

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SAMIR DAOUD,

Claimant,

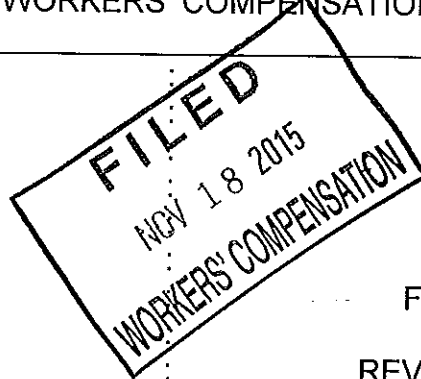
vs.

QUAKER OATS COMPANY,

Employer,

and

ACE-CIGNA,

Insurance Carrier,
Defendants.

File No. 5026754

REVIEW-REOPENING
DECISIONHead Note Nos.: 1801, 1802,
1803, 2500

STATEMENT OF THE CASE

This is a review-reopening proceeding. The contested case was initiated when claimant, Samir Daoud, filed his review-reopening petition with the Iowa Division of Workers' Compensation. The petition was filed on June 12, 2014. Claimant alleged he sustained a change of condition since the arbitration was rendered on September 9, 2009. (Original notice and petition)

Defendants filed their answer on June 25, 2014. The hearing administrator scheduled the case for hearing on June 11, 2015, at 2:20 p.m. The hearing took place in Waterloo, Iowa, at the Iowa Department of Workforce Development. The undersigned appointed Ms. Abby M. Kurtz as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Defendants did not call any witnesses to testify live at the hearing.

The parties offered exhibits. This deputy admitted claimant's exhibits marked 1 through 6, and 10 through 12. The undersigned admitted defendants' exhibit A through D, and F. Joint exhibits 1 through 6 were also admitted.

Post-hearing briefs were filed on or before July 7, 2015. The case was deemed fully submitted on that date.

STIPULATIONS

The parties completed the designated hearing report. However, on or about October 27, 2015, the attorneys for the respective parties held a telephone conference with the undersigned deputy workers' compensation commissioner. The parties informed this deputy, they had reached agreement on all but two issues. The only issues to be addressed in the review-reopening proceeding were:

1. Whether claimant's squamous cell carcinoma of the left vocal fold is causally related to claimant's work injury on July 28, 2006; and, if so;
2. Whether defendants are liable for the medical costs associated with the treatment of the squamous cell carcinoma under Iowa Code section 85.27.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This deputy, after listening to the testimony of claimant at hearing, after judging his credibility, and after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

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

The arbitration decision in this matter was issued on September 9, 2009 by another deputy workers' compensation commissioner. Defendants were ordered to pay unto claimant permanent partial disability benefits to claimant in the amount of 65 percent or 325 weeks of permanent partial disability benefits at the weekly benefit rate of \$583.42 per week. Claimant was diagnosed with having suffered obstructive airway disease/bronchiolitis obliterans from workplace exposure to small particles. (Arbitration decision, page 2)

Because claimant complained of increasing hoarseness, his authorized treating physician, Patrick Hartley, M.D., and a pulmonologist, referred claimant to the Otolaryngology Clinic at the University of Iowa Hospitals and Clinics. Douglas J. Van Daele, M.D., Associate Professor of the Department, examined claimant on October 24, 2013. (Joint Exhibit 3, page 1) Dr. Van Daele performed a laryngoscopy and found a "Laryngeal Mass." (Jt. Ex. 3, p. 6) A biopsy of the mass was ordered.

Laila Dahmouh, M.D., a pathologist, diagnosed the mass as:

Larynx, left vocal fold, biopsy:

Invasive moderately differentiated squamous cell carcinoma.

