



1 of 100 DOCUMENTS

JIMMY WILEY, PETITIONER, v. PACE SURBURBAN BUS SERVICE, RESPOND-
ENT,

NO: 07WC 38810

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

15 IWCC 235; 2015 Ill. Wrk. Comp. LEXIS 236

March 27, 2015

JUDGES: Mario Basurto; David J. Gore; Stephen Mathis

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, permanent partial disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 13, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under § 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$ 22,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 27 2015

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION [*2] DECISION

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steffen**. Arbitrator of the Commission, in the city of **Chicago**, on **June 13, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

F. Is Petitioner's current condition of ill-being causally related to the injury?

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. What temporary benefits are in dispute?

TTD

L. What is the nature and extent of the injury?

FINDINGS

On **3/30/2007**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given [*3] to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$ **37,043.24**; the average weekly wage was \$ **712.37**.

On the date of accident, Petitioner was **54** years of age, *married* with **0** children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ **13,230.13** for TTD, \$ **n/a** for TPD, \$ **n/a** for maintenance, and \$ **n/a** for other benefits, for a total credit of \$ **13,230.13**.

Respondent is entitled to a credit of \$ **n/a** under Section 8(j) of the Act.

ORDER

Respondent owes and has paid Petitioner temporary partial disability benefits of \$ 474.91/week for 30 5/7 weeks for period commencing March 31, 2007 through October 31, 2007 as provided in Section 8(a) of the Act.

Respondent shall be given a credit of \$ 13,230.13 for temporary total disability benefits that have been paid.

Respondent shall pay to Petitioner reasonable and necessary medical services, pursuant [*4] to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act for medical services relating to the right hip and low back for period commencing March 31, 2007 through October 31, 2007.

Respondent shall pay Petitioner permanent partial disability benefits of \$ 427.42/week for 50 weeks, because the injuries sustained caused the 10% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

8/13/14

Date

Factual History

Petitioner, Jimmy Wiley was 54 years old at the time of his work accident of March 30, 2007. He began working as a Bus Mechanic [*5] for Pace Bus in 2004. He was later transferred from the Joliet location to the Markham garage. Employment as a bus mechanic requires special training and certification, as well as a Commercial Driver's License (CDL).

As a Bus Mechanic, Mr. Wiley would perform preventative maintenance, as well as interior and exterior repairs. This work would require him to change out heavy parts, including tires, alternators, radiators, or batteries. When performing preventative maintenance he would have to crouch in a pit under the bus. If a bus broke down on a route, Mr. Wiley would be sent on a "road call" to repair it. This would take him away from the garage approximately two (2) to three (3) days per week. Mr. Wiley worked five (5) to six (6) days per week in this heavy duty capacity. Mr. Wiley was 54-years-old and considered himself physically fit with the strength and stamina to complete the above-listed physical duties without issue.

On March 30, 2007, Mr. Wiley was sent on a road call to repair Bus Number 2416. Mr. Wiley arrived on scene with two (2) batteries on a lift truck approximately four (4) feet off the ground. Each battery weighed approximately 90 pounds. He removed the two (2) [*6] dead batteries from the bus to the curb. He was in immediate pain and could not get them back to his truck. He then slid them onto the bus. When he was carrying the first replacement battery, he side stepped and felt pain. When carrying the second replacement battery, he felt a tear and pop in his right groin, as well as low back pain.

Mr. Wiley reported his injury to his foreman on the same date. A written report was completed the following day. Respondent does not dispute this accident.

Prior to this injury Mr. Wiley never had complaints of pain in his right hip/groin or lower back. He never had medical treatment to either of these areas.

Respondent directed Mr. Wiley to Ingalls Occupational Health on April 2, 2007. (P.E. 1) He was diagnosed with a right groin strain and low back pain. He was prescribed physical therapy. Mr. Wiley was also evaluated by his primary care physician, Dr. Manzoor Hussain Shah on April 5, 2007. (P.E.3). A CT Scan was obtained on April 20, 2007. Mr. Wiley participated in physical therapy at Accelerated Rehabilitation from April 25, 2007 through July 27, 2007.

A Lumbar Spine MRI obtained on June 18, 2007 revealed multilevel disc bulges with moderate foraminal [*7] stenosis at L4-L5. An EMG was reported to be normal on June 22, 2007.

