BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH BRUNO, Claimant, vs. 7G DISTRIBUTING, LLC, Employer, and TRAVELERS CASUALTY AND SURETY COMPANY, Insurance Carrier, Defendants.	File No. 5064196.01 ARBITRATION DECISION Head Notes: 1402.30; 2502

STATEMENT OF THE CASE

Claimant, Joseph Bruno, filed a petition in arbitration seeking workers' compensation benefits from 7G Distributing, LLC (7G), employer, and Travelers Casualty and Surety Company, insurer, both as defendants. This matter was heard on April 12, 2021, with the final submission date of May 10, 2021.

The record in this case consists of Claimant's Exhibits 1 through 37, Defendants' Exhibits A through N, 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 an injury that arose out of and in the course of employment.

2. Whether the injury resulted in a temporary disability.

3. Whether the injury resulted in a permanent disability.

4. The extent of claimant's entitlement to permanent partial disability benefits.

5. Whether there is a causal connection between the injury and the claimed medical expenses.

6. Whether the claimant is entitled to reimbursement of an independent medical evaluation (IME) under Iowa Code section 85.39.

7. Costs.

FINDINGS OF FACT

Claimant was 43 years old at the time of hearing. Claimant has a GED. Claimant attended a community college but did not obtain a degree. (Claimant's Exhibit M, deposition pp. 4-6)

Claimant has worked as a forklift driver. He worked as a warehouse manager for a vending company. Claimant worked for a plumbing supply store. (Ex. M, depo pp. 8-15)

Claimant began employment with 7G Distributing in December of 2017. Claimant worked as a night loader. Claimant testified in deposition the job was as an "order picker position." (Ex. M, depo p. 28) The job required lots of lifting and carrying. Claimant's job duties included, but were not limited to, filling orders on hand carts and loading the orders on trucks. Claimant said the job was very physical. (Ex. M, depo pp. 30-35)

Claimant's prior medical history is relevant. Claimant had a work-related left inguinal hernia injury in April of 2006 while living in Colorado. (Ex. C, p. 5) As a result of that injury, claimant eventually underwent a left orchiectomy in March of 2009. (Ex. B)

In October 2009, claimant was evaluated by L. Barton Goldman, M.D., for an independent medical evaluation (IME) for bilateral testicular pain. Claimant had begun receiving bilateral nerve blocks. Dr. Goldman opined that claimant would require further treatment in the future consisting of bilateral iliohypogastric nerve blocks. Dr. Goldman also recommended pain management and psychiatric treatment. (Ex. C, pp. 4-20) Claimant was found to have a 6 percent permanent impairment to the body as a whole. (Ex. C, pp. 4-20)

Between 2011 and 2016 claimant received nerve blocks every 8-12 months. (Testimony p. 17; Ex. G, p. 29) Claimant testified that as time went on, the nerve blocks became less effective. (Ex. M, depo p. 42)

In 2010 claimant returned to Iowa. He transferred his care approximately at that time to the Mayo Clinic. (TR p. 16)

In April of 2017, claimant received his last nerve block before the date of injury in this case. (Ex. G, p. 29) Claimant testified that the effect of his April 2017 nerve block had worn off by March or April of 2018. (TR p. 22)

Claimant worked with 7G until March 8, 2018, when he was terminated. (TR p. 23) Claimant testified he never reported a work injury to his employer during the time he worked at 7G. (TR p. 24)

Claimant testified that he first noticed that symptoms on his right side were not going away approximately one week after he left 7G. (Ex M, depo p. 46)

On March 22, 2018, claimant was evaluated by Kristina Adkins, M.D., at Tri-State Family Practice for hemorrhoids and intermittent right groin pain. There is no record of a work injury in this visit. (Ex. E, p. 24)

Claimant testified he told Dr. Adkins at this visit that he believed his injury was work related. (TR pp. 24-25)

Claimant returned to Dr. Adkins on April 2, 2018, for discomfort in the groin. At that time claimant was questioning if the injury might have happened at work. (Ex. E, p. 25)

On April 13, 2018, claimant returned to the Mayo Clinic for a nerve block. Claimant indicated he developed right groin pain in the past two weeks. Claimant indicated he was pushing a cart at work. (Ex. G, p. 34)

On May 2, 2018, claimant was evaluated at the University of Iowa Hospitals and Clinics (UIHC) by Lillian Erdahl, M.D., for evaluation of a right inguinal hernia. Claimant's past medical history indicated anxiety, depression and chronic pain. Claimant was assessed as having a right inguinal hernia and an umbilical hernia without obstruction. Claimant left the UIHC prior to completing a preoperative visit and later called back requesting an evaluation in the Hernia Clinic. (Ex. 22, pp. 85-90)

Claimant went to the emergency room at Southwest Health in Platteville, WI, on June 10, 2018, with complaints of right-sided groin and abdominal pain. Claimant was assessed as having right groin pain. He was informed exams, labs and CT scans did not explain his symptoms. Claimant left the emergency room in anger. (Ex. 23, pp. 91-93)

