BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RYAN LEE BAKER,

Claimant,

vs.

HAMES COMMUNITIES, LLC,

Employer,

and

EMC INSURANCE COMPANIES

Insurance Carrier,
Defendants.

File No. 5051470

REVIEW - REOPENING

DECISION

Head Note Nos.: 2501, 2905

STATEMENT OF THE CASE

Claimant, Ryan Baker, filed a petition in review-reopening seeking workers' compensation benefits from Hames Communities, LLC, (Hames), employer and EMC Insurance Companies, insurer, both as defendants. This matter was heard in Des Moines, Iowa on April 15, 2019 with a final submission date of May 31, 2019.

The record in this case consists of Claimant's Exhibits 1-5, Defendants' Exhibits A through G, and the testimony of claimant and his father, Jerry Baker.

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 claimant is due additional benefits under a review-reopening proceeding.

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

FINDINGS OF FACT

Claimant was 42 years old at the time of hearing. Claimant has a GED. Claimant worked at a grocery warehouse pulling orders. He worked as a mill operator. Claimant did assembly work for a wind power factory. He worked for a towing service. Claimant worked as an assistant manager with Hames. Claimant's duties with Hames included maintenance, mowing, snow removal and dealing with tenants. In May of 2014 claimant was promoted to a manager's position. (Arbitration Decision, page 2)

On July 8, 2014 claimant was cutting up trees with a chainsaw and loading wood and brush into a dump trailer. Claimant injured his lower back while loading wood. (Arb. Dec., p. 2)

In July of 2014 claimant had a lumbar laminectomy at the L5-S1 level. Surgery was performed by Chad Abernathey, M.D. (Arb. Dec., p. 3) In a June of 2015 report Richard Neiman, M.D., found claimant had a 15 percent permanent impairment to the body as a whole. Dr. Abernathey found claimant had between a 5 to 8 percent permanent impairment to the body as a whole. (Arb. Dec., p. 5) The arbitration decision found claimant had a 15 percent permanent impairment to the body as a whole and permanent restrictions that limited claimant to no repetitive lifting over 25 pounds with a maximum lift of 50 pounds. (Arb. Dec., p. 8)

At the time of the arbitration hearing, claimant was working as a tow truck driver for Darrah's Towing. The arbitration decision found claimant had a 30 percent industrial disability or loss of earning capacity. (Arb. Dec., p. 8)

In June of 2016 claimant quit his job as a tow truck driver with Darrah's. Claimant testified he left Darrah's, as he believed the job was worsening his back condition. (Tr. p. 10)

Claimant and his family moved to Harpers Fairy, Iowa to be closer to his parents. (Tr. pp. 10-11) In the fall of 2016 claimant began employment with Reel Core Plastics doing injection molding and finishing parts. (Tr. pp. 11-12)

Claimant testified approximately two weeks after he began at Reel Core, he fell down the stairs at home. (Tr. p. 12)

On November 28, 2016 claimant was seen at Veterans Memorial Hospital in Waukon. Claimant had complaints of left shoulder and collarbone pain from falling down the stairs that prior Wednesday. Records indicate claimant tried to lift sheetrock but was unable to do so. Pain in the shoulder had gotten worse. Claimant was assessed as having a mild AC joint sprain. Physical therapy was recommended. (Ex. B, pp. 1-9)

Claimant testified he was not lifting sheetrock at the time, but was only operating a drywall jack.

Claimant testified he returned to Reel Core after being off work for a few months. He said after two days on the job he felt his position at Reel Core was harming his back, and he left the company. (Tr. pp. 12-13)

Claimant testified that sometime in May of 2017 he began working for Prairie Industries (Prairie). Claimant began as a general laborer packing boxes with earplugs and safety glasses, and putting the boxes on a pallet. (Tr. p. 14) Claimant said he was eventually promoted to a lead position at Prairie. Claimant testified he was demoted from the lead position for taking too much time off work. Claimant said he had to take off time from work for doctor visits for his back. (Tr. pp. 18-20) Claimant said his employer at Prairie accommodated him by letting him sit and stand as needed. (Tr. p. 27)

Claimant testified that during his employment with Prairie his back condition worsened. He said he took medications due to back pain.

