

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEREK DAVIS,

Claimant,

vs.

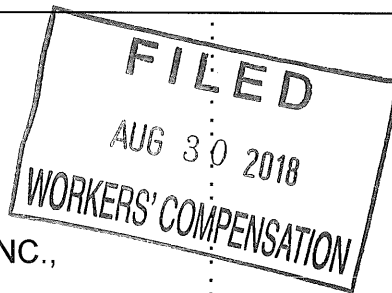
CRST INTERNATIONAL, INC.,

Employer,

and

AMERICAN INTERNATIONAL GROUP
INC.,

Insurance Carrier,
Defendants.



File No. 5062380

ARBITRATION
DECISION

Head Note Nos.: 1402.40, 1802,
1803, 2500

STATEMENT OF THE CASE

Derek Davis, claimant, filed a petition in arbitration seeking workers' compensation benefits from CRST International, Inc. (CRST) and its insurer, American International Group, Inc., as a result of an injury he allegedly sustained on August 7, 2015 that allegedly arose out of and in the course of his employment. This case was heard in Cedar Rapids, Iowa, and fully submitted on December 1, 2017. The evidence in this case consists of the testimony of claimant, Claimant's Exhibits 1 through 12 and Defendants' Exhibits A through O and Joint Exhibits 1 through 6. Defendants were allowed to provide additional exhibits and submitted two additional exhibits, which I have labeled P (Supplemental Report of Dr. Berg) and Q (Affidavit of Deb. Mentzer). On June 11, 2018, Attorney Chris Scheldrup entered an appearance on behalf of defendants. No withdraw of counsel has been filed by attorney Charles Blades for the defendants.

The parties filed hearing reports at the commencement of the arbitration hearing. On the hearing reports, 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 on August 7, 2015, which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;
3. Whether the alleged injury is a cause of permanent disability and, if so;
4. The extent of claimant's disability.
5. The commencement date of permanent disability benefits.
6. The amount of claimant's gross weekly earnings and the claimant's weekly workers' compensation rate.
7. Whether claimant is entitled to payment of certain medical expenses.
8. Whether defendant is entitled to a credit of 56.86 weeks of benefits paid at the rate of \$260.98.
9. Whether defendants are entitled to a credit for overpayment of the weekly rate.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Derek Davis, claimant, was 48 years old at the time of the hearing. He completed high school in Maryland. Claimant has one year at a community college in computer science. (Transcript, page 113) After high school he enlisted in the U.S. Marines and served for one year and received a medical discharge for a knee injury. (Tr. p. 20) Claimant testified that he has held a number of jobs and the longest he worked for one employer was three years as a security guard. (Tr. pp. 22, 23) Claimant was not working at the time of the hearing. He was taking care of his ill mother. (Tr. p. 107, Ex. A, p. 4) Claimant worked for Fast Park at the Baltimore Maryland airport from March 2016 through beginning of October 2016. (Tr. p. 108, Ex. A, p. 3) Claimant decided to drive for CRST as CRST had a training program. His first day of employment was July 7, 2015. (Exhibit, O, p.2) Claimant drove with a co-driver Kyle Emerson. (Tr. p. 24)

Claimant testified that that as to the date of his injury he had the date of August 7, 2015 stuck in his head and he made a mistake claiming August 7 as his date of injury. (Tr. pp. 30, 114) Claimant admitted that he was more likely to have a better recollection of the date of his injury shortly after his injury. (Tr. p. 114) Claimant said he was driving in the middle of nowhere, in Wisconsin, when his right calf began to hurt. (Tr. p. 34) Claimant said his right calf started hurting about an hour or two before he stopped driving on the morning of August 9, 2015. (Tr. p. 35) Claimant testified that the cruise control on his truck was not working and he had to keep his foot on the gas all the way. (Tr. p. 36; Ex. A, p. 76) Claimant and his co-driver drove to Chicago, unloaded and then went to Queens, New York. Claimant said he drove no more than two hours in the evening of August 9, 2015 due to calf pain. (Tr. p. 38) Claimant testified that at that time his co-driver called Amanda Leafgate, their supervisor, and let her know he was in pain and could not drive. (Tr. pp. 39, 46) CRST was also told that the cruise control on their truck was not working correctly. (Tr. p. 46)

