BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN EHREDT,	:	
Claimant,	:	
vs.	:	
	:	File No. 5001566
JTPA,	:	
	:	A R B I T R A T I O N
Employer,	:	
	:	D E C I S I O N
and	:	
VIRGINIA SURETY COMPANY,	:	
Insurance Carrier, Defendants.	:	HEAD NOTE NO: 1402.40

STATEMENT OF THE CASE

Kevin Ehredt, claimant, filed a petition in arbitration seeking workers' compensation benefits from JTPA and its insurer, Virginia Surety Company, as a result of an injury he allegedly sustained on December 28, 1999, that allegedly arose out of and in the course of his employment. This case was heard and fully submitted in Davenport, Iowa, on April 9, 2003. The evidence in this case consists of the testimony of claimant, claimant's wife, Carrie Ehredt, Joyce Dickinson, Kristin Dalton, Pam Grayson, Rebekah Ebensberger, and Marcia Shadle and claimant's exhibits 1 through 22 and defendants' exhibits A through O.

It should be noted that claimant's exhibit 15 and defendants' exhibit A are both the deposition of John M. O'Shea, M.D., taken January 18, 2003. Both of these exhibits were missing the backside of each two-sided page when submitted at the hearing. In a letter dated April 22, 2003, claimant supplied the missing pages. All references to Dr. O'Shea's deposition will be referred to only as exhibit 15.

ISSUES

1. Whether the alleged injury on December 28, 1999, is a cause of temporary disability; and, if so, claimant's entitlement to temporary benefits;

2. Whether the alleged injury on December 28, 1999, is a cause of permanent disability; and, if so, the commencement date of permanent partial disability benefits and;

3. The extent of claimant's industrial disability; and

4. Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant.

FINDINGS OF FACT

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

Kevin Ehredt, claimant, was born January 14, 1961, making him 41 years old at the time of the evidentiary hearing. He lives in Clinton, Iowa. He attended high school to the 11th grade, has not obtained a GED, and has no further formal or trade school training or education. Claimant's work experience includes customizing vans, being a foreman with five employees at a dry feed plant and being a maintenance mechanic. The pay for these jobs ranged from $15,000 per year to $15.99 per hour. (Exhibit 20, page 1)

Claimant has a history of low back pain and surgery. (Ex. 2, p. 17) On November 9, 1998, claimant was released by Todd Ridenour, M.D., his surgeon, to return to regular duty. (Ex. 5, p. 8)

Claimant began working for JTPA, defendant-employer, in September 1999. Claimant described JTPA as a program that helps people find jobs when they are having difficulty finding jobs. (Ex. B, p. 9) Claimant was employed as a park aide assigned to the conservation department. A park aide performs a variety of tasks in maintenance of parks. (Ex. 19)

On December 1, 1999, claimant reported to a medical clinic that he fell down stairs and had low back pain. X-rays of the lumbar spine were normal. (Ex. 6, p. 2)

Claimant testified that on December 28, 1999, he was cutting up downed trees and cleaning up debris from a flood. Claimant also testified that he slipped and fell while carrying logs when his right foot went into a hole two foot deep. Claimant described the event as a "dramatic experience." (Ex. B, p. 16) He also testified that he completed his work shift and did not seek immediate medical care but the pain got worse. Claimant worked 5 days a week through Friday, January 14, 2000, working up to 10 hours a day on 2 days, and 8 hours on each day the work week ending January 14, 2000. (Ex. C, pp. 5-6) However, claimant testified in his deposition taken October 22, 2002, that the last day he worked was December 28, 1999. (Ex. B, p. 3)(Ex. 1, pp. 1 and 2 are identical)

