BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CONNOR YOUNG, Claimant, vs. THE DRILLER, LLC, Employer, and TRAVELERS CASUALTY AND SURETY CO, Insurance Carrier, Defendants.	:	File No 5059099 ARBITRATION DECISION Head Note Nos.: 1402.20, 1402.40, 1803, 1803.1, 2600

FILED
MAY 24 2018
WORKERS COMPENSATION

STATEMENT OF THE CASE

Connor Young, claimant, filed a petition in arbitration seeking workers' compensation benefits from defendants, The Driller, LLC, employer, and its insurer, Travelers Casualty and Surety Co. The hearing occurred before the undersigned on May 14, 2018, in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the arbitration hearing. In 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 consists of: Joint Medical Exhibits JE 1 through JE 5, Claimant's Exhibits 1 through 6 and 10, and Defendants' Exhibits A through B.

Claimant testified on his own behalf. No other witness testified. The evidentiary record closed on May 14, 2018. The case was considered fully submitted upon receipt of the parties' briefs on May 21, 2018.

Julie Burger appeared as counsel for defendants for the first time in defendants' post-hearing brief. Ms. Burger and the undersigned were previously associated as attorneys for the State of Iowa/Second Injury Fund. While it did not appear that

Ms. Burger's appearance triggered any of the circumstances that would require disqualification of the undersigned under the Iowa Code of Administrative Judicial Conduct, the parties were asked out of an abundance of caution whether they agreed to waive any potential disqualification. The parties agreed via e-mail, and that e-mail is now incorporated into the agency file.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the disability stemming from the October 3, 2016 injury is a scheduled member disability or an industrial disability.

2. The extent of claimant's disability.

3. Costs.

FINDINGS OF FACT

After a review of the evidence presented, the undersigned finds as follows:

Background

Claimant was 20 years old at the time of the hearing. (Claimant Testimony) He graduated from high school and completed one year of college courses before being hired by the defendant employer.

Claimant was hired by the defendant employer as a laborer, and he continued to be employed in a full-duty capacity at the time of the hearing. As a laborer, claimant runs the drill, maneuvers a clam bucket, and welds, among other tasks. The job requires heavy lifting and the ability to work in holes and on uneven terrain.

October 3, 2016 Injury and Subsequent Medical Treatment

Claimant sustained a stipulated work injury on October 3, 2016, when a 2,000-pound clam bucket struck and pinned the lower half of his right leg. (Cl. Testimony) As depicted in Claimant's Exhibit 1, the injury was gruesome and substantial, causing a laceration that extended more than 15 centimeters and exposed both the muscle and the tibia itself. (Cl. Exhibit 1; JE Ex. 1:3)

Claimant was on a job site in Wisconsin at the time of the injury, so claimant was taken by ambulance to a University of Wisconsin (UW) hospital. (Cl. Testimony) Upon arrival at the hospital, imaging studies revealed an impaction fracture of claimant's right knee. (JE 1:4, 6-7) Claimant was admitted, and a washout and debridement of the right lower leg wound was performed on October 4, 2015. (JE 1:8) Doctors also placed a wound VAC during the debridement. (Id.)

A second irrigation and debridement was performed the following day by Gerald Lang, M.D. (JE 1:10) After the debridement, Dr. Lang placed claimant in a splint. (JE 1:11) Claimant was then discharged with pain medications and instructions to remain off work until his follow-up appointment. (JE 1:16-17)

When claimant returned to Dr. Lang on October 25, 2016, he was complaining only of mild pain. (JE 1:19) The splint was removed, and Dr. Lang told claimant he could return to sedentary work beginning November 11. (Id.)

