BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONALD DHABOLT,	:	File Nos. 5068239, 20000505.01
Claimant,	:	A P P E A L
vs.	:	D E C I S I O N
CITY OF DES MOINES,	:	
Employer, Self-Insured, Defendant.	:	Head Notes: 1402.20; 1402.40; 1403.10; 1801; 1803; 1803.1; 2501; 2502; 2701; 2907

Defendant City of Des Moines, self-insured employer, appeals from an arbitration decision filed on January 26, 2022. Claimant Donald Dhabolt responds to the appeal. The cases were heard on May 17, 2021, and were considered fully submitted in front of the workers' compensation commissioner on June 14, 2021.

In the arbitration decision, for File No. 5068239, the deputy commissioner found claimant met his burden of proof to establish he sustained two scheduled member injuries to his left arm and left shoulder as a result of the April 8, 2019, work injury, and the deputy commissioner found claimant sustained 15 percent industrial disability, which entitles claimant to receive 75 weeks of permanent partial disability (PPD) benefits, commencing on August 12, 2019. The deputy commissioner also found claimant proved he sustained an injury to his cervical spine as a result of the April 8, 2019, work injury, and the deputy commissioner found claimant is entitled to alternate care for his cervical spine and left shoulder.

For File No. 20000505.01, the deputy commissioner found claimant proved he sustained an injury to his right arm on January 4, 2020, and found claimant is entitled to temporary total disability benefits from March 5, 2020, through April 5, 2020.

For both files, the deputy commissioner found defendant should be assessed the $6,300.00 cost of the independent medical examination (IME) of claimant performed by Scott Neff, D.O.

Defendant asserts on appeal that the deputy commissioner erred in finding in File No. 5068239 that claimant's cervical spine condition is causally related to the April 8, 2019, work injury, and in finding claimant is entitled to alternate care for his cervical spine condition. Defendant raises no issues on appeal in File No. 20000505.01.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, the arbitration decision filed on January 26, 2022, is affirmed in part, and is reversed in part.

Without further analysis, for File Number 5068239, I affirm the deputy commissioner's finding that claimant proved he sustained 15 percent industrial disability as a result of the April 8, 2019, injuries to his left arm and left shoulder, which entitles claimant to receive 75 weeks of PPD benefits, commencing on August 12, 2019. I affirm the deputy commissioner's finding that claimant is entitled to alternate care for his left shoulder as recommended by Scott Neff, D.O.

For File Number 20000505.01, I affirm the deputy commissioner's findings that claimant proved he sustained an injury to his right upper extremity on January 4, 2020, and I affirm the deputy commissioner's finding that claimant is entitled to receive temporary total disability benefits from March 5, 2020, through April 5, 2020.

For both files, I affirm the deputy commissioner's finding that defendant should be assessed the $6,300.00 cost of Dr. Neff's IME.

For File Number 5068239, with the following additional and substituted analysis I reverse the deputy commissioner's finding that claimant proved he sustained an injury to his cervical spine as a result of the April 8, 2019, work injury, and I reverse the deputy commissioner's finding that claimant is entitled to alternate care for his cervical spine.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> . . . it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must

> ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

An injury to one part of the body can later cause an injury to another. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16-17 (Iowa 1993) (holding a psychological condition can be caused or aggravated by a scheduled injury). The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). When considering the weight of an expert opinion, the factfinder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

On April 8, 2019, while stopping for lunch, claimant slipped and fell in the restroom. (JE 1, page 1) On the date of the injury, claimant reported to medical personnel that as he fell, his feet went out in front of him and he fell backwards, landing directly on his buttocks. (JE 1, p. 1) Claimant reports that as he was falling, he tried to grab a rail attached to the wall to stop his fall, and as he grabbed the rail he felt a pop in his left arm and he hit his left medial elbow forearm on the toilet tank. (JE 1, p. 1)

