BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN MEHAFFY, Claimant, vs. CNH INDUSTRIAL AMERICA, LLC, Employer, and INDEMNITY INS. CO. NA, Insurance Carrier, Defendants.	:	FILE NO.: 21010880.01 ARBITRATION DECISION Head Notes: 1108, 1402.30, 1402.50. 1403.30, 1803, 2209, 2041, 2501

STATEMENT OF THE CASE

Claimant Kevin Mehaffy filed a petition in arbitration seeking worker's compensation benefits against CNH Industrial America, LLC, employer, and Indemnity Insurance Company and North America, insurer, for an alleged work injury date of August 8, 2020. The case came before the undersigned for an arbitration hearing on November 3, 2022. Pursuant to an order of the Iowa Workers' Compensation Commissioner, this case proceeded to a live video hearing via Zoom, with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 4, Claimant's Exhibit 1, and Defendants' Exhibits A and B.

Claimant testified on his own behalf. The evidentiary record closed at the conclusion of the evidentiary hearing on November 3, 2022. The parties submitted post-hearing briefs, and the case was considered fully submitted on December 2, 2022.

ISSUES

1. Whether claimant sustained an injury arising out of and in the course of his employment on August 8, 2020;
2. If so, whether claimant provided the employer with timely notice of the injury pursuant to Iowa Code section 85.23;
3. Whether claimant timely filed his claim under Iowa Code section 85.26;[1]
4. Whether the injury is the cause of permanent disability, and if so, the extent; and,
5. Payment of claimant's independent medical examination under Iowa Code section 85.39.

FINDINGS OF FACT

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

Claimant's testimony was generally consistent as compared to the evidentiary record, and his demeanor at the time of hearing gave the undersigned no reason to doubt his veracity. He was not a great historian, but poor historians can be credible witnesses. Overall, claimant is found credible.

At the time of hearing, claimant was a 54-year-old person. (Defendants' Exhibit A, p. 3) Claimant testified that he initially started working for the defendant employer in 1997, and was laid off in 2000. (Hearing Transcript, p. 10) He was then rehired in 2004, and has worked there ever since. He works as a journeyman assembler in the experimental department, which works on prototype development. (Tr., pp. 17-18) He testified that in the experimental department, they perform all wrenching and other work by hand. (Tr., p. 18) There is no special equipment as is present in other departments. Rather, he uses hand torque wrenches, anywhere from two to six feet long, and torques up to 3,600 pounds by hand. He testified that his job involves constant pushing, pulling, use of impact tools, tearing equipment apart, and putting equipment back together again with new prototype parts. (Tr., pp. 18-19)

Claimant has alleged bilateral carpal tunnel syndrome as a cumulative work injury, with August 8, 2020 as the date of injury. (See Petition) He testified that at that time, he started to experience numbness in his hands and pain in his left hand up to his elbow, so the in-house nurse at CNH sent him to have an EMG. (Tr., p. 11) He testified that the in-house nurse had previously provided him with over-the-counter ibuprofen and tried heat therapy and some other things to calm it down, but ultimately sent him for an EMG, which revealed bilateral carpal tunnel syndrome. (Tr., pp. 11-12)

The medical records are not entirely consistent with claimant's recollection. It should be noted that claimant had a work-related neck injury on January 4, 2008. (Def.

[1] Neither party briefed this issue. Given that the petition was filed on September 23, 2021, it was filed timely under section 85.26 and the issue will not be addressed further in this decision.

Ex. A, p. 1) That injury ultimately resulted in a cervical fusion at C6-7 on June 25, 2008. (Joint Exhibit 1, p. 1) He was able to return to work following that injury, but has had several flare-ups of neck pain that were treated conservatively since that time. He also had a work-related left knee injury on July 26, 2018, which was recently litigated. (Def. Ex. A, p. 1; See also Mehaffy v. CNH Industrial, File No. 19001764.01 (Arb., Feb. 11, 2022)).

Medical records indicate that claimant saw Cassim Igram, M.D., on December 2, 2020. (Jt. Ex. 1, p. 1) Dr. Igram noted that claimant presented for cervical neck pain related to his 2008 injury. He reported that for the prior two months, claimant had experienced increased neck pain and stiffness, at times associated with numbness and tingling in the arms. Claimant was able to reproduce the numbness and tingling with his head tilted and arm abducted. He reported the numbness was worse on the left than the right. (Jt. Ex. 1, p. 2) As such, Dr. Igram recommended a bilateral upper extremity EMG "to further evaluate for cervical radiculopathy." (Jt. Ex. 1, p. 4)

The EMG was performed on January 18, 2021, by Robert Chesser, M.D. (Jt. Ex. 3, p. 1) The report states that Cassim Igram was the referring doctor. After reviewing the EMG results, Dr. Chesser's impression was moderate bilateral carpal tunnel entrapments without denervation. (Jt. Ex. 3, p. 2) He noted the ulnar nerves were normal at the wrists and elbows, and he was unable to confirm a radiculopathy in either upper extremity.

