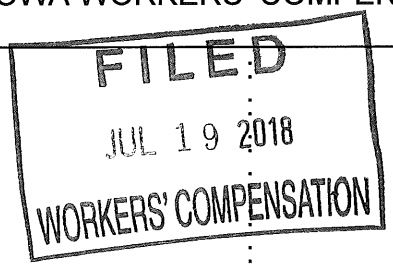
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



RANDY FARRELL, Claimant, vs. JOHN DEERE DAVENPORT WORKS, Employer, Self-Insured, Defendant.	:	File No. 5063179 ARBITRATION DECISION Head Note: 1100

STATEMENT OF THE CASE

Randy Farrell, claimant, filed a petition in arbitration seeking workers' compensation benefits from John Deere Davenport Works, the self-insured defendant employer.

The matter proceeded to hearing on February 7, 2018.

The evidentiary record includes: Joint Exhibits JE1 through JE8; Defendants' Exhibits A through N; and, Claimant's Exhibits 1 through 4. At hearing, claimant provided testimony.

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.

The parties submitted post-hearing briefs on April 4, 2018, and the matter was considered fully submitted on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the alleged injury of June 19, 2015, to the right arm is barred by a compromise settlement approved by this agency on November 21, 2014.

2. Whether the alleged injury of June 19, 2015 arose out of and in the course of employment.

3. Extent of temporary benefits, if any.

4. Extent of permanent partial disability benefits, if any.

5. Entitlement to independent medical examination (IME) reimbursement under Iowa Code section 85.39.

6. Costs.

FINDINGS OF FACT

After a review of the evidence presented, I find as follows:

1) Prior Medical History

Claimant previously alleged an injury to his right elbow and right shoulder that occurred on April 12, 2012, while working for the defendant employer. (Exhibit I, page 45)

On June 22, 2012, claimant underwent surgery with James Lyles, M.D. consisting of a: "[r]ight lateral epicondylectomy, epicondyle debridement and reattachment of the extensor complex with Arthrex anchor," and "[r]ight cubital tunnel release and anterior transposition." (Ex. JE2, p. 1)

On February 6, 2013, claimant underwent right shoulder surgery with Dr. Bries. (Ex. I, p. 48) Claimant does not assert a shoulder injury in the present matter.

On November 26, 2013, Dr. Lyles, the treating elbow surgeon, authored a letter to claimant's counsel stating that following surgery, on June 22, 2012, claimant continued to have "persistent pain overall." (Ex. I, p. 42) Dr. Lyles assigned 5 percent impairment regarding the right elbow. (Id.) He stated that further therapy "may eventually improve his overall symptoms." (Id.)

On March 18, 2014, Jeffrey Coe, M.D., issued a report to claimant's counsel following an IME conducted at the request of claimant's counsel. (Ex. I, p. 44) Dr. Coe reported that claimant's numbness and tingling in his right arm and hand had "fully resolved after ulnar nerve decompression." (Ex. I, p. 49) He assigned no permanent impairment related to the elbow injury. (Ex. I, p. 54)

On July 7, 2014, Christine Deignan, M.D. conducted an IME and authored a letter to defense counsel identifying a diagnosis of "[r]ight lateral epicondylitis and cubital tunnel syndrome," in addition to a "[r]ight shoulder glenoid labrum tear, impingement syndrome partial thickness rotator cuff tear, post subacromial decompression." (Ex. I, pp. 58-59) She assigned 4 percent impairment for reduced range of motion of the elbow, which was derived from Figure 16-34, page 472, of the AMA Guides, regarding flexion and extension of the elbow joint. (Ex. I, pp. 59, 61) At

the time of the evaluation, claimant complained of his right hand and arm falling asleep at night or if he holds his arm up. (Ex. JE1, pp. 11-12)

2) Compromise Settlement

On November 2, 2014, this agency approved a compromise settlement pursuant to Iowa Code section 85.35(3). (Ex. I, pp. 36-36) The settlement covered claimant's: "bilateral upper extremities, bilateral elbows, right shoulder and neck" regarding the "injuries of April 12, 2012." (Ex. I, p. 35) The Statement of Awareness advised claimant that he was "barred from future claims or benefits under the Iowa Workers' Compensation Law for the injuries compromised." (Ex. I, pp. 35-36)

Claimant agreed at hearing that he provided a complete release to the employer concerning the above described injuries, which included the right arm/elbow injury described in the above section titled "Prior Medical History." (Testimony)

3) Employment History

Claimant began working for defendant employer in 2003, moved to the Assembler position in 2005, and continued in that position while employed with defendant. (Ex. 3, p. 2; Testimony)

On or about August 12, 2013, claimant's employment with defendant was terminated based on allegations that he misrepresented his medical condition to the employer. (Ex. 2, p. 2) After being terminated he worked as a driver for a number of companies.