Claimant reported the work injury the day it occurred and defendant sent him to Des Moines Occupational Medicine for treatment that same day. (JE 1) Betsy Bolton, PA-C, examined claimant, documented the above history, and assessed claimant with a rupture of the left distal biceps tendon and also with a low back strain. (JE 1, p. 2) Bolton did not document claimant reported hitting his neck or head or complained of any pain or symptoms involving his neck. (JE 1, pp. 1-2)

Claimant treated with Des Moines Occupational Medicine and underwent surgery and treatment for his left arm with Ze-Hui Han, M.D., an orthopedic surgeon. (JE 1; JE 2; JE 3) During an appointment on April 29, 2019, claimant mentioned having shoulder and back pain to Dr. Han and Dr. Han documented he told claimant to speak with his case manager about seeing a shoulder and back specialist. (JE 2, p. 23). Dr. Han's records do not document claimant complained of having neck pain.

Claimant treated with Bolton for his low back strain. (JE 1) Bolton's exam from May 6, 2019, documents tenderness over claimant's lumbar spine and bilateral SI joints and pain at the top of claimant's right buttocks. (JE 1, p. 3) There is no mention of any complaints of neck pain.

When claimant returned to Bolton on June 28, 2019, Bolton documented, "[t]he patient's low back has improved and it is back to baseline without any outgoing concerns," noting on exam claimant denied tenderness with palpation, his strength was 5/5 throughout and his reflexes and sensation were intact. (JE 1, p. 15) Bolton noted claimant's low back strain was resolved. (JE 1, p. 16) Bolton did not document claimant complained of any neck pain or problems with his neck.

During an appointment with Dr. Han on August 12, 2019, claimant complained of right arm numbness and pain radiating into his ring and small fingers and claimant also reported left elbow pain and numbness radiating to his left wrist. (JE 2, p. 31) There is no mention of any neck pain. On August 12, 2019, Dr. Han found claimant had reached maximum medical improvement and released him to full duty. (JE 2, p. 32)

As noted above, Dr. Han's records make no mention of any cervical spine issues or complaints. (JE 2) Likewise, claimant's physical therapy records do not document any cervical spine complaints. (JE 4)

Claimant was referred to Ian Lin, M.D., an orthopedic surgeon, on July 22, 2019, for his left shoulder complaints. (JE 6, p. 49) Dr. Lin examined claimant and reviewed his x-rays and left shoulder MRI, and Dr. Lin opined the MRI looked normal with the exception of subacromial bursitis and noted claimant's biceps tendon and rotator cuff appeared to be fine. (JE 6, p. 50) Dr. Lin assessed claimant with left shoulder impingement syndrome and administered an injection. (JE 6, p. 50) During a follow-up appointment on August 19, 2019, Dr. Lin documented claimant "is doing remarkably well after the injection. He is pretty much back to normal. He is very pleased." Dr. Lin noted claimant did not have any pain with range of motion and had normal strength. (JE 6, p. 53) Dr. Lin found claimant reached maximum medical improvement and released him from care. (JE 6, p. 53) Dr. Lin's records do not document claimant complained of neck pain or problems during his treatment.

On October 23, 2019, Dr. Neff, an orthopedic surgeon, provided claimant with a second opinion. (JE 7, pp. 67-70) Dr. Neff reviewed claimant's medical records and examined him. (JE 7, pp. 67-70) Dr. Neff documented claimant reported he injured his arm and left shoulder during a fall at work on April 6, 2019, and he complained of pain in

his left shoulder and numbness and tingling in the medial aspect of his forearm. (JE 7, p. 67) Dr. Neff opined:

> Mr. Dhabolt still has trouble with his left shoulder. He has been a weightlifter for a long time and denied any trouble with the left shoulder prior to his slip and fall. He says when he grabbed the object when he fell, that the right arm ripped up in the area and he immediately had pain in the biceps and had immediate pain in the left shoulder.
>
> I would recommend an EMG study to be performed for the left cubital tunnel syndrome and also a sensory careful exam done by a physiatrist or someone expert in this field for the medial antebrachial nerve.
>
> Mr. Dhabolt has had subacromial steroid injection in the left shoulder. He is still having symptoms and forward flexion impingement maneuver produces symptoms, although the empty can test does not show severe changes.
>
> In my opinion he has limited function of the medical [*sic*] antebrachial cutaneous nerve and also has impingement syndrome of the shoulder, likely the direct result of his work-related injury.
>
> I am not able to determine impairment at this time because we do not have documentation of the nerve function in the left arm. Although he has fairly decent motion in the left shoulder, he still is having active symptoms. I think if these symptoms persist significantly, that surgical arthroscopy of the left shoulder would be a consideration.
>
> Consequently, I do not think he is at maximum medical improvement and I cannot attribute impairment.
>
> I would recommend an EMG study first be done by an expert electromyographer and we need to consider whether or not his symptoms are severe enough to warrant arthroscopic left shoulder surgery.

(JE 7, pp. 69-70)

Dr. Neff did not document that claimant complained of neck pain or neck problems. (JE 7, pp. 57-70) Dr. Neff did not document that he observed cervical spine pain or other cervical spine problems on exam. (JE 7, pp. 67-70)

Claimant returned to Dr. Neff on December 4, 2019, for treatment. (JE 7, pp. 71-72) During the appointment, Dr. Neff noted the following:

> [t]he patient says he is having significant pain in his neck. He also has numbness and tingling in his right arm. He says he has numbness over the lateral antebrachial cutaneous nerve distribution on the left arm and he

> has good sensation beginning at about the dorsum of the wrist where the cutaneous nerve stops its innervation and the radial nerve takes over.
>
> On exam, he has a strong empty can test on the right. He is muscled and bulky and he can lift me off the chair with his right arm. His left dominant arm is much weaker and he has painful empty can test. His active motion is fairly decent and he can elevate to about 160. If he tries to abduct and go into internal rotation and extension, he has nonradicular pain.
>
> He is having significant pain in his neck.
>
> This radiates down to about the T2 level on both sides in almost a Shaw type pattern.

(JE 7, pp. 71-72)

Dr. Neff assessed claimant with an injury of the left upper arm and recommended cervical spine MRI and an electromyography study of both arms "especially in the left antebrachial cutaneous nerve." (JE 7, p. 72)

On December 4, 2019, claimant underwent cervical spine x-rays and cervical spine MRI ordered by Dr. Neff. (JE 5, p. 44; JE 7, p. 76-77) In the x-ray report, the reviewing radiologist listed an impression of "mild mid-cervical degenerative change without acute appearing bony abnormality." (JE 5, p. 44; JE 7, p. 76) In the cervical spine MRI report, the reviewing radiologist listed an impression of "[d]egenerative changes of the cervical spine most pronounced at the left C4/C5. Findings should be correlated with symptoms of left L5 radiculopathy." (JE 7, p. 77)

On January 4, 2020, claimant reported he was using a crank at work to open a door and his right hand slipped and his bicep struck a pole, causing tingling and pain in his bicep area. (JE 9, p. 101) Claimant was diagnosed with a right biceps tendon rupture and requested a follow-up appointment with Dr. Neff. (JE 1, pp. 5-6, 20; JE 9, p. 101, 104-06)

Claimant underwent electromyography with Celeste Miller, M.D., on January 10, 2020. (JE 7, p. 79) Dr. Miller noted claimant complained of neck pain and right hand "D4 and D5 numbness radiating up the arm" and left arm numbness from the elbow down to the hand. (JE 7, p. 81) Dr. Miller opined the study "reveals evidence of C5 and C6 radiculopathy on the left." (JE 7, p. 82)

