

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHEICKNA CAMARA,

Claimant,

vs.

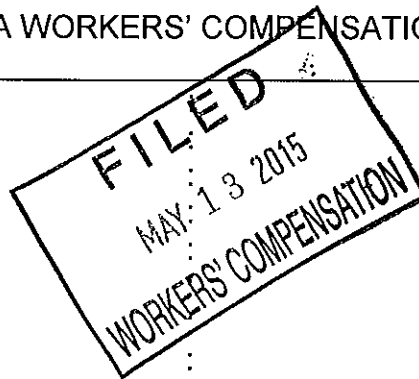
MANPOWER TEMPORARY
SERVICES,

Employer,

and

NEW HAMPSHIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5046676

ARBITRATION

DECISION

Head Note Nos.: 1801, 1803, 2500,
2501, 2700

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Cheickna Camara, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on January 29, 2014. Claimant alleged he sustained a work-related injury on December 12, 2012. (Original notice and petition.)

Manpower Temporary Services and its workers' compensation insurance carrier, New Hampshire Insurance Company, filed their answer on February 14, 2014. They admitted the occurrence of the work injury. A first report of injury was filed on December 24, 2012.

The hearing administrator scheduled the case for hearing on April 2, 2015 at 8:30 a.m. The hearing took place in Des Moines, Iowa at the Iowa Department of Workforce Development. The undersigned appointed Ms. Julie M. McCurnin, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Ms. Amy Vannoni, significant other, also testified on behalf of claimant.

The parties offered exhibits. Claimant offered exhibits marked 1 through 9 and 11. Defendants offered exhibits marked A through I. All proffered exhibits were admitted as evidence in the case. Post-hearing briefs were filed on April 17, 2015. The case was deemed fully submitted on that date.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury.
2. Claimant sustained an injury on December 12, 2012 which arose out of and in the course of his employment;
3. The work injury is a cause of both temporary and permanent disability;
4. The weekly benefit rate for which benefits should be paid is \$420.45 per week;
5. Defendants have waived any affirmative defenses they may have had available;
6. Defendants are entitled to a credit for all weekly benefits paid; and
7. The parties are able to stipulate to the costs allowed by law.

ISSUES

The issues presented are:

1. The extent of permanent disability benefits to which claimant is entitled, if any;
2. Whether claimant is entitled to certain medical expenses pursuant to Iowa Code section 85.27;
3. Whether claimant engaged in unauthorized medical care, and if so, whether defendants are liable for the payment of those medical costs;
4. Whether claimant is entitled to alternate medical care;
5. Whether claimant is entitled to a running award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This deputy, after listening to the testimony of claimant and the other witness at hearing, after judging the credibility of all, and after reading the evidence, and the post-hearing briefs makes the following findings of fact and conclusions of law:

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

Claimant is a 55-year-old male who is right-hand dominant. He resides with his significant other, Ms. Amy Vannoni in Ottumwa, Iowa. They have known one another for 11 years. Claimant is a daily smoker.

Claimant commenced his employment with Manpower Temporary Services on October 15, 2012. Claimant was hired to work at Revstone Castings in Fairfield, Iowa. Revstone Castings is a foundry. Claimant was required to grind and break steel parts with the use of a hammer. The work was very labor intensive with respect to the use of the upper extremities. Claimant only held the foundry job until December 2012.

Early into his employment, claimant developed numbness and tingling in both of his hands and arms. Initially, defendants sent claimant to Occupational Health in Ottumwa, Iowa. The appointment occurred on December 18, 2012. (Exhibit 3, page 34) Claimant was diagnosed with bilateral carpal tunnel syndrome. (Ex. 3, p. 36)

On January 17, 2013, Wesley Smidt, M.D., an orthopedic surgeon, examined claimant for bilateral wrist pain. Dr. Smidt diagnosed claimant with:

1. Bilateral carpal tunnel syndrome clinically and by EMG/NCV.
2. EMG evidence of bilateral cubital tunnel syndrome with mild clinical findings.

(Ex. 5, p. 39)

On January 30, 2013, Dr. Smidt performed a right carpal tunnel release. (Ex. 5, pp. 42-43) Claimant complained of tendinitis in his forearm too. (Ex. 5, p. 47) He actively engaged in therapy, post-surgery.

