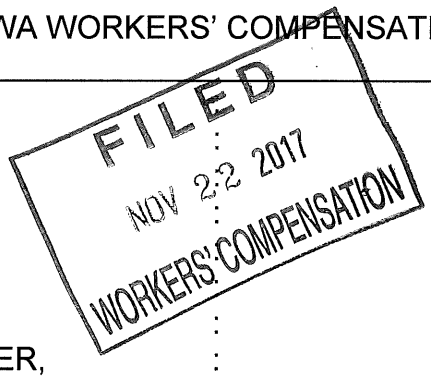
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



TRACY SAFFELL, Claimant, vs. PETERS SERVICE CENTER, Employer, and AUTO OWNERS INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5057015 A R B I T R A T I O N D E C I S I O N Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Tracy Saffell, filed a petition in arbitration seeking workers' compensation benefits from Peters Service Center (Peters) employer, and Auto Owners Insurance Company, insurer, both as defendants. This matter was heard in Des Moines, Iowa on August 24, 2017.

The record in this case consists of Joint Exhibits 1-5, Claimant's Exhibits 1-4, Defendants' Exhibits A through E, 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.

ISSUE

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

FINDINGS OF FACT

Claimant was 52 years old at the time of hearing. Claimant graduated from high school. Claimant also attended mechanics courses at Des Moines Area Community College for two months in 1983. (Exhibit C, page 2)

Claimant has worked as a painter. Claimant has worked in meat processing plants, in an assembly line, and cleaned offices. Claimant has also worked in construction. (Ex. 1, p. 2; Ex. 8, p. 2)

Claimant began working for Peters in October of 2002. Claimant worked as a shag driver. As a shag driver, claimant drove trailers to and from loading docks. Claimant also did cleaning of truck trailers. Claimant testified he earned approximately $18.55 an hour and worked 40 hours a week with a little overtime.

On August 24, 2015 claimant went to move a conveyer belt. Claimant fell on his right shoulder while moving the conveyer belt. (Ex. 1, p. 3)

On August 31, 2015 claimant was evaluated by Charles Mooney, M.D. for shoulder pain. Claimant had symptoms consistent with a rotator cuff tear. An MRI of the right shoulder was recommended. (Joint Ex. 1, p. 1)

An MRI, taken on September 2, 2015, showed a full-thickness supraspinatus tear. Claimant was referred to a surgeon. (Jt. Ex. 1, p. 2; Jt. Ex. 2)

Claimant was evaluated by David Sneller, M.D. on September 16, 2015. Claimant was assessed as having a large acute rotator cuff tear. Surgery was recommended as a treatment option. (Ex. 3, pp. 1, 2)

On September 18, 2015 claimant underwent surgery consisting of a repair of the tears in the supraspinatus and infraspinatus tendons. Surgery was performed by Dr. Sneller. (Jt. Ex. 3, pp. 5-6)

Claimant returned in followup care with Dr. Sneller from September through December 2015. On September 9, 2015 claimant was released to work with a five-pound lifting restriction and allowed to drive only with the right arm. (Jt. Ex. 3, pp. 8-10)

Claimant testified there was no light duty at Peters and that he had to return to work at a level beyond his restrictions.

Claimant was released to full-duty work on March 28, 2016. (Jt. Ex. 3, p. 12)

In an August 29, 2016 letter Dr. Sneller found claimant to have an 8 percent permanent impairment to the right upper extremity converting to a 5 percent permanent impairment to the body as a whole. Claimant had no permanent restrictions at that time. (Jt. Ex. 3, p. 13)

Claimant testified he worked from approximately March 2016 through March 2017 as a shag driver for Peters. He said on February 27, 2017 he was involved in an accident at work. Because the damage to the trailer exceeded $3000.00, claimant was terminated from his job on March 3, 2017. (Ex. 3)

On May 2, 2017 claimant underwent a functional capacity evaluation (FCE). Claimant was restricted to lifting up to 30 pounds occasionally from waist to floor and 20 pounds occasionally above his shoulders. (Jt. Ex. 4)

In the May 8, 2017 letter, Dr. Sneller indicated he reviewed the FCE and agreed with restrictions detailed in the evaluation. (Jt. Ex. 3, p. 14)

