

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARSHALL SANDLIN,

Claimant,

vs.

MID AMERICAN CONSTRUCTION, LLC,

Employer,

and

GRINNELL MUTUAL,

Insurance Carrier,
Defendants.

File No. 5806495

ARBITRATION DECISION

Head Note Nos.: 1803

STATEMENT OF THE CASE

Claimant, Marshall Sandlin, filed a petition for arbitration seeking workers' compensation benefits from Mid-American Construction, the employer and Grinnell Mutual, the insurance carrier.

The matter came on for hearing on September 5, 2019, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of claimant's exhibit 1 through 2; defense exhibits A through G; joint exhibits 1 through 5; as well the sworn testimony of claimant, Marshall Sandlin. Julie McCurnin was appointed as the court reporter for the proceedings. Both attorneys did an excellent job of narrowing the issues and appropriately limiting the record to probative exhibits. The record was held open for one week to allow the claimant an opportunity to secure an additional exhibit. The parties briefed this case and the matter was fully submitted on October 2, 2019.

ISSUES AND STIPULATIONS

The following issues and stipulations were submitted. All of the stipulations have been accepted by the agency and are deemed binding at this time.

It is stipulated that claimant suffered an injury to his left foot which arose out of and in the course of employment on September 6, 2017. The primary disputed issue is whether this injury resulted in any permanent disability, and if so, the extent of functional disability. It is stipulated that if the claimant is entitled to permanent disability benefits, the disability is scheduled (left foot). The defendants dispute whether claimant has suffered any permanent disability. The parties have stipulated the commencement date for any permanent disability benefits.

The claimant also seeks payment for IME expense and medical payments. Defendants dispute these expenses and contend claimant's medical care was not authorized.

FINDINGS OF FACT

Marshall Sandlin was born in 1975 making him 44 years old at the time of hearing. He is single with no dependents at the time of hearing. He testified live and under oath at hearing. His testimony was generally credible.

Mr. Sandlin began working for the employer in this case, Mid-American Construction, as a general laborer in May 2017. Prior to starting work for the employer, Mr. Sandlin had no impairment, restrictions or condition in his left foot.

On September 6, 2017, Mr. Sandlin was removing rotten boards while working on a ladder. The ladder kicked out and he fell. As he fell he became tangled in the ladder and hit the concrete. Immediately after the fall, he could not place any weight on his left foot. He testified that his supervisor advised him to go home. His symptoms, however, did not improve. Mr. Sandlin informed his employer he would need to seek medical treatment.

On September 9, 2017, Mr. Sandlin was evaluated at Medical Associates Clinic. The following is documented.

This is a 42-year-old white male who suffered a work-related injury when he fell off a ladder landing on some cement, this injury occurred at about 1:30 on September 6, 2017, patient hit his left knee, and twisted his left foot. Patient was able to bear weight on his foot, continued working. Now reports pain involving the forefoot, had some bruising noted in the toes along the base of the left heel. Patient suffered no other injuries.

(Joint Exhibit 2, page 4) X-rays were ordered which were suggestive of a fracture at the fifth metatarsal. "Impression: Nondisplaced, predominantly transversely-oriented fracture within the proximal 5th metatarsal. Findings are most consistent with a Jones-type fracture." (Jt. Ex. 2, p. 6) He was instructed to keep his foot elevated and use ice. The physician recommended ibuprofen for pain and placed restrictions on him. A postop shoe was also provided. (Jt. Ex. 2, p. 5)

Two days later, Mr. Sandlin was evaluated by a foot specialist, Theresa Hughes, DPM. She prescribed a walking boot and crutches and restricted him from any weight-bearing. (Jt. Ex. 3, p. 9) The crutches were not immediately authorized. Mr. Sandlin returned to Hughes on September 13, 2017. She instructed him to wear the boot at all times, continue icing and provided crutches to him. (Jt. Ex. 3, p. 11) On October 11, 2017, Mr. Sandlin was reevaluated. The following is documented.

Patient is seen for recheck Jones fracture left foot. He has been wearing the walking boot with all ambulation. He has been mostly using the

crutches but at times due to the weather he will forego the crutches so he doesn't fall. He feels great. No pain. No swelling. No other concerns.