However, by mid-November, claimant was noticing significant changes in his wound. (JE 1:22) X-rays revealed a healing fracture, but an MRI showed extensive soft tissue edema compatible with cellulitis. (JE 1:23-24) Claimant was again admitted to the UW hospital for placement of a PICC line for antibiotics. (JE 1:26-27)

Unfortunately, less than a week after his discharge, claimant returned to the UW hospital with fevers and a rash. (JE 1:29) He was experiencing an allergic reaction to one of his antibiotics and a recurrence of cellulitis. (JE 1:30-40) Claimant was again discharged after several days of antibiotics but was instructed to refrain from working until his next follow-up appointment. (JE 1:39-41)

When claimant returned to Dr. Lang on December 8, 2016, he was showing no signs of infection, and his bone injury was healing well. (JE 1:43) Dr. Lang recommended a compression stocking to reduce swelling, and he released claimant to return to work in a sedentary capacity as of December 12, 2016 and in a full-duty capacity as of January 2, 2016. (JE 1:44) Dr. Lang indicated he did not anticipate claimant would have any long-term disability from the injury. (Id.)

Claimant's final appointment in Wisconsin was on January 5, 2017, with Dr. Lang's physician's assistant (PA). (JE 1:45) Of significance is the PA's indication that claimant was continuing to experience "slight tightness in the leg" but was "able to ambulate without any discomfort." (JE 1:46) The note also indicates claimant was "able to ambulate without any limp." (Id.) At hearing, claimant disputed this notation, stating he could walk but not without a limp. (Cl. Testimony) Regardless, because both claimant's wound and bone fracture were well healed, claimant was released from Dr. Lang's care. (JE 1:46)

In a letter to defendants on March 7, 2017, Dr. Lang confirmed that he anticipated no permanent impairment (although it is noted this was pursuant to the Sixth Edition of the AMA Guides) and that claimant required no permanent work restrictions. (JE 1:47)

When claimant requested additional care, defendants authorized a second opinion with Phinit Phisitkul, M.D., at the University of Iowa Hospitals and Clinics. (JE 2) Claimant presented to Dr. Phisitkul with complaints of pain from the knee to ankle along with swelling and muscle twitching in the lower leg. (JE 2:48) Notably, claimant's gait was observed to be normal. (JE 2:49) Dr. Phisitkul attempted an

injection, but it only provided 30 percent pain relief. (Id.) Dr. Phisitkul then recommended an ultrasound-guided injection to determine whether claimant was a surgical candidate. (Id.)

However, before claimant returned to Dr. Phisitkul for the second injection, he sustained an ankle sprain at work. (JE 3) The emergency room note from April 15, 2017 indicates claimant "was wearing large rubber boots when he stepped out of an excavator and twisted his right ankle." (JE 3:63) The note also states claimant was able to walk but "with difficulty." (Id.) An ankle x-ray revealed soft tissue swelling but no fracture. (JE 3:66)

Claimant reported the ankle sprain to Dr. Phisitkul when he returned for his second injection. (JE 2:51) He told Dr. Phisitkul he sustained the sprain when he "came off an excavator." (Id.) Dr. Phisitkul observed claimant could "bear weight with a slight limp." (Id.) Claimant was given a second injection, but it provided minimal to no relief. (Id.) As a result, Dr. Phisitkul was of the opinion that surgery would not relieve claimant's pain. (JE 2:52) Dr. Phisitkul instead recommended physical therapy and returned claimant to work without restrictions. (Id.)

When claimant returned to Dr. Phisitkul on May 27, 2017, he reported no improvement in his leg pain through physical therapy. (JE 2:55) He also reported improving but continuing pain in the sprained ankle, and he continued to walk with a limp. (Id.) Dr. Phisitkul noted claimant had bilateral pes planus, worse on the right side, that "may also be contributing to pain with some malalignment and altered mechanics." (JE 2:56) Dr. Phisitkul prescribed custom insoles for the bilateral pes planus condition, recommended use of compression socks, and instructed claimant to discontinue physical therapy. (Id.) He placed claimant at maximum medical improvement (MMI) and told claimant to follow up as necessary. (Id.)

