

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LOUIS VASQUEZ,

Claimant,

vs.

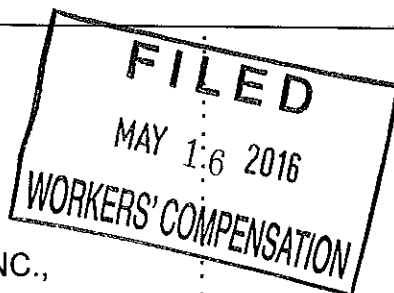
KRAFT FOODS GROUP, INC.,

Employer,

and

INDEMNITY INSURANCE CO., N.A.,

Insurance Carrier,
Defendants.



File No. 5049693

ARBITRATION

DECISION

Head Note Nos.: 1108, 1402

STATEMENT OF THE CASE

Louis Vasquez, claimant, filed a petition in arbitration seeking workers' compensation benefits from Kraft Foods Group, Inc., and their workers' compensation carrier, Indemnity Insurance Company, N.A. Hearing was held on February 18, 2016, in Davenport, Iowa. Presiding at the hearing was Deputy Workers' Compensation Commissioner Erin Q. Pals.

Claimant, Louis Vasquez and Dennis Woods, were the only witnesses who testified live at trial. The evidentiary record also includes claimant's exhibits 1-10. Defendants did not submit any separate exhibits. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs which were submitted on March 18, 2016.

ISSUES

The parties submitted the following issues for resolution:

1. What, if any, permanent disability claimant sustained as a result of the stipulated August 15, 2013 and/or October 29, 2013 work injuries?
2. The appropriate commencement date for any permanency benefits.
3. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

At the time of hearing, Louis Vasquez was 59 years of age and resided in Davenport, Iowa. He began working for Kraft Foods Group ("Kraft") in 1974. At the time of hearing he was working as a smoke house process operator. Prior to starting work at Kraft he underwent a pre-employment physical and was approved for full-time, full duty work. He did not have any respiratory or vocal conditions. (Testimony)

Claimant has alleged two dates of injury, August 15, 2013, and October 29, 2013. During this time, Mr. Vasquez was working in Department 157. His job duties included working as a smokehouse process operator. He was a full-time employee and worked 48 hours per week. He worked six days per week. Mr. Vasquez testified that there are six smokehouses in Kraft's basement that he was responsible for operating. There were another five smokehouses on the third floor. Mr. Vasquez usually worked in the basement, but on Saturdays he was required to work on the third floor or while processing "Thuringer" meat. He began working with the "Thuringer" meat in 2013. In 2013, his position required him to watch the hopper that cooked to make sure that it functioned properly during the cooking cycle. Mr. Vasquez testified that the smoker #1 (technically named a stoker) on the third floor did not work properly. Rather than the smoke going into the smokehouse, there was a back draft and the smoke poured out the bottom of the smokehouse. Mr. Vasquez testified that the smoke was green and pungent and that his coworkers throughout the plant noticed the smoke. He testified the intensity of the smoke caused him to choke and made his eyes water. The smoking process took approximately four hours to complete. Mr. Vasquez testified that it took about two hours to get the smoke under control. He did not wear a respirator or any type of protective breathing device. Mr. Vasquez testified that the smoker malfunctioned from the spring of 2013 until he reported problems with his voice in October of 2013. (Testimony; Exhibit 10, page 6) In his deposition he indicated that smoke exposure took place in April, May, June, and July of 2013. (Ex. 10, p. 7) It is noted that prior to 2013, Mr. Vasquez worked in the smoking operation and did not have any problems with his voice. (Testimony)

In 2013 Mr. Vasquez noticed that his voice had become extremely low. In August of 2013, he brought this to the attention of his family physician, Olatokunbo Kolawole, M.D. He reported hoarseness which "comes and goes" and lasted for a few hours and then resolved. He noted that he was required to go in and out of rooms of varying temperatures ranging from 20 to 80 degrees at work. He did this for eight hours per day, six days per week. He noted that his co-workers had similar changes in their voices. He denied cough, sore throat, rhinorrhea, or nasal congestion. The doctor's assessment included voice hoarseness. Mr. Vasquez was told to follow-up if the hoarseness persisted. During this time, Mr. Vasquez continued working with no change in his work environment. He said that Kraft attempted to correct the problem with the smoke, but could not manage to resolve the issue. (Testimony; Ex. 4)