Following a successful grievance, claimant was reinstated to his job with the defendant employer on or about March 30, 2015. (Testimony; Ex. JE1, p. 2) Upon his return to work, he reported to Mary Huesmann, nurse practitioner, for a return to work evaluation and stated that he will always have some level of discomfort in his right upper extremity, but that he has "adapted," and that "he feels he is ready to safely return to regular duty." (Ex. JE1, p. 2) He denied any concerns or health issues that might prevent his performance of regular duty. (Id.)

4) Current Alleged Work Injury

Claimant alleges that on June 19, 2015, he sustained an injury to his right arm that arose out of and in the course of his employment with defendant employer. There was no specific event or trauma on that date. Claimant asserts a cumulative injury. Claimant has worked as an Assembler for the defendant since 2005. He continued in that position after his return to work in March, 2015. (Testimony) Claimant attributes his June 2015 alleged injury to his assembly job, which he described as requiring a high amount of torque.

On June 21, 2015, claimant went to Unity Point Health Emergency Department and reported onset of pain in his right elbow two to three days earlier. He denied any

recent falls, trauma or injury, but he did report having a prior injury and surgery on his right elbow. (Ex. JE5, p. 1) He stated the pain feels similar to the pain he experienced prior to surgery related to his prior injury. (Id.)

On June 24, 2015, claimant was seen at Family Care Partners, in follow up to his emergency department visit concerning his right elbow. (Ex. JE6) It is reported that he had surgery two years earlier, but on "Sunday the elbow started swelling and causing pain." (Ex. JE6, p. 1) He was scheduled to follow up with Thomas VonGillern, M.D. the following day. (Ex. JE6, p. 1)

On June 25, 2015, claimant was seen by Dr. VonGillern at ORA Orthopedics. (Ex. JE3, p. 31) Claimant described the pain as constant, sharp, throbbing, aching and at a level of 10/10. He reported taking Hydrocodone for pain. (Id.) Dr. VonGillern diagnosed right elbow lateral epicondylitis. (Ex. JE3, p. 32)

On July 14, 2015, claimant returned to Dr. VonGillern "still having right elbow pain." (Ex. JE3, p. 33) Dr. VonGillern recommended proceeding with surgery consisting of: right elbow extensor origin release and repair with partial lateral epicondylectomy, right elbow arthroscopy, debridement, synovectomy and chondroplasty. (Ex. JE3, p. 34)

On July 27, 2015, surgery was performed by Dr. VonGillern. (Ex. JE3, p. 35; JE4) At that time, the pre-operative and post-operative diagnoses were: right elbow extensor chronic lateral epicondylitis; right elbow synovitis; and chondromalacia. The procedure performed was as recommended on July 14, 2015, described above. (Ex. JE4, p. 1)

Claimant continued with follow up care with ORA post-surgery, which included therapy and restrictions. (Ex. JE3, pp. 36-39) He was returned to work on November 23, 2015. (Ex. E, p. 18)

On June 12, 2017, Dr. VonGillern signed and dated a letter written by defense counsel indicating that the treatment he provided to claimant after June 19, 2015, was "for the same right elbow condition for which Mr. Farrell received treatment from ORA Orthopedics and Dr. Lyles," and that claimant's "right elbow condition after June 19, 2015 was a mere continuation of his previous right elbow injury and right elbow issues." (Ex. H, p. 32) In support of this conclusion, it is noted that the diagnosis of Dr. Lyles before November 21, 2014 and the diagnosis of Dr. VonGillern after June 19, 2015, was the same, which was right lateral epicondylitis. (Id.)