It appears claimant saw Rhea Allen, M.D., at Great River Business Health on January 25, 2021. (Def. Ex. A, p. 16)[2] Claimant's intermittent numbness and tingling in the hands is noted. Dr. Allen stated that claimant had two separate issues, the first being residual neck pain from his 2008 injury. The second was bilateral carpal tunnel syndrome, which was a new problem, and he was advised to talk to occupational health at work and file a claim. He was released to regular duty and referred to a hand specialist.

After that, claimant had knee surgery and post-surgical care related to the 2018 injury. (Def. Ex. A, pp. 16-17) On July 29, 2021, he had an independent medical examination (IME) with Peter Matos, D.O., at defendants' request. (Def. Ex. A, p. 3) The IME report lists the date of injury as July 26, 2018, which was the date of claimant's left knee injury. All of the questions that Dr. Matos addressed involved claimant's 2008 neck injury and his 2018 knee injury. (Def. Ex. A, pp. 5-7) Dr. Matos did not address the carpal tunnel diagnosis or provide a causation opinion regarding the August 8, 2020 date of injury.

Claimant went on strike in April of 2022. (Tr., p. 39) At the time of hearing, he was still on strike and had not worked. (Tr., pp. 38-39) On July 1, 2022, claimant saw Laura Medanic, NP, at Concentra Medical Centers for the bilateral carpal tunnel syndrome. (Jt. Ex. 4, p. 1) The record indicates it is a recheck of bilateral hand/wrist and

[2] This record is not in evidence, but is summarized in the independent medical examination report authored by Peter Matos, D.O. (Def. Ex. A)

left elbow, but there is no record in evidence of a prior visit. The record also states: "Patient has not been working. This is a non-work related medical condition. On strike." (Jt. Ex. 4, p. 1) The record also states that the pain is from an injury that first occurred in 2018, and indicates the injury date is July 26, 2018, which is the date of claimant's knee injury. Claimant reported that he had been taking the medications he was prescribed at his prior visit and was wearing wrist braces with activity and to sleep but had not seen improvement. (Jt. Ex. 4, pp. 1-2) After physical examination, NP Medanic recommended referral to an orthopedic specialist and physical therapy. (Jt. Ex. 4, p. 3)

Claimant testified that NP Medanic agreed that his carpal tunnel syndrome was work related, and after she made the referrals, he did not hear anything back for three weeks to a month. (Tr., pp. 16-17) At that point, he got a call he was to return to Concentra. (Tr., p. 17) He returned on August 1, 2022, and saw Naomi Chelli, M.D. (Jt. Ex. 4, p. 13) The record again states that it is "a non-work related medical condition." Dr. Chelli noted that claimant's condition had not improved since his prior visit, and that he was still waiting to see if physical therapy would be approved in Burlington to be closer to his home. (Jt. Ex. 4, pp. 13-14) Claimant was again referred to orthopedics for a hand surgeon. (Jt. Ex. 4, p. 15)

Claimant testified that his first visit to Concentra, before he saw NP Medanic, was also with Dr. Chelli. The record of that visit is not in evidence. Claimant said at that visit, Dr. Chelli told him it was "obvious" that his condition was related to his work, and he watched her put in the requests for referrals to orthopedic surgery and physical therapy on her computer. (Tr., pp. 12-13; 34) However, after his second visit with Dr. Chelli, he received a text message from "some other guy in Concentra that said she determined after that it wasn't work related." (Tr., p. 13) On August 10, 2022, defense counsel sent a letter to claimant's attorney indicating that claimant's August 8, 2020 injury had been denied, based on Dr. Chelli's recent report indicating that claimant's condition is not related to his work activities. (Def. Ex. B, p. 1) Claimant testified that he has not sought any treatment on his own since the claim was denied. (Tr., pp. 36-37)

Claimant had an IME with Sunil Bansal, M.D., at his attorney's request, on September 23, 2022. (Claimant's Exhibit 1) Dr. Bansal's report indicates the only medical record he reviewed was the July 1, 2022 record from NP Medanic. (Cl. Ex. 1, p. 1-2) Dr. Bansal noted that as a result of claimant's repetitive and physically demanding work activities, he developed bilateral carpal tunnel syndrome. At the time of his examination, claimant reported continued numbness and tingling in both hands, as well as a sharp pain shooting up his left elbow any time he lifts anything with his left arm. He also described his job duties to Dr. Bansal, consistent with his testimony at hearing. (Cl. Ex. 1, p. 3)