On July 25, 2007, Mr. Wiley submitted to a Functional Capacity Evaluation (FCE). A valid evaluation found Mr. Wiley capable of performing at the medium physical demand level. On August 2, 2007, Ingalls authorized Mr. Wiley to return to work at the medium physical demand level. However, Respondent did not accommodate these restrictions and Mr. Wiley stayed off of work. On August 14, 2007, Dr. Shah authorized Mr. Wiley to stay off work and try work conditioning.

Mr. Wiley submitted to a Section 12 examination with Dr. Gunnar Andersson on September 25, 2007. (R.E.1). Dr. Andersson is a Board Certified orthopedic surgeon with subspecialties in back and neck disorders. (R.E.6, p.6). Twenty percent of his practice is devoted to Section 12 examinations. (R.E. 6, p.12). This is almost always on behalf of the defense. *Id.*

Mr. Wiley reported to Dr. Andersson that he was working as a mechanic and had been lifting four (4) 90-pound batteries on March 30, 2007, when he developed pain in the right groin and lower back. (R.E. 6, p.7). Mr. Wiley denied any history of back or groin pain prior to the accident of March 30, 2007 [*8] (R.E. 6, p.12-13). None of the medical records revealed the contrary. (R.E. 6, p. 13) Dr. Andersson testified he observed Mr. Wiley to walk with an antalgic gait indicating hip abnormality, normal back posture, normal range of motion of the lower back, negative straight leg raising, normal lower extremity reflexes, motor and sensory function and decreased hip range of motion in all directions. (R.E. 6, p.8) His report indicates the reflexes were weak. (R.E. 1)

Dr. Andersson reviewed medical records following the accident and found the focus of the evaluations and treatment to have been the lumbar spine. *Id.* Dr. Andersson felt that Mr. Wiley's primary problem was hip osteoarthritis. *Id.* However, Dr. Andersson opined that Mr. Wiley's hip osteoarthritis was not related to his described injury on March 30, 2007. (R.E. 6, p.9). Dr. Andersson opined that Mr. Wiley's work incident did not aggravate or accelerate his hip osteoarthritis. *Id.* At the time of his exam on September 25, 2007, Dr. Andersson felt Mr. Wiley had reached maximum med-

ical improvement in regards to his March 30, 2007 work accident. *Id.* At the time of the examination Mr. Wiley was still complaining of low [*9] back pain, as well as numbness in his buttocks and thigh on the right side (R.E. 6, p. 19-20).

Dr. Andersson opined that once Mr. Wiley had a hip replacement, his lower back would no longer be an issue (R.E. 6, p.14). Dr. Andersson explained that Mr. Wiley's hip arthritis was causing a loss of motion affecting the pelvis and the lower back. *Id.* He claimed that if one corrects the hip problem the back problem almost always gets better. *Id.*

Dr. Andersson opined that certain work activities such as lifting and walking can cause a temporary aggravation of the underlying condition (R.E. 1). Dr. Andersson issued an addendum report on May 28, 2009, explaining that one can have an increase in symptoms from any type of activity in which the hip is involved, including walking, lifting, rising, sitting down, stair climbing, etc. (R.E. 2). Dr. Andersson opined that while this may have occurred on March 30, 2007, it does not mean this is why the patient continues to have hip symptoms or needed surgery. *Id.*

On cross-examination, Dr. Andersson was asked how he can determine when the temporary exacerbation or aggravation ends (R.E. 6, p.15). Dr. Andersson testified that the symptoms may [*10] continue, but the symptoms caused by the lifting incident, which seems to have involved primarily the back, really are only an initiating event and not a continuing problem. *Id.* Dr. Andersson testified this remains true even though the symptoms and treatment start and continue after the initiating event. (R.E. 6, p.16). While Dr. Andersson testified Mr. Wiley's accident involved primarily a lifting injury to the back, he admitted that Mr. Wiley complained of right groin pain in his initial presentation in addition to low back pain. (R.E. 6, p.18-19). Dr. Andersson also stated that the right hip was worse than the left at the time of his examination. (R.E. 6, p.18) Further, Mr. Wiley's symptoms did not develop with everyday activities such as walking. *Id.*

Dr. Andersson also stated in his report of September 25, 2007 that Mr. Wiley needs a sedentary job due to the severity of his hip osteoarthritis. (R.E. 6, p.16) Dr. Andersson testified that even though the FCE showed that Mr. Wiley was capable of work at a medium level, this would just irritate his hip more; he needed to be at a job where his hip is not affected. *Id.* Dr. Andersson acknowledged that Mr. Wiley was working [*11] in a heavy physical demand capacity prior to his lifting accident and he could not be certain how long Mr. Wiley could have continued in this capacity absent the work injury. (R.E. 6, p.16-17).

