

IN THE IOWA DISTRICT COURT FOR WEBSTER COUNTY

_____)	
KENNETH HENRY STREIT,)	
)	
Plaintiff,)	No. CVCV319215
)	
vs.)	
)	
STREIT CONSTRUCTION, INC.,)	ORDER
EMC INSURANCE COMPANIES,)	
)	
Defendants.)	
_____)	

On February 28, 2019, Defendant's Appeal of the Decision of the Iowa Worker's Compensation Commissioner filed June 1, 2018, came before the Court for hearing. Jerry Schnurr appeared for the Plaintiff/Claimant; Matthew Grotnes appeared for the Defendants.

FACTUAL BACKGROUND

Plaintiff, Kenneth Streit, filed for worker's compensation benefits for an injury alleged to have occurred on October 13, 2012. On May 7, 2015, a Deputy Commissioner rendered an opinion granting benefits. That decision was appealed to the Iowa Worker's Compensation Commissioner, who reversed in its entirety the previous arbitration decision.

A Petition for Judicial Review was filed in January 2017, which resulted in the District Court

remanding the matter back to the Commissioner with instructions to evaluate the case per the "injury" analysis as outlined in Iowa Code Chapter 85. On remand, the Commissioner concluded that Plaintiff had not sustained the burden of proof in failing to establish that his MRSA infection arose out of and in the course of his job duties with Streit Construction. Plaintiff thereafter again filed a second Petition for Judicial Review.

In condensed format, the facts here are relatively uncontested other than the pivotal issue of causation. Plaintiff owned his own construction company. He worked many long hours doing general construction work. In the course of his work, particularly doing steel and concrete work, he would sustain cuts and scratches on his arms and hands. Plaintiff claims that these cuts and scrapes allowed MRSA to enter his body, leading to the development of abscesses on his back and resulting in back pain and disability. Defendants deny that Mr. Streit suffered an injury arising out of and in the course of his employment. Defendants simply argue that there is no evidence in the record showing Plaintiff/Claimant came in contact with MRSA at work.

The record is replete with multiple medical

reports from either treating or consulting physicians. Various opinions as to the etiology of Plaintiff's condition are offered, some of which are competing in nature.

DISCUSSION

The Plaintiff here has the burden to prove that the MRSA infection arose out of and in the course of his employment. See Iowa Code Chapter 85.3(1). Here, the Plaintiff's evidence fails in meeting that evidentiary standard.

Plaintiff's "best case" evidence concerning establishing a nexus between the MRSA and his work comes from a report authored by Dr. Comstock. In his report, Dr. Comstock states, ". . . the overwhelming POSSIBILITY is that the illness arose out of his working conditions." (Emphasis added). Other physicians offering reports explicitly deny any demonstrable relationship between the MRSA infection and Mr. Streit's workplace, particularly as to a specific time and date.

Of importance to the Court is Plaintiff's failure to cite to an Iowa case in which an employee was awarded benefits for an injury-based infection or disease where the source of the infection was not present on the job site.

Here, there is speculation and opinion about "possibility" of Plaintiff having contracted the MRSA at the work site but the evidence does not meet the required level of proof to establish the nexus between the injury and the worksite under the factual record presented. Further, the cases cited by Plaintiff relate to factual scenarios that clearly related and were demonstrated to have occurred at the work site; and that connection is not made here. Granted, Defendants make "suggestions" as to possible sources of the MRSA other than that advanced by Plaintiff.

Notwithstanding, it is the Plaintiff who, by a preponderance of the evidence, must prove that a causal connection exists between the conditions of employment and the asserted injury. See *Meidema v. Dial Corp.*, 551 N.W.2d 309 (Iowa 1996). That has not been done here, as noted by a review of the record submitted; and the Court so FINDS. There is no evidence Plaintiff came in contact with MRSA at work. Here, the Plaintiff has failed to carry his burden of proof that his MRSA infection arose out of and in the course of his employment.

To overturn the Commissioner's finding, this Court would have to determine that the decision making process was affected by an erroneous interpretation of law,

irrational reasoning, failure to consider relevant facts, or irrational, illogical, or wholly unjustifiable application of law to the facts. Given the record reviewed, this Court is unable to make any such finding. *See Lakeside Casino v. Blue*, 743 N.W.2d 169 (Iowa 2017). Accordingly, the decision of the Commissioner denying benefits is affirmed.

ORDER

IT IS ORDERED that the Order of the Worker's Compensation Commissioner denying benefits is AFFIRMED.

Costs taxed to Plaintiff.

Clerk to furnish copies to:

Jerry Schnurr
Matthew Grotnes



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
CVCV319215 KENNETH STREIT VS STREIT CONSTRUCTION ET AL

So Ordered

A handwritten signature in cursive script, appearing to read "T. Bice".

Thomas J. Bice, District Court Judge,
Second Judicial District of Iowa