Claimant testified that he initially thought he had pulled a muscle in his calf and did not immediately seek medical attention. (Tr. p. 44) Claimant returned to his home in Maryland and was directed by defendants to a Concentra medical clinic for care. (Tr. p. 57) Claimant went to Northwest Hospital for his calf pain and was diagnosed with deep vein thrombosis (DVT). (Tr. p. 59) Claimant was then sent to a chiropractor by defendants after he had been released from Northwest Hospital. (Tr. p. 59)

Claimant saw Brent Rittenhouse, D.C., on September 2, 2015. Dr. Rittenhouse noted that claimant denied any part of his body hit the truck on August 7, 2015. (JEx. 5, p. 1) Dr. Rittenhouse's assessment was:

IMPRESSION: It is my opinion that Mr. Davis is suffering from posttraumatic right leg strain and he is also suffering from a deep vein thrombosis. I grade his condition as fair. He cannot work. He will need to follow up for medication.

The impression listed above are consistent with and directly and causally related to the 08/07/15 accident.

(JEx. 5, pp. 1, 2)

Claimant received medication for his DVT from Northwest Hospital. He was then examined by Thomas Bensinger, M.D., on October 8, 2015, at the request of the defendants. (Tr. 60) Claimant testified that in mid-October 2015 he had ran out of his anticoagulation DVT medication and had a pulmonary embolism (PE). (Tr. p. 64) Claimant was in the hospital and was released on October 21, 2015 for this PE. (Tr. p. 65) Claimant had a second PE and was hospitalized on October 31 through November 14, 2015. Claimant said he was taking his DVT medication after his release from the hospital on October 21, 2015. (Tr. p. 66) Claimant stated that CRST started paying for his DVT medication (Warfarin/Coumadin) after his second PE and release from the hospital. (Tr. p. 67) Claimant testified that defendant stopped paying for his medication in July 2016 and he could not afford the \$400.00 charge. (Tr. p. 69)

Claimant had a third PE and was hospitalized November 13, 2016 through November 20, 2016. (Tr. pp. 69, 70) Claimant had a fourth PE and was hospitalized January 14, 2017 through January 20, 2017. (Tr. p. 70) After this hospitalization, claimant was able to obtain Medicaid and has been able to obtain his DVT medication. (Tr. 71) Claimant testified that he had difficulty in receiving timely authorization for medication by the defendants. (Tr. pp. 132, 133; Ex. A, p. 95)

Claimant testified that on August 7 and 8, 2015 he drove four hours and thirty-three minutes in one single stretch and disagreed with David Lawrence, M.D., that the longest he drove was two hours seventeen minutes. (Tr. pp. 74 - 76) Claimant testified that he did not believe he was non-compliant for failure to take his medication. He stated:

A. Because I constantly had problems with the insurance company, and they would not fill – they wouldn't fill the prescription. Or every time I went to take the card they gave me, it wasn't approved, and they had to call for approvals, and they just were so uncooperative, including trying to even call the nurse. I couldn't even – I wouldn't be able to get in contact with her or she would just tell me, "I'm taking care of it," and I needed my medication and I wasn't getting it. I didn't want to die. I'm too young for that.

Q. Okay. And from October 8th, 2015, when the nurse case manager was present at Doctor Bensinger's appointment, until you had your pulmonary embolism, CRST's insurance company did not provide you with any access to the medication, correct?

(Tr. p. 86, 87)

Claimant testified that he was mistaken that his injury happened on August 7, 2015; even though he was sure it was August 7, 2015 in his deposition and identified August 7, 2015 in his answer to interrogatories. (Tr. pp. 113 – 121)

On August 18, 2015, claimant provided a statement to a claims adjuster for the defendants. Claimant said that his injury occurred on the morning of August 7, 2015 and was due to the fact that he had to keep his foot on the gas for eight and one-half hours due to the broken cruise control. (Ex. C, p. 3; Ex. 11, p. 3)

