

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HARLAN SIEMENS,

Claimant,

vs.

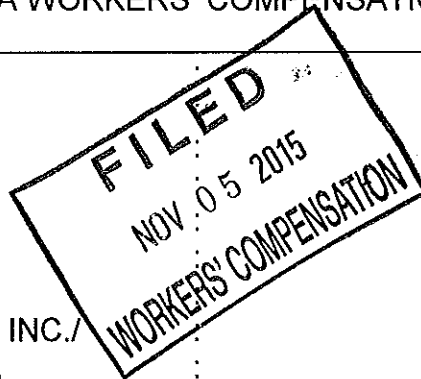
FISHER CONTROLS INT'L, INC./
EMERSON ELECTRIC CO.,

Employer,

and

OLD REPUBLIC INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5050079

ARBITRATION

DECISION

Head Note Nos.: 1803, 1402.40

STATEMENT OF THE CASE

Harlan Siemens, claimant, filed a petition in arbitration seeking workers' compensation benefits from Fisher Controls International, Inc./Emerson Electric Company, employer, and Old Republic Insurance Company, insurance carrier. Hearing was held on August 17, 2015.

Claimant was the only witness testifying live at trial. The evidentiary record also includes claimant's exhibits 1-7 and defendants' exhibits A-D. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs which were submitted on September 25, 2015.

ISSUES

The parties submitted the following issues for resolution:

1. What, if any, industrial disability claimant sustained as a result of the June 18, 2012, work injury.
2. The appropriate commencement date for permanent partial disability benefits.
3. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

At the time of hearing claimant, Harlan Siemens (hereinafter "Harlan"), was 54 years of age and lived in Marshalltown, Iowa. Harlan grew up in Garwin, Iowa and attended school until the 11th grade. During the 11th grade he left school to work full-time at the Iowa Veterans Home. At this job he washed dishes and moved food carts to the rooms. He testified that he left school because he enjoyed earning money more than he enjoyed attending school. He worked at the Iowa Veterans Home from approximately 1976 to 1979.

Harlan's work history is set forth in Exhibit 7. His employment history includes working for Garwin Lumber Yard unloading feed trucks and feed sacks. He earned \$140.00 per week. He testified that he was required to move 100-pound sacks and climb on and off feed trucks. (Testimony; Exhibit 7)

He also worked at Bryngelson Construction in Marshalltown where he ran a backhoe and finished concrete. He worked there from approximately 1981 to 1988 and he earned \$220.00 per week. At this job he pulled forms, leveled concrete with a board, knocked out concrete with a sledgehammer, and shoveled concrete. He testified that the job could be physically demanding on his shoulders and arms. (Testimony; Ex. 7)

Next he went to work for KIOWA/Ace Precision Castings, LLC. He worked there from approximately 1988 to 2006. KIOWA was a factory that worked with aluminum castings. Harlan attended some classes at Iowa Valley Community College at the request of KIOWA. (Ex. 7) Harlan testified that they made a variety of items including gas caps for Caterpillars. He worked in the finishing shop and operated drill presses and CNC lathes. He also worked as a process engineer. He programmed and ran the CNC lathes. At this job he wrote all the programs for the lathe. He eventually went into management and learned how to "fix everything". He earned \$740.00 per week. However, he left this job because he felt the company was not stable. (Testimony; Ex. 7)

Harlan then began working at Fisher Controls in 2006 and was still employed at the time of the hearing. When he started at Fisher he worked the night shift as a CNC lathe operator; these duties were similar to his duties at KIOWA. Harlan did not like working the night shift, so he bid on the jig mill operator, which is the job he was

performing at the time of the injury. His work on the jig mill involves moving valves to be machined onto a table. The valves range from 20 to 500 pounds. On June 18, 2012, Harlan was removing a spindle when a tap holder unexpectedly popped out of a spindle and he caught it with his left hand. The weight of the spindle caused Harlan to fall back into a table, and his left shoulder became painful. (Testimony; Ex. A, p. 16)

On June 21, 2012, Harlan was seen for left shoulder pain by Charles D. Mooney, M.D. at McFarland Clinic in Marshalltown. He reported the pain began on June 18 while performing his duties as a jig mill operator. He told the doctor he was removing a spring-loaded tap holder from a spindle on the machine when it flew out. Harlan caught the spindle and had what the doctor described as "forced external rotation of the shoulder." (Ex. 1, p. 1) Since that time he has had aching and a significant amount of night pain. Dr. Mooney felt his symptoms were consistent with mild left rotator strain and perhaps some bicipital tendinitis. Dr. Mooney prescribed physical therapy and Aleve. Harlan was not assigned any restrictions and was told to follow up in approximately three weeks. (Ex. 1, p. 1)