Following Dr. Andersson's exam, Mr. Wiley's temporary total disability benefits were terminated on October 13, 2007. On October 22, 2007, Dr. Shah authorized Mr. Wiley to remain off work for his hip and back pain. However, on October 29, 2007, Dr. Shah authorized Mr. Wiley to return to work on November 1, 2007, due to financial hardship. Mr. Wiley did in fact return to work on November 1, 2007. He worked in his normal heavy duties, but his low back pain was "bad" during this time. He was taking Vicodin for his pain.

Mr. Wiley presented to Dr. Moran at Midland Orthopaedic Associates on November 29, 2007. (P.E. 4). Mr. Wiley completed a Medical History form for this appointment wherein he listed low back and right groin pain with an onset of March 30, 2007, lifting four (4), 90-pound batteries. Mr. Wiley also checked the work-related box. However, Dr. Moran's visit note for this date indicates that Mr. Wiley's complaints, examination, diagnosis, and treatment plan was to the left hip. Mr. Wiley [*12] testified this is a clerical error on Dr. Moran's part. All of their discussions were regarding the right hip. Mr. Wiley was not experiencing symptoms in his left hip at this time. This is supported by the intake form and prior exam by Dr. Andersson. Dr. Moran recommended a total hip arthroplasty, but noted that Mr. Wiley had insurance issues and prescribed Diclofenac. (P.E. 4).

Mr. Wiley returned to Dr. Moran on February 7, 2008. (P.E. 4). Dr. Moran noted the left hip to have bone on bone grinding, but this was again typographical error as it relates to the left hip. Dr. Moran observed coxalgic gait and explained that Mr. Wiley's lumbar spondylosis was being aggravated by his hip problem. Dr. Moran issued an addendum to this visit note stating that Mr. Wiley's pain really started when he slipped and injured himself at work on March 30, 2007; his hip was fine prior to that time. Mr. Wiley testified that Dr. Moran's indication that he slipped at work was an error, as he already indicated the lifting incident on the form to Dr. Moran on November 29, 2007. Dr. Moran also authorized Mr. Wiley to return to work February 8, 2008.

On May 28, 2008, Dr. Shah took Mr. Wiley back off work due [*13] to his back pain. (P.E. 3). On June 3, 2008, Dr. Shah indicated that Mr. Wiley was still being treated for hip pain. *Id.* Dr. Moran subsequently left the practice and Mr. Wiley was seen by his associate, Dr. Jay M. Brooker on July 16, 2008. Dr. Brooker performed bilateral injections at this time. (P.E. 4). When he followed up on August 11, 2008, Mr. Wiley reported significant improvement with the injections. *Id.* Dr. Brooker authorized Mr. Wiley to return to work on Wednesday. *Id.* Mr. Wiley returned to work for Re-

spondent on August 13, 2008. His employment was later terminated on August 18, 2008. Dr. Brooker repeated the bilateral injections on October 6, 2008. (P.E. 4).

Dr. Brooker issued a Narrative Report on November 18, 2008. (P.E. 5, E. 2). Dr. Brooker is a Board-Certified orthopedic surgeon who treats both lumbar spine and hip injuries in the course of his practice. (P.E. 5, p. 5-6). Dr. Brooker opined that if Mr. Wiley never had symptoms prior to March 30, 2007 than his pain and condition was exacerbated by the incident. (P.E. 5, E. 2). Dr. Brooker acknowledged the pre-existing nature of Mr. Wiley's arthritis, but explained that it was certainly worsened and aggravated [*14] by the work accident. *Id.* According to Dr. Brooker the incident most likely sped up the process of when Mr. Wiley would require such a surgery, even though he would have required surgery at some point in his life. *Id.* The incident significantly aggravated his pre-existing condition and made him unable to work until August 2008. *Id.*

Dr. Brooker testified that certain activities, such as heaving lifting, can cause an aggravation of osteoarthritis. (P.E. 5, p.12). Dr. Brooker testified to reasonable degree of medical and surgical certainty that the incident of lifting the batteries exacerbated Mr. Wiley's hip condition. (P.E. 5, p 13). This exacerbation aggravated his condition sufficiently to make it necessary to receive treatment for the arthritis (P.E. 5, p 13-14). The treatment and injections performed were reasonably required to alleviate Mr. Wiley of the effects of his injury. (P.E. 5, p.14). Dr. Brooker testified that if it was not bothering him before, this was the "straw that broke the camel's back." (P.E. 5, p.16).