Kyle Emerson testified via deposition. Mr. Emerson was a lead driver and claimant was a trainee at CRST. (Ex. B, p. 4) At the time of his deposition, Mr. Emerson was working for a different trucking company than CRST. Mr. Emerson testified that when he and claimant were driving they were having a problem with the cruise control on the truck. Mr. Emerson said that claimant's leg started hurting him because claimant had to use the gas a lot. Mr. Emerson notified dispatch and maintenance that there was a problem with cruise control on the truck and that claimant's leg was hurting him. (Ex. B, p. 6) Mr. Emerson was awake sitting next to claimant when he was told by claimant that his leg was hurting him. Mr. Emerson went to bed and was told by claimant when Mr. Emerson woke-up that his leg was still hurting him. (Ex. B, pp. 6, 7)

On October 8, 2015, Thomas Bensinger, M.D., was asked to perform an independent medical examination (IME) by Coventry of the claimant. (Ex. 1, p. 1) Dr. Bensinger recited the history claimant provided that claimant said to keep his foot on the accelerator for eight hours on August 7, 2015. (Ex. 1, p. 1) Dr. Bensinger's impression was:

IMPRESSION: Acute thrombophlebitis of the right popliteal vein, on therapy.

To the best of my medical knowledge, Mr. Derek Davis has an acute thrombophlebitis of the right popliteal vein, which is presently being appropriately treated with anticoagulation. However, he needs to remain on anticoagulation for three to six months, a minimum would be three months. He must avoid prolonged sitting, high temperatures with limited access to fluids or strenuous activities. The best activity would be for him to walk around on a regular basis. He should not drive a vehicle or sit in a vehicle or conveyance of any sort for greater than two hours without getting up and walking around. He should also be advised to wear a support stocking to avoid post-phlebitic syndrome. With these criteria in mind, he can return to work if he is not asked to sit or stand for more than two hours at any one time.

(Ex. 1, p. 2) Dr. Bensinger recommended restrictions and that claimant continue his anticoagulation therapy for three to six months. (Ex. 1, p. 2) On a sheet provided by Coventry, Dr. Bensinger indicated affirmatively (circling yes) that the claimant's diagnosis was causally related to his reported injury. (Ex. 1, p. 3)

On June 20, 2017, Mayer Gorbaty, M.D., Director of Oncology Northwest Hospital wrote a letter concerning claimant's condition. Dr. Gorbaty had been treating claimant for about two years because of his recurrent history of recurrent pulmonary embolism as well as recurrent right lower extremity deep vein thrombosis. (Ex. 2, p. 1) Dr. Gorbaty wrote, "In my estimation, his prolonged driving with pressure required on the accelerator for 7 to 8 hours was a contributing factor to the development of his deep vein thrombosis." (Ex. 2, p. 1) Dr. Gorbaty recommended claimant stay on indefinite anticoagulation therapy and recommended that he should not sit for prolonged periods and that every three hours that he be allowed to walk around. (Ex. 2, p. 1)

Claimant has submitted medical bills in the total amount of \$32,039.89 and with adjustments due to Medicaid payments resulting in a net amount of \$21,026.18 (Ex. 4, p. 1)

Claimant has asserted his average weekly wage is \$391.01. Claimant combines four weeks of his wages and eight weeks of his co-driver's wages to reach this result. (Ex. 5, p. 1)

The driving logs submitted show claimant drove 8 hours and 49 minutes on August 6, 2015. (Ex. 6, p. 2) The logs used military time and start at 00:00 and would end at 23:59. (12:00 a.m. to 11:59 p.m.) The record does not show how long he drove on August 5, 2015 leading up to his 00:00 start time on August 6, 2015. He was on duty 9 hours and 9 minutes that day. He was in the sleeper for 14 hours and 11 minutes. (Ex 6, p. 2) On August 7, 2015, claimant drove for 2 hours and 37 minutes and was on duty for a total time of 2 hours and 57 minutes and in the sleeper for 21 hours and 3 minutes. (Ex. 6, p. 3) On August 8, 2015, claimant drove 11 hours and 7 minutes and was on duty for a total time of 11 hours 45 minutes. He was in the sleeper for 11 hours 33 minutes. (Ex. 6, p. 4)

The longest claimant drove without a break from August 6 through August 8, 2015 was 4 hours and 50 minutes. (Ex. 6, pp. 3, 4) Claimant did not drive 7 to 9 hours without a break.

