BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEREMIAH COGGINS,

Claimant,

vs.

QUAD COUNTY CORN PROCESSORS,

Employer,

and

ACCIDENT FUND GENERAL INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5059597

ARBITRATION

DECISION

Head Note Nos.: 1108.50; 1402.30; 2803

STATEMENT OF THE CASE

Jeremiah Coggins, claimant, filed a petition in arbitration seeking workers' compensation benefits from Quad County Corn Processors, employer and Accident Fund General Insurance Company, insurance carrier as defendants. Hearing was held on September 7, 2018 in Des Moines, Iowa.

Jeremiah Coggins, Delayne Johnson, and Asif Malik all testified live at trial. The evidentiary record also includes joint exhibits JE1-JE6, claimant's exhibits 1-7, and defendant's exhibits A-G and J & K. Claimant objected to defendants' exhibit H and I because they were not served in a timely manner. Claimant's objection was sustained.

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 October 10, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury on October 5, 2016, which arose out of and in the course of employment?

2. The extent of temporary disability claimant sustained as a result of the injury.
3. The extent of permanent disability claimant sustained as a result of the injury.
4. Whether claimant's claim is barred by operation of Iowa Code section 85.23 for failure to provide timely notice of the injury to the defendants?
5. Whether claimant is entitled to payment of past medical expenses.
6. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Jeremiah Coggins, has alleged an October 5, 2016 repetitive trauma injury to his low back. He testified that the first time he gave notice to his employer of the alleged October 5, 2016 injury was in July of 2017. Mr. Coggins began working for Quad County Corn Processors ("Quad County") on June 15, 2009. Quad County is an ethanol production facility. The facility grinds, cooks, ferments, and distills corn to produce ethanol. During approximately the first three years of his employment Mr. Coggins worked as a cook operator, distiller, and boiler operator. His job duties required quite a bit of walking. He also needed to climb 30 to 50 foot ladders, shovel weights of 40-50 pounds, and carry as much as 80 pounds. Mr. Coggins held these three positions at different times during his employment, but he would also help in each position as needed. (Testimony; Def. Ex. B, p. 2; Def. Ex. A)

After approximately three and one half years at Quad County, Mr. Coggins moved to the position of "lead operator" for the night shift. The night shift worked from 5:00 p.m. to 5:00 a.m. Mr. Coggins usually worked four days on and then had four days off. His main responsibility as lead operator was to keep the plant running. Mr. Coggins monitored the plant by sitting at a computer and watching different screens which provided him information on the cook, distillation, and evaporation processes. Mr. Coggins admits that this portion of his job was sedentary. However, he also filled in at the plant performing the more physical jobs when the plant was short-staffed during the night shift. (Testimony)

Mr. Coggins testimony that he performed physical work during the night shift as a lead operator was corroborated by Shawn DuBord. Mr. DuBord also worked the night shift at Quad County. Mr. DuBord has worked as the backup lead for Mr. Coggins while he was out. Mr. DuBord stated that lead operators are asked to be able to perform all floor positions, including lifting and carrying a minimum of 70 pounds. The lead operator must also be able to bend, push and stoop to clean around and under equipment, climb stairs and ladders, work at heights, and be able to enter confined spaces. Mr. DuBord stated that when Quad County was short staffed he had to help fill in at the floor operator spot for cook. He also listed off numerous other duties consistent with the testimony of Mr. Coggins. (Cl. Ex. 2) Many of these duties are also listed in the lead operator job description. (Cl. Ex. 3, p. 1)

Mr. Coggins testified that he worked overtime for Quad County. When he worked overtime he was not performing the lead operator job, he was filling in at whatever job needed help. He might be filling in as cook operator, distillation, or cleaning. According to the payroll register, Mr. Coggins worked overtime during several weeks leading up to October 5, 2016. (Cl. Ex. 6, pp. 2-4)

Mr. Coggins testified that when he first worked as lead operator he did not have to do much physical work. However, as time went on, the job changed due to plant break downs, staff shortages, and an addition to the plant. During these times, he would fill in at whatever position was necessary to keep the plant running. This meant that he was doing many of the same physically demanding duties he performed during his first three and a half years at the plant. (Testimony; Ex. A, pp. 45-49)