Dr. Phisitkul subsequently took a leave of absence and claimant did not return to him for care. (Cl. Testimony) On July 5, 2017, defendants sent Dr. Phisitkul a letter asking whether claimant sustained an injury to his bilateral hips on October 3, 2016, but that letter went unanswered. (JE 5; Cl. Testimony)

There was a break in claimant's treatment until September of 2017 when claimant was evaluated by Joseph Chen, M.D., for an impairment rating. (JE 2:59) Dr. Chen assigned a 17 percent impairment rating to claimant's right lower extremity for plantarflexion weakness in the right ankle and an additional 5 percent for skin infection and loss, for a total of 22 percent impairment of the right lower extremity. (JE 2:61-62) Dr. Chen acknowledged claimant made a self-report of disability due to back pain, but no impairment was assigned for claimant's back complaints. (JE 2:61) According to claimant, Dr. Chen told claimant that he was not authorized to evaluate his back. (Cl. Testimony) Dr. Chen assigned no permanent restrictions relating to claimant's work injury, though he did indicate claimant should wear compression stockings for 2 years and may have difficulty with ongoing strenuous work requirements. (JE 2:61) Claimant did not return to Dr. Chen for treatment.

In October of 2017, claimant presented to his primary care physician with hip pain due to "a bit of a limp from the injury." (JE 5:72) It does not appear from the record that any specific treatment was rendered to claimant's hips or that claimant ever pursued additional treatment for his hips.

Expert Opinions

Both Dr. Chen (discussed above) and claimant's independent medical examination physician, Sunil Bansal, M.D., rendered opinions regarding impairment and restrictions in this case. Claimant was evaluated by Dr. Bansal on February 7, 2018. (Cl. Ex. 2) Dr. Bansal opined that the pain and weakness in claimant's leg "led to a chronic altered gait with sacroiliac joint sequelae." (Cl. Ex. 2:17) He further explained claimant's "back pathology is permanent as it is being aggravated by his antalgic gait resulting from his right lower extremity condition." (Id.) He then assigned a 5 percent lower extremity impairment for claimant's tibial plateau fracture, a 21 percent lower extremity impairment for claimant's ankle weakness, and a 3 percent whole body impairment for claimant's back under DRE lumbar category II. (Id.) He also assigned restrictions of no frequent kneeling, bending, squatting, climbing, or twisting; no prolonged standing/walking greater than 3 hours at a time; and avoid multiple steps, stairs, or ladders and uneven terrain. (JE 2:18)

Permanent Disability

While the parties agree that claimant sustained permanent disability as a result of his October 3, 2016 injury, they disagree as to whether claimant's disability is limited to his leg or extends to the body as a whole. Thus, the initial inquiry to be decided is whether claimant sustained a scheduled injury or an industrial disability as a result of his October 3, 2016 accident.

Until claimant sprained his ankle in April of 2017 when coming down an excavator, he made no complaints of limping or an altered gait. Claimant testified that he was limping when he was seen in Dr. Lang's office for the final time in January of 2017, but the note from that visit indicates – not once, but twice – that claimant was able to ambulate without a limp or discomfort. (JE 1:46) Similarly, the note from claimant's first visit with Dr. Phisitkul on March 23, 2017, makes no mention of limping. In fact, at that appointment, Dr. Phisitkul observed "[n]ormal gait and station" and noted claimant had "been full WB and does not use any assistive devices for ambulation." (JE 2:48-50)

The first mention of a limp appears in Dr. Phisitkul's note from April 18, 2017, just days after claimant sprained his ankle. (JE 2:51) The note states:

> Of note, while working last week patient came off an excavator and sprained his right ankle with inversion injury. He went to a local ED and x-rays were reported as negative. He was unable to bear weight after the injury but improved now and can bear weight with a slight limp.

(Id.) Based on Dr. Phisitkul's April 18, 2017 note and claimant's normal gait leading up his ankle sprain, it is clear claimant's complaints of limping are attributable to the April 2017 sprain and not cumulative or general weakness or pain from the laceration. (Id.)