On November 3, 2017, Richard Kreiter, M.D. issued a report following an IME conducted at the request of claimant's counsel. (Ex. 1) Dr. Kreiter opined that the "repetitive work with force in awkward positions has caused irritation of the median nerve at the right wrist," and that the work "**may** have aggravated a pre-existing condition, at least to the extent that Dr. VonGillern elected a reoperation." (Ex. 1, p. 1)(emphasis added) Dr. Kreiter also stated that he found "it difficult to assess

impairment caused by the work injury," because "[t]he entrapment of the median nerve is symptomatic and should be investigated if symptoms increase," and that the "[r]esidual elbow symptoms are connected as well to the pre-existing elbow condition and surgery and transposition of the ulnar nerve." (Id.) Dr. Kreiter then assigned restrictions, but did not identify whether they were necessary because of the possible aggravation of an underlying condition, or due to the residual symptoms that are connected to the pre-existing elbow condition and surgery.

On January 9, 2018, Dr. Deignan issued a report following an IME conducted at the request of defendant on January 3, 2018. (Ex. L)

It is important to note that Dr. Deignan also conducted an IME with claimant following the prior right arm injury, as discussed above. Therefore, she was aware of claimant's condition prior to the compromise settlement and after the alleged injury of June 19, 2015. (Ex. I, pp. 55-61)

During the January 3, 2018, evaluation claimant described his right arm injury as a re-aggravation or re-injury. (Ex. L, p. 1) He attributed his current right arm pain to doing a job involving the application of significant torque at his job at John Deere. It was not clear how often the torque was applied during a shift, nor how the torque was applied. Therefore, the amount of effort required by claimant to do the job was not terribly clear. Claimant reported using over-the-counter ibuprofen and Tylenol as needed, but not on a regular basis. (Ex. L, p. 76) Dr. Deignan concluded to "a reasonable degree of medical certainty, that Mr. Farrell has not sustained a new right elbow injury from his employment at John Deere on June 19, 2015." (Ex. L, p. 79) She further opined that "Mr. Farrell has not sustained any cumulative right arm/elbow injury from his employment at John Deere after November 21, 2014," and that claimant's "current right elbow condition was not caused by his work at John Deere on June 19, 2015," or "after November 21, 2014." (Ex. L, p. 80) Dr. Deignan opined that claimant's functional impairment remained unchanged from her prior assessment on July 7, 2014, in which she assigned 4 percent impairment for the right upper extremity. (Ex. I, pp. 59, 61; Ex. L, p. 80) She recommended no permanent restrictions. (Ex. L p. 80)

Based on Dr. Kreiter's opinion that claimant's work "may" have aggravated an underlying condition, and that claimant has "residual elbow symptoms," which "are connected . . . to the pre-existing elbow condition and surgery," I am unable to find from his opinion that claimant sustained an aggravation of an underlying condition separate from the pre-existing condition and surgery. (Ex. 1, p. 1)

Further, based on the opinion of the treating surgeon, Dr. VonGillern, and the opinion of Dr. Deignan, who was in the unique position of evaluating claimant both before and after the June 19, 2015 alleged injury, I find that claimant did not sustain a new injury or aggravation of a pre-existing condition that arose out of and in the course of his employment.

5) Additional Findings

Claimant testified his right arm falls asleep at night, similar to his prior complaints concerning the right arm covered by the compromised settlement. I find that claimant's claimed injury involves the same part of the body and similar complaints as those that are the subject of the compromise settlement approved by this agency on November 21, 2014.

Claimant continues to work for the defendant employer full-time without restrictions as an Assembler. (Testimony)

There is no clear medical opinion to a reasonable degree of medical certainty that claimant sustained an injury, as he has alleged, that arose out of and in the course of his employment with the defendant employer on or about the date alleged.

CONCLUSIONS OF LAW

Defendant argues for the application of res judicata, collateral estoppel, claim preclusion and issue preclusion. However, I will first address claimant's burden of proving that he sustained an injury that arose out of and in the course of his employment on June 19, 2015, as alleged.

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 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 Electric 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 143.

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

The claimant has the burden of establishing an injury arising out of and in the course of employment. It was found above that he failed to meet that burden. As claimant has failed to carry his burden of proof that his claimed health conditions arose out of and in the course of employment, all other issues are moot.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing.

Each party shall pay their own costs.

Defendant 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 19th day of July, 2018.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Robert T. Rosenstiel
Attorney at Law
PO Box 4298
Rock Island, IL 61204-4298
rrosenstiel@wkclawfirm.com

Troy A. Howell
Attorney at Law
220 North Main St., Ste. 600
Davenport, IA 52801-1987
thowell@l-wlaw.com

TJG/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.