(Jt. Ex. 3, p. 10)

A CT scan of the larynx on December 5, 2013 revealed a 5 mm x 13 mm left true vocal cord mass consistent with given history of squamous cell carcinoma. (Jt. Ex. 4, p. 5) Radiation therapy for six to seven weeks was recommended. Claimant underwent the radiation therapy from December 16, 2013 through January 30, 2014. Subsequent to the radiation therapy, claimant had some swelling and ulcerations consistent with the treatment he had received. (Jt. Ex. 3, p. 6)

On January 22, 2014, defendants desired an opinion regarding the cause of claimant's squamous cell carcinoma. Susannah Friemel, M.D., at Iowa Cancer Specialists was contacted to provide an expert opinion. The oncologist did not examine claimant, but she did review some medical records, although it is unclear what records Dr. Friemel examined. In her report of the same date, the physician opined in relevant part:

Mr. Daoud was seen on 10/24/2013 with the complaint of increasing hoarseness over several months. A flexible laryngoscopy was performed on that day and a small left vocal fold irregularity was noted, concerning for early neoplasm. Note was also made that the oropharyngeal mucosa appeared "normal." Laryngoscopy with biopsy was performed on 11/25/2013 and a fungating mass was seen on the left anterior vocal fold originating from a mass in the left anterior vestibule. Pathology showed invasive moderately differentiated squamous cell carcinoma. A nasolaryngoscopy performed on 12/05/2013 showed no significant abnormality in the nasopharynx or oropharynx; an area of leukoplakia was seen along his left vocal cord. A CT of the larynx/neck performed on 12/05/2013 showed an enhancing 5 mm x 13 mm mass located in the anterior aspect of the left true vocal cord. He was evaluated by radiation oncology and a course of radiation therapy was recommended as definitive treatment for his T2N0, stage II tumor.

Mr. Daoud has no history of smoking or using smokeless tobacco products, however, his father died of lung cancer at the age of 78 and was a heavy smoker. A clinical note dated 03/14/2007 states that Mr. Daoud would have increased pulmonary symptoms when around cigarette smoke, and that he formerly would sit with friends who were smokers in the workplace cafeteria. In summary, Mr. Daoud has a history of significant exposure to secondhand smoke as well as a family history of lung cancer.

Head and neck cancer is comprised of a wide variety of tumors that arise in the head and neck region, including the oral cavity, pharynx, and larynx among other sites. The vast majority of head and neck cancers arise from squamous mucosal epithelium lining the aerodigestive tract and are termed squamous cell carcinomas. In the United States, about one-fourth of the 55,000 cases of head and neck cancer diagnosed annually arise from the larynx.

Exposure to the carcinogens found in tobacco is the most important known risk factor for the development of head and neck cancer, and concurrent tobacco and alcohol consumption have a synergistic effect. There is also evidence for a genetic predisposition to the carcinogenic effects of tobacco. Chronic exposure of the upper aerodigestive tract to these and other risk factors results in field cancerization, which refers to a higher-than-expected prevalence of primary tumors within the upper aerodigestive tract. Secondhand smoke exposure is also a significant risk factor. Individuals diagnosed with head and neck cancer without a personal history of tobacco or alcohol use have a history of significantly higher exposure to environmental tobacco smoke in both the workplace and home.

The full manufacturer's prescribing information for albuterol sulfate, triamcinolone acetonide, fluticasone-salmeterol, tiotropium bromide, and fluticasone aerosol was reviewed, and carcinoma of the head and neck is not described as a potential adverse outcome from using these inhaled medications.

In summary, after reviewing the records in this case, it is my professional opinion to a probable degree of medical certainty that Mr. Daoud's laryngeal carcinoma was not caused by the longterm use of inhaled medications prescribed to treat his pulmonary condition, bronchiolitis obliterans.

(Ex. C, pp. 1, 2)

On April 2, 2014, claimant reported to Dr. Van Daele that his voice was back to normal. (Jt. Ex. 3, p. 18) Dr. Van Daele saw no evidence of cancer recurrence but there was some indication of laryngopharyngeal reflux. Omeprazole was prescribed. (Jt. Ex. 3, p. 22)

On July 2, 2014, Elizabeth R. Cullen, ARNP, examined claimant. She found no clinical evidence of squamous cell carcinoma. (Jt. Ex. 5, p. 12) The nurse practitioner advised claimant to follow up with Dr. Van Daele in six months. (Jt. Ex. 5, p. 12) Dr. Van Daele examined claimant on July 2, 2014. There was no evidence of recurring cancer. (Jt. Ex. 3, p. 29)

Claimant followed up with Dr. Van Daele on October 9, 2014. (Jt. Ex. 3, p. 30) A laryngoscopy performed that day revealed edema and erythema of the hypopharynx consistent with post-radiation therapy. (Jt. Ex. 3, p. 33) Two subsequent laryngoscopies revealed no major changes.