Harlan returned to Dr. Mooney on July 12, 2012. He was still reporting a lot of pain. Dr. Mooney injected his acromioclavicular joint. Harlan was to continue his physical therapy and follow up in two weeks. (Ex. 1, p. 5) He continued to follow up with Dr. Mooney. By September, Harlan really had not improved much. Dr. Mooney ordered an MRI of the left shoulder because conservative treatment was failing. (Ex. 1, p. 7)

Harlan saw Dr. Mooney again on October 11, 2012, to review the MRI results. The MRI showed evidence of tendinosis and perhaps an early rim rent tear and fairly advanced AC arthropathy. Dr. Mooney assessed Harlan as having symptoms of chronic impingement of the left shoulder. Harlan was given another injection. When he followed up with Dr. Mooney on October 25, 2012, his condition was essentially unchanged. Dr. Mooney recommended an orthopedic consultation. (Ex. 1, pp. 8-9)

On November 1, 2012, Harlan saw Bryan Warne, MD. He examined Harlan and reviewed the MRI. Dr. Warne noted that Harlan had a work-related injury which resulted in shoulder pain that was refractory to conservative treatment. His diagnosis included AC arthrosis impingement and rotator cuff injury. He recommended arthroscopic surgery and Harlan opted to proceed with surgery. (Ex. 2, pp. 10-11)

On November 14, 2012, Dr. Warne performed a left arthroscopic subacromial decompression, distal clavicle excision, and labral debridement. The operative findings included a degenerative anterior labrum with a large subacromial spur and a hypermobile distal clavicle with a large spur. (Ex. 2, pp. 12-13)

Harlan saw Dr. Warne on November 20, 2012. He reported he was doing well and not taking any pain medicine. The doctor advised he could return to work next Monday with a five-pound lifting restriction and no overhead duty. (Ex. 2, p. 14)

On December 18, 2012, Harlan returned to Dr. Warne and reported that overall he was doing well but there was one spot when he abducted the arm where he had a little bit of pain. He had been back to work and reported he was getting along very well. Harlan believed that he would be ready for full return to duty on January 1, 2013. Dr. Warne noted that the preoperative pain was gone and stated he could return to work without restrictions on January 1, 2013. In the meantime, he was to continue the rehabilitation program and follow up with Dr. Warne as needed. (Ex. 2, p. 15)

Harlan returned to Dr. Warne on March 1, 2013. He reported that the one spot that was bothering him back in December was still bothering him. He was back to work without restrictions and said he had figured out how to work without restrictions despite his continued pain. However, the pain was bothering him enough that he was not able to sleep at night. Dr. Warne was concerned that he had bicipital tendinitis or bicipital groove pain that he was not able to see at the time of surgery. Harlan was given a biceps tendon sheath injection and told to follow up in two months. The doctor noted that despite his pain Harlan wanted no work restrictions. (Ex. 2, p. 16)

Harlan returned to Dr. Warne on March 13, 2013, and reported the injection did not help. At this visit he also saw Dr. Buck for a second opinion. The doctors determined that an MR arthrogram to evaluate the cuff and soft tissue structures was the appropriate next step. (Ex. 2, p. 17)

Dr. Warne reviewed the MR arthrogram with Harlan on April 16, 2013. The MR arthrogram showed an intact rotator cuff and some presumed post-surgical changes in the anterior labrum from clean-up as well as resection of the distal clavicle. Dr. Warne did not see any findings that he felt he could predictably make Harlan better. He stated that if he was still struggling in six months then he should call his office. (Ex. 2, p. 18)

On May 10, 2013, Harlan was seen again by Dr. Warne. He was still struggling with left shoulder pain. The only recommendation that Dr. Warne had was consideration of a trigger point injection anteriorly. (Ex. 2, p. 19)

On May 20, 2013, Harlan was seen at the Mary Greeley Pain Medicine Clinic by Arnold R. Parenteau, M.D. for his left shoulder pain. Dr. Parenteau felt the left deltoid trigger could be contributing to the shoulder pain. He felt it was also possible that the lateral pectoralis areas were problematic. He recommended conservative care including a deltoid trigger point injection which was performed that day. (Ex. 3, pp. 20-21) Harlan returned to the pain clinic on June 14, 2013, and reported that the deltoid injection was somewhat beneficial. A repeat trigger injection was performed. (Ex. 3, pp. 22-23)

On November 7, 2013, Harlan was seen at Iowa Ortho by Timothy R. Vinyard, M.D. for a second opinion. Harlan reported that he found it very difficult to do his job because of the pain. Dr. Vinyard felt the left shoulder pain was likely due to proximal biceps tendinopathy. The doctor felt the only reasonable surgical option would

be to consider arthroscopic biceps tenodesis. Harlan opted to proceed with surgery. (Ex. 4, pp. 24-27)