On January 17, 2000, it snowed .5 inches in Clinton. (Ex. O, p. 50) On January 18, 2000, claimant visited the office of his family doctor, John O'Shea, M.D. The history recorded by the nurse at the doctor's office was that claimant had twisted his lower back while shoveling the day before when he had pain so intense that he fell down. (Ex. 2, p. 17 and Ex. 15, p. 5) The history recorded by Dr. O'Shea on January 18, 2000, was that claimant had been shoveling snow the day before and had a "sudden onset of pain in right lower back radiating to the right buttocks when he twisted so intense that it caused him to fall down." (Ex. 2, p. 17) Dr. O'Shea testified that both his nurse and he took a history from claimant and that claimant had told the doctor he was shoveling snow. (Ex. 15, pp. 5-6) On January 18, 2000, Dr. O'Shea noted that claimant was in extreme discomfort with any motion. Dr. O'Shea also testified that when he saw claimant on January 25, 2000, someone had transferred the paperwork in his office from a non-work injury status to a work injury status. (Ex. 2, pp. 18, 21, and Ex. 15, Deposition Ex. 2)

Claimant testified that he did not shovel snow on January 17, 2000. (Ex. B, p 22) Claimant denied that he made a statement regarding shoveling snow to either Dr. O'Shea or his nurse. Claimant's wife testified that claimant did not shovel snow on January 17, 2000. Both claimant and his wife testified that she made claimant go to Dr. O'Shea on January 18, 2000, because of his increase in pain following the December 28, 1999, injury.

On January 19, 2000, and January 25, 2000, Dr. O'Shea noted that prescription pain medication was not helping claimant's pain. (Ex. 2, p. 20) On January 25, 2000, Dr. O'Shea ordered an MRI. Claimant was seen by Dr. O'Shea for follow-up for pain on February 1, 2000. (Ex. 2, p. 22)

On February 10, 2000, claimant returned to see Dr. Ridenour for the first time since November 1998. The history claimant gave Dr. Ridenour was nearly two months of "excruciating right leg pain" following a "modest accident at work where he was carrying some wood at work and stepped in a hole." (Ex. 5, p. 9) Dr. Ridenour noted an MRI had been done. Dr. Ridenour also noted that given the "amount of exquisite pain" claimant had a recurrent disc herniation was a real possibility. (Ex. 5, p. 9) Dr. Ridenour recommended that claimant consider surgery and discussed the risks of further surgery. (Ex. 5, p. 10)

Claimant was eventually seen by Vincent Traynelis, M.D., a neurosurgeon, at the University of Iowa Hospitals and Clinics (hereinafter UIHC), on July 17, 2000. Claimant reported to Dr. Traynelis a history of carrying logs and falling in a hole on January 28, 2000. Claimant also reported to Dr. Traynelis that he had been doing well after he returned to work following the surgery in 1998 until the "events of January 2000." (Ex. 3, p. 3) It was also noted that claimant went out to shovel snow a couple of weeks after he fell into the hole carrying logs but his back hurt so much he could not do it. (Ex. 3, p. 3) Dr. Traynelis thought the MRI was consistent with lumbar spondylosis as well as epidural scar. Dr. Traynelis also thought there was a fair amount of psychological overlay as well. (Ex. 3, p. 4)

Claimant was seen at UIHC Pain Medicine Clinic on August 18, 2000. Claimant gave a history of reportedly feeling fine following surgery in 1998 until January 2000, when he stepped in a hole while carrying firewood. (Ex.3, p. 5) Trigger point injections were administered. (Ex. 3, p. 8)

On January 30, 2001, Dr. Ridenour wrote that on February 10, 2000, claimant told the doctor that he had been involved in an accident at work while carrying some wood. Dr. Ridenour opined, "Certainly, there is a chance that that injury at work was the cause of his recurrent herniation." (Ex. 5, p. 11) There is no indication in Dr. Ridenour's records that he was aware of the alleged snow shoveling incident on January 17, 2000.