On February 8, 2015, Dr. Van Daele authored a report for claimant's counsel with respect to the cause of claimant's laryngeal glottis squamous cell carcinoma. (Ex. 5, p. 1) In paragraph two of his report, Dr. Van Daele opined:

He may continue to have intermittent sore throat and hoarseness of voice. His voice will not be able to last for a full eight hours at a time. It is more likely than not that his vocal fold cancer is a result of his inhalation (burn) injury as a small percentage of skin burns are known to develop into squamous cell carcinomas over time.

(Ex. 5, p. 1)

Claimant sought an independent medical examination from Farid Manshadi, M.D. on February 11, 2015. Dr. Manshadi authored a report on March 16, 2015 in which he expressed his opinion as to the cause of claimant's squamous cell carcinoma. (Ex. 6, p.3) Dr. Manshadi wrote:

In regard to Mr. Daoud's laryngeal cancer, I believe that the work injury of 2006 when Mr. Daoud had inhalation injury as a result of the vapors and dust from the artificial flavoring at Quaker Oats was a significant contributing factor for Mr. Daoud to develop the laryngeal cancer. Further, Dr. Douglas Van Daele from the University of Iowa Otolaryngology Department indicated in a letter that "It is more likely than not that his vocal fold cancer is a result of inhalation (burn) injury as a small percentage of skin burns are noted to develop into squamous cell carcinoma over time."

(Ex. 6, p. 3)

RATIONALE AND CONCLUSIONS OF LAW

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 261 Iowa 352, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

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).

The greater weight of the evidence supports claimant's argument; the laryngeal squamous cell carcinoma was causally related to claimant's original work injury on July 28, 2006. Claimant's treating doctor in the department of otolaryngology related the laryngeal cancer to claimant's inhalation (burn) injury. Dr. Van Daele had numerous opportunities to observe claimant and to conduct specialized testing. He also had the benefit of reviewing all of Dr. Hartley's records over the course of the prior nine years.

Dr. Manshadi concurred with the opinions held by Dr. Van Daele. While otolaryngology is not Dr. Manshadi's specialized field, he did not dispute any opinions Dr. Van Daele held.

On the other hand, Dr. Friemel, did not examine claimant. She relied only on medical records to assist in rendering her opinions. The physician did not list the records she reviewed. Dr. Friemel attributed the cause of claimant's problems to secondary smoke, especially when coupled with alcohol. Claimant never smoked or used other tobacco products throughout his life. This deputy has no way of knowing what records Dr. Friemel reviewed or how she extrapolated the amount of time claimant was exposed to secondhand smoke over the course of his life. Dr. Friemel's opinions seem to be based on tenuous data. She asks this fact finder to make giant leaps of faith that tobacco and alcohol were the offending agents when claimant has always been a non-smoker and a non-drinker of alcoholic beverages. This deputy does not accord much weight to the opinions of Dr. Friemel in this case.

It is the determination of the undersigned; claimant's laryngeal squamous cell carcinoma was caused by claimant's original work injury on July 28, 2006.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant is requesting the payment of medical costs pursuant to Iowa Code section 85.27 for the treatment of the laryngeal squamous cell carcinoma. Since the

condition is work-related, defendants are liable for the same. They will reimburse the insurance carrier for any benefits it paid. Likewise, defendants will pay any outstanding bills to the medical providers, and will reimburse claimant for out-of-pocket expenses, including medical mileage.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's laryngeal squamous cell carcinoma is causally related to claimant's original work injury on July 28, 2006.

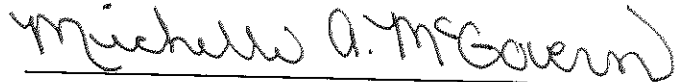
Defendants shall pay for the cost of claimant's medical bills to treat the laryngeal squamous cell carcinoma as provided by Iowa Code section 85.27 and as detailed in the body of this decision.

The parties indicated they had resolved all other issues on their own.

Costs are assessed to defendants.

Defendants shall file all reports as required by this division.

Signed and filed this 18th day of November, 2015.



MICHELLE A. MCGOVERN
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.