In a July 12, 2017 report Sunil Bansal, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Dr. Bansal found claimant had a 6 percent permanent impairment to the body as a whole from his injury. He agreed with the permanent restrictions detailed in the May of 2017 FCE. He found claimant was at maximum medical improvement (MMI) on August 28, 2016. (Jt. Ex. 5)

In a July 14, 2017 report, Lana Sellner, MS, CRC, gave her opinions of claimant's vocational opportunities. Ms. Sellner identified eight full and part-time jobs she believed claimant could perform given his age, experience, education and physical limitations. Ms. Sneller opined claimant could continue to work in a medium work level position. (Ex. C)

Claimant testified that since he was terminated from Peters, he has applied for hundreds of jobs. At the time of hearing, claimant was still unemployed.

Claimant testified he has a constant burning sensation in his shoulder. He said activity with his shoulder increases his pain. He said due to shoulder pain he can no longer do home repair and has difficulty lifting or using a hammer. Claimant testified he can no longer perform maintenance or repair on his cars. Claimant said his shoulder limitations cause difficulty with sleeping and dressing.

CONCLUSIONS OF LAW

The only issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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 was 52 years old at the time of hearing. Claimant graduated from high school. Claimant has worked as a painter, in a meat processing plant, in an assembly line, and cleaned houses. Claimant has also done some construction work.

Dr. Sneller found claimant had a 5 percent permanent impairment to the body as a whole. (Jt. Ex. 3, p. 13) Dr. Bansal opined claimant had a 6 percent permanent impairment to the body as whole. (Jt. Ex. 5) Because the ratings for permanent impairment were so close, I found it unnecessary to make finding of fact which permanent impairment rating is more convincing. It is found claimant has a permanent impairment to the body as a whole between 5 to 6 percent.

Claimant underwent an FCE; it limited claimant to lifting up to 30 pounds from floor to waist occasionally and 20 pounds from the shoulder level occasionally. (Jt. Ex. 4) Both Dr. Bansal and Dr. Sneller accept the findings in the FCE as claimant's permanent restrictions.

Claimant was able to return as a shag driver for approximately one year with Peters. He was terminated for reasons not related to his work injury.

All of claimant's jobs have involved manual labor. Claimant has restrictions that allow him to only occasionally lift 30 pounds from floor to waist. Claimant's job with Peters required him to occasionally lift more than 75 pounds. Dr. Sneller indicated claimant would not be able to lift more than 75 pounds occasionally. (Jt. Ex. 3, p. 14)

In brief, it is true that claimant worked at his job at Peters for approximately one year following his return to work. Claimant was terminated for a reason not related to his work injury. Likewise, it is also true that based on Dr. Sneller's opinions (Jt. Ex. 3, p. 14), claimant would probably not be rehired at Peters given a job requirement of lifting more than 75 pounds, and claimant's job restrictions.

Claimant's unrebutted testimony was that, at the time of hearing, he has looked for hundreds of jobs and yet to be hired by any employer. Ms. Sneller opined there were jobs in claimant's geographic labor market that claimant could perform. I respect the opinions of Ms. Sneller regarding claimant's vocational opportunities. However, in this case, the record indicates claimant's real life experience, of applying for hundreds of jobs and not finding work, is more convincing than Ms. Sellner's hypothetical opinion that there may be jobs claimant could perform.

Claimant has between a 5 to 6 percent permanent impairment. He has performed manual labor his entire work life. He has permanent restrictions that would limit him to only lifting 30 pounds from floor to waist and 20 pounds at shoulder level. Given these restrictions, it does not appear he would be able to be rehired by Peters if that were a possibility. Claimant's unrebutted testimony is that since March of 2017 he has applied for hundreds of jobs and not been hired by any employer. Given this record, it is found claimant has a 50 percent industrial disability or loss of earning capacity.

ORDER

Therefore it is ordered:

That defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the rate of five hundred twenty-two and 39/100 dollars ($522.39) per week commencing on August 29, 2016.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall receive a credit for benefits previously paid.

That defendants shall pay 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 22nd day of November, 2017.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Randall Schueller
Attorney at Law
1311 – 50th St.
West Des Moines, IA 50266
randy@loneylaw.com

Lindsey Mills
Attorney at Law
225 Second St. S.E., Ste. 200
PO Box 36
Cedar Rapids, IA 52406
lmills@scheldruplaw.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.