On February 9, 2018 claimant returned to Dr. Abernathey. Claimant complained of intermittent back pain. An MRI of the lower back was recommended. (Ex. 1, p. 1)

On March 2, 2018 claimant underwent a lumbar MRI. It showed laminotomy changes at the L5-S1 level. It also showed no evidence of nerve root compression. (Ex. 2)

On the same day claimant returned to Dr. Abernathey. Dr. Abernathey reviewed the MRI and believed it showed no significant neural compromise or recurrent disc extrusion. Dr. Abernathey recommended against aggressive treatment given the lack of clinical and radiographic findings. Epidural steroid injections (ESI) were recommended as a treatment option. (Ex. 1, p. 1)

On March 28, 2018 claimant was evaluated by Val Lyons, M.D. Claimant indicated intermittent episodes, for the last three weeks, of being unable to properly lift the left foot. (Ex. 3, pp. 1-2) Claimant had his first ESI on May 9, 2018 at the L4-5 level. (Ex. 3, p. 4)

Claimant returned to Dr. Lyons on May 23, 2018. Claimant indicated the ESI had significantly reduced his symptoms. (Ex. 3, p. 7)

Claimant eventually underwent a second ESI. Claimant did not do as well following the second ESI. A third ESI was recommended. (Ex. 3, p. 9)

On July 11, 2018 claimant was seen at the Veterans Memorial Hospital in Waukon, Iowa. Claimant injured his lower back while getting out of the shower. Records indicate when claimant bent over to dry his legs, he could not straighten up. Claimant was assessed as having chronic back pain and a lumbar strain. (Ex. 4; Ex. B, p. 13)

In August of 2018 claimant had a third ESI. (Ex. 3, p. 10)

Claimant returned in follow up on September 26, 2018. Claimant had continued intermittent back pain. He indicated the ESI number one and number three provided the most benefit. Claimant was prescribed gabapentin. (Ex. 3, pp. 14-15)

In a September 19, 2018 note, Dr. Lyons did not believe the incident that required the emergency room treatment in July of 2018 was causally connected to the work injury of July 8, 2014. (Ex. 3, p. 22)

Claimant returned in follow up on November 14, 2018. He indicated his symptoms had not been under good control. (Ex. 3, p. 16)

Claimant returned to Dr. Lyons on February 20, 2019. Claimant continued to experience back pain. Claimant was referred to a pain clinic. (Ex. 3, p. 19)

Claimant testified he had accrued a number of points for unexcused absences at work at Prairie. He said he was going to miss work for an appointment with a pain specialist. Claimant testified his employer told him if he had any more unexcused absences, he would be fired. Claimant testified that given this situation, he quit his job as opposed to being fired. (Tr. pp. 18-19)

On March 21, 2019 claimant was evaluated by Timothy Miller, M.D. Dr. Miller is a pain specialist. Claimant indicated he had difficulty with being fully functional while working full time. An exam showed claimant had full range of motion and flexion regarding the back and was able to go to full extension. Claimant had a normal gait. Dr. Miller opined claimant had no objective findings to show an abnormality. Dr. Miller believed claimant would be best served by a strengthening program for his lower back. He did not believe further ESIs would be useful. He saw no benefit in further surgery. He also saw no benefit in a facet block, nerve denervation, or a spinal cord stimulator. (Ex. C)

Dr. Miller recommended claimant be treated with nonsteroidal medications. He did not believe further interventional treatment was required. (Ex. C)

Claimant testified that, at the time of hearing, he has a part-time job doing security surveillance. Claimant says he rides around in construction zones to make sure no cars are parked in the zones and that safety lights in the construction areas are operating. Claimant works the job 24 hours a week, two back-to-back 12-hour shifts. At the time of hearing claimant earned $22.50 an hour on this job. Claimant testified the hourly wage was subject to changes depending on the jobsites he worked at for the company. (Tr. p. 28)

At the time of the original arbitration hearing, claimant earned $15.00 an hour working for Darrah's. (Tr. p. 26) Claimant earned between $13.00 and $14.00 an hour for the two weeks he worked for Reel Core Plastics. (Tr. p. 12) Claimant testified as a lead person for Prairie Industries he earned $13.30 an hour. He said when he was demoted he earned $10.80 an hour. (Tr. pp. 25-26)

Claimant testified he is unable to get through the day without taking medications for back pain. He testified the more active he is, the more symptomatic his back becomes. Claimant said he is not able to do household chores. Since the 2016 hearing, claimant testified he takes gabapentin, Soma, and cyclobenzaprine to deal with back pain. Claimant was up and down during the course of hearing.

Claimant testified no doctor has restricted him in the number of hours he can work. He said no doctor has put him on any restrictions since 2015.

Jerry Baker testified he is claimant's father. Jerry Baker testified claimant has difficulty sitting for extended periods. He said claimant needs to get up and walk after sitting for extended periods. He said claimant often sits in a neighbor's hot tub for relief of back pain.

Jerry Baker testified he has observed claimant's condition getting worse. He said he notices his son is more irritable and short-tempered and believes it is due to back pain.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant has a change in condition that would entitle him to additional permanent partial disability benefits under a review-reopening proceeding.