Claimant has requested costs in the amount of \$357.80. The costs are \$100.00 filing fee, \$13.35 service costs, \$211.45 deposition cost of claimant and \$33.00 deposition cost of Mr. Emerson. (Ex. 10, p. 1)

An affidavit of Steve Madlom was submitted by the parties. Mr. Madlom is the Director of External maintenance and VRT, which includes providing maintenance on semi-truck for CRST. (Ex. H, p. 1; Ex. 12, p. 1) Mr. Madlom stated that he reviewed maintenance records at CRST for the truck claimant was driving and had no record that CRST had been informed that there was a problem with the cruise control. (Ex. H, p. 1)

On August 15, 2015, claimant was seen at Concentra in Maryland. Claimant was complaining of right calf and knee pain from driving a truck when cruise control was not operating. This record states the date of injury was August 7, 2015. (JEx. 3, p. 1) Claimant was assessed with calf pain and discharged without any medication. On August 17, 2015, claimant went to the emergency department of Northwest Hospital. Venous Doppler showed claimant was having acute DVT. (JEx. 4, p. 10) The assessment was, "Acute right popliteal deep venous thrombosis." (JEx. 4, p. 11) Claimant was started on medication. Claimant's discharge diagnosis was "Deep venous thrombosis." (JEx. 4, p. 13)

On October 14, 2015, claimant was seen at LifeBridge Health for difficulty breathing and right upper back pain. The history note for the admission stated claimant had not been able to take his DVT medication for the past week due to insurance not paying for it. (JEx. 4, p. 14) The hospital admission note of October 14, 2015 reported that claimant had not been able to take his medication due to workers' compensation issues. (JEx. 4, p. 17) Claimant was found to have bilateral pulmonary emboli. (JEx. 4, p. 18) The admission note stated, "History of recent right lower extremity deep venous thrombosis. The patient acquired this deep venous thrombosis during prolonged immobility while on the road. The patient is a truck driver, and spends 8 to 11 hours a day behind the wheel." (JEx. 4, p. 19) The October 21, 2015 discharge summary stated in part,

Briefly, the patient is a 46-year-old male who, in 08/2015, was diagnosed with right lower extremity DVT, felt to be provoked due to prolonged immobility related to truck driving. Patient had been imitated on Xarelto; however, he had been off of Xarelto for at least 10 days due to insurance coverage issues. Patient, on the day of presentation, comes to our ER for evaluation of chest pain and shortness of breath, and is, therefore, admitted for further management.

(JEx. 4, pp. 21, 22) His discharge diagnosis was:

1. Pulmonary emboli with pulmonary infarctions.
2. Deep vein thrombosis of the right lower extremity.
3. Pleuritic chest wall pain attributed to pulmonary infarctions.

(JEx. 4, p. 22)

On October 31, 2015, claimant returned to Northwest Hospital and was discharged November 9, 2015. Claimant had a new left lower pulmonary embolism while on Xarelto. (JEx. 4, p. 30)

Claimant was seen on November 23, 2015 by Lawrence Rubin, M.D., for a follow-up evaluation for his pulmonary embolus. Dr. Rubin's impression was "Occupational related DVT and PE." (JEx. 5, p. 6) Dr. Rubin changed claimant's medication and took claimant off work for a month. A note of April 13, 2016 stated that claimant missed four doses of his medication due to insurance delay. (JEx. 4, p. 38) A Northwest Hospital note of September 12, 2016 stated claimant had been out of his anticoagulation medication for about two weeks due to insurance reasons. (JEx. 4, p. 42) Claimant was hospitalized for a PE on November 13, 2016 and discharged on November 20, 2016. (JEx. 4, p. 49) Claimant was last hospitalized for PE from January 14, 2017 through January 20, 2017. The note indicated this incident was likely due to noncompliance with taking his medication. (JEx. 4, p. 54) Lifetime use of an anticoagulant was recommended at that time. (JEx. 4, p. 55)

Dr. Gorbaty saw claimant on January 6, 2016. Dr. Gorbaty's assessment and recommendations were,

ASSESSMENT:

1. Popliteal vein thrombosis of the right lower extremity, August 2015.
2. Pulmonary embolism, October 2015.
3. Transiently positive lupus anticoagulant.
4. Chronic back pain.