Dr. Smidt performed a left carpal tunnel release on March 13, 2013. Claimant reported some numbness several weeks after the surgery. (Ex. 5, p. 51) He engaged in physical therapy for his left hand and upper extremity. (Ex. 5, p. 54) He also wore a brace on his hand. (Ex. 5, p. 56)

On May 16, 2013, Dr. Smidt examined claimant's upper extremities. The surgeon found:

EXAMINATION: Exam shows that he has continued fullness of his right wrist and hand. He is able to make a complete grip with both right and left hand. There is minimal fullness or swelling in the left hand and wrist.

(Ex. 5, p. 56)

On September 30, 2013, Dr. Smidt again examined claimant in the clinic. Claimant complained of pain primarily in the forearms. (Ex. 5, p. 59) The surgeon found:

EXAMINATION: I would state that the exam today shows that he has full wrist range of motion. He can fully grip and extend fingers. He does not have swelling in the hands or wrists. He has fairly global tenderness in the forearms on both the left and right side. He has full elbow range of motion including flexion, extension, pronation and supination. He has well healed incisions over the volar aspect of the wrist on both the left and right side.

(Ex. 5, p. 59)

Dr. Smidt opined permanent work restrictions were appropriate for claimant. (Ex. 5, p. 59) Dr. Smidt wrote in his notes, "I want to review his formal job description but I would put his permanent restrictions as avoiding forceful repetitive motions including grasping, pulling, etc. of both left and right hands and a lifting restriction of 10 – pounds." (Ex. 5, p. 59) The restrictions applied to both the right and the left hand. (Ex. 5, p. 61) The orthopedic surgeon advised claimant he could wear wrist splints as needed. (Ex. 5, p. 61) Dr. Smidt determined claimant reached maximum medical improvement (MMI) effective September 30, 2013. This was the last appointment claimant had with Dr. Smidt.

Dr. Smidt provided a zero percent permanent impairment rating according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Ed. (Ex. 5, p. 62) The orthopedic surgeon recognized claimant had continued pain in his wrists and especially in the forearms. Dr. Smidt acknowledged the pain spiked when claimant increased his activities. (Ex. 5, p. 62) For that reason, the physician imposed permanent work restrictions. (Ex. 5, p. 62)

Claimant testified both in his deposition and at his hearing that during his last visit with Dr. Smidt, the orthopedic physician informed claimant, there was nothing more to do in the form of treatment. The orthopedist advised claimant to seek additional treatment from his personal physician. Claimant also testified the statements were made in the presence of claimant's significant other, Amy Vannoni, and in the presence of the case manager, "Shelley" or "Sally."

At his hearing, claimant testified he contacted representatives of Manpower and explained he was still in pain but Dr. Smidt would not treat claimant. Nevertheless, Manpower did not provide any other medical treatment.

Ms. Amy Vannoni testified at the hearing she was present during claimant's last appointment with Dr. Smidt on September 30, 2013. Ms. Vannoni testified Dr. Smidt told claimant there was nothing else the physician could do for claimant in the way of treatment. Dr. Smidt advised claimant to seek treatment from his primary physician.

Dr. Smidt's medical records were silent as to the course claimant should take if he desired any other medical treatment. At the hearing, defendants did not provide any witnesses to rebut the testimony of claimant or Ms. Vannoni regarding the issue of additional care.

On January 10, 2014, claimant presented to his personal physician, Robert Blommer, M.D., at Mercy Ottumwa Medical Clinic. (Ex. 6, p. 64) Claimant complained of bilateral wrist pain. (Ex. 6, p. 64) Claimant complained of pain at the base of his right thumb on the dorsum of his right wrist. (Ex. 6, p. 64) Dr. Blommer referred claimant to an orthopedic specialist. (Ex. 6, p. 65)

Bradley Scott, D.O., an orthopedic surgeon at Ottumwa Health Group, examined claimant on February 14, 2014. Dr. Scott diagnosed claimant with:

BILATERAL HAND PAIN - - TINGLING AND PAIN FROM THE
THUMB TO ELBOW; AND DIFFICULTY WITH TRIGGER FINGER RT
MIDDLE FINGER

(Ex. 7, p. 70) Claimant was later diagnosed with bilateral epicondylitis and radial styloid tenosynovitis. (Ex. 6, pp. 72, 75)

Claimant underwent EMG/NCV testing on May 23, 2014. The test results were abnormal. (Ex. 7, p. 81) On June 18, 2014, Dr. Scott performed a recurrent right carpal tunnel release. (Ex. 7, p. 89) The left carpal tunnel release was performed on August 13, 2014. (Ex. 7, p. 97)