On June 12, 2001, Dr. Traynelis and doctors at UIHC performed surgery consisting of L4-5, L5-S1 posterior lumbar interbody fusion with Allograft, L 4-5, L5-S1 decompression and L4-S1 posterior lateral fusion with instrumentation and autograph. (Ex. 3, p. 21) On June 21, 2001, surgery was performed for a wound infection. (Ex.3, p. 22)

Following the surgeries, claimant continued to experience pain in the right leg. The Pain Medicine Clinic at UIHC recommended spinal cord stimulation. (Ex. 3, p. 43) Before proceeding with that procedure, claimant underwent a psychological evaluation. On October 1, 2002, Amy Stockman, Ph.D., psychologist, found that claimant was in major depression and that aggressive treatment of the depression was necessary. (Ex. 3, p. 44) Claimant received treatment for his psychological condition. (Ex. 4, pp. 10-26)

On December 20, 2002, Kenneth McMains, M.D., conducted an independent medical examination of claimant. Dr. McMains rated claimant's impairment as 25 percent of the whole person and 14 percent impairment directly related to the third and fourth surgeries (surgeries in June 2001). Dr. McMains found an overwhelming problem with pain that may be psychogenesis or a pattern of pain behavior. Dr. McMains thought claimant's back was stable and that treatment needed to focus primarily on claimant's underlying physiological dependence on the large amounts of medications he was taking. (Ex. E, pp. 5-6)

Dr. O'Shea was deposed on January 8, 2003. Dr. O'Shea was aware of the history of claimant carrying logs and stepping in a hole. (Ex. 15, pp. 38-39) Dr. O'Shea also had the history given to him by claimant regarding shoveling snow on January 17, 2000. (Ex. 15, p. 40) At one point in his deposition, Dr. O'Shea opined based on a hypothetical question posed that the pain claimant had and some of the findings on the MRI could and likely would have been caused by the accident on December 28, 1999. (Ex. 15, p. 31) Dr. O'Shea opined that if claimant had pain from carrying wood and slipping and later had a snow shoveling incident, that claimant's condition was aggravated, accelerated, or exacerbated by the incident at work. (Ex. 15, p. 42) Dr. O'Shea also opined that based on what claimant told him the cause of claimant's condition was shoveling snow. (Ex. 15, p. 37)

On January 10, 2003, Richard Rosenquist, M.D., in the Pain Medicine Division of UIHC, noted that claimant had reported he initially injured himself in January 2000, while carrying some firewood. (Ex. 3, p. 58) Dr. Rosenquist wrote that it was difficult to provide any significant opinion regarding the initial injury and claimant's referral to the Pain Medicine Clinic by Dr. Traynelis eight months after his original injury. (Ex. 3, p. 60)

On January 14, 2003, Dr. Traynelis wrote that claimant had reached maximum medical improvement but required further treatment to manage his chronic pain problem. Also on January 14, 2003, Dr. Traynelis opined that claimant's impairment was 28 percent of the whole body. (Ex. 3, p. 62)

On January 17, 2003, Julian Burn, Ph.D., who had seen claimant on five occasions, opined that claimant's accident did exacerbate the depressive symptoms. (Ex. 4, p. 27) The history given to Dr. Burn on April 9, 2001, was that claimant had an accident in which he stepped into a hole and injured two discs in his back while carrying firewood. (Ex. 4, p. 10) Dr. Burn's office note on October 21, 2002, indicates a history of the accident occurring on December 28, 1999. (Ex. 4, p. 16)

On March 10, 2003, Dr. McMains wrote an addendum to his December 20, 2002, report. Dr. McMains noted the history given to Dr. O'Shea regarding claimant shoveling snow and what Dr. McMains described as the other story of carrying wood and slipping. Dr. McMains wrote, "Since we don't know the actual causation, and both are plausible in terms of symptoms, ..." (Ex. E, pp. 20-21)

On March 24, 2003, Dr. Stockman wrote that claimant's psychological condition was stable and that claimant deserved a chance at a trial of a spinal cord stimulator. On April 7, 2003, the procedure for placement of the spinal cord stimulator was scheduled for April 21, 2003. (The evidentiary hearing in this matter was held on April 9, 2003.)