(Jt. Ex. 3, p. 14) Repeat x-rays were taken. (Jt. Ex. 3, p. 15) She instructed him to continue using the walking boot for another week. "Then in 1 week get into a good supportive shoe/boot like the Kean's he has on today. Wear these with all weight bearing, ice as needed, increase activities as tolerated. . . . He can work full time without restrictions in 1 week." (Jt. Ex. 3, p. 14)

In December 2017, Erin Kennedy, M.D., a certified independent medical examiner, opined that claimant suffered a zero percent impairment under The AMA Guides. Dr. Kennedy, however, documented that Mr. Sandlin continued to experience minor symptoms associated with the fracture. (Jt. Ex. 4)

Claimant secured an independent medical examination from Mark Taylor, M.D, in June 2018. Dr. Taylor spent more time with Mr. Sandlin and used instruments to test the range of motion in the foot and ankle. Dr. Taylor opined that Mr. Sandlin has suffered a 2 percent functional impairment in his left foot as a result of the work injury. (Cl. Ex. 1)

At hearing, Mr. Sandlin testified that he has a dull, throbbing pain in the mid to side of the foot. The pain is not constant. It is more pronounced when he is on uneven surfaces or on his feet for long periods of time. Cold weather also exacerbates his symptoms. He testified that he almost always wears supportive shoes. Mr. Sandlin is quite active and continues to engage in his hobbies, however, he testified that due to the symptoms he continues to experience, he does not hike, hunt or fish as much as he did before. I find all of this testimony believable.

Having reviewed all of the evidence in the record, and considered the arguments of counsel, I find that claimant suffered an injury which arose out of and in the course of his employment on September 6, 2017, which resulted in a mild permanent functional disability in his left foot and ankle. While Mr. Sandlin had an excellent recovery, there is little doubt in this record that his left foot and ankle are not quite as functional as it was prior to the injury. The impairment rating assigned by Dr. Taylor is the best evidence of his functional disability. I further find that Mr. Sandlin was referred to Dr. Kennedy by an authorized treatment provider.

CONCLUSIONS OF LAW

The first question is whether the admitted March 15, 2010 injury is a cause of permanent disability, and if so, the extent of such disability. By a preponderance of evidence, I find that the September 6, 2017, work injury is a cause of minor functional disability in claimant's left foot and ankle.

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).

The expert opinions as to the medical impairment in this case are conflicted. Dr. Kennedy assigned a rating of zero. She noted that he continued to have minor symptoms, consistent with what he testified to at hearing, however, opined that he suffered no actual functional impairment under The AMA Guides. Dr. Taylor opined claimant suffered a very minor impairment of 2 percent of the lower extremity.

For the reasons set forth herein, I find the claimant has met his burden that his injury is a proximate cause of disability.

The next question is the extent of disability. The disability is to claimant's left foot and ankle.

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)-(t) or for loss of earning capacity under section 85.34(2)(u). 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).

Having found that claimant has suffered a 2 percent functional loss in his left foot and ankle, I find claimant is entitled to 4.4 weeks of compensation commencing on October 8, 2017. I find that the disability does extend into claimant's leg and therefore benefits are payable under Iowa Code section 85.34(2)(o)(2019).

The next issue is IME expense.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

Having found that claimant received a zero rating from Dr. Kennedy, I conclude claimant was entitled to an IME. Defendants shall reimburse the costs set forth in claimant's exhibit 2.

ORDER

THEREFORE IT IS ORDERED

Defendants shall pay the claimant four point four (4.4) weeks of permanent partial disability benefits at the rate of three hundred seventy-three and 90/100 (\$373.90) per week commencing October 8, 2017.

Defendants shall pay accrued weekly benefits in a lump sum.

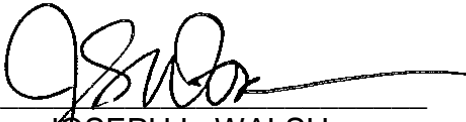
Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall reimburse the IME expense set forth in claimant's exhibit 2 in the amount of two thousand twenty and 00/100 dollars (\$2,020.00).

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants.

Signed and filed this 18th day of June, 2020.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Zeke McCartney (via WCES)

Stephen W. Spencer (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.