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).

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Rather, claimant's condition must have worsened or deteriorated in a manner not contemplated at the time of the initial award or settlement before an award on review-reopening is appropriate. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957). A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978).

In a review-reopening proceeding, the claimant has the burden of proof to prove whether he has suffered an impairment of earning capacity proximately caused by the original injury. E.N.T. Associates v. Collentine, 525 N.W.2d 827, 829 (Iowa 1994).

Both claimant and his father testified claimant's condition has worsened since his arbitration hearing in May of 2016.

In February of 2018 claimant returned to Dr. Abernathey with complaints of intermittent back pain. He underwent an MRI in March of 2018. It showed no evidence of nerve root compression. (Ex. 2) Based on the MRI and claimant's exam, Dr. Abernathey found claimant had no recurrent disc extrusion or significant neural compression in the lumbar spine. (Ex. 1, p. 1)

Claimant treated with Dr. Lyons from approximately March of 2018 through February of 2019. Dr. Lyons also opined there was no evidence of a recurrent disc herniation or nerve impingement. He recommended against surgery. (Ex. 3, p. 19)

Claimant saw Dr. Miller on one occasion. Dr. Miller's exam found claimant had full range of motion and flexion and that claimant could touch his toes. Claimant was assessed as having mechanical back pain with minimal objective findings. He was recommended to exercise and use nonsteroidals. (Ex. C, pp. 2-3)

Drs. Abernathey, Miller and Lyons did not find a recurrent disc extrusion or evidence of nerve impingement. Drs. Abernathey, Miller and Lyons did not find claimant had any additional permanent impairment to his lower back, or required additional permanent restrictions. No doctor has limited claimant in the time he can work. No doctor has taken claimant off work. Given this record, claimant has failed to carry his burden of proof he has a physical change in condition since the April of 2016 arbitration decision that would increase his loss of earning capacity.

Regarding his economic condition, claimant was working at Darrah's at the time of the May of 2016 hearing and was earning $15.00 an hour. Claimant voluntarily quit the job, as he believed the position was worsening his condition. Claimant worked at Reel Core Plastics for approximately two weeks and earned between $13.00 and $14.00 an hour. Claimant quit this job after being off work following a fall. Claimant testified he quit Reel Core, as he did not believe he could physically handle the work. As noted, there is no evidence any doctor took claimant of work.

Claimant worked at Prairie for almost two years. He earned between $10.90 and $13.30 an hour. Claimant quit this job when he was told he was going to be fired for excessive absenteeism. At the time of hearing claimant was working a security surveillance position. Claimant earned $22.50 an hour on this job. At the time of hearing claimant testified he limited himself to working 24 hours per week on this job due to his back. No doctor has limited claimant in the number of hours he can work per week.

Since claimant's May of 2016 arbitration hearing, claimant has applied for and been hired for three jobs. Claimant has voluntarily quit every job except his current position in security surveillance. There is no evidence from any expert or employer that claimant was not able to work at any of the jobs he voluntarily left. Given this record, claimant has failed to carry his burden of proof he has a change in economic condition that would entitle him to additional permanent partial disability benefits under a review-reopening proceeding.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses. Specifically, claimant contends defendants are liable for payment of medical expenses for the July of 2018 emergency room visit, prescription medications, and medical mileage.

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).

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).

Dr. Lyons opined the need for claimant's July of 2018 emergency room visit was not related to the July 18, 2014 work injury. (Ex. 3, p. 22) No expert has contradicted this opinion. Given this record, claimant has failed to carry his burden of proof that defendants are liable for expenses related to the July 11, 2018 emergency room visit.

Claimant also seeks reimbursement for expenses listed in Exhibit 5 for medications. Exhibit 5 indicates these medications were prescribed by Linda Carstens and Antoinette Thompson. (Ex. 5, p. 2) Linda Carstens is a dentist in Waukon. Ms. Thompson is a nurse practitioner. There is no evidence defendants authorized claimant's care with either Dentist Carstens or Nurse Practitioner Thompson. Given this record, defendants are not liable for reimbursement of prescriptions listed in Exhibit 5.

Claimant also seeks reimbursement for medical mileage as listed in Exhibit 5, page 3. This medical mileage appears to be associated with treatment for physicians authorized by defendants. Given this record, defendants are liable for the medical mileage.

ORDER

Therefore, it is ordered:

That claimant shall take nothing in additional permanent partial disability benefits from this proceeding.

That defendants shall pay claimant medical mileage as detailed in Exhibit 5, page 3.

That both parties shall pay their own 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 24th day of July, 2019.

JAMES F. CHRISTENSON
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.