Defendants deny Mr. Coggins sustained a work injury to his back. In support of their contention they assert that the lead operator job is not a physically demanding job. Delayne Johnson, the CEO of Quad County and Asif Malik, the COO of Quad County both testified about the duties of the lead operator. Mr. Malik testified that he never saw Mr. Coggins perform any physically demanding activities or climb any ladders. Both Mr. Johnson and Mr. Malik worked the day shift. Although Mr. Johnson and Mr. Malik were both present during a small portion of the night shift, it was not on a regular basis or for the duration of the shift. Mr. Malik testified that he was usually there at the beginning of the night shift until around 6:00 or 6:30 p.m. There were times when he would get called to the plant at night if needed. This did not happen often but when it did occur he would be there for anywhere from 2 to 10 hours. Mr. Johnson typically left work by around 5:30 p.m. (Testimony) Because Mr. Johnson and Mr. Malik did not work the night shift and did not observe Mr. Coggins at work on a regular basis, I do not find their testimony to be as persuasive as the statement of Mr. DuBord. Mr. DuBord worked the lead operator position on the night shift. Thus, his description of what was required of the lead operator on the night shift is given great weight.

Prior to working for Quad County, Mr. Coggins served in the U.S. Army from 1997 to 2002. There are records from the Veterans Affairs (VA) beginning in 2010. Mr. Coggins testified that while he was in the military he did strain his back one time in 1999. Mr. Coggins was discharged from the military in 2002. At the time of his discharge he was assigned some disability, but none for his back. (Testimony; JE6)

Mr. Coggins testified that his current back pain came on gradually. He first sought treatment at Horn Memorial Hospital on October 2, 2014. He reported back and leg pain for the past two months. He was not quite sure exactly what he did to flare his pain up but it started two months ago, with sacroiliac pain bilaterally, worse in the left SI joint. He saw a chiropractor but did not receive any relief. Mr. Coggins reported that his pain was "worse with sitting and it is his job." (JE1, p. 1) He told the doctor he did a lot of computer work and was sitting quite a bit. The diagnosis was back pain. Lumbar back pain for the last two months with radicular leg pain bilaterally and bilateral leg weakness. The doctor ordered x-rays and MRI of the lumbar spine. (JE1, pp. 1-3)

The impression from the October 2014 MRI was: (1) bilateral spondylolysis L4 and L5 without evidence of spondylolisthesis, (2) disc desiccation and degeneration L5-S1 level, (3) mild degenerative spondylosis L5-S1 level with mild bilateral neural foraminal bony encroachment, and (4) no compressive soft disc disease. (JE1, p. 4)

On October 13, 2014, Mr. Coggins again reported having quite a bit of pain while sitting in his chair or in his car. (JE1, pp. 7-8) When he was seen again on October 21, 2014 he reported that he worked at a desk. He is able to sit for about 45 minutes and walks for up to an hour. (JE1, p. 12)

Mr. Coggins saw Steven J. Meyer, M.D., on October 15, 2014. Mr. Coggins reported that over the past several months he had been employed in a more sedentary position and had gained significant weight. The doctor reviewed the MRI. His assessment included L5-S1 spondylolysis without spondylolisthesis. He recommended conservative treatment, including injections, physical therapy. He also recommended exercise and weight loss. (JE2, pp. 1-3)

On October 5, 2016, Mr. Coggins saw neurosurgeon, Matthew Johnson, M.D. The surgeon noted that Mr. Coggins had a long history of back pain that was getting progressively worse for the past four years. His pain is aggravated by heavy activity and carrying heavy objects. His pain also bothered him when he was in one position for a long period of time. Mr. Coggins explained that if he was sitting at work for a long time, he would have to get up and move around. Also, if he was standing, walking, and doing heavy work for a long time, he needed to sit to feel better. Dr. Johnson noted that he had received four rounds of multiple epidural and other spinal injections, with only a couple days' worth of relief. Mr. Coggins had been on hydrocodone for the last year, up to three per day, and this was no longer very effective. Mr. Coggins had previously been told that weight loss would help. He then proceeded to lose 45 pounds, but his pain persisted. Dr. Johnson felt Mr. Coggins was a good candidate for lumbar spinal fusion. Mr. Coggins was eager to proceed with surgery. (Testimony; JE2, pp. 7-9)