RECOMMENDATIONS: While here this morning I spoke to Mr. Davis about our general approach to the management of DVT/PE. We tend to start by thinking about this whether it is provoked or spontaneous. In his case, the main risk factor that I can see is that he is a long-distance truck driver and that prior to having the DVT he was in this predicament where he had to keep his right leg on the accelerator in an uncomfortable position for many hours. In terms of biochemical evaluation, he did have a lupus anticoagulant, which was positive in October, though 2 weeks later it

was negative. The pulmonary embolism occurred while he was actually off anticoagulation for about 10 days.

(JEx. 6, p. 3) On July 15, 2016, Dr. Gorbaty noted claimant had started working as a shuttle driver and wrote:

My impression is that he had a provoked DVT which was subsequently complicated by a pulmonary embolism when he was off of his anticoagulant. Therefore, I think it would be very reasonable to discontinue his anticoagulant at this time since he has had it for over 6 months and his work situation has changed. Instead of an anticoagulant, he could go on aspirin daily. Another option is to continue with his warfarin at this time and a third option is to continue an anticoagulant but switch him to one of the NOAC's which would be somewhat easier on his lifestyle.

Mr. Davis' response to my suggestion is that he would like to leave well enough alone and stay on the warfarin. Certainly, he may change his mind in the future but this is what he is most comfortable doing and I am fine with that.

(JEx. 6, pp. 5, 6)

On July 30, 2017, Dr. Lawrence wrote a report based upon a record review at the request of defendants. Dr. Lawrence wrote claimant drove a total of 136 miles on August 7, 2016 and 667 miles on August 8, 2015. (Ex. D, p. 1) Dr. Lawrence wrote that he did not believe that claimant driving for CRST on August 7, and 8, 2015 was the cause of claimant's DVT. Dr. Lawrence stated that the driving logs did not show 7 to 9 hours of driving and that the non-functioning cruise control would have increased the movement of the right calf; effectively mimicking the movements depicted in the seatback pocket magazine on planes to reduce risk of DVT. (Ex. D, p. 3) As he held that the driving did not cause the DVT he concluded that the PE was caused by claimant's failure to be using his medication. (Ex. D, p.3) Dr. Lawrence said that claimant's need for lifelong need for anticoagulate therapy was caused by his noncompliance with medication and was not the result of his work for CRST. He found claimant at maximum as of March 25, 2016 and found a 10 percent impairment caused by the need for his lifelong anticoagulation therapy. (Ex. D, p. 5)

David Berg, D.O., provided three reports in this claim. One on July 30, 2016, one on July 25, 2017 and the third report on October 18, 2017. In Dr. Berg's July 30, 2016 report he reviewed medical records. In this report he disagreed with prior evaluations that attributed claimant's DVT to driving long periods of time with his foot on the accelerator. (Ex. E, p. 3) Dr. Berg concluded that the terrain claimant was driving in was not flat and that claimant would have been repetitively plantar flex and dorsal flex his right foot, which he said was the same exact activity used to prevent DVT for passengers who drive or fly for long periods of time. (Ex. E, p. 3) Dr. Berg stated that

claimant's PE was the result of noncompliance with medication and read Dr. Rittenhour's report to indicate that claimant suffered trauma to his leg, which could be the etiology of claimant's DVT. (Ex. E, p. 3) Dr. Berg did not believe that claimant's work for CRST was an aggravating factor for claimant's DVT. Dr. Berg stated claimant had no permanent impairment from his DVT and was at maximum medical improvement (MMI) three months following his diagnosis. (Ex. E, p. 4)

