

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY VASKE,

Claimant,

vs.

CITY OF WEST DES MOINES,

Employer,
Self-Insured,
Defendant.

File No. 22001874.01

ARBITRATION DECISION

Headnotes: 1402.30, 1803

STATEMENT OF THE CASE

Claimant, Timothy Vaske, filed a petition in arbitration seeking workers' compensation benefits from the City of West Des Moines, self-insured employer. This matter was heard on June 29, 2023.

The record in this case consists of Joint Exhibits 1-13, Claimant's Exhibits 1-3, Defendant's Exhibits A-I, and the testimony of claimant.

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.

ISSUES

1. Whether claimant sustained a cubital tunnel syndrome that arose out of and in the course of employment on November 19, 2020.
2. Whether the injury is a cause of temporary disability.
3. The extent of claimant's entitlement to permanent partial disability benefits.
4. The commencement date for permanent partial disability benefits.
5. Whether there is a causal connection between the injury and the claimed medical expenses.

The hearing report does not indicate causation of claimant's cubital tunnel syndrome as an issue in dispute. However, it is clear from the record, the medical

reports and other exhibits, and direct and cross-examination of claimant, that causation of claimant's cubital tunnel syndrome is a central issue in this case.

FINDINGS OF FACT

The claimant worked for the City of West Des Moines in the Parks and Recreation Department. Claimant said his job duties with Parks and Recreation included, but were not limited to, emptying and picking up trash, mowing, trimming and pruning trees.

Claimant's prior medical history is relevant. When claimant was in middle school, he had a fractured arm. In 1997 claimant had a near amputation of his middle fingertip and an injury to his ring finger from a snowblower accident. Claimant said he had no current issues related to his hand from the hand injury in 1997. (Claimant's Exhibit 1, page 12)

On November 19, 2020, claimant and a co-worker were replacing wooden planks on a pedestrian bridge. Claimant said the planks weighed between 100 and 200 pounds. Claimant said while moving a plank, a plank fell on his right hand. Claimant said his hand was pinned under the plank and his elbow was twisted in an awkward position.

On November 25, 2020, claimant was evaluated by Daphney Myrttil, M.D., for his right finger pain. Claimant was assessed as having right hand and right little finger contusions. Claimant was put on modified work duty effective November 25, 2020. (Joint Exhibit 2, pages 2-3)

Claimant returned to Dr. Myrttil on December 2, 2020, for pain in the right little finger. Claimant was put on modified work duty on December 2, 2020, and recommended to have occupational therapy. (JE 2, pp. 7-8)

Claimant underwent a CT scan of his right hand on March 5, 2021. The CT scan did not show any acute abnormalities. (JE 6, p. 63) Claimant was returned to full duty with no restrictions on March 12, 2021. (JE 2, p. 24)

Claimant was evaluated by Benjamin Paulson, M.D., an orthopedic specialist, on March 22, 2021. Claimant was told to use heat and range of motion exercises. He was returned to work with no restrictions. (JE 7, pp. 66-67)

Claimant returned to Dr. Paulson on April 26, 2021, with complaints of right wrist and hand pain. Claimant was given a cortisone injection. He was returned to work with no restrictions. (JE 7, pp. 69-70)

Claimant saw Dr. Paulson on May 24, 2021, indicating the injection only gave him one week of relief. Claimant was given a second injection and told to have an EMG. (JE 7, pp. 72-73)

Claimant underwent EMG/NCV testing. It showed a right ulnar neuropathy. (JE 7, pp. 75-76) Claimant was told to use a right arm brace. (JE 7, pp. 77-78)

Claimant returned to Dr. Paulson on July 26, 2021. Claimant's symptoms had worsened. Claimant had right hand and elbow pain and right shoulder pain that began two weeks prior. A right cubital tunnel release was recommended. (JE 7, pp. 80-81)