Dr. Johnson performed a spinal fusion from L4 to S1 on January 30, 2017. The pre-operative and post-operative diagnoses were L4-5, L5-S1 isthmic spondylolisthesis. Mr. Coggins worked until the day of his operation. Dr. Johnson restricted Mr. Coggins and he was off work following the operation. Mr. Coggins applied for and received short term disability benefits. (JE3, pp. 6-7; Testimony)

On May 31, 2017, Mr. Coggins sent an email to Delayne Johnson, CEO of Quad County because he was not receiving long-term disability benefits. Mr. Coggins acknowledged that there were certain parts of his job that were sedentary in nature. However, he also stated that he was out on the floor a lot doing the same duties as the other ops. Mr. Coggins expressed his concern about a potential slip and fall at work taking him back to square one with his recovery. He expressed his frustration with not having any income since April 30, 2017. (Def. Ex. C; Testimony)

On June 1, 2017, the long-term disability insurer, Principal Financial Group, issued a letter to Quad County. Principal determined that Mr. Coggins was not eligible for disability benefits. Mr. Coggins testified that someone at Quad County said his job was sedentary and that is why he was denied long-term disability benefits. It was at this point that Mr. Coggins sought legal advice. Mr. Coggins testified that prior to meeting with his attorney he did not understand the concept of a repetitive trauma workers' compensation claim. (Testimony; Def. Ex. D)

On July 23, 2017, the Department of Veterans Affairs received a Notice of Disagreement from Mr. Coggins about a prior decision regarding his disability. Mr. Coggins testified that he was awarded and still receiving disability benefits from the VA for service connected disability to his back. The disability is related to his spinal fusion. Mr. Coggins testified that he ran out of options financially and that is why he sought disability benefits for his back from the VA. The VA issued their decision on September 23, 2017. (Testimony; Def. Ex. J, p. 20)

Dr. Johnson released Mr. Coggins to work with a 50-pound lifting restriction on July 25, 2017. However, Mr. Coggins told the doctor that he did not feel he was going to be able to perform with this restriction given the discomfort in his back. Dr. Johnson recommended a functional capacity evaluation (FCE) to gauge Mr. Coggins' ability to return to work. (JE2, pp. 20-42; Testimony)

Mr. Coggins underwent two rounds of physical therapy. He then had an FCE on November 8, 2017. Mr. Coggins performed at the light physical demand level in the FCE. The FCE noted that he demonstrated consistency of effort during the evaluation. (Testimony; Cl. Ex. 1, p. 8)

At the request of his attorney, Mr. Coggins saw Sunil Bansal, M.D., for an IME on June 28, 2018. Dr. Bansal examined Mr. Coggins and reviewed the documentation provided to him. Dr. Bansal's diagnosis was aggravation of L4-L5 spondylolisthesis. Dr. Bansal opined that as a result of Mr. Coggins' repetitive work activities he sustained an injury to his back which culminated on October 5, 2016. Dr. Bansal felt October of 2016 is the timeframe where his body was no longer able to sustain or adapt. He stated that the job duties at Quad County, on a cumulative basis, were "highly pathognomonic for Mr. Coggins' particular type of lumbar spine pathology." (Cl. Ex. 1, p. 11) He placed Mr. Coggins at maximum medical improvement (MMI) as of June 14, 2017, the date of his last appointment with Scott Feese, PA-C. Dr. Bansal noted he was status post L5-S1 transforaminal lumbar interbody fusion, L4 through S1 posterolateral spinal fusion and assigned him 22 percent whole person impairment. He agreed with the restrictions assigned by the November 8, 2017 FCE which placed him in the physical demand level of light work. (Cl. Ex. 1)

First, a determination must be made regarding causation. Dr. Bansal is the only medical expert to provide an opinion regarding causation in this case. Dr. Bansal has opined that as a result of Mr. Coggins' repetitive work activities he sustained an injury to

his back which culminated on October 5, 2016. I find this unrebutted causation opinion to be persuasive.

I found the testimony of Mr. Coggins and the statement of Mr. DuBord to be persuasive. The evidence supports Mr. Coggins' contention that his job was more than just sedentary desk work. Based on this, combined with Dr. Bansals' unrebutted causation opinion, I find that Mr. Coggins has sustained his burden to show by a preponderance of the evidence that his back injury arose out of and in the course of his employment with Quad County.