Dr. Bansal opined that claimant developed bilateral carpal tunnel syndrome from his work at CNH, as he was engaged in job tasks that are capable of increasing carpal tunnel pressures. (Cl. Ex. 1, p. 5) He stated that the job tasks would place significant pressure on the wrists based on repetition and the angle in which he would position his wrists while grabbing, turning, gripping, and using a sledgehammer. He then provided a

seven percent upper extremity impairment rating for the right wrist, and a six percent upper extremity rating for the left wrist. (Cl. Ex. 1, p. 6)

There is no doubt that claimant has bilateral carpal tunnel syndrome. The records make the diagnosis clear. The question is whether that condition arose out of and in the course of his employment. The medical records regarding causation are problematic in this case. The records from Concentra indicate claimant was seen for "a non-work related medical condition." (Jt. Ex. 4, pp. 1, 13) However, that conclusory statement is made while also noting claimant had not been working because he had been on strike, and no further explanation is provided. Additionally, the Concentra records indicate the bilateral hand and wrist pain first occurred from an injury in 2018, which is not accurate. Claimant also testified that both Dr. Chelli and NP Medanic told him that his condition was work related. (Tr., pp. 12-13; 16; 34) The Concentra records are simply not sufficient evidence to determine whether claimant's bilateral carpal tunnel syndrome arose out of and in the course of his employment.

The only other medical evidence in the record that addresses causation is Dr. Bansal's IME report. Dr. Bansal only reviewed one medical record, from NP Medanic on July 1, 2022. (Cl. Ex. 1, p. 2) However, there are not many other records related to the carpal tunnel diagnosis, and the records that do exist likely would not have altered Dr. Bansal's opinion. It does appear that Dr. Bansal had an accurate picture of claimant's job duties and work history. (Cl. Ex. 1, p. 3) Additionally, he provided some explanation of how those job duties likely caused claimant's condition. (Cl. Ex. 1, pp. 5-6) Therefore, I find Dr. Bansal's opinion regarding causation to be more credible than the Concentra records, which only offer conclusory statements and contain an inaccurate date of injury. As such, I find claimant's bilateral carpal tunnel syndrome more likely than not arose out of and in the course of his employment.

Defendants argue that claimant did not provide proper notice of the August 8, 2020 injury, and note that the first time they were made aware of the claim was when Dr. Igram recommended the EMG on December 2, 2020. Claimant testified that when he first started having problems with his hands, he saw the in-house nurse, who provided him with over-the-counter medications and heat therapy. (Tr., p. 11) He was not sure of the date he first saw the nurse. When her treatments did not provide relief, he testified that the company nurse sent him for the EMG. (Tr., pp. 14-15) The medical records indicate that claimant's recollection on this point is not accurate. Rather, claimant was sent to Dr. Igram due to a flare up of his neck pain from his 2008 work injury, along with numbness and tingling in the arms for the past two months. (Jt. Ex. 1, p. 1) Dr. Igram is the one who recommended the EMG, to further evaluate for cervical radiculopathy. (Jt. Ex. 1, p. 4) It was not until after the EMG, which took place on January 18, 2021, that claimant was diagnosed with bilateral carpal tunnel syndrome.

That being said, there is no evidence in the record to support August 8, 2020 as the correct date of injury. There are no employment records in evidence showing any injury report was filed, and no records from the in-house nurse to correlate the dates. Claimant could not remember when he first reported to the in-house nurse. The only

evidence in the record regarding when claimant's symptoms started is Dr. Igram's record of his December 2, 2020 appointment. That note states claimant's symptoms started to develop two months prior to his appointment, which would be early October of 2020. I find this is a more likely timeframe, and the only one supported by the evidence. Therefore, I find that claimant sustained a cumulative injury arising out of and in the course of his employment, which manifested on or around October 2, 2020.

Defendants were obviously aware of claimant's symptoms before December 2, 2020, as they arranged for him to be seen. Dr. Igram was concerned the upper extremity numbness and tingling was the result of cervical radiculopathy related to the 2008 neck injury, which is why he recommended the EMG. After the EMG showed carpal tunnel syndrome, defendants had actual knowledge of that diagnosis upon receipt of the medical record. Additionally, on January 25, 2021, Dr. Allen noted claimant had two separate issues, the residual neck pain from his 2008 injury, and bilateral carpal tunnel syndrome, which was a new problem. (Def. Ex. A, p. 16) Defendants again had actual knowledge of Dr. Allen's diagnoses and opinions upon receipt of that medical record. Because defendants had actual knowledge of claimant's symptoms and diagnosis within 90 days of the date the injury manifested, their notice defense fails.