On January 20, 2020, claimant returned to Dr. Neff complaining of "pain down his left arm with significant pain in his neck." (JE 7, p. 91) Dr. Neff noted claimant had recently injured his right arm and he had been referred for treatment. (JE 7, p. 91) Dr. Neff stated he was "concerned about [claimant's] neck because his EMG study shows a left C5 and C6 radiculopathy. This can certainly be the result of the fall as well," and documented claimant has foraminal narrowing and L4-L5 and facet changes at C5-6,

noting "[t]he worst changes are on the left side at C4-C5 which would be consistent with his symptoms." (JE 7, p. 91)

Claimant was referred to Jeffrey Rodgers, M.D., an orthopedic surgeon, for his right arm injury. (JE 6, p. 55) During his first appointment with Dr. Rodgers on January 22, 2020, claimant stated "he was cranking up the back of a machine at work and slipped and reached to catch himself with his right arm and felt a pop." (JE 6, p. 55) Dr. Rodgers assessed claimant with a right distal bicep tendon rupture, and on January 28, 2020, Dr. Rodgers performed a reconstruction of claimant's right distal biceps tendon with semitendinosus allograph. (JE 6, p. 56; JE 8) Dr. Rodgers documented the findings at surgery showed claimant's condition to be chronic, but opined claimant could have sustained the injury at the time of the April 2019 injury, but certainly not in January 2020. (JE 6, p. 61) Dr. Rogers did not note that claimant complained of neck pain or neck problems during his treatment.

On May 20, 2020, claimant returned to Dr. Neff reporting he was still having trouble with his neck and left shoulder, with numbness and tingling in his left arm. (JE 7, p. 95) Dr. Neff assessed claimant with neck pain, opined "the injury to his neck and his both shoulders are related to the injury as he described it although I have not seen that with initial injury report" and recommended a referral to a neurosurgeon, and for an evaluation of his left shoulder by an orthopedic surgeon. (JE 7, p. 95)

On June 3, 2020, claimant attended an appointment with Judith Nayeri, D.O., an occupational medicine physician with Des Moines Occupational Medicine. (JE 1, pp. 5-6) Dr. Nayeri documented claimant told her that since April 2019 he has had to drive for hours and he experiences shooting pain in his neck and both arms caused by the April 2019 fall. (JE 1, p. 5) Dr. Nayeri noted claimant's medical records only documented problems with his left arm and not his neck or other arm. (JE 1, p. 5) Dr. Nayeri assessed claimant with bilateral arm pain with numbness and tingling and opined causation with respect to the reported symptoms of bilateral arm pain and numbness was undetermined at this time. (JE 1, p. 6)

On June 26, 2020, Jon Yankey, M.D., an occupational medicine physician with Des Moines Occupational Medicine performed an IME records review for defendant. (JE 1, pp. 7-10) Dr. Yankey noted claimant sustained injuries to his left elbow, left shoulder, and low back as a result of the April 8, 2019 work injury, and he noted claimant was discharged from treatment and placed at maximum medical improvement for all three injuries on August 19, 2019. (JE 1, p. 9) Dr. Yankey documented claimant reported a second injury on January 4, 2020, and he had been diagnosed with a distal right biceps tendon rupture, he underwent surgery and he was released to full duty several months later. (JE 1, p. 9)

Dr. Yankey agreed claimant's reported bilateral arm pain and numbness is coming from his neck. (JE 1, p. 9) Dr. Yankey noted x-rays and cervical MRI "revealed mild degenerative joint disease with uncovertebral spurring and facet arthropathy," with the most pronounced degenerative changes at C4-C5, with no evidence of stenosis. (JE

1, p. 9) Dr. Yankey also noted electromyography of both arms revealed cervical radiculopathy at C5 and C6. (JE 1, p. 9) Dr. Yankey opined claimant's neck pain and bilateral arm pain and numbness are the result of degenerative joint disease and degenerative disc disease of the cervical spine with secondary cervical radiculopathy, which are part of the normal aging process and are not related to a specific incident or injury. (JE 1, pp. 9-10) Dr. Yankey further elaborated:

> [i]t is my opinion, with a reasonable degree of medical certainty, that Dr. Dahbolt's current bilateral arm and neck pain is not related to his injury on 04/08/2019. After a careful review of the medical records, Mr. Dhabolt never reported neck pain at any of his multiple office visits to any of the providers, Mr. Dhabolt reported left shoulder pain at those visits which was felt to be from left shoulder impingement syndrome, and which resolved with conservative treatment. Mr. Dhabolt reported tingling initially only in his left elbow and forearm, and then later on his right forearm during the course of treatment for his injuries. At his last visit at UPH-DM Occupational Medicine, Mr. Dhabolt again reported tingling only in his left elbow and forearm. However, Dr. Han, orthopedist, who treated Mr. Dhabolt's left elbow injury, stated that he could not attribute ulnar nerve symptoms to the original injury or to the surgery for that injury. In addition, the EMG/NCS performed on 01/10/2020 revealed evidence of radiculopathy, but did not reveal evidence of entrapment syndromes in his elbows or wrists. Lastly, the characteristics of Mr. Dhabolt's current bilateral arm and shoulder pain are not similar to the left elbow pain, left shoulder pain, and bilateral forearm and hand numbness which was documented in the records for his 04/08/2019 injury. Thus, for these reasons, I feel that Mr. Dhabolt's current bilateral arm and shoulder pain is not related to his injury on 04/08/2019.

(JE 1, p. 10) Even though he found claimant's current neck and bilateral arm and shoulder pain were not related to the April 8, 2019, work injury, Dr. Yankey recommended a referral to Lynn Nelson, M.D. for evaluation and recommended treatment options. (JE 1, p. 10)

On October 8, 2020, Dr. Nelson, an orthopedic surgeon, performed an IME of claimant for defendant regarding claimant's complaints of posterior neck pain and left shoulder pain. (JE 6, p. 63) Dr. Nelson documented claimant reported his symptoms began on April 8, 2019, when he fell in a bathroom at work and sustained a left biceps tendon tear. (JE 6, p. 63) Dr. Nelson reviewed claimant's medical records, including his imaging, and examined him. (JE 6, pp. 63-66) Dr. Nelson listed an impression of right trapezial pain, left shoulder pain, left anterior forearm paresthesia complaints, and right ulnar, forearm, and hand paresthesia complaints. (JE 6, p. 65)

Dr. Nelson opined:

> I explained that in regards to his cervical spine, I do not appreciate significant structural or neurologic problems. His upper extremity neurological exam was unremarkable. His cervical spine plain films and MRI scan are basically unremarkable for age. Some of his records note degenerative changes, but again I do not appreciate significant appearing degenerative changes.
>
> I explained that I do not recommend cervical spine intervention. I certainly do not appreciate any indication for cervical spine injections, let alone surgical treatment.
>
> A letter to myself from Mary Marshall with EMC included multiple inquiries. The following are my opinions, with a reasonable degree of medical certainty, regarding Donald Dhabolt and his reported work injury on or about 4/8/19:
>
> 1. I do not appreciate cervical spine cause for his bilateral arm pain or paresthesia complaints.
>
> 2. The patient did not sustain material injury to his cervical spine.
>
> 3. The fall of 4/8/19 did not significantly light up or aggravate his cervical spine.
>
> As above, I do not recommend cervical spine treatment and have no other significant recommendation for his complaints.

(JE 6, p. 66)

On April 28, 2021, Dr. Neff conducted an IME for claimant. (Ex. 1) Dr. Neff documented claimant reported the following on April 8, 2019:

> . . . he and his boss went in a restroom and the floor was slick with hand sanitizer and he slipped and fell. He states that he grabbed with both arms, his feet went out from underneath him, and he fell backwards hitting his head and neck that both of his arms were injured. His most significant pain was on the left side but he had pain in his neck and pain on the right.