Respondent obtained a second Section 12 examination by Dr. Joshua Jacobs on July 20, 2009. (R.E. 4). Dr. Jacobs is a Board-Certified orthopedic surgeon. [*15] (R.E. 7, p. 5). Mr. Wiley reported to Dr. Jacobs that he lifted a battery from the tray and felt a sharp, intense pain in the right groin and felt it pop. (R.E. 7, p. 7). He had increasing back pain the next day. (R. E. 4). Mr. Wiley reported not having worked since August 2008. *Id.*

Dr. Jacobs observed a severe coxalgic gait on the right side, less severe on the left side, severe pain with right straight leg raise, and quite painful range of motion. (R.E. 7, p. 8). Dr. Jacobs explained that Mr. Wiley's hip osteoarthritis has progressed since the x-rays of September 25, 2007 and he was now bone-on-bone. (R.E. 4).

Dr. Jacobs opined that Mr. Wiley's bilateral hip osteoarthritis pre-dated March 30, 2007. (R.E. 4). Dr. Jacobs testified that the accident did not accelerate the arthritis in the hips. (R.E. 7, p. 9). Dr. Jacobs testified Mr. Wiley's work related injury temporarily exacerbated the osteoarthritis in the right hip. (R.E. 7, p. 13). Dr. Jacobs explained that heavy lifting is one of the many activities that can make osteoarthritis painful. (R.E. 7, p. 16). Dr. Jacobs opined that the medical treatment to date was reasonable and necessary, but that future bilateral hip arthroplasties [*16] would be required but not related. (R.E. 7, p. 10, 15).

Finally, Dr. Jacobs opined that Mr. Wiley required sedentary work restrictions due to the end-stage severity of the bilateral hip osteoarthritis. (R.E. 7, p. 9). Dr. Jacobs explained that sedentary restrictions are imposed because it's painful when you have arthritis and such activities can lead to progression. (R.E. 7, p. 13). These restrictions would still be necessary after replacements. (R.E. 4). Dr. Jacobs went on to state that these permanent restrictions would have been necessary absent the incident because severe bilateral osteoarthritis pre-dated the work-related injury. (R.E. 4). Dr. Jacobs was unable to state how long Mr. Wiley could have continued in his full-duty job absent the injury. (R.E. 7, p. 15).

Mr. Wiley went on to treat with Dr. Jacobs on September 14, 2009. (P.E. 6). Dr. Jacobs obtained x-rays showing near complete loss of joint space bilaterally, although the right hip was somewhat worse than the left. Dr. Jacobs diagnosed severe disabling osteoarthritis of the right hip, osteoarthritis of the left hip, and low back pain. He recommended that Mr. Wiley pursue hip replacement with Dr. Levine, who would have [*17] a quicker schedule.

Mr. Wiley was evaluated by Dr. Levine on September 18, 2009. (P.E. 6). Dr. Levine noted that the left hip also has very poor range of motion but no significant pain. Dr. Levine planned to proceed with right hip arthroplasty. Mr. Wiley underwent an additional pre-operative visit on October 23, 2009. His pre-operative lab work, chest x-rays and electrocardiogram (EKG) was performed at Advocate Trinity Hospital on October 26, 2009 and November 2, 2009. (P.E. 2). Right hip arthroplasty was performed by Dr. Levine at Rush University Medical Center on November 11, 2009.

Mr. Wiley attended post-operative therapy at Advocate Trinity Hospital beginning on November 24, 2009. The initial evaluation listed lifting four (4), 90-pound batteries at work with twisting when pain began in the right groin area, as the mechanism of injury. Mr. Wiley attended this therapy through January 5, 2010. Mr. Wiley also underwent post-operative labs for monitoring his Coumadin blood thinner to prevent a deep vein thrombosis (DVT) at Advocate Trinity Hospital through December 7, 2009.

Mr. Wiley attended his three-week follow-up with Dr. Levine on December 4, 2009. At his six week follow-up status [*18] post right hip replacement on January 8, 2010, Dr. Levine noted that the left hip was now bothering him worse than the right. Mr. Wiley testified that it was not until now that he first had a problem with the left hip. He denied injuring his left hip in the original accident on March 30, 2007. This is confirmed in Dr. Levine's visit note on November 8, 2011.

Mr. Wiley attended his six month follow-up with Dr. Levine's Physician Assistant on May 18, 2010. He was noted to have severe limitations on the left side and some back pain. Mr. Wiley wanted to delay left hip replacement. Mr. Wiley continued to treat his left hip pain with injections by Dr. Levine on August 17, 2010, February 1, 2011, and May 3, 2011.

