BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH NELSON, Claimant, vs. NORTH IOWA RAILROAD CONSTRUCTION, Employer, and TECHNOLOGY INSURANCE CO., Insurance Carrier, Defendants.	File No. 5068146 ARBITRATION DECISION Head Note No.: 1402.30

STATEMENT OF THE CASE

Kenneth Nelson, claimant, filed a petition for arbitration against North Iowa Railroad Construction as the employer and its insurance carrier, Technology Insurance Company. Prior to the scheduled arbitration hearing, claimant's attorney moved to withdraw from representation. This case was stayed, the arbitration hearing continued, and Mr. Nelson was given an opportunity to object to the withdrawal of his attorney.

In the undersigned's order entering a stay and granting time for objection, the undersigned provided an admonition to claimant that he would need to secure alternate counsel in a short time-frame or prepare to represent himself because any evidence was frozen and the case would be ordered to be returned to the hearing docket expeditiously. Mr. Nelson did not comply with the undersigned's order and did not file a response or objection to his attorney's withdrawal.

After the time allowed for objection expired, the undersigned issued an order lifting the stay, granting the attorney withdrawal, and directing that the case be returned to the hearing docket. Claimant did not cooperate in the scheduling of the trial and defendants ultimately requested a hearing date in compliance with the order of the undersigned. Pursuant to this scheduling procedure, the agency issued a hearing assignment order scheduling this case for an arbitration hearing before the undersigned on December 18, 2020 at 1:00 p.m. Hearing was ordered to be conducted via a video platform using CourtCall.

Each of the orders since the filing of an application to withdraw has been mailed by the agency to Mr. Nelson using regular U.S. Mail as well as certified mail. Claimant has not accepted or signed for any of the certified mailings and those were return to the agency. However, none of the orders mailed using regular U.S. Mail have been returned as undeliverable by the postal service. It is found that the agency deposited these orders into the U.S. Mail using typical agency protocol and an authorized U.S. Mail receptacle. It is presumed that Mr. Nelson received the agency's mailings and orders via regular U.S. Mail.

Mr. Nelson has not complied with any of the agency's orders. He did not object or respond to the attorney withdrawal. Mr. Nelson did not cooperate in the scheduling of a trial date. He did not file an appearance or otherwise correspond or file anything with the agency. Mr. Nelson made no efforts to register with CourtCall to appear for the videoconference hearing on December 18, 2020, he did not contact the agency seeking assistance or a continuance, and he did not appear for the December 18, 2020 hearing.

Defendants appeared at the December 18, 2020 hearing through their attorney, Andrew Tice. Once it was apparent that Mr. Nelson had not appeared for the hearing, defendants moved to dismiss claimant's petition on multiple grounds. First, defendants moved for dismissal because claimant failed to appear for the hearing. Defendants also moved for dismissal due to claimant's violation of this agency's orders.

The undersigned accepted the oral motion of the defendants and found that Mr. Nelson was in default for his failure to appear for the December 18, 2020 hearing. The motion to dismiss was granted and claimant's original notice and petition was dismissed with prejudice as a result of claimant's default.

In the alternative, the undersigned also noted at the time of hearing that he would proceed to consider the merits of the claim as well. Mr. Nelson failed to appear and offered no exhibits or testimony at the time of trial. In reliance upon the fact that claimant was not offering any evidence, defendants similarly declined to offer any testimony or written evidence. The evidentiary record closed at the conclusion of the December 18, 2020 hearing and the case was fully submitted to the undersigned.

FINDINGS OF FACT

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

Claimant failed to appear or present any evidence at the time of the December 18, 2020 arbitration hearing. Having received no evidence, the undersigned cannot make any factual findings that would support a finding that claimant was an employee of the employer or that he sustained an injury that arose out of and in the course of employment on August 21, 2018, as alleged. The undersigned specifically finds that claimant failed to produce any evidence in support of his claim and failed to prove a work related injury on August 21, 2018.

CONCLUSIONS OF LAW

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).

Having found that Mr. Nelson failed to prove he sustained a work related injury on August 21, 2018, I conclude that Mr. Nelson failed to carry his burden of proof to establish a compensable work injury occurred. Therefore, I conclude that claimant's original notice and petition should be dismissed with prejudice and without an award of worker's compensation benefits.

ORDER

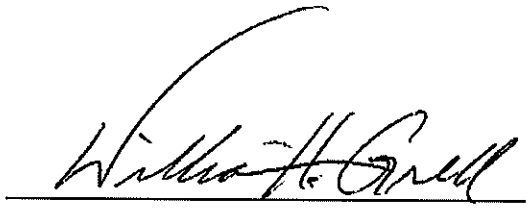
THEREFORE, IT IS ORDERED:

Claimant's original notice and petition is dismissed with prejudice.

Claimant takes nothing.

All costs are taxed to claimant.

Signed and filed this 22nd day of January, 2021.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Kenneth Nelson (Via Certified and Regular Mail)
1715 N. Delaware Ave.
Mason City, IA 50401-1235

Andrew Tice (Via WCES)

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.