On December 10, 2013, Dr. Vinyard performed left shoulder arthroscopic biceps tenodesis, arthroscopic decompression/acromioplasty, and debridement of articular-sided partial thickness supraspinatus tear. (Ex. 4, pp. 36-37)

On December 23, 2013, Harlan followed up with Dr. Vinyard for his two-week post-op visit. His pain, strength, and range of motion had all been improving. He was instructed to continue to wear his sling until January 10, 2013 and then slowly wean out of the sling. He was to continue working with physical therapy and return in four weeks. (Ex. 4, pp. 28-29)

On January 23, 2013, Harlan reported that he was doing well and had weaned out of his sling. He told Dr. Vinyard he was very happy with his outcome thus far. Dr. Vinyard recommended continued physical therapy. He placed a five-pound lifting restriction and instructed him to return in six weeks. (Ex. 4, pp. 30-31)

On February 3, 2014, Harlan reported to physical therapy that his pain was 0/10 and stated "his shoulder was doing great." (Ex. B, p. 10) On February 21, 2014, he again reported his pain was 0/10 most of the time. He did note that when he reached up and back, sometimes he would get a catch in his left shoulder for just a second or two. He felt ready to return to full-duty work on March 7, 2014. (Ex. B, p. 12) One week later the therapist noted that Harlan could perform all activities at home without any difficulties and he also did not have any difficulties at work. (Ex. B, p. 14) On March 4, 2014, Harlan had achieved all of his therapy goals and had 5/5 strength in his left shoulder. (Ex. B, p. 17)

Harlan returned to see Dr. Vinyard on March 7, 2014. At that point he was three months post-op. He was doing great and had been discharged from physical therapy. His pain, strength, and range of motion were all improving. He was only having very mild pain at the extremes of external rotation. The doctor allowed him to return to work without restrictions. He was to follow up in one month and possibly be placed at maximum medical improvement (MMI) at that time. (Ex. 4, pp. 32-33)

On April 4, 2013, Harlan was still experiencing mild pain and weakness. He felt he was able to work without restrictions. Dr. Vinyard placed him at MMI and released him without restrictions. Dr. Vinyard informed Harlan that it would not surprise him if he had pain from time to time, and if that happened he should return to see him. (Ex. 4, pp. 34-35) On April 8, 2014, Dr. Vinyard assigned 1 percent impairment to the left upper extremity. (Ex. 4, p. 38)

At the request of his attorney Harlan was seen for an IME by Robert Jones, M.D. on May 6, 2015. Dr. Jones opined that the left shoulder injury which led to the initial surgery with Dr. Warme and the second surgery with Dr. Vinyard was sustained as a result of the June 18, 2012 work injury. He further noted that as a result of the injury

Harlan had pain and loss of motion. Dr. Jones assigned 10 percent impairment of the body as a whole. He assigned permanent restrictions of occasional lifting and carrying limited to 50 pounds, 25 pounds frequently so long as the lifting is below shoulder level. He also recommended very limited use of the hand and arm above shoulder level to use tools or operate machinery. Harlan should also avoid activities that place a twisting, forceful load on the shoulder. Finally, Dr. Jones recommended that the lifting should be done in close proximity to the trunk of the body. (Ex. 5)

At the request of defendants' attorney, Harlan was evaluated by Mark B. Kirkland, D.O. on July 20, 2015. Dr. Kirkland diagnosed Harlan with the following: Left shoulder acromioclavicular joint internal derangement/osteoarthritis, impingement syndrome, proximal biceps tendonitis, partial tear of the supraspinatus, and mild glenohumeral internal rotation deficit. He placed Harlan at MMI as of April 4, 2014. Dr. Kirkland stated that as a result of the June 18, 2012, work injury Harlan had sustained 11 percent whole person impairment. Dr. Kirkland agreed with Dr. Vinyard that Harlan did not require any restrictions as a result of the work injury. (Ex. 6)

On September 9, 2015, Dr. Kirkland responded to a letter from claimant's counsel. Dr. Kirkland explained that he did not place any activity restrictions on Harlan because he had returned to his prior job and was able to complete all essential job functions. (Ex. 6, pp. 53(a)-(b))

At the time of hearing Harlan continued to work in the same job he performed at the time of the injury. He had not lost any wages or hours as a result of the injury. He was still able to perform his job, but he had modified how he performed the work. He used the hoist for lifting more than he did prior to the injury. He tried to use his right hand to do the majority of the tasks.