We now turn to the issue of whether Mr. Coggins gave timely notice of his work injury to the defendants. Claimant contends that his cumulative injury manifested on October 5, 2016. I find that the evidence supports a manifestation date of October 5, 2016. A review of the October 5, 2016 clinical note demonstrates that by October 5, 2016, Mr. Coggins knew that he had an injury to his back and that there was a causal relation of his back to his employment. On that date, he saw a neurosurgeon and reported work activities that bothered his back. He also reported that, despite treatment, his back had been getting progressively worse for the past four years. I find that both the fact of his injury and the causal relationship to his work were plainly apparent to Mr. Coggins on October 5, 2016.

Mr. Coggins testified at hearing that the first time he told defendants that he believed his back problems were related to his work was in July of 2017. Mr. Coggins admits that he did not tell the employer of the work injury within 90 days of the occurrence of the injury. However, he contends that prior to seeking legal advice he was unaware of the concept of cumulative trauma and his claim is saved by the discovery rule. I do not find this argument to be persuasive. I find that Mr. Coggins knew or should have known that his injury was serious enough to have a permanent adverse impact on his employment on October 5, 2016. This is the date of the appointment with Dr. Johnson. At this appointment, the neurosurgeon discussed the conservative treatment that Mr. Coggins had received and the lack of benefit he had received. The doctor noted the four rounds of multiple epidural and other spinal injections, and the use of hydrocodone for the last year. Mr. Coggins had even lost 45 pounds in an attempt to improve his back pain. Despite this treatment, the back pain was getting progressively worse. It was on this date that Dr. Johnson suggested Mr. Coggins undergo a spinal fusion from L4-S1. After a discussion about the surgery, Mr. Coggins was eager to undergo the operation. I find that these facts demonstrate Mr. Coggins either knew or should have known that his physical condition was serious enough to have a permanent adverse impact on his employment as of October 5, 2016. Because Mr. Coggins did not provide notice to the defendants within 90 days of October 5, 2016, no compensation shall be allowed for the injury.

Even if one is not convinced that October 5, 2016 is the date that Mr. Coggins knew or should have known that his physical condition was serious enough to have a permanent adverse impact on his employment, he most certainly should have known by January 30, 2017 when Dr. Johnson performed the spinal fusion and took Mr. Coggins

off of work. Even utilizing the January 30, 2017 date, Mr. Coggins still failed to provide notice to his employer within 90 days.

Because Mr. Coggins did not provide timely notice of the work injury all remaining issues are rendered moot.

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 fact, I conclude claimant carried his burden of proof to demonstrate by a preponderance of the evidence that he sustained an injury to his back which arose out of and in the course of his employment on October 5, 2016.

However, defendants have asserted that claimant's claim is barred by operation of Iowa Code section 85.23. The date of injury in this case is October 5, 2016. The applicable Code states:

> 85.23 Notice of injury — failure to give. Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf

> or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed.

Iowa Code section 85.23.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Based on the above findings of fact, I conclude that claimant's claim is barred by operation of Iowa Code section 85.23. In the present case, Mr. Coggins did not report the work injury to his employer until July of 2017. I conclude that Mr. Coggins knew or should have known that his injury was serious enough to have a permanent adverse impact on his employment as of October 5, 2016. I further conclude that even if he did not know by this date, he most certainly should have known by January 30, 2017, the date of the spinal fusion and the date he was taken off of work. By the time Mr. Coggins made a claim for workers' compensation benefits he had already received extensive conservative treatment for his back and undergone a multi-level spinal fusion. Additionally, Mr. Coggins had selected all of his treating physicians, including the neurosurgeon who performed the fusion. Because Mr. Coggins waited until July of 2017 to make a claim for workers' compensation benefits the defendants did not have the opportunity to promptly investigate his claim, nor did they have the opportunity to accept his claim and control the medical treatment. Furthermore, there is no legal authority to support claimant's argument that his claim should be saved because he was unaware of the concept of cumulative trauma. The Iowa Code clearly states a claimant shall provide notice of an injury within 90 days from the date of the occurrence of the injury or no compensation shall be allowed. I conclude that claimant failed to provide notice of the injury within 90 days and therefore, no compensation shall be allowed to Mr. Coggins.

Claimant is seeking an assessment of costs. I conclude that claimant was not successful in his claim. I exercise my discretion and do not assess costs against the defendants. Each party shall bear their own costs.

Because claimant's claim is barred by operation of Iowa Code section 85.23 all remaining issues are rendered moot.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

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 2nd day of January, 2019.

ERIN Q. PALS
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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.