(Ex. 1, p. 1)

This is the first documentation in the medical record that claimant reported hitting his head and neck on April 8, 2019. No other medical providers have recorded this history.

Dr. Neff noted:

> Mr. Dhabolt has not had an MR scan or cervical spine studies. EMG study shows nerve root entrapment, and this needs further workup. In my opinion, he has strength loss in the left arm secondary to biceps repair. Using the 5th Edition of the AMA Guides there is no specific annotation as a result of a strength loss, especially when it is difficult to compare right to left sides. He has full motion.
>
> In your questions, you have asked if his work for the City of Des Moines [sic]. Mr. Dhablolt [*sic*] says that he was used to fairly vigorous work and heavy activities and after he slipped and fell he had pain, pain in both arms, and subsequently underwent distal biceps repair on the left and distal biceps repair on the right with allograft. He denies any previous symptoms prior to his work-related fall.
>
> Based on that history, it is my opinion that his symptoms in the left elbow, right elbow, and cervical spine are related to his work activity and the fall which occurred while he was in the work circumstance. In my opinion, he is permanently restricted from doing the type of heavy lifting he did prior to his biceps tears.
>
> He has ulnar nerve symptoms on both sides. He did not have a MR scan of his cervical spine. In question 4, you have asked about further treatment and workup. I would recommend EMG study to both upper extremities. I would recommend MR scan of his cervical spine.

(Ex. 1, p. 4)

At the arbitration hearing claimant testified as follows regarding April 8, 2019:

> I was going into lunch at Casey's General Store and a workmate, went in to wash our hands and go to the bathroom. After I washed my hands, I had walked into a stall. Somebody had put some kind of slippery substance on the ground all over. My legs shot out from under me. I tried to grab the handicap rails to keep myself from falling, I guess.
>
> I came down on the front of a toilet on my arms – with my arms, and my back and my head hit the ground. My feet came down last.

(Tr., p. 17)

The deputy commissioner found claimant to be highly credible at hearing finding "[h]is testimony was consistent with other portions of the record including contemporaneous medical records." (Arbitration Decision, p. 2) Following my de novo review of the record I respectfully disagree. Claimant's testimony differs from Dr. Neff's

account of what claimant told him, and vastly differs from what Bolton recorded claimant reported on the day of the injury.

In assessing claimant's credibility, I considered whether claimant's testimony was reasonable and consistent with other evidence I believe, whether he had made inconsistent statements, his knowledge of facts, and his interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990).

Claimant has an obvious interest in the outcome of the case. Claimant testified he informed his treating medical providers he was having neck symptoms following the injury.

During cross-examination defendant's attorney inquired about when claimant first began experiencing neck symptoms and when he reported the symptoms:

> Q. Okay. And so did you begin experiencing symptoms in your neck immediately after your fall?
>
> A. To be absolutely honest, I was in so much pain from the bicep that I'm not 100 percent sure. After a couple of days, I definitely felt a lot of pain in my back and the doctor that I had seen from UnityPoint said that it was just, you know, from trauma.
>
> Q. Okay. And so when did you first report your symptoms – the pain in your neck?
>
> A. I mean, right away.
>
> Q. Okay. So you reported that on your first visit to the City Clinic?
>
> A. I don't – I can't really tell you if I did say – what I said to them. Like I said, I was in a lot of pain. I just tore my bicep all the way off.
>
> Q. Sure. And did you report your neck pain to any other providers over the course of your treatment?
>
> A. Yeah, to Dr. Han, which was my surgeon, to my physical therapist, to basically every doctor I talked to. But mostly I talked to Dr. Han because he was my surgeon, so – but I talked to him about it every time.

(Tr., pp. 36-37)

I find claimant's testimony evasive. When asked about when he first developed symptoms in his neck, claimant testified he had a lot of pain in his back. Claimant's contemporaneous medical records do not document he reported he hit his head or neck when he fell on April 8, 2019, or that he was experiencing neck pain or symptoms.