While it is foreseeable and even logical that claimant's significant leg injury may have contributed to ankle weakness that in turn contributed to his ankle sprain in April of 2017, claimant provided no expert opinion that affirmatively established a causal relationship between claimant's work injury and the April 2017 ankle sprain. Dr. Bansal opined that "pain and weakness to [claimant's] lower extremity . . . has led to a chronic altered gait with sacroiliac joint sequelae" but in coming to this conclusion, Dr. Bansal made no mention of claimant's ankle sprain or the significant temporal connection between the ankle sprain and claimant's complaints of limping. (Cl. Ex. 2:17) Dr. Bansal also failed to specifically address whether the April 2017 ankle sprain was causally related to the October 3, 2016 work injury. Because Dr. Bansal did not fully consider or address the impact and causation of claimant's April 2017 ankle sprain, Dr. Bansal's opinion regarding claimant's back injury is not convincing.

Claimant points to the unanswered letter to Dr. Phisitkul (JE 5) to suggest defendants failed to rebut the opinion of Dr. Bansal. While it is true defendants did not offer any expert reports that affirmatively refuted claimant's back claim, Dr. Bansal's report was unconvincing in its own right, as explained above.

Claimant also offered his own testimony and the incident report from the April 2017 ankle sprain as evidence of the causal connection between the work injury and the ankle sprain. Claimant testified he now rolls his ankle on a weekly basis, and the incident report states claimant's "ankle did not have enough strength to support body weight due to previous injury." (Cl. Testimony; Cl. Ex. 6) However, the lay opinions of claimant and his supervisor, by themselves, are not sufficient to establish causation. Again, as logically attractive as claimant's argument may be, claimant did not produce an expert opinion that causally related claimant's intervening ankle sprain to the October 3, 2016 work injury.

For these reasons, it is found that claimant failed to prove that his altered gait and resulting sacroiliitis were caused by the October 3, 2016 work injury. Claimant's injury, therefore, is found to be limited to his lower extremity.

However, even assuming claimant's ankle sprain was caused by the October 3, 2016 work injury, Dr. Bansal's opinion that claimant's work accident caused a permanent injury to claimant's back is not consistent with the medical records or claimant's treatment. First, Dr. Bansal's report states claimant's lower back pain started "about six months after his injury," but the first mention of back pain in the medical records appears in Dr. Chen's examination in September of 2017—nearly a year after the injury. (Cl. Ex. 2:14; JE 2:61) Additionally, Dr. Chen in his report acknowledged claimant's self-report of back pain, but he noted no corresponding abnormal findings with respect to claimant's back, and he assigned no permanent impairment for any back

condition. (JE 2:61-62) Of significance is the fact that Dr. Chen is board certified in spinal cord injury medicine. (Defendants' Ex. A:1)

While claimant testified Dr. Chen said he was only authorized to evaluate claimant's leg, Dr. Chen's report indicates he did a full physical exam and also considered claimant's anxiety and depression. (JE 2:61) Thus, it appears from the report that Dr. Chen considered claimant's physical status beyond his leg. Further, the absence of any significant findings or mention of claimant's back in Dr. Chen's report is consistent with the fact that claimant made no requests for and received no medical care relating to his back or hips during his course of treatment. (Cl. Testimony) Ultimately, Dr. Bansal's opinion regarding claimant's back is the outlier, and for the reasons stated above is not persuasive. It is therefore found that the October 3, 2016 work injury did not cause a permanent injury to claimant's back, meaning claimant's injury is found to be limited to his lower extremity.