Claimant has not worked since January 2000. At the time of the hearing claimant was a handyman manager of a 14 unit apartment building. Claimant lives in the building rent free in exchange for his services. He has lived in the building since September 2002. Claimant does limited repair work as the handyman. Claimant made a limited and unsuccessful job search in February 2003. (Ex. 16, pp. 1-2)

CONCLUSIONS OF LAW

The dispositive issue to be resolved is whether claimant has proved that injury on December 28, 1999, caused claimant's condition and a temporary and/or permanent disability.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e)

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. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 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 very troubling aspect of this case is that claimant suffered a stipulated injury on December 28, 1999, did not seek immediate medical treatment, returned to work, and did not seek medical attention until January 18, 2000, following an alleged snow shoveling incident the day before. Thereafter he was taken off work and had long-term, aggressive medical treatment. Claimant's explanation that he did not shovel snow on January 17, 2000, is inconsistent with the history he gave independently to both Dr. O'Shea and Dr. O'Shea's nurse. Claimant's explanation is also inconsistent with other records that suggest the work injury occurred on December 28, 1999, while shoveling snow. Other medical records indicate a history of carrying logs and slipping in January 2000. The explanations offered on behalf of claimant that he did not immediately seek medical treatment after the December 28, 1999, injury because he did not like to go to the doctor are inconsistent with the volume of medical records in this case. Also, that explanation is specifically inconsistent with the fact that claimant sought medical treatment for a fall on stairs on December 1, 1999, which would be characterized as a fairly insignificant event given that x-rays were normal and there is no record of medical treatment for that incident other than the x-rays for evaluation. Also suspicious is the incident report that claimant alleges was completed on December 28, 1999. The report indicates claimant had a herniated disc because of the December 28, 1999, injury but the herniation would not have been known until after the MRI following claimant's medical treatment beginning January 18, 2000.

The picture of what was the substantial factor in causing claimant's condition and disability is a fuzzy one. The picture that emerges here is that claimant's stipulated injury on December 28, 1999, did not cause the need for immediate medical treatment.

After January 18, 2000, claimant had a need for medical treatment for a "dramatic experience" and "excruciating pain." It certainly appears that something happened on or about January 17, 2000, that caused claimant's condition to worsen significantly. Given this appearance and the facts of this case, it is impossible for claimant to prove that the December 28, 1999, injury was a substantial factor in causing his condition and need for treatment and any disability.

The medical opinions do not meet claimant's burden of proof. Dr. O'Shea, at one point in his deposition, opined based on what claimant told him that the cause of claimant's condition was snow shoveling. At another point in the deposition, Dr. O'Shea opined that based on a posed hypothetical question that the December 28, 1999, incident likely caused claimant's condition. Dr. O'Shea's opinion that the incident at work aggravated claimant's condition could be the basis that claimant had a work injury as stipulated but it would not necessarily be an opinion that claimant's work injury caused a disability or need for medical treatment. Dr. McMains who was also aware of both the December 28, 1999, incident and the snow shoveling allegation, could not determine the actual causation. It appears that the opinions of Dr. Ridenour and Dr. Burn were based on an inaccurate history, namely they were unaware of the alleged snow shoveling. Dr. Rosenquist refused to provide an opinion. It should also be noted that Dr. Rosenquist relied upon a history of claimant slipping while carrying logs in January 2000. No doctor with an accurate history has conclusively opined that the work injury on December 28, 1999, caused claimant's condition and a need for medical treatment and/or disability.

When all evidence is considered, claimant has failed to prove the December 28, 1999, injury caused his condition and a need for medical treatment and any alleged disability. All other issues are moot.

ORDER

THEREFORE, it is ordered:

That claimant shall take nothing from these proceedings.

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

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this _____4th_____ day of June, 2003.

_____
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DEPUTY WORKERS'
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