BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD WILLIAM BRINCK,

Claimant,

vs.

SIOUXLAND MENTAL HEALTH CENTER,

Employer,

and

THE CINCINNATI INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5038759

REHEARING

DECISION

Head Note Nos: 2905, 5-9998

On April 5, 2017, claimant filed an application for rehearing (application) Defendants have not resisted the application. The application is considered.

Claimant raises two grounds for rehearing. First, it appears claimant's counsel suggests that merely by showing a change in earning capacity, claimant is entitled to additional benefits under a review-reopening proceeding. Second, claimant contends the doctrine of res judicata is not applicable in this case.

In a review-reopening procedure the claimant has the burden of proof to prove whether she has suffered an impairment of earning capacity proximately caused by the original injury. E.N.T. Associates v. Collentine, 525 N.W.2d 827, 829 (Iowa 1994).

While it may be true claimant sustained a change in earning capacity after the November 2012 agreement for settlement, case law is clear that under a review-reopening proceeding, claimant has the burden of proof to show the change in earning capacity was proximately caused by the original injury.

Claimant filed an arbitration petition in November 2011 with a date of injury of April 14, 2009, indicating claimant fell and hit his head on a door. As a result of the injury, claimant had staring spells, seizures and depression.

In November of 2012, the parties reached an agreement for settlement, which was approved on November 27, 2012. Under the agreement, defendants paid claimant 250 weeks of permanent partial disability benefits (Exhibits P and Q)

On November 4, 2013 the claimant voluntarily admitted himself to Avera McKennan Hospital in Sioux Falls, South Dakota for protection from harm to himself and others. (Exhibit I, page 11). He indicated he had had delusions of reference and persecution, and thought insertion for two years and he had hid them from others, as he worried that others would be under suspicion from being associated with him. (Ex. I, p. 10) Claimant indicated that for the past two or more years he had been struggling with extreme paranoia. (Ex. 1, p.3). While at McKenna, claimant reported he had a father with a history of depression and hoarding, a paternal uncle with a history of schizophrenia, a paternal great-grandmother with a history of schizophrenia and a mother who attempted suicide on approximately November 4, 2012. (Ex. I, p. 5). Claimant also noted he had a sister with a history of depression and a suicide attempt, a brother with a history of post-traumatic stress disorder, an oldest daughter with severe depression and ADHD, a middle child with a history of depression and ADHD and a youngest daughter with questionable autism spectrum disorder. (Ex. I, p. 5).

Claimant was discharged from Avera McKennan Hospital on November 19, 2013. The discharge summary noted claimant had delusions of reference and persecution as well as thought insertion for almost two years, which he had hidden from others. (Ex. 1, p. 161).

On November 26, 2013, claimant was evaluated by Sanjay Singh, M.D. Claimant reported to the nurse case manager, at this appointment, he had recent psychiatric issues and had been hospitalized two weeks but had not called her because he did not believe the condition was related to his work injury. (Ex. F, pg. 37)

On February 20, 2014, claimant filed a review-reopening petition in this case. In brief, claimant claimed a change in condition, alleging his psychotic disorders were causally related to his work injury of April 14, 2009, when claimant hit his head on a door.

Five experts gave opinions regarding the cause of claimant's psychosis.

Bruce Gutnik, M.D. evaluated claimant on October 15, 2014. Dr. Gutnik opined he could not relate claimant's psychosis to the April 14, 2009, injury for several reasons. First claimant had at least three head injuries and loss of consciousness prior to the April 14, 2009, event. Dr. Gutnik noted claimant developed psychotic symptoms four years after his April 14, 2009, incident. He found it impossible to determine whether claimant's three prior concussions, or the concussion of April 14, 2009, caused claimant's psychosis. (Ex K, pp 15 and 18)

Second, Dr. Gutnik noted claimant had sleep apnea. He noted literature indicates people with sleep apnea can develop psychotic disorders. (Ex K, p. 15)

Third, claimant had hyperthyroidism. Dr. Gutnik noted people with hyperthyroidism can develop psychotic symptoms. (Ex. K, pp. 15-16)

Fourth, claimant had a family history of schizophrenia and he met the basic criteria for a diagnosis of having schizophrenia. (Ex. K, p. 16)

Given that claimant had at least three potential causes for psychotic symptoms, Dr. Gutnik could not relate claimant's current symptoms to the April 2009 injury (Ex. K)

James Gallagher evaluated claimant for a psychiatric exam in January of 2015. Dr. Gallagher opined claimant's psychosis was caused by the work injury of April 2009. Dr. Gallagher reviewed Dr. Gutnik's report. However, Dr. Gallagher did not explain why the April of 2009 injury was the proximate cause of claimant's psychosis, compared with at least three other potential causes identified by Dr. Gutnik. Dr. Gallagher noted a familial history of depression, but made no reference to a familial history of schizophrenia. Dr. Gallagher's report noted claimant denied having prior concussions or closed head injuries. (Ex. II, pp 192-210) Given these deficiencies, Dr. Gallagher's opinions regarding causation are found not convincing.