In an August 3, 2021, letter, Dr. Paulson indicated that claimant's cubital tunnel syndrome and need for medical treatment was not caused or materially aggravated by his November 16, 2020 injury. (JE 7, p. 83)

On August 6, 2021, defendant's third-party administrator (TPA) denied further care related to claimant's cubital tunnel syndrome. (Defendant's Exhibit G)

In an August 10, 2021 letter, Dr. Paulson indicated claimant did not require further treatment for his hand contusion. (JE 7, p. 84)

On September 30, 2021, claimant was seen in the emergency department at the VA Clinic in Omaha, Nebraska, for right upper extremity pain. Claimant was assessed as having a right ulnar nerve impingement. (JE 9)

On December 27, 2021, claimant was evaluated by Dr. Paulson for right upper extremity pain. Claimant was assessed as having a right cubital tunnel syndrome. A cubital tunnel release was recommended. (JE 7, pp. 85-86)

In a December 27, 2021 letter, Dr. Paulson found that claimant had an 8 percent permanent impairment to the right upper extremity due to his work injury. Claimant had no permanent restrictions. (JE 7, p. 88)

On February 3, 2022, claimant underwent a cubital tunnel release on the right. Surgery was performed by Michael McGuire, M.D., through the VA. (JE 12, pp. 102-103)

In an April 17, 2023 report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant had difficulty holding objects with his right hand. Claimant had difficulty with strength and range of motion in his right hand, arm, and elbow. Claimant's pain initially began in his hand but progressed to the elbow and shoulder. (Ex. 1, p. 13)

Dr. Bansal found that claimant had reached maximum medical improvement (MMI) regarding his hand and small finger as of December 27, 2021. He reached maximum medical improvement regarding the cubital tunnel syndrome as of April 4, 2022. (Ex. 1, p. 14)

Dr. Bansal opined that claimant's right hand and small finger and right elbow injury were all caused by the November 19, 2020, injury at work. (Ex. 1, p. 15) Dr. Bansal found that claimant had between a 15-20 percent permanent impairment to the right upper extremity. (Ex. 1, pp. 15-16)

In a May 10, 2023 report, Dr. Paulson gave his opinions of claimant's condition. Dr. Paulson indicated he reviewed Dr. Bansal's report. Dr. Paulson did not believe claimant sustained a cubital tunnel syndrome caused by the November 19, 2020, work injury. He found Dr. Bansal's causation opinion of claimant's cubital tunnel syndrome "quite ridiculous." (Ex. A, p. 1) This was because a twisted elbow would more likely

tear collateral ligaments and would not result in a cubital tunnel syndrome. Dr. Paulson also based his opinion on the fact that there is no mention of elbow symptoms in records until March of 2021. Dr. Paulson did not believe it was physiologically possible for claimant to have a cubital tunnel syndrome from twisting his elbow. (Ex. A, p. 1)

Dr. Paulson indicated he performed several cubital tunnel syndrome releases per week, and he had never heard of a patient developing cubital tunnel syndrome from a twisting of the elbow. Dr. Paulson reiterated he did not believe claimant's cubital tunnel syndrome was caused or aggravated by the work injury of November 19, 2020. (Ex. A, p. 2)

CONCLUSION OF LAW

The first issue to be determined is whether claimant sustained a cubital tunnel syndrome injury that arose out of and in the course of employment on November 19, 2020.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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" refer 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 Elec. 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).

Claimant contends he sustained a cubital tunnel syndrome from his November 19, 2020 work injury. Defendant accepts liability for the injury to claimant's right hand. Defendant denies causation of claimant's cubital tunnel syndrome.

Two experts have opined regarding claimant's cubital tunnel syndrome. Dr. Paulson treated claimant for an extended period of time. Dr. Paulson is an orthopedic specialist. The record indicates Dr. Paulson performs several cubital tunnel syndrome releases per week.