Harlan testified that it is still painful for him to use his left hand. The movement in his left arm is less than it was prior to the injury, and it was tough for him to move his left arm away from his body. He could not use his arm in a throwing motion, and holding his hand out at shoulder height was also difficult. He experienced pain at night when he slept on his shoulder. He took Extra-Strength Tylenol for his pain.

The first issue to be addressed in this case is the extent, if any, of industrial disability that Harlan has sustained as a result of the work injury to his left shoulder. Dr. Vinyard, a treating doctor, assigned 1 percent upper extremity impairment which is the equivalent of 1 percent of the body as a whole. Dr. Vinyard returned Harlan to work without restrictions. Claimant's IME doctor, Dr. Jones, assigned 10 percent impairment to the body as a whole. Dr. Jones assigned permanent restrictions on Harlan's activities. Defendants' IME doctor, Dr. Kirkland, assigned 11 percent body as a whole impairment. Dr. Kirkland did not assign any permanent restrictions on Harlan's activities. Based on these medical opinions I find that the preponderance of the evidence does show that Harlan has sustained approximately 10 percent permanent functional impairment to his body as a whole.

Following the second surgery Dr. Vinyard released Harlan to return to work without restrictions on March 7, 2014. In April of 2014, Harlan reported he was able to return to work without restrictions with only occasional pain that he rated as 1/10. Dr. Kirkland agreed with Dr. Vinyard's assessment that Harlan did not require any permanent restrictions. In this case, the only physician to assign any permanent restrictions is Dr. Jones, who claimant saw at the recommendation of his attorney. Unfortunately, Dr. Jones does not provide his rationale for why permanent restrictions are necessary in light of Harlan's ability to perform his job without restrictions and with relatively little pain since March of 2014. Furthermore, Harlan has not missed any work because of his shoulder since March of 2014. (Ex. A, p. 13) I find Dr. Vinyard and Dr. Kirkland's opinions regarding permanent restrictions to be convincing. Based on their opinions and claimant's demonstrated ability to perform his job without restrictions I find the preponderance of the evidence demonstrates that claimant does not have any permanent restrictions on his activities as a result of the June 18, 2012, work injury.

Considering Harlan's age, educational background, employment history, ability to retrain, motivation to continue working, length of healing period, permanent impairment, lack of permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that Harlan has sustained a 20 percent loss of future earning capacity as a result of his work injury on June 18, 2012.

The next issue to be addressed is the appropriate commencement date for permanent partial disability benefits. Based on the medical records it appears claimant returned to work without restrictions on March 8, 2014. (Ex. 4, p. 32) Therefore, I find claimant's healing period ended on March 7, 2014, and the appropriate commencement date is March 8, 2014.

Finally, we turn to the issue of costs. I find that because claimant was generally successful in his claim an award of costs is appropriate. Claimant is seeking recovery of his filing fee in the amount of \$100.00. I find this is appropriate under 876 IAC 4.33(7). Claimant is also seeking \$300.00 for the preparation of Dr. Jones' IME report. Dr. Jones' statement indicates that he charged \$700.00 for his IME and \$300.00 for preparation of the report. The Iowa Supreme Court has recently indicated that the unreimbursed written report of an examination may be taxed as hearing costs. See Des Moines Area Regional Transit Authority v. Young, No. 14-0231 (Iowa, June 5, 2015). Thus, I find defendants are responsible for reimbursement of the \$300.00 for preparation of the report. Therefore, I find that the defendants are responsible to reimburse claimant costs in the amount of \$400.00.

CONCLUSIONS OF LAW

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); Dunlavy 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).

Because claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Based on the above findings, I concluded Harlan has sustained 20 percent industrial disability as a result of the June 18, 2012, work injury.

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. See Iowa Code section 85.34. Because claimant has sustained 20 percent loss of industrial disability claimant is entitled to 100 weeks of permanent partial disability benefits at the stipulated weekly rate of \$740.55. I concluded that the appropriate commencement date for permanent partial disability benefits is March 8, 2014.

Costs are to be assessed at the discretion of the deputy commissioner hearing the case. Because claimant was generally successful in his claim I find it is appropriate

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to assess costs against the defendants as set forth above. Thus, defendants shall reimburse claimant costs in the amount of \$400.00.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing on March 8, 2014, at the stipulated weekly rate of seven hundred forty and 55/100 dollars (\$740.55).

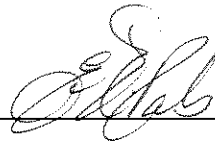
Defendants shall pay any accrued weekly benefits in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall be entitled to credit for any weekly benefits paid to date.

Defendants shall reimburse claimant's costs as set forth above.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 5th day of November, 2015.



ERIN Q. PALS
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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.