Dr. Berg examined claimant on June 13, 2017 and issued a report on June 25, 2017. Dr. Berg noted that the driving logs from August 6 – 8, 2015 did not show claimant driving straight for 7-8 hours. (Ex. E, pp. 6, 7) He concluded that there were no prolonged periods of inactivity that would cause his DVT and could find no medical studies that compared driving time to developing DVT. (Ex. E, pp. 7, 8) Dr. Berg stated that if claimant would drive 7-8 hours, with the use of cruise control, such immobility could cause DVT. Based upon the driver's logs Dr. Berg stated that claimant's DVT was not caused by his driving for CRST. (Ex. E, p. 8) Dr. Berg found claimant to be at MMI for his DVT and PEs on March 25, 2016. He stated the PE were the result of noncompliance with his medication. And provided a rating of 10 percent to the whole body. (Ex. E, p. 8)

On October 18, 2017, Dr. Berg wrote a third report. Dr. Berg stated that claimant would have had dorsiflex and plantar flex while driving his truck. Dr. Berg referred to a printout from the airlines referring to the movement of a foot to pump it and avoid DVT. (Ex. P, p. 1) Dr. Berg stated again that he did not believe that the driving duties at CRST was the cause of claimant's DVT and the cause of the PE was claimant not taking his medicine. (Ex. p. p. 2)

Defendants submitted an exhibit on foot pump exercises for air travel related DVT. (Ex. G, p. 1) One exercise shows an action similar to putting a foot on an accelerator keeping the heel on the floor and raising and lowering the ball of the foot and toes. The other image shows the heel being raised with the ball of the foot on the floor. (Ex. G, p. 1) This heel raising motion does not appear to be a motion typically done while driving.

In Dr. Lawrence's report and all three of Dr. Berg's reports, the October 14, 2015 through October 21, 2015 PE seven day hospitalization is not mentioned.

I find the claimant credible that for the majority of time he was not able to take his anticoagulation medication was primarily due to delays in having the defendants authorize and provide the medicine. I find that claimants PE were not the result of an intervening cause but were a result of his DVT. Defendants eventually denied the claimant and he had no insurance until he was eligible for Medicaid to pay for his medication. The medical records reflect that insurance delays were the reason claimant was not taking his medication. I find claimant was compliant with his treatment as much as he reasonably could be, considering the problems in getting prescriptions.

I find that the date of claimant's injury is August 7, 2015. This is the date claimant provided his medical providers shortly after the claimant experienced the DVT symptoms. Claimant's assertion of an injury date of August 9, 2015 is not consistent to the information claimant gave to his medical providers shortly after the DVT began.

CONCLUSIONS OF LAW

Defendant, at the hearing, moved to dismiss a claimed injury date of August 9, 2015 and renewed their objection in their brief. I have found the injury date to be August 7, 2015 so that the objection is moot. The undersigned denied the motion to dismiss at the hearing and provided defendants additional time to provide evidence concerning their response to the claim of an injury date of August 9, 2015. Claimant was not permitted to offer rebuttal evidence to defendants' evidence. Defendants assert that the change of dates was prejudicial due to the fact that they no longer had the driver logs for August 9, 2015 and could not refute some of claimant's testimony and did not have the drive time information to present to physicians. The co-driver Kyle Emerson notified CRST when claimant could no longer drive. This happened within hours that claimant first noticed right calf symptoms. Defendants had actual knowledge of when the claimant and could no longer drive due to his DVT. Defendants' motion to dismiss the injury claim date August 9, 2015 is overruled.

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" referred 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 Electric 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)

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Claimant had DVT that appeared while he was driving for CRST. I find the claimant and Mr. Emerson's testimony credible that the cruise control was not working properly on the truck they were driving. There simply is no reliable evidence that claimant was driving 7 to 9 hours straight.

This is a close case as to causation of the DVT. I find that claimant has not proven by a preponderance of the evidence that his DVT arose out of and in the course of his employment with CRST. The opinion of Dr. Bensinger and Dr. Gorbaty are based upon claimant driving 7 to 9 hours straight without any breaks. The driving logs and the

credible testimony show the longest claimant drove without a break was 4 hours 50 minutes. Given the evidence presented, claimant has not proven his case.

As claimant has not prevailed, all other issues identified by the parties are moot.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further in this claim.

Each party pays own costs.

Signed and filed this 30th day of August, 2018.



JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.