BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CARLOS CALDERON,

Claimant,

vs.

ARCHER DANIELS MIDLAND CO. INC.,

Employer,
Self-Insured,
Defendant.

File No. 5063681

ARBITRATION DECISION

Head Notes: 1402.40, 2502

STATEMENT OF THE CASE

Claimant, Carlos Calderon, filed a petition in arbitration seeking workers' compensation benefits from Archer Daniels Midland Co., Inc. (ADM), self-insured employer. This matter was heard in Davenport, Iowa on June 5, 2019.

The record in this case consists of Joint Exhibits 1-5, Claimant's Exhibits 1-6, Defendant's Exhibits A through B, 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 resulted in a permanent disability; and if so
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME).

FINDINGS OF FACT

Claimant was 47 years old at the time of hearing. Claimant graduated from high school. He went to the University of Iowa for one and a half years but did not graduate.

Claimant has associate's degrees in auto motor repair and in auto body work. Claimant worked for Alcoa in maintenance. He drove garbage and recycling trucks for the city of Bettendorf. Claimant worked for ADM as a maintenance mechanic.

On June 3, 2014 claimant was cutting old guardrails with a cutting torch when his left pant leg caught fire.

On the same day, claimant was evaluated at Medical Associates. Claimant was assessed as having second-degree burns on the left lower leg. He was treated with pain medication and given light-duty work. (Joint Exhibit 1)

On June 6, 2014 and June 20, 2014 claimant was evaluated by James Paul, M.D. at Plastic Surgery Center. Claimant was told to elevate his legs and walk every two hours to avoid blood clots. (Jt. Ex. 2, pp. 2-3)

On June 13, 2014 claimant was seen by Dr. Paul. A skin graft was discussed as a treatment option. On the same date, claimant underwent a skin graft on the left lower leg. Surgery was performed by Dr. Paul. (Jt. Ex. 3)

Claimant was returned to full-duty work on July 17, 2014. (Jt. Ex. 2, p. 4)

Claimant testified he was terminated from ADM sometime in November of 2014. (Ex. 6, Deposition p. 31) This occurred because claimant violated ADM's no-show/no-call policy. Claimant said this happened, as his wife filed a contempt motion against him during the divorce proceedings. Claimant's attorney, for the divorce, failed to respond to a court order and claimant was jailed. Claimant said he received a work release order from the District Court, but ADM never called him at the jail.

In September of 2015 claimant began as a maintenance mechanic at a 3M plant. Claimant said he worked at 3M up to 50 hours per week. He said the job required a great deal of walking. Claimant testified he left 3M because he was inhaling chemicals in the plant.

Claimant returned to Dr. Paul on January 7, 2015. Claimant's wound area itched at times. Claimant had normal light touch to sensation. Claimant felt as if there were no significant functional problems. Claimant had no infection. Dr. Paul did not restrict claimant. He opined claimant had no permanent impairment. Claimant was released from care. (Jt. Ex. 2, p. 5)

In a January 7, 2015 letter, Dr. Paul indicated based upon the AMA Guides to the Evaluation of Permanent Impairment, claimant had no permanent impairment given his function and his normal healing of the wound. Claimant was found to be at maximum medical improvement (MMI). (Jt. Ex. 2, pp. 6-7)

On March 22, 2018 claimant was evaluated by Americo Lagone, DPM for heel pain. Claimant was assessed as having plantar fasciitis. He was given stretching exercises and told to wear more supportive shoes. (Jt. Ex. 5, pp. 15-16)

Claimant returned to Dr. Lagone on April 5, 2018 with continued heel pain. Claimant was again given stretching exercises and told to wear supportive shoes. (Jt. Ex. 5, pp. 17-18)

On May 12, 2018 claimant was evaluated by Jeffrey Shay, DC, for pain in the left lower extremity radiating to the left foot. Claimant was evaluated as having left sciatic neuralgia. Claimant was given manipulations and electric stimulation. (Jt. Ex. 4, pp. 12-13)

In July of 2018 claimant began work as a maintenance mechanic with Iowa American Water Company (American). At American, claimant's duties include, but were not limited to, changing and maintaining water pumps, maintaining buildings, water towers and water tanks, loading and unloading materials, and performing general maintenance.

Claimant returned to Dr. Lagone on October 4, 2018 with continued complaints of left heel pain. Claimant was again assessed as having plantar fasciitis on the left. He was again given stretching exercises and told to wear more supportive shoes. (Jt. Ex. 5, pp. 19-20)

Claimant returned to Dr. Shay on November 29, 2018. Claimant had left leg pain. Claimant was assessed as having left sciatic neuralgia. (Jt. Ex. 4, pp. 13-14)

In a May 6, 2019 report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an IME. Claimant had continued sensitivity in the burn area of his leg. Claimant had numbness and tingling in the leg. Claimant indicated difficulty with stairs and could only walk short distances. (Ex. 4)

Dr. Bansal found claimant had a 9 percent permanent impairment to the body as a whole for the burn injury under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. This rating was based, in part, on a finding that claimant had limitations with sitting and ambulation. (Ex. 4)

Claimant testified he believes his left leg is not as strong as this right. He said he has pain in the left leg. Claimant said when he walks he feels as if he is dragging his left leg. Claimant takes over-the-counter medication for pain. Claimant applies lotion to the area of the wound. Claimant testified he gets pimples in the area of the wound if the wound is exposed to the sun.