In an August 21, 2018 report, Erin Kennedy, M.D., gave her opinions of claimant's condition following an IME. Claimant indicated he first noticed pain in the right groin on or about April 20, 2018, while doing sit-ups and core exercises. Records indicate an ultrasound from May 14, 2014, indicated a right inguinal hernia. (Ex. H, pp. 44, 47)

Dr. Kennedy opined that claimant had an asymptomatic hernia in May 2014 that did not become symptomatic until he began exercising after leaving 7G. She opined claimant's work at 7G was not the cause of claimant's right inguinal hernia. (Ex. H, pp. 48, 50)

On January 22, 2019, claimant was evaluated by Nick Armstrong, M.D., for left and right groin pain and right testicular pain. Dr. Armstrong recommended against surgical intervention. Claimant was assessed as having a chronic groin pain syndrome. (Ex. I, pp. 56-61)

Claimant testified he sought out Dr. Armstrong as he was considered to be a hernia specialist. (TR p. 22)

In an April 25, 2019 report, Joseph Chen, M.D., gave his opinion of claimant's condition following a records review. Dr. Chen opined that claimant's work at 7G was not a substantial factor in causing or materially aggravating his right inguinal hernia or groin pain condition. (Ex. J, pp, 72-73) He opined claimant's condition became symptomatic after doing sit-ups at home. Dr. Chen opined that claimant had chronic pain syndrome that was not due to a focal injury. (Ex. G, pp. 73-74)

In an April 3, 2019 report, Farid Manshadi, M.D., gave his opinions of claimant's condition following an IME. Dr. Manshadi opined claimant had evidence of a supraumbilical hernia, which did not appear to exist prior to his employment at 7G. Dr. Manshadi appeared to agree that claimant does not have a right-sided inguinal hernia. (Ex. 32, p. 146) Dr. Manshadi opined that claimant had a total of 8 percent permanent impairment to the body as a whole for his right-sided abdominal and inguinal and testicular pain. This was based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Ex. 32, p. 146)

In a May 20, 2019 letter, Dr. Manshadi opined that a spinal cord stimulator (SCS) might be a future treatment option for claimant. (Ex. 32, p. 149)

In a June 12, 2019 letter, written by claimant's former counsel, Dr. Armstrong diagnosed claimant with pelvic pain syndrome or chronic pain of the groin and abdomen. Dr. Armstrong agreed that, assuming claimant's symptoms worsened, it was likely the work activity claimant engaged in was a significant contributing factor to his current groin and abdominal pain. Dr. Armstrong also noted, ". . . per pt's claim, this could well be true. I do not know if right-sided pain complaints were documented PRIOR to work event as this would be critical info." (Ex. 30, pp. 133-135)

On July 9, 2019, claimant saw Dr. Armstrong for follow-up care. Claimant had a temporary SCS and was considering converting to a permanent SCS. Claimant had continued right groin and abdominal pain. Dr. Armstrong agreed claimant had a "variant" of a chronic pelvic pain syndrome. (Ex. 30, pp. 127-129)

Claimant returned to Dr. Armstrong on March 10, 2020, with complaints of right groin and abdominal pain. Dr. Armstrong noted claimant's complaints of pain seemed to be out of proportion, although he noted that this phenomena does occasionally occur in some inguinodynia patients. Dr. Armstrong told claimant that it was very difficult to opine that claimant's work definitely caused the hernia problems claimant was having. Claimant was diagnosed with chronic groin pain and abdominal pain. (Ex. 30, pp. 130-132)

In an addendum to her IME, Dr. Kennedy noted an erroneous record indicating an ultrasound showing a right inguinal hernia was performed on May 14, 2014. The ultrasound was actually performed on March 22, 2018. Dr. Kennedy did not believe claimant's work activity at 7G caused claimant's right inguinal hernia. This is because generally a traumatic hernia due to a strain is known immediately to a patient due to the extreme pain of the injury. Claimant's medical records indicate that claimant did not

relate his pain to work until on or about April 2, 2018. Claimant was terminated from 7G on March 8, 2018. (Ex. H, pp. 54-55; TR p. 23)

In an April 5, 2020 letter, A. Scott Whitney, Ph.D., indicated he was a licensed clinical psychologist. He began treating claimant beginning on September 11, 2018. Dr. Whitney assessed claimant as having a major depressive disorder. Dr. Whitney opined that claimant's worsening physical condition led to a further deterioration of claimant's mental health. Dr. Whitney found it unlikely claimant would return to his March 18, 2018 baseline in the near future. (Ex. 28, pp. 113-114)

In a January 26, 2021 letter, that appears to be written by claimant, Jeffrey Kueter, M.D., gave his opinions regarding claimant's condition. Dr. Kueter previously treated claimant in 2019 for a cyst on his tailbone. (Ex. 33, pp. 151-155) Dr. Kueter opined that it was possible for a 40-year-old male to have a hernia by repetitive lifting over 40 pounds and pushing heavy carts. He opined repetitive lifting can be a risk factor for hemorrhoids. He opined it was possible for a 40-year-old male with a 12-year history of nerve pain injections to not recognize an injury when it occurred. He opined chronic pain can exacerbate mental health conditions. (Ex. 33, pp. 156-160)