Mr. Wiley presented to Dr. Levine with new complaint of low back pain following a fishing trip on June 24, 2011. Dr. Levine diagnosed low back spasm and prescribed Flexeril and Flector patch samples. Mr. Wiley testified that his low back pain continued after his right total hip arthroplasty. The fishing trip made his ongoing low back pain temporarily worse. It then returned to the baseline low back pain that he experienced without relief since the accident.

On November 8, 2011, [*19] Mr. Wiley requested to proceed with scheduling his left hip surgery. He complained of numbness and tingling in his feet and some back pain. Dr. Levine referred Mr. Wiley to his associate, Dr. Phillips. Mr. Wiley was evaluated by Dr. Phillips on December 6, 2011 for low back pain. Dr. Phillips noted the onset was in 2007 while working as a mechanic for Pace, lifting 90-pound bus batteries with immediate pain with radiation into the leg. The back pain was not as significant as the lower extremity symptoms. Dr. Phillips ordered a lumbar spine MRI to determine whether left lower extremity symptoms were originating in the hip or the back.

An MRI of the lumbar spine obtained on December 13, 2011 revealed:

- (1) minimal anterolisthesis L4 on L5;
- (2) degenerative disc disease throughout, most pronounced at L4-L5;
- (3) severe bilateral facet arthropathy L4-L5 and L5-S1; and
- (4) L4-L5 posterior disk extrusion with mild superior migration causing moderate to severe spinal canal stenosis and mild bilateral foraminal stenosis.

Mr. Wiley underwent left total hip arthroplasty by Dr. Levine on January 19, 2012. He attended his post-operative therapy and labs at Advocate Trinity Hospital. On February [*20] 3, 2012, Dr. Levine noted Mr. Wiley would see Dr. Phillips due to continued back problems. On March 6, 2012, Dr. Phillips referred Mr. Wiley to the pain clinic.

Mr. Wiley was seen by Dr. Zhang in the pain clinic on March 22, 2012. (P.E. 6). It was noted that he was initially injured at work in 2007 while lifting a heavy object, with persistent low back pain radiating to the back of both thighs. Dr. Zhang administered a bilateral L4 transforaminal selective nerve root injection. This was repeated on April 20, 2012. Mr. Wiley reported improvement after the first injection, with low back pain only when walking on certain days. The third injection was administered on June 7, 2012. Mr. Wiley reported being pain-free for two-weeks after the second injection. At his six-month follow-up with Dr. Levine status post left total hip arthroplasty on July 3, 2012, Mr. Wiley reported no pain in the hips but difficulty walking due to low back pain. Dr. Levine cautioned Mr. Wiley to avoid high impact activities due to the bilateral total hip arthroplasties.

Mr. Wiley presented for his fourth injection with Dr. Zhang on July 19, 2012. He reported another pain flare after a three day fishing trip with [*21] uneven terrain.

Mr. Wiley followed-up with Dr. Phillips for spondylolisthesis and spinal stenosis on July 26, 2012. The injections provided temporary relief, but since his function was reasonable Mr. Wiley did not want to pursue surgery at this time. Mr. Wiley went on to have additional visits with Dr. Zhang on December 18, 2012, November 15, 2012, December 17, 2012, and January 3, 2013.

Mr. Wiley testified that he continues to experience low back pain. He described it as excruciating. He experiences it day-in and day-out. He continues to treat his pain with medications prescribed by Dr. Shah. He reported seeing Dr. Shah just Monday last week before trial. His pain wakes him up and makes him want to cry. He rates it as eight (8) out of ten (10). He cannot cut the grass, do prolonged walking, or stand more than fifteen to twenty minutes.

Mr. Wiley has had good relief of his hip pain following right total hip arthroplasty. However, he has never been cleared to return to the heavy physical demand level and was specifically cautioned by Dr. Levine to avoid high impact activities. He has not worked for any other employer since his employment with Respondent terminated in August 2008.