Claimant has not been placed at maximum medical improvement (MMI) for his injury, and has not completed the recommended medical treatment. Therefore, his claim for permanency benefits is not ripe for consideration at this time. However, as he has proven an injury arising out of and in the course of employment, he is entitled to medical benefits pursuant to Iowa Code section 85.27.

CONCLUSIONS OF LAW

The first issue to determine is whether claimant's bilateral carpal tunnel syndrome arose out of and in the course of his employment. 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 Rule of Appellate Procedure 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, 150 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309, 311 (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, 128 (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 at 311. 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); Miedema, 551 N.W.2d at 311. 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 at 150.

A possibility of causation is not sufficient; a probability is necessary. Sanchez v. Blue Bird Midwest, 554 N.W.2d 283, 285 (Iowa Ct. App. 1996) (citing Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974). 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).

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).

I found Dr. Bansal's opinion regarding causation to be more reliable than the records from Concentra, which only provided conclusory statements that were not supported by any explanation and included an inaccurate date of injury. Therefore, I determined that claimant's injury more likely than not arose out of and in the course of his employment. I also found that based on the evidence in the record, the cumulative injury most likely manifested on or around October 2, 2020, as claimant reported to Dr. Igram.

The next issue to determine is whether claimant provided proper notice of his injury to the employer, pursuant to Iowa Code section 85.23. Failure to give notice is an affirmative defense, which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

Iowa Code section 85.23 states:

> 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. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information that makes the employer aware that the injury occurred, and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Dept. of Transp., 296 N.W.2d 809 (Iowa 1980).

This case was made more complicated by the fact that claimant alleged August 8, 2020 as the date of his cumulative injury. There is nothing in the record to support that date, and it is unclear why that date was chosen. Based on the evidence, I found the bilateral carpal tunnel syndrome most likely manifested on or around October 2, 2020, two months prior to claimant's appointment with Dr. Igram. Defendants had actual knowledge of claimant's symptoms no later than December 2, 2020, when claimant saw Dr. Igram and the EMG was ordered. Therefore, the employer had actual knowledge of a potentially compensable claim within 90 days of the date of manifestation, and the notice defense fails.

With respect to benefits, I found that claimant has not reached maximum medical improvement. Under Iowa Code section 85.34(2), "[c]ompensation for permanent partial disability shall begin when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined" using the AMA Guides. Because claimant has not reached MMI, his claim for permanent disability benefits is not yet ripe for consideration. Claimant is, however, entitled to reasonable and causally connected medical care pursuant to Iowa Code section 85.27.

The final issue to determine is whether claimant is entitled to reimbursement for Dr. Bansal's IME charges under Iowa Code section 85.39. Iowa Code section 85.39(2) states, in relevant part:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice,

and reasonably necessary transportation expenses incurred for the examination.

The Iowa Workers' Compensation Commissioner has noted that the Iowa Supreme Court adopted a strict and literal interpretation of Iowa Code section 85.39 in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015) (hereinafter "DART"). See Cortez v. Tyson Fresh Meats. Inc., File No. 5044716 (Appeal December 2015). If an injured worker wants to be reimbursed for the expenses associated with a disability evaluation by a physician selected by the worker, the process established by the legislature must be followed. This process permits the employer, who must pay the benefits, to make the initial arrangements for the evaluation and only allows the employee to obtain an independent evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. DART, 867 N.W.2d at 847 (citing Iowa Code § 85.39). This includes an employer-chosen physician's opinion that there was no causation, as such an opinion is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 966 N.W. 2d. 326 (Iowa Ct. App., 2021).

In this case, the employer did not seek an evaluation of permanent disability related to the carpal tunnel syndrome. Nor did defendants seek a formal causation opinion. As such, claimant has failed to establish entitlement to reimbursement of his IME under Iowa Code section 85.39.

ORDER

THEREFORE, IT IS ORDERED:

The claim for permanent partial disability benefits is not ripe for consideration at this time.

Defendants shall provide claimant ongoing medical care for his bilateral carpal tunnel syndrome pursuant to Iowa Code section 85.27.

Defendants 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.

The parties shall bear their own costs.

Signed and filed this ___11TH___ day of July, 2023.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James P. Hoffman (via WCES)

Timothy W. Wegman (via WCES)

Tyler Smith (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.