On October 29, 2013, he reported his symptoms to the Kraft Plant Medical Department. Mr. Vasquez also completed an incident report with the defendant employer. He indicated that the nature of his injury was "hoarseness in his voice/lost his voice." (Ex. 1) He stated that the original date of the injury was unknown – mid August sometime. He felt this was work related due to going in and out of the cooler all night long, over 80 times per night. However, he also felt this was mostly due to the smoking houses in "cook lean" leaking so badly and the problem with the smoker. He indicated that he could not breathe when he was working in thick smoke for three to four hours. (Ex. 1) Mr. Vasquez treated with the Kraft Medical Department and was told to avoid smoke exposure. (Ex. 3)

Mr. Vasquez saw Rick Garrels, M.D., in early November 2013. (Ex. 3, p. 3) Dr. Garrels observed Mr. Vasquez as moderately hoarse with a mildly red and swollen throat. The doctor noted that the hoarseness was secondary to smoke exposure. He was restricted to avoid the smoke exposure and given a prescription for penicillin and prednisone. (Ex. 3, p. 3)

Mr. Vasquez returned to see Dr. Garrels on November 14, 2013, and reported that at times his voice was better, but he remained hoarse. Dr. Garrels continued the work restrictions. (Ex. 3, p. 2) Mr. Vasquez returned to Dr. Garrels on November 21, 2013. He reported no change since his last visit. He indicated that he wanted to return to regular work because it sounded like Kraft was using the smokers which did not have any problems. He was permitted to resume regular work. (Ex. 3, p.2)

Mr. Vasquez was eventually referred to Michael S. Tomek, M.D. On December 13, 2013, claimant saw Dr. Tomek, at ENT Professional Services, P.C. The notes indicate he was referred by Rick Garrels M.D., for evaluation of a four month history of hoarseness. The change was noted as moderate in severity and constant since onset. His voice was described as raspy and weak. The assessment at that time was voice disturbance. Treatment options were vocal rehabilitation, including speech therapy or perhaps a vocal cord injection procedure. (Ex. 5, pp. 1-4)

On January 8, 2014, Dr. Tomek performed a suspension microdirect laryngoscopy with bilateral vocal cord injection augmentation. The postoperative diagnosis was bilateral vocal cord atrophy with hoarseness. (Ex. 6) Mr. Vasquez returned to see Dr. Tomek on February 5, 2014. The patient reported little improvement in his voice. The assessment was Dysphonia. The doctor felt the cords looked much better and that the voice was hoarse about half the time. The doctor felt he could continue to improve. Dr. Tomek stated, "It is most likely that he has a hypersensitivity to the smoking chemicals at work that aggravate the vocal cords and cause his voice to be worse while at work. There really is not a good 'fix' for this. He could consider working at another station if this aggravation is too much for him." (Ex. 5, pp. 5-6)

Mr. Vasquez continued performing his regular work duties. He saw Dr. Garrels on February 19, 2014. Dr. Garrels noted that claimant continued to have some hoarseness, but it seemed less noticeable. (Ex. 3, p. 1) Dr. Garrels concluded that Dr.

Tomek had no other treatment options other than avoidance of smoke exposure. Dr. Garrels placed Mr. Vasquez at maximum medical improvement. He opined that Mr. Vasquez had not sustained any permanent impairment. (Ex. 3, p. 1)

On January 22, 2015, Mr. Vasquez was seen at the University of Iowa Hospitals and Clinics by Douglas J. Van Daele, M.D., for an independent medical examination. Mr. Vasquez reported that his voice had been getting steadily worse over the past two years. He attributed his raspy and poor voice to exposures at work. Over the past two years he had been working in the smokehouse for four hours on the third shift. Four months after he started working in the smokehouse his voice became raspier and it became more difficult to speak. Mr. Vasquez noted that there had been a smoker malfunction which manifested as a backdraft and smoke coming out of the smoker into the room where he was working. He reported frequent sore/scratchy throat, occasional shortness of breath, problems being understood due to voice issues, and nose running with clear drainage more out of the front than the back. Dr. Van Daele assessed him as having hoarseness of voice and presbylarynx. The doctor noted significant dysphonia related to his vocal fold atrophy. He also noted that Mr. Vasquez did not have a significant response to the vocal fold injections. Dr. Van Daele stated his vocal fold atrophy was "not likely caused by a work exposure. However, it is more likely than not that his issues related to his voice are worsened by his work exposure." (Ex. 8, p. 5)