Claimant's contemporaneous medical records document claimant reported having low back pain and he was treated for a low back strain.

Claimant testified he reported his neck problems to every medical provider, including his physical therapist. This testimony is not supported by the record.

Claimant treated with Des Moines Occupational Medicine for his injuries. (JE 1) During an appointment Dr. Nayeri on June 3, 2020, claimant reported that since April 2019 he has had to drive for hours and he experiences shooting pain in his neck and both arms caused by the April 2019 fall. (JE 1, p. 5) Dr. Nayeri documented claimant's medical records only documented problems with his left arm and not his neck or other arm. (JE 1, p. 5)

Claimant testified at hearing he told Dr. Han he was having problems with his left shoulder and neck and he "just told me that he wasn't able to do anything about that, that it would get better with time." (Tr., pp. 18-19) Dr. Han's records do not document claimant made any complaints about his neck. His records do document claimant complained of shoulder and back problems, and Dr. Han recommended he speak with the carrier about a referral to a shoulder and back specialist. Claimant was then referred to Dr. Lin. Claimant's medical records do not document he complained to his physical therapist or to Dr. Lin about neck symptoms.

During Dr. Neff's second opinion exam in October 2019, Dr. Neff did not document claimant reported he was having any neck problems or pain. It was not until December 2019, that claimant first reported his neck pain and problems to Dr. Neff, a month before the second injury.

The first documentation in the medical record claimant reported he hit his head and neck when he fell was when he attended the IME with Dr. Neff in 2021. Dr. Neff did not note this history when he first examined claimant in October 2019, and as noted above, claimant's 2021 report of the injury to Dr. Neff is quite different from his account to Bolton on the date of the accident.

I do not believe claimant reported hitting his head or neck at the time of the accident, or that he reported he was having neck pain and problems to his various treating providers. Based on the foregoing, I do not find claimant to be a credible witness. I do not believe he hit his head or neck at the time of the April 8, 2019 accident, or that he reported he was having problems with his cervical spine at the time of the accident.

The deputy commissioner found Dr. Neff's opinion on causation to be the most persuasive. Again, I respectfully disagree.

Dr. Neff ordered cervical spine MRI and cervical spine x-rays, which were performed on December 4, 2019. It appears Dr. Neff did not review the medical records for the tests he ordered at Broadlawns Medical Center, where he works, in reaching his conclusions. I do not find his opinion persuasive.

Dr. Nelson reviewed claimant's medical records, including his cervical spine x-rays and cervical spine MRI in reaching his conclusions. Dr. Nelson opined claimant did not sustain a material injury to his cervical spine caused by the April 8, 2019, work injury, and that the fall did not light up or aggravate any preexisting cervical spine condition, and Dr. Nelson stated he did not recommend any treatment for claimant's cervical spine. (JE 6, p. 66) Unlike Dr. Neff, Dr. Nelson reviewed all of the imaging in reaching his conclusions, which I find are supported by the record evidence.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 24, 2022, is affirmed in part, and is reversed in part.

For File 5068239 – Injury Date of April 8, 2019:

Defendant shall pay claimant 75 weeks of permanent partial disability benefits, commencing on August 12, 2019, at the stipulated weekly rate of seven hundred twenty-nine and 86/100 dollars ($729.86).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendant shall authorize treatment for claimant's left shoulder as recommended by Dr. Neff.

For File Number 20000505.01 – Injury Date of January 4, 2020:

Defendant shall pay claimant temporary total disability benefits from March 5, 2020, through April 5, 2020, at the stipulated weekly rate of six hundred eighty-four and 41/100 dollars ($684.41).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

For Both Files

Defendant shall reimburse claimant six thousand three hundred and 00/100 dollars ($6,300.00) for Dr. Neff's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of six hundred and 00/100 dollars ($600.00), and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 28th day of July, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Christopher Spaulding (via WCES)

Molly Tracy (via WCES)