimant's medical records. He opined that claimant's alleged permanent impairment and knee problems in 2020 were not causally connected to the 2016 work injury. This was because of the three-year lapse of treatment for the left knee and because of claimant's ability to work in four other truck-driving positions without restrictions. Because Dr. Wenzel's opinion regarding causation correlates with

the records in this case, his opinion regarding causation of claimant's alleged permanent impairment to the left knee is found convincing.

Dr. Jasko found claimant at MMI with no permanent impairment in May of 2017. Claimant had no treatment for his left knee for approximately three years. There are no medical records between 2017 and 2020 that claimant had any knee problems. Claimant worked at four different trucking positions without restrictions after leaving W.W. Transport. The causation opinion of Dr. Guberman regarding impairment is found not convincing. The opinion regarding a lack of causation by Dr. Wenzel is found convincing. Given this record, claimant has failed to carry his burden of proof his 2016 injury resulted in a permanent disability.

As claimant failed to carry his burden of proof his 2016 knee injury resulted in a permanent disability, the issue regarding the extent of claimant's entitlement to permanent partial disability benefits is moot.

The next issue to be determined is whether there is a causal connection between the injury and the claimed 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 1975).

As detailed above, Dr. Jasko found claimant was at MMI for the left knee in May of 2017 with no permanent impairment. Claimant's alleged permanent impairment to the knee is found not causally connected to the 2016 work injury. Given this record, defendants are not liable for any medical expenses incurred after May 17, 2017.

The final issue to be determined is whether defendants are liable for reimbursement of claimant's IME.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need

not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

Dr. Jasko, the employer-retained expert, gave his opinion of permanent impairment in a May 17, 2017 report. Dr. Guberman, the employee-retained physician, gave his opinion of claimant's permanent impairment in a January 29, 2021 report. Given this chronology, claimant is due reimbursement for Dr. Guberman's IME.

As claimant failed to carry his burden of proof on any other issue other than the IME, both parties shall pay their own costs.

ORDER

THEREFORE IT IS ORDERED:

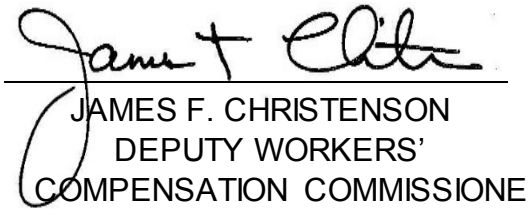
That claimant shall take nothing in the way of additional benefits in this matter.

That defendants shall reimburse claimant for costs associated with Dr. Guberman's IME.

That both parties shall pay their own other costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this ____29th____ day of September, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Abigail Wenninghoff (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.