

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MICHAEL COLLINS,

Claimant,

vs.

NICHOLS ALUMINUM, LLC,

Employer,

and

SENTRY CASUALTY CO.,

Insurance Carrier,  
Defendants.

**FILED**

JUN 07 2016

WORKERS COMPENSATION

File No. 5054216

ARBITRATION DECISION

Head Note No.: 1100

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STATEMENT OF THE CASE

Michael Collins, the claimant, seeks workers' compensation benefits from defendants, Nichols Aluminum, L.L.C., the alleged employer, and its insurer, Sentry Casualty Co., as a result of an alleged injury on April 10, 2015. At hearing, the caption was changed to show that the employer at the time of the alleged injury was Nichols Aluminum LLC, not Aleris Aluminum, as originally pled.

Presiding in this matter is Larry P. Walshire, a deputy Iowa workers' compensation commissioner. An oral evidentiary hearing commenced on May 17, 2016, and the matter was fully submitted at the close of that hearing. Oral testimony and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Claimant's exhibits were marked numerically. Defendants' exhibits were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Ex. 1-2:4." Citations to a transcript of testimony such as "Tr-4:5," either in a deposition or at hearing, shall be to the actual page number(s) of the original transcript, not to the page number of a copy of the transcript containing multiple pages.

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. An employee-employer relationship existed between claimant and Nichols Aluminum, LLC at the time of the alleged injury.
2. Claimant is not seeking temporary total or healing period benefits.
3. If the injury is found to have caused permanent disability, the type of disability is a scheduled member disability to the right leg.
4. If I award permanent partial disability benefits, they shall begin on April 10, 2015.
5. At the time of the alleged injury, claimant's gross rate of weekly compensation was \$972.23. Also, at that time, he was married and entitled to 2 exemptions for income tax purposes. Therefore, claimant's weekly rate of compensation is \$591.94 according to the workers' compensation commissioner's published rate booklet for this injury.
6. Medical benefits are not in dispute.

#### ISSUES

At hearing, the parties submitted the following issues for determination:

- I. Whether claimant received an injury arising out of and in the course of employment;
- II. The extent of claimant's entitlement to permanent disability benefits; and,
- III. The extent of claimant's entitlement to reimbursement for an independent medical examination (IME) pursuant to Iowa Code section 85.39 or pursuant to our rules as a cost.

#### FINDINGS OF FACT

In these findings, I will refer to the claimant by his first name, Michael, and to the defendant employer as Nichols.

Michael, age 60, is a high school graduate. Prior to working at Nichols, he had been a production worker at IBP, a meat processing plant, since 1980. He suffered a work injury to his hands while at IBP in which he lost his fingernails, until they grew back. (Exhibit J-9)

Michael left IBP to come to Nichols in 1995 and he continues to be employed at the same plant, now operated by Aleris. His job at the time of injury was utility worker in the melting department. This job essentially involved charging and skimming the furnaces, although as a utility he was assigned to other work as needed. (Ex. J-13:14) Michael continues in this job today.

Michael testified that he injured his left knee on April 9, 2015 after stepping in a hole located on the concrete floor of the melting area at Nichols. He states that he reported this injury to his supervisor, and was only told to go to his own doctor. (Hearing Testimony, Ex. J-36:37) Michael states that he then saw his family doctor, Harold Miller, M.D. He said Dr. Miller took X-rays and gave him some prescription medications, but when he did not improve he was referred to Joseph Martin, M.D., an orthopedic specialist. (Hearing Testimony) Michael said that he then received two or three injections, which helped, but did not cure his knee problems. (Hearing Testimony) He continues to wear a knee brace at the present time and continues to have ongoing pain and stiffness in the right knee. (Ex. J-25)

The problem with Michael's deposition and hearing testimony is that according to the records of Dr. Miller, Michael was first seen for right knee pain on March 20, 2015 at which time he complained of the onset of right knee pain and stiffness for the last three weeks. (Ex A-1) Dr. Miller's office note states as follows, "The context of the knee problem: occurred not in association with sports injury, not in association with work injury and not after trauma." (Id.)

Dr. Miller's diagnosis was degeneration disease of the medial meniscus of the right knee. (Ex. A-2) Dr. Miller did order an X-ray of the right knee and the X-ray report, dated March 20, 2015, indicated mild degenerative changes and chondrocalcinosis consistent with calcium pyrophosphate deposition disease (CPPD). (Ex. B-1) There was no mention of an injury from stepping into a hole at work in any of Dr. Miller's records in evidence.

Michael did report a right knee injury to Nichols, but the report was not done until April 10, 2015. Also, the report did not mention stepping into a hole in the floor of the melting department. Michael simply stated that his right leg was hurting and he did not know why other than old age, but stated that he could have done it getting out of the car, getting off the work lift or stepping on a piece of scrap. He said he just knows that "it wasn't playing golf." (Ex. D)

Michael saw Dr. Martin for the first time on May 27, 2015. It was at this time, Michael first mentioned stepping into a hole at work. Dr. Martin's assessment was exacerbation of chondrocalcinosis/mild arthritis. (Ex. C-1) The doctor then gave an injection into the knee. Michael completed a medical history form for Dr. Martin and indicated the injury date of March 10, 2015. (Ex C-3)

At the request of his attorney, Michael's right knee was evaluated by Richard Neiman, M.D., a neurologist, on February 3, 2016. Dr. Neiman opined that although claimant had degenerative arthritis, the arthritis was significantly aggravated by the fall at work and consequently work related. He opined that Michael suffered a two percent permanent partial impairment to the lower extremity under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Ex. 4-52)

At the request of defense counsel, Michael's right knee was evaluated by Charles Clark, M.D., a professor of orthopedic surgery at the University of Iowa Hospitals and Clinics. Dr. Clark explains that Michael has chondrocalcinosis, which was initially diagnosed at the X-ray on March 20, 2015. The doctor explains that this condition is a progressive inflammatory arthritis caused by calcium pyrophosphate deposits in the knee joint which takes years to develop. He opined that Michael's onset of symptoms was due to the passage of time, not due to any trauma or aggravation injury. (Ex. H-2:5)

Given the conflicting view of the medical experts, I am unable to find that Michael's current knee pain and stiffness is causally related to a work injury at Nichols. Even if I did accept that this arthritis condition can be aggravated, I would have to make a finding as to some sort of aggravation injury at work, either traumatic or cumulative. However, the record is too confusing for me to do so. Admittedly, although Michael's demeanor at hearing did not suggest he was lying, his testimony conflicts far too much with the medical records to support a finding of a work injury.

Therefore, based on the lack of supportive medical evidence, I am unable to find that Michael suffered the work injury as alleged.

#### 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 at 143.

In the case sub judice, I found that claimant failed to show by a preponderance of the evidence an injury arising out of and in the course of employment.

ORDER

1. Claimant shall take nothing from these proceedings.
2. Claimant shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33.

Signed and filed this 7<sup>th</sup> day of June, 2016.

  
LARRY WALSHIRE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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**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.