Claimant testified he has worked all his jobs without any permanent restrictions from any employer since his return to work at full time. At the time of hearing claimant was still employed as a maintenance mechanic with American.

Claimant testified he earned almost $26.00 an hour when employed with ADM. (Ex. 6; Depo. p. 17) He earned approximately $33.25 an hour when he left 3M. (Ex. 6; Depo. p. 13) Claimant earns approximately $28.00 an hour in his employment with American. (Ex. 6; Depo. p. 15)

CONCLUSIONS OF LAW

The first issue to be determined is whether 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. 6.14(6).

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 contends he has a permanent disability. Claimant testified he has difficulty walking. He says he still has pain in the area of the wound. Claimant uses lotion on the site of the wound.

The record indicates since he was found to be at MMI, claimant has worked as a maintenance mechanic at a 3M plant and for American. The record suggests all positions were somewhat physically demanding. Since his return to full-time work in January of 2015, claimant has worked full time with no permanent restrictions.

Claimant has not received any treatment for his burn injury since his release from care by Dr. Paul in January of 2015.

Claimant was treated for plantar fasciitis with Dr. Lagone in 2018. He also sought chiropractic care in 2018 from Dr. Shay for sciatica. There is no reference in any of these medical records that claimant had any problems with his left leg regarding his burn injury. (Jt. Exs. 4, 5)

Two experts have opined regarding claimant's permanent impairment. Dr. Paul treated claimant for approximately half of a year for his burn. Dr. Paul performed claimant's skin graft. Dr. Paul opined claimant had no permanent impairment and was released from care in January of 2015 with no permanent restrictions. (Jt. Ex. 2, pp. 5-7)

Dr. Bansal evaluated claimant one time for an IME. Dr. Bansal opined claimant has a permanent impairment to the body as a whole for the burn injury. Dr. Bansal's opinion regarding permanent disability is problematic for several reasons. Dr. Bansal found claimant had a permanent disability, in part, due to claimant's alleged limitations in sitting. There is nothing in the record indicating claimant has any limitations in sitting. Dr. Bansal opined claimant had a permanent disability due to his limitations of walking. The finding that claimant has limitations in walking is at odds with claimant's work at ADM, 3M, and American with no permanent restrictions. Dr. Bansal's finding that claimant has limitations in walking also does not consider that claimant's limitations may be in part due to his plantar fasciitis or his sciatica. In short, Dr. Bansal's opinion offers no analysis how claimant's plantar fasciitis, or his sciatica, factors into the finding claimant is limited in walking.

Dr. Bansal's opinion regarding permanent disability seemed to be based, in part, on a non-existent problem with sitting. His opinion regarding permanent disability also fails to factor in claimant's plantar fasciitis or his sciatica. It is true a treating doctor's opinions are not to be given greater weight as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994). However, as a finding of fact, Dr. Paul has far greater familiarity with claimant's condition and medical presentation than does Dr. Bansal. Based on these facts, and the others as detailed above, it is found Dr. Paul's opinions regarding permanent disability are more convincing than those of Dr. Bansal.

Claimant has not had any treatment for his burn injury since January of 2015. Claimant has had physically demanding jobs with ADM, 3M and American. He has not required permanent restrictions at any of these jobs. Claimant was evaluated by two healthcare providers in 2018. There is no reference in any of the records for 2018 regarding difficulties claimant has regarding his burn injury. The opinions of Dr. Paul regarding permanent disability are found more convincing than those of Dr. Bansal. Given this record, claimant has failed to carry his burden of proof his June 3, 2014 burn injury resulted in a permanent disability.

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

The final issue to be determined is whether claimant is entitled to reimbursement for an 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. Paul, the employer-retained physician, gave his opinions of claimant's permanent impairment in a report dated January 7, 2015. (Jt. Ex. 2, pp. 5-7) Dr. Bansal, the employee-retained expert, gave his opinions of claimant's permanent impairment in a May 6, 2019 report. Given the chronology of these opinions, defendant is liable for reimbursement of the Bansal IME.

ORDER

Therefore, it is ordered:

That claimant shall take nothing in the way of permanent partial disability benefits from this decision.

That defendant shall reimburse claimant for costs associated with Dr. Bansal's IME.

That both parties shall pay their own costs.

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

Signed and filed this 6th day of August, 2019.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

William J. Bribriesco
Attorney at Law
2407 – 18th St., Ste. 200
Bettendorf, IA 52722
bill@bribriescolawfirm.com

Mark A. Woollums
Attorney at Law
1900 E. 54th St.
Davenport, IA 52807-2708
maw@bettylawfirm.com

Paul M. Powers
Attorney at Law
1900 East 54th St.
Davenport, IA 52807
pmp@bettylawfirm.com

JFC/sam

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.