Arun Sharma, M.D. was claimant's current medical treater at the time of hearing. Dr. Sharma opined claimant's current psychosis was caused by the work injury of April 2009. (Ex. II, pp 156-157) However, based on the record, it is unclear what records Dr. Sharma relied on. Dr. Sharma was only supplied with three of the 163 pages, of records from Avera McKenna. Dr. Sharma was also not given records from claimant's prior treatment of April 2009. As noted in the review-reopening decision, Dr. Sharma was also not provided with records from James Case, M.D. John Meyer, Psy.D; Robert Wisco, M.D.; Dr. Singh; Carol Roge, M.D., and most of claimant's treatment records after April 14, 2009. Because Dr. Sharma was not provided with a number of records by claimant's counsel, Dr. Sharma's opinions regarding causation are found not convincing.

Carol Roge, M.D also opined claimant's current psychosis was caused by the April 2009 work injury. (Ex. I, p 43) Dr. Roge testified she has been a close personal friend of claimant for 20 years. (Ex. I, p. 43; Transcript pages 14, 17, 26) Dr. Roge was not aware claimant had at least three concussions with a loss of consciousness prior to the April 2009 work injury (Tr. p. 32) Dr. Roge has no experience in practicing in psychiatry. (Tr. p 25) Based on this record, Dr. Roge's opinions regarding causation are also not found convincing.

Anthony Vaca, M.D. treated claimant at Avera McKenna. He suggested claimant's psychosis was related to the 2009 fall (Ex I, p. 159) However, Dr. Vaca never reviewed Dr. Gutnik's report. There is no indication in any of the Avera records he had knew of claimant's three prior concussions. There is little evidence Dr. Vaca had access to claimant's medical records prior to April 2009. Given this, Dr. Vaca's opinions regarding the cause of claimant's psychosis are found not convincing.

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).

As noted in the review-reopening decision, approximately five years after his work incident, claimant filed a review-reopening proceeding contending he had psychosis caused by his April 2009 work injury. As detailed, the opinions of Drs. Vaca, Roge, Sharma and Gallagher are not convincing for the reasons detailed above. The record indicates Dr. Gutnik had access to more of claimant's medical records in formulating an opinion on causation. Dr. Gutnik identified at least three other potential causes for claimant's psychosis. None of these other potential causes has been adequately addressed by any of the other experts in this case. In November 2013, claimant denied his psychosis was related to his work injury (Ex. F, p. 37) Given this record, claimant has failed to carry his burden of proof his psychosis is caused by the April 2009 work injury.

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Rather, claimant's condition must have worsened or deteriorated in a manner not contemplated at the time of the initial award or settlement before an award on review-reopening is appropriate. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957). A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978).

It may be true claimant has sustained an economic change since the agreement for settlement was approved on November 27, 2012. However, for the reasons detailed above, claimant has failed to carry his burden of proof he has sustained an impairment of earning capacity proximately caused by the original injury. For this reason, claimant's application is denied.

Even assuming, for argument, claimant carried his burden of proof his psychosis was related to the April 2009 work injury, claimant's application would still be denied under the doctrine of res judicata.

A condition that has already been determined by an award or settlement should not be the subject of a review-reopening petition. Kohlhaas v. Hogslat, Inc., 777 N.W.2d 387, 392-393 (Iowa 2009). The Iowa Supreme Court noted, in Kohlhaas, that:

> Although we do not require the claimant to demonstrate his current condition was not contemplated at the time of the original settlement, we emphasize the principles of res judicata still apply - that the agency, in a review-reopening petition, should not reevaluate an employee's level of physical impairment or earning capacity if all of the facts and circumstances were known, or knowable, at the time of the original action. As this court has explained,
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> > A contrary view would tend to defeat the intention of the legislature [:] ... "The fundamental reason for the enactment of this legislation is to avoid litigation, lessen the expense incident there to, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act."
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> (Kohlhaas 773 N.W. 2d at 393)

The doctrine of res judicata includes both claim preclusion and issue preclusion. Colvin v. Story County Board of Review 653 N.W.2d, 345, 348 (Iowa 2002). Generally, a final adjudicatory decision of an administrative agency is entitled to res judicata effect as if it were a judgment of a court. Bennett v. MC #619, Inc., 586 N.W.2d 512, 517-518 (Iowa 1998).

Claim preclusion applies when a final judgment in a previous action is entered and the later claim was or ***could have been*** litigated by the parties in the first action. Claim preclusion only applies if the initial and subsequent litigation involve the same claim, identical parties and a final judgment or adjudication was rendered in the initial action. Colvin, 653 N.W.2d at 348. (emphasis supplied)

Claim preclusion prevents piecemeal litigation by requiring a party to try an entire claim or defense in the case at trial. To that end, claim preclusion applies not only to matters the earlier action actually determined ***but also to relevant matters that could have been determined had they been raised.*** Penn v. Iowa State Board of Regents, 577 N.W.2d 393, 398 (Iowa 1998). (emphasis supplied)

As detailed in the record, in the review-reopening decision, and above, claimant clearly knew, at least a year prior to entering into the agreement for settlement, he was suffering from delusions, paranoia, and psychosis. His psychosis was known or knowable at the time of the agreement for settlement. For this reason, claimant's claim

under a review-reopening proceeding is precluded under claim preclusion. Claimant's application is denied as to this ground.

ORDER

For the reasons detailed above, claimant's application for rehearing is denied.

Signed and filed this 18th day of April, 2017.

Joseph S. Cortese II

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