Claimant testified in deposition he had not looked for work as of February of 2019. In a supplemental answer to interrogatories, dated March 9, 2021, claimant indicated he was currently employed as a front desk associate with the Ramada Hotel in Galena, IL. Claimant indicated he had worked over 1100 hours at this job since October 23, 2019. (Ex. N)

CONCLUSION OF LAW

The first issue to be determined is whether claimant sustained an injury that 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 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 work-related injury on or about the week of March 5, 2018 through March 8, 2018 while working at 7G. Claimant contends those injuries include a supraumbilical abdominal hernia, a right inguinal hernia and a hemorrhoidal prolapse. Claimant also contends that his prior injuries of internal hemorrhoids, causalgia, chronic pain and his mental health problems were exacerbated by a work injury at 7G occurring during the week of March 5, 2018 through March 8, 2018. (Claimant's post-hearing brief, p. 1)

As noted, claimant has a long history of health problems including an inguinal hernia, chronic groin and abdominal pain, hemorrhoids and mental health issues. (Exs. 2, pp. 4-5, 6-8, 10-13; B; C; D; G. p. 29; M, depo p. 42; Tr. pp. 16-17, 22-24)

Claimant worked at 7G from December 2017 until March 8, 2018. Claimant testified his job was physically demanding and required repetitive lifting and pushing heavy carts. He testified he did not report a work injury to 7G during the time he worked at the distributor. Claimant testified that he did not miss any time from work due to an injury when employed at 7G. (TR p. 24)

Claimant testified in deposition that his symptoms on the right side of his groin were not going away one week after he left 7G. (Ex. N, p. 46) It is unclear from the record when claimant first noticed symptoms in his right groin and abdomen.

On March 22, 2018 claimant was evaluated by Dr. Adkins for groin pain. Claimant testified he told Dr. Adkins his injury was related to work. There is no mention in the March 22, 2018 record regarding a work injury. (Ex. E, p. 24) Claimant returned

to Dr. Adkins on April 2, 2018, for continued discomfort in the groin area. At that time claimant questioned if the injury happened at work. (Ex. E, p. 25)

A number of experts have opined regarding causation of claimant's groin and abdominal pain. Dr. Kennedy opined that claimant's condition was not work related. This is because a hernia caused by an acute injury is generally so painful that an injury is immediately known. Claimant did not report an alleged work-related injury while he was employed at 7G. The records indicate that claimant did not indicate a work-related injury until approximately one month after he left 7G. Dr. Kennedy also noted records indicate that claimant's groin pain was not documented until after claimant began performing core exercises. (Ex. H, pp. 48, 50, 55)

Dr. Chen performed a records review. He opined that claimant's right-sided pain was caused and made worse as a result of claimant doing core exercises after he left 7G. (Ex. J, p. 73)

Dr. Armstrong is a hernia specialist. Claimant sought Dr. Armstrong's care. Dr. Armstrong indicated that he could not relate claimant's hernia problems to his work at 7G. (Ex. I, p. 66)

Dr. Manshadi evaluated claimant once for an IME. Dr. Manshadi was chosen by claimant. Dr. Manshadi did not opine that claimant's right-sided neuropathic pain was caused by a work injury. (Ex. 32)

Claimant did not report a work injury while employed at 7G. He did not take any time off work for an injury while employed at 7G. Claimant was terminated from 7G on March 8, 2018. The first documented evidence, indicating claimant believed his pain was work related, is dated April 2, 2018. (Ex. E, p. 25) Drs. Chen and Kennedy both opine that claimant's condition was likely not caused by work. Dr. Armstrong was the specialist chosen by claimant. Dr. Armstrong could not relate claimant's hernia problems to work. Dr. Manshadi was an expert chosen by claimant for an IME. Dr. Manshadi did not give an opinion regarding causation. Given this record, claimant has failed to carry his burden of proof his numerous alleged injuries arose out of and in the course of employment at 7G.

I am empathetic to claimant's situation. It is clear from the record and from claimant's appearance at hearing that he suffers from some kind of chronic pain. It should also be noted that claimant did a good job in representing himself at hearing. However, per the facts as detailed above, claimant has failed to carry his burden of proof his injury arose out of and in the course of employment.

As claimant failed to carry his burden of proof his injury arose out of and in the course of employment, all other issues, except for reimbursement of the IME, are found to be moot.

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). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

Dr. Manshadi, the employee-retained expert, gave his opinions of claimant's permanent impairment in a report dated April 3, 2019. No expert, retained by defendants, gave an opinion regarding permanent impairment. Given this record, claimant is not due reimbursement for costs associated with the IME under Iowa Code section 85.39.

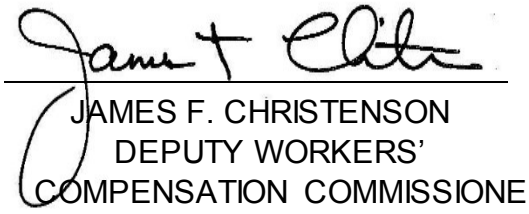
ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this _____11th____ day of October, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Bruno (via WCES)

James Ballard (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.