

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

JUN 5 2015

WORKERS' COMPENSATION

MARLON JACKMAN,

Claimant,

vs.

BRIDGESTONE/FIRESTONE,

Employer,

and

OLD REPUBLIC INSURANCE,

Insurance Carrier,
Defendants.

File No. 5040145

REMAND

DECISION

Head Note Nos.: 1402.30; 1702; 1801;
1804; 2501; 2907;
3002

This case comes before the undersigned on remand from the Iowa District Court for Polk County.

On February 26, 2014, the employer, Bridgestone/Firestone, and the insurer, Old Republic Insurance, filed a petition for judicial review following the August 30, 2013, finding of the agency that claimant had sustained a permanent and total disability arising out of his employment.

The District Court upheld the deputy's ruling that the employee sustained a cumulative injury as of June 30, 2011, arising out of and in the course of the employee's employment with the defendant employer.

On the matter of the extent of claimant's disability, however, the District Court did not find substantial evidence supporting an MMI date of September 12, 2012. It stated:

The court cannot conclude, from the evidence before it, that a finding that respondent is permanently and totally disabled as of September 12, 2012 is supported by substantial evidence in the record. This case is remanded to the Commission to make an explicit determination as to the date respondent reached MMI with respect to his lower back injury.

Ruling on Judicial Review, p. 18

Both the judicial review decision and the underlying arbitration decision gave a fulsome recitation of the facts. The following are in addition to the previously stated findings of fact.

Pursuant to the underlying arbitration decision, claimant sustained an injury on June 30, 2011. On July 11, 2011, claimant was seen by Lazaro Rabang, M.D. for complaints of pain in the right hip radiating into the right leg. (Exhibit 7, p. 15) Dr. Rabang took claimant off work beginning on July 14, 2011, due to neck, low back, and right leg pain. (Ex. 7, p. 16) His off-work status was converted to short term disability on September 9, 2011.

On October 3, 2011, claimant returned to Dr. Rabang (but saw Nurse Practitioner Laura Dankof) with reports that therapy had improved his right leg pain. (Exhibit 7, p. 22). Claimant was scheduled to return to work on October 5, 2011. with no restrictions. (Ex. 7, p. 22) He sustained an exacerbation after returning to work on October 5, 2011. He was then taken off of work again with the plan to return him to work on or about October 21, 2011. (Ex. 7, p. 23)

According to notes from Todd Troll, M.D. at the Bridgestone/Firestone medical department, claimant was off work on October 5, 2011, for pain in his neck, back, right leg and low back. (Ex. 1, p. 3)

On October 6, 2011, Jeffrey Pederson, D.O., wrote to Dr. Rabang regarding treatment of claimant at the Mercy Center for Spine Care. Dr. Pederson noted that epidurals improved claimant's condition and that he had an 80 percent decrease in pain. (Ex. 9, p. 73; Ex. 11, pp. 112-115)

On October 13, 2011, Dr. Troll returned claimant to permanent work with restrictions of no lifting greater than 15 pounds and no repetitive bending and twisting. (Ex. 1, p. 4) On October 21, 2011, a note was issued to the State of Iowa Department of Transportation that claimant was considered permanently medically handicapped because he could not walk 200 feet without stopping to rest and was severely limited in his ability to walk. (Ex. 7, p. 26)

During his pain management appointment on October 28, 2011, claimant was given prescriptions for oxycodone, Medrol Dosepak and nabumetone. Also, claimant's Gabapentin was increased to four times a day. (Ex. 7, p. 29)

On December 22, 2011, Dr. Pederson agreed that claimant was not at MMI and was still working through treatment options. (Ex. 9, p. 82) He agreed with the 15 pound restriction.