[*22] **Analysis/Findings**

F. In support of the Arbitrator's Decision with regards to whether Petitioner's present condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To recover in a preexisting condition case, a claimant need only establish a causal connection between her work-related injury and claimed current condition of ill-being by showing that her injury aggravated or accelerated the preexisting disease. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 204-206, 797 N.E.2d 665, 278 Ill. Dec. 70, (2003) (citing *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36-37, 65 Ill. Dec. 6, 440 N.E.2d 861 (1982) (an accidental injury will be deemed compensable if it can be shown that the employment was also a causative factor)). It has long been held that an employer takes its employees as it finds them. *Sisbro*, 207 Ill. 2d at 205 (citing *Baggett v. Industrial Commission*, 201 Ill.2d 187, 199, 775 N.E.2d 908 (2003)). [*23] As in this case, even where an employee has a pre-existing condition that renders her more vulnerable to an injury, "recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." See *Sisbro*, 207 Ill. 2d at 205 (citing *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d at 36; *Williams v. Industrial Commission*, 85 Ill. 2d 117, 122, 51 Ill. Dec. 685, 421 N.E.2d 193 (1981); *County of Cook v. Industrial Commission*, 69 Ill. 2d 10, 18, 12 Ill. Dec. 716, 370 N.E.2d 520 (1977)).

Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the industrial Commission. *Roberts v. Indus. Comm'n*, 93 Ill. 2d 532, 538, 67 Ill. Dec. 836, 445 N.E.2d 316 (1983); *Caterpillar Tractor Co. v. Indus. Comm'n*, 92 Ill. 2d at 36-37; [*24] *Caradco Window & Door v. Indus. Comm'n*, 86 Ill. 2d 92, 99, 56 Ill. Dec. 1, 427 N.E.2d 81 (1981).

In the case of *Crader v. Frito Lay*, 3 IIC 599 (2003), the Commission relied on *Sisbro* and held that the claimant's work related injury hastened his need for surgery and set off the chain of events leading to his current condition. The Commission found that the petitioner's work injury "hastened" the need for his knee replacement even though the petitioner had severe pre-existing arthritis. In *Crader*, the petitioner's treating physician testified that although the petitioner had several years of extensive treatment to his knee and pre-existing arthritis, the work accident was, "the straw that broke the camel's back and put petitioner in a situation where he felt like he was not able to function without going ahead with the joint replacement." *Id.* The Commission relied on the petitioner's treating physician and found that even though the petitioner had pre-existing arthritis, his work injury necessitated the need for surgery, and thus it was a compensable case.

In the case at bar, Mr. Wiley had pre-existing [*25] right hip arthritis. He had documented significant pre-existing bilateral hip osteoarthritis. He worked without issue until his injury on March 30, 2007. While his right hip arthritis could warrant a total hip arthroplasty at some indeterminable point in the future, Petitioner had no imminent medical directives for the same. The issue is whether the accident at work on March 30, 2007 caused the need the total hip replacement surgery through an aggravated or accelerated the pre-existing condition or if the work accident caused a temporary exacerbation of Mr. Wiley's pre-existing condition which subsided.

The treating physician, Dr. Brooker and the IMEs, Drs. Andersson and Jacobs give differing medical opinions as to this causation issue. Drs. Anderson and Jacobs opine that the accident of March 30, 2007 caused a temporary exacerbation of Mr. Wiley's pre-existing condition. Dr. Brooker opines that Mr. Wiley's pre-existing arthritis was worsened and aggravated by the work accident which hastened the need for the hip replacement. (P.E. 5).

Upon a review of the differing medical opinions, the comprehensive medical records and witness testimony, the Arbitrator finds that the Petitioner [*26] experienced a temporary exacerbation of pain as a result of picking up the 90lbs batteries but that his condition returned back to the baseline by October, 2007.

Initially, it is worth noting that Petitioner is a likeable, hardworking and honest individual. His testimony and demeanor in court were noteworthy. He did not exaggerate his condition and he appeared to take his work duties seriously. The Arbitrator gives weight to his testimony regarding his symptoms and his pain. However, Petitioner credible testimony does not overcome the medical question regarding the cause of Petitioner's continued and extensive hip and back pain. The burden is upon the Petitioner and he had failed to prove by a preponderance of credible evidence that his current condition of ill-being is related to the March 30, 2007, incident. The Arbitrator finds that Petitioner experienced a temporary exacerbation of pain as a result of picking up the 90lbs batteries. His current condition of ill-being is related to his severe degenerative condition of his hips and back rather than his work related accident.

Right Hip

Petitioner claims his work related accident on March 30, 2007, aggravated and accelerated [*27] his right hip degeneration. He testified credibly to never having any prior hip pain or treatment for either hip. Dr. Brooker opines that the work related accident accelerated Petitioner's need for right hip replacement. Pet. Ex. 5. The two IME's disagree. The Arbitrator finds the opinions of Dr. Andersson and Dr. Jacobs to be more persuasive on the