In a letter to the claims adjuster dated January 20, 2015, Dr. Van Daele confirmed his opinions. He noted that his findings were consistent with a voice disorder which was exacerbated by his work environment but not likely caused by the work environment. The doctor noted, "[p]oor abduction with atrophy of the vocal folds with glottic gap noted; this is consistent with age related reduction in volume of vocal folds bilaterally." (Ex. 8, p. 4) The doctor utilized AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, and opined that Mr. Vasquez sustained a Class 2 Voice/Speech impairment category based on audibility. According to the Guides Class 2 amounts to 15-34 percent impairment which is the equivalent of 5-12 percent of the body as a whole. (Ex. 8, p. 4)

On October 19, 2015, Mr. Vasquez completed an Employee's Report form for the defendant insurance carrier. He indicated that he was injured sometime from May to October. He felt the injury occurred in the third floor smoke house, #1 cook house. He noted that the smoker kept malfunctioning due to a back draft entering the house, rather than wood chips. This caused the smoke to come out of the smoker causing severe hoarseness and loss of voices. (Ex. 2)

On January 18, 2016, Rick L. Garrels, M.D., authored a letter to defense counsel. Dr. Garrels indicated that he was unable to tell exactly how Dr. Van Daele came to a permanency award of approximately 30 percent. Dr. Garrels noted that that is an extremely high rating which would normally be seen in a person whose voice is the basis for their career, such as a singer. Dr. Garrels stated:

I reviewed Dr. Van Daele's report and he like Dr. Tomek concluded the underlying cause of the hoarseness of voice is presbylarynx, an age-related change in the voice due to shrinking of the vocal folds. This underlying condition is not related to work. It is not that uncommon, as one of the ED physician's I work with has the same condition.

I previously concluded, like Dr. Van Daele, that the smoke exposure does temporarily aggravate the condition.

(Ex. 7)

Dr. Garrels placed Mr. Vasquez in the Class 1 category for impairment which would be, at most, 5 percent whole person impairment. (Ex. 7)

The production supervisor at Kraft, Dennis Woods, testified that he had been with Kraft for 32 years, of which 18 were at the Davenport location. He has known Mr. Vasquez for approximately 5 or 6 years. Mr. Woods testified that he was familiar with the green smoke described by Mr. Vasquez. He indicated that Mr. Vasquez's description of the smoke was accurate. He agreed that a regular part of Mr. Vasquez's job was smoking products in the smokehouse with a stoker. He testified that claimant's voice is lower, raspier, and softer than when he first met him. However, this change has not affected his job performance in any material way. He testified that he is able to communicate with Mr. Vasquez in the workplace without difficulty; both in the quiet office setting and while wearing earplugs on the production floor. (Testimony)

At the time of hearing Mr. Vasquez was working as a process operator on third shift. He continued to work full-time performing his regular duties without accommodation. He typically worked from 9:00 p.m. to 5:30 a.m. six days per week; averaging 48 hours per week. His duties include rolling racks that contain sticks of meat into smokehouses for cooking and/or smoking. Not all meat requires smoking. Claimant typically cooks meat in eight smokehouses during a shift. Once the meat is cooked and/or smoked hand trucks are used to roll the racks out of the smokehouses into chill cells. Mr. Vasquez typically performs the "back end" job. In order to perform this job he is required to lift two 40-pound bags of sawdust to fill the hopper of the smokehouse; he must do this once per week. While the meat is smoking Mr. Vasquez sits or stands by the stoker to monitor the smoking process. He cannot leave the area during this process. He testified that he does not have any medical restrictions on his activities. He believes he last worked around smokehouse #1 in June of 2014. At that time, a ventilation system had been installed which vacuumed up any smoke escaping from the stoker. The conditions in the smokehouse have improved, but he testified that his symptoms have remained. Approximately twice per week he experiences a gritty feeling in his throat causing him to gag for about five minutes. Occasionally, he will wake in the morning and notice that his breathing is different. Additionally, cold air aggravates his voice. He also testified that he still speaks in a lower register. He occasionally has difficulty talking. (Testimony; Ex. 10)