Dr. Paulson opined that claimant's cubital tunnel syndrome was not caused or materially aggravated by the November 19, 2020, injury. This is because a twisting injury to the elbow would cause ligament damage and not a cubital tunnel syndrome. Dr. Paulson's opinion was based upon his years of experience in treating cubital tunnel syndrome. It was also based on the fact that there is no mention of elbow symptoms until approximately March 2021 in the medical records, or approximately four months after the date of injury.

Dr. Bansal evaluated claimant once for an IME. He opined claimant's twisting injury of the elbow caused the cubital tunnel syndrome. Dr. Bansal does not specialize in orthopedics. Dr. Bansal also provided no rationale for the four-month lapse in the time between the date of injury and the first reference of elbow symptoms in the medical records. Based on this discrepancy, it is found that Dr. Bansal's opinion regarding causation of the cubital tunnel syndrome is not convincing.

Dr. Paulson opined that claimant's cubital tunnel syndrome was not caused by the November 19, 2020, date of injury. Nearly four months had elapsed between the date of injury and the first reference to elbow symptoms in the medical records. Dr. Bansal's opinions regarding causation are found not convincing. Based on this, it is found that claimant has failed to carry his burden of proof his cubital tunnel syndrome was caused or materially aggravated by his November 19, 2020, work injury.

The next issue to be determined is whether claimant is entitled to temporary benefits.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides

that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Claimant seeks temporary benefits for the period of February 3, 2022, through March 7, 2022. This is the period of time that claimant was unable to work due to the cubital tunnel release. (JE 12, pp. 102-103) Because it is found that claimant has failed to carry his burden of proof his cubital tunnel syndrome arose out of and in the course of employment, claimant has also failed to carry his burden of proof regarding entitlement to temporary benefits for the period of time he was unable to work due to his cubital tunnel release surgery.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Dr. Paulson found that claimant had an 8 percent permanent impairment to the right upper extremity due to the November 19, 2020, work injury. (JE 7, p. 88) Defendant paid claimant permanent partial disability benefits based on that rating. (Ex. I) As noted, claimant failed to carry his burden of proof his cubital tunnel syndrome was caused or materially aggravated by the November 19, 2020, injury. Based on this, claimant is due permanent partial disability benefits based on Dr. Paulson's 8 percent

rating to the right upper extremity. Benefits for this injury would commence as of December 27, 2021.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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).

As noted above, claimant has failed to carry his burden of proof his cubital tunnel syndrome was causally connected to the November 19, 2020, injury. On August 3, 2021, Dr. Paulson indicated claimant's cubital tunnel syndrome was not related to the work injury of November 19, 2020. Defendant gave notice to claimant that they were denying further care for claimant's cubital tunnel syndrome shortly thereafter.

Claimant has a list of itemized bills related to medical care found in Exhibit 3. It appears that the majority of these charges are related to claimant's cubital tunnel syndrome. However, it is unclear if all the charges detailed in Exhibit 3 are related to claimant's cubital tunnel syndrome. Defendant is not liable for medical charges related to claimant's cubital tunnel syndrome. Defendant is liable for medical care and medical mileage related to claimant's right hand contusion.

ORDER

THEREFORE IT IS ORDERED:

That defendant shall pay claimant permanent partial disability benefits based on Dr. Paulson's 8 percent rating to the right upper extremity at the rate of three hundred fifty-two and 24/100 dollars (\$352.24) per week commencing on December 27, 2021.

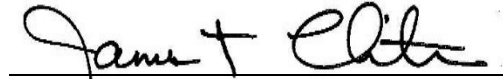
That defendant shall receive a credit for benefits previously paid.

That defendant shall only be liable for medical expenses regarding claimant's right hand contusion. Defendant is not liable for medical charges related to claimant's cubital tunnel syndrome.

That defendant shall pay costs.

That defendant shall file subsequent reports of injury as required by this agency under Rule 876 IAC 3.1(2).

Signed and filed this 28th day of September, 2023.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jason Neifert (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.