On February 24, 2012, claimant reported an increase in pain. (Ex. 9, P. 85) His medication regime included Gabepentin three times a day, Cyclobenaprine, Lisinopril, and Temazepam as well as Hydrocodone. (Ex. 9, p. 88)

By mid-summer, claimant's condition appeared unchanged. His pain was 5/10 at best on his June 15, 2012, visit. His medication list was essentially the same. (Ex. 9, P. 91) He returned to Metro Anesthesia Pain Management on October 25, 2012, for repeat of injections which were successful on previous occasions. (Ex. 12, p. 119)

Claimant continued to be seen at Catholic Health Initiatives by Dr. Rabang for pain management. His restrictions of no lifting more than 15 pounds with no repetitive twisting or bending remained the same over a year later on January 13, 2013. (Ex. 7, p. 56) His medication list on January 18, 2013, varied only a bit from his February 24, 2012, list. (Ex. 7, p. 58)

John Kuhnlein, D.O. was retained to perform an independent examination of the claimant. Dr. Kuhnlein did not believe claimant had reached MMI as of the date of his August 14, 2012, examination. (Ex. 13, p. 134). The report was issued on January 2, 2013, but there are no records referenced beyond the summer of 2012. (Ex. 13, p. 129) In his report, Dr. Kuhnlein noted that claimant's back symptoms had not improved significantly in the six months prior to the examination date of August 14, 2012. (Ex. 13, p. 130) To treat claimant's low back condition, Dr. Kuhnlein recommended that claimant may need surgery as well as physical therapy and strengthening exercises. (Ex. 13, p. 134) After reviewing Dr. Hirschl's note of June 22, 2011, however, Dr. Kuhnlein retracted his surgical suggestion and recommended nonsurgical treatment measures. (Ex. 14, p. 138) It is not clear why Dr. Kuhnlein believed claimant would improve after six months of non-improvement or how non-surgical treatments would change claimant's condition following the January 14, 2013, letter. (Ex. 14, p. 138)

On December 12, 2012, claimant was examined by Scott B. Neff, D.O. on behalf of the defendants. (Ex. 1) Dr. Neff determined that claimant was at MMI because claimant suffered from degenerative disc disease and would not get better. Instead his disease would worsen. (Ex. 1, p. 5)

Claimant returned to work two times – October 5, 2011, and in April 2012. After both attempts to return to work, claimant suffered exacerbations. He ultimately told his employer that he could not do his pre-injury tasks and put in for retirement. His last day of work was April 11, 2012. (Ex. 20, p. 158) He was medically laid off due to "no job position he can perform with his medical restrictions." (Ex. 20, p. 158)

The last period of improvement for the claimant was after the injections at Metro Anesthesia Pain Management in September, 2011. He reported an 80 percent decrease in pain. He saw improvement after physical therapy. On October 13, 2011, Dr. Troll, the company doctor, designed claimant's return to work with permanent restrictions of no lifting greater than 15 pounds and no repetitive bending or twisting. These are the restrictions that remained in place at the time of the hearing.

Claimant returned to work for a brief time in October and then was taken back off of work. On October 21, 2011, an application for a handicapped designation was made because claimant could not walk 200 feet without needing to stop and rest. His pain prescription regime of Oxycodone and Gabapentin was largely unchanged after October 2011 as well.

Based on the above stated facts, claimant's condition improved after his injections on September 1, 2011, and September 29, 2011. When he was seen again by Dr. Ransdell on November 23, 2011, he presented with increased back and leg pain which did not abate following that visit.

The facts support a finding that Dr. Peterson and Dr. Kuhnlein were both hopeful that claimant's condition would improve with nonsurgical therapy methods such as exercise, cessation of smoking, and medications. However, claimant's condition has been largely the same since October, 2011.

The District Court opined that MMI is the date of stabilization or, put another way, when it is unlikely claimant's condition would improve.

In reviewing all of the medical records, it appears claimant's date of maximum medical improvement was in October, 2011. Dr. Troll returned claimant to work on October 13, 2011, with permanent restrictions – the ones that presumably exist today. Claimant showed no improvement following that return to work date of October 13, 2011. Instead, he has experienced fluctuating pain in his low back, in the range of 5/10 to 8/10. Claimant's medications were largely the same in October, 2011, as they were in January, 2013. Dr. Kuhnlein noted that claimant's condition was unchanged in the six months prior to the August 14, 2011, evaluation.

Therefore, it is found that claimant's MMI date is October 13, 2011, when claimant was returned to work with his permanent restrictions of no lifting over 15 pounds and no repetitive bending or twisting. There is not sufficient evidence in the record to support a finding that claimant improved significantly following that date.

ORDER

IT IS THEREFORE ORDERED, pursuant to remand of the District Court, that claimant's MMI date is October 13, 2011.

Signed and filed this 5th day of June, 2015.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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