On September 25, 2014, Dr. Scott injected claimant's left lateral epicondyle with Depo-medrol. The patient tolerated the procedure well. (Ex. 7, p. 104) Claimant did not receive lasting benefits from the injection. On January 8, 2015, Dr. Scott performed bilateral ecrb injections. (Ex. 7, p. 110) On March 14, 2015, claimant underwent a debridement of the left ECRB tendon insertional area. A splint was placed over the left elbow. (Ex. 7, p. 114)

Exhibit 7, page 69 is a statement prepared by claimant's counsel but signed by Dr. Scott on March 23, 2015. The statement indicated:

I represent Mr. Camara with regards to a workers' compensation claim. It is my understanding that you have the following opinions arising

from your care and treatment of Cheickna. If the records indicate that the initial treating surgeon, Dr. Smidt, assigned causation for the bilateral cubital and carpal tunnel problems to the work related repetitive efforts as a metal grinder then you would concur. Therefore the necessity for your care and treatment for these bilateral upper extremity problems has likewise been related to this initial injury involving repetitive use of the upper extremities while grinding metal parts. Furthermore you currently have Cheickna restricted from any repetitive or heavy tasks with the upper extremities as a result of these conditions.

If the above accurately represents your opinions with regards to the aforementioned, please feel free to sign below. In the alternative, please feel free to draft a report of your own choosing.

(Ex. 7, p. 69)

This deputy finds Dr. Smidt informed claimant if he needed additional care, he should seek treatment from his primary or personal physician. Dr. Smidt had no additional treatment to offer claimant. Both claimant and Ms. Vannoni testified credibly about this matter. Their testimony was un rebutted.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant also testified he notified "Carrie" at Manpower he was still having issues with his bilateral hands once he had been released from the care of Dr. Smidt. (Ex. 1, pp. 45-47) Manpower did not provide any care to claimant. Defendants ignored claimant's request for medical treatment pursuant to Iowa Code section 85.27.

As a result, claimant followed the verbal advice of Dr. Smidt. Claimant sought medical treatment from his primary care physician, Dr. Blommer. Then the primary care physician referred claimant to the orthopedic specialist, Dr. Scott.

A referral by an authorized physician to another practitioner is generally found to be authorized care. Coleman v. Coleman Indus. Cleaning, 4 Iowa Indus. Comm'r Rep. 67 (1984). In the alternative, if an employer abandons claimant's care, claimant is within his rights to seek out his own care independent of the employer. See: Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

It is clear; defendants neglected to provide reasonable and necessary medical care to claimant for the treatment of his bilateral upper extremities. According to claimant's testimony, he did not seek medical treatment until he had obtained a medical assistance eligibility card from the Iowa Department of Human Services (Iowa Care). The exact date for the receipt of the card is unknown. The first appointment with Dr. Blommer was January 10, 2014.

Defendants are liable for all reasonable and necessary medical treatment for the bilateral upper extremities. Defendants shall reimburse the Iowa Department of Human Services for all expenses paid by the department/Iowa Care. Defendants shall reimburse claimant for any out-of-pocket expenses, including medical mileage.

The next issue in dispute is whether claimant is entitled to a running award from November 1, 2014 until such time as claimant has reached maximum medical improvement. Claimant has been actively treating from November 1, 2014 through the date of the hearing. He has not reached maximum medical improvement. Until such time, claimant is entitled to a running award in the stipulated amount of \$420.45 per week commencing from November 1, 2014.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant, a running award from November 1, 2014 until such time as claimant reaches maximum medical improvement; and said weekly benefits shall be paid at the stipulated weekly benefit rate of four-hundred twenty and 45/100 dollars (\$420.45) per week.

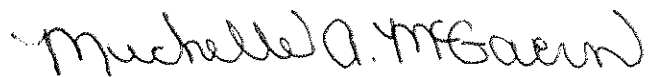
Accrued benefits shall be paid in a lump sum with interest as provided by law.

Defendants are liable for all reasonable and necessary medical expenses to treat the bilateral upper extremities, and the Iowa Department of Human Services/Iowa Care shall be reimbursed for all medical expenses the department made on claimant's behalf, plus claimant shall be reimbursed for any out-of-pocket expenses, including medical mileage.

Costs are assessed to defendants.

Defendants shall file all reports as required by this division.

Signed and filed this 13th day of May, 2015.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

CAMARA V. MANPOWER TEMPORARY SERVICES

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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.