The parties stipulated that Mr. Vasquez sustained injuries on August 15, 2013 and October 29, 2013, which arose out of and in the course of his employment with Kraft. (Hearing Report) The central issue in this case is whether claimant's exposure to smoke in his workplace in 2013 was a temporary or material aggravation of a pre-existing condition and if so, what percentage of industrial disability, if any, he sustained as a result of that exposure.

Mr. Vasquez testified that he began to experience problems with his voice in 2013, which he attributed to his work environment. Dr. Van Daele found significant dysphonia related to his vocal fold atrophy and that his condition was worsened by the exposure at work. (Ex. 8) Dr. Garrels also indicated that Mr. Vasquez's condition was worsened by the smoke exposure at work. (Ex. 3 & 7) Dr. Tomek opined that claimant likely has a hypersensitivity to the smoking chemicals at work that aggravate his vocal cord and cause his voice to be worse while at work. (Ex. 5, p. 6) On December 13, 2013, Dr. Tomek noted there were no long-term effects noted from work. (Ex. 5, p. 4)

I find that claimant has failed to show by a preponderance of the evidence that he sustained permanent injury or permanent disability as a result of his work with Kraft. I do not find the opinion of Dr. Van Daele to be persuasive. Dr. Van Daele places Mr. Vasquez in the Class 2 category for voice/speech impairment. However, this classification is not consistent with the clinical notes. It is also not consistent with the symptoms Mr. Vasquez testified he still experiences. Also the AMA Guides, Class 2 examples include individuals whose profession relies on their voices. (Ex. 9, p. 5) The undersigned agrees with defendants' argument that the difference between the Class 1 claimants and the Class 2 claimants include the extent to which the claimant needed to alter their activities of daily living and their ability to engage in most daily speech. (Ex. 9, pp. 4-6) Yet, in Mr. Vasquez's case his supervisor testified that he has no difficulty communicating with him. Additionally, claimant does not contend that his voice is worsening. He merely alleges that on occasion his voice is so low it is difficult to talk. (Ex. 10, p. 9; Testimony) I find that although Mr. Vasquez may find it difficult to speak, the hoarseness of his voice has not affected his job performance in any way. Furthermore, Dr. Van Daele fails to state whether there is any causal connection between the permanent impairment and Mr. Vasquez's work at Kraft. Based on the opinions of Dr. Tomek and Dr. Garrels, and on the record as a whole, I find that Mr. Vasquez has sustained a temporary aggravation as a result of the work exposure.

The preponderance of the evidence demonstrates that Mr. Vasquez's voice condition is consistent with the elements of a Class 1 Voice/Speech impairment and equates to a zero percent impairment. (Ex. 7)

He graduated from high school in 1975. The only education or training he has received since that time has been on the job training. Since graduating from high school the only job he has held is for the defendant employer. He has worked in several different positions. He worked in his first position of ham boner for 17 years. He described this as a physically demanding job. He also worked in shipping for two years. He testified that this was not as physically demanding as the ham bone position

because the fork trucks did all the lifting. Next he worked in the stuffed meats department for 10 years where he performed three different jobs. There is no evidence that his work injury would prevent him from returning to any of his prior positions with Kraft.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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).

Based on the above findings of facts, I conclude that Mr. Vasquez sustained a temporary aggravation of a pre-existing condition. Thus, I concluded that Mr. Vasquez failed to carry his burden to establish by a preponderance of the evidence that he sustained a permanent injury as a result of his work at Kraft.

Costs are to be assessed at the discretion of the deputy commissioner hearing the case. Because claimant was generally not successful in his claim, I find it is not appropriate to assess costs against the defendants.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

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.

Claimant shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 16th day of May, 2016.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EQP/kjw

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.