Turning to the extent of claimant's lower extremity impairment, Dr. Chen's rating was based solely on deficits in ankle strength and skin loss, while Dr. Bansal's rating considered both claimant's ankle strength and tibial fracture. Although claimant's tibial fracture was "well healed" when he was released from Dr. Lang's office, the fact that he sustained a fracture in the work accident is undisputed. Thus, Dr. Bansal's rating to claimant's lower extremity is more convincing. Claimant is therefore found to have sustained a 5 percent right lower extremity impairment due to his fracture and a 21 percent right lower extremity impairment due to ankle strength deficits, for a total of 25 percent impairment (pursuant to the Combined Values Chart in the AMA Guides).

CONCLUSIONS OF LAW:

Permanent Disability

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).

When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Based on the above findings of fact, it is concluded claimant failed to satisfy his burden to prove a whole body injury from the October 3, 2016 accident. As explained above, Dr. Bansal's opinion that claimant's work injury led to an altered gait with sacroiliac joint sequelae was given little weight because Dr. Bansal failed to consider the strong temporal connection between claimant's ankle sprain in April of 2017 and claimant's altered gait. Dr. Bansal also failed to specifically address whether claimant's ankle sprain was caused by the work injury. In other words, Dr. Bansal's conclusion did not consider the full scope of claimant's history. Additionally, Dr. Bansal's opinion that claimant sustained a permanent back injury was not consistent with the fact that claimant neither received nor requested any treatment for his back. It is therefore concluded that claimant's injury was limited to a scheduled member.

The undersigned is sympathetic to claimant, as he sustained a very serious injury to his leg. However, it is claimant's burden to prove – not defendants' burden to disprove – his claims, and for the reasons set out above, claimant's expert report, at least with respect to claimant's back complaints, was not sufficient to satisfy that burden.

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)-(t) or for loss of earning capacity under section 85.34(2)(u). 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). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Evidence considered in assessing the loss of use of a particular scheduled member may entail more than a medical rating pursuant to standardized guides for evaluating permanent impairment. A claimant's testimony and demonstration of difficulties incurred in using the injured member and medical evidence regarding general loss of use may be considered in determining the actual loss of use compensable.

Soukup, 222 Iowa 272, 268 N.W. 598. Consideration is not given to what effect the scheduled loss has on claimant's earning capacity. The scheduled loss system created by the legislature is presumed to include compensation for reduced capacity to labor and to earn. Schell v. Central Engineering Co., 232 Iowa 421, 4 N.W.2d 339 (1942).

Based on the above findings of fact, it is concluded that claimant sustained a 25 percent lower extremity impairment due to the October 3, 2016 injury. Dr. Bansal's rating considered both claimant's diminished ankle strength and his tibial fracture. Having concluded claimant proved he sustained a 25 percent lower extremity impairment, claimant is entitled to 55 weeks of permanent partial disability benefits. Iowa Code section 85.34(o).

Costs

Claimant seeks his $100.00 filing fee as a cost.

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

Because claimant was generally successful in his claim, an assessment of costs is appropriate. In the discretion of the undersigned, the $100.00 filing fee is taxed to defendants pursuant to rule 876 IAC 4.33(7).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant permanent partial disability benefits of fifty-five (55) weeks, beginning on the stipulated commencement date of January 4, 2017, until all benefits are paid in full.

Defendants shall be entitled to a credit for all weekly benefits paid to date. The parties have stipulated that defendants are entitled to a credit of forty-nine point four (49.4) weeks.

All weekly benefits shall be paid at the stipulated rate of seven hundred thirty and 52/100 dollars ($730.52) per week.

All accrued benefits shall be paid in a lump sum.

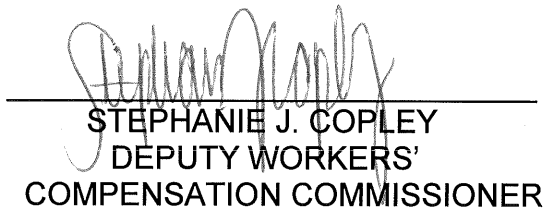
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall reimburse claimant costs in the amount of one hundred and 00/100 dollars ($100.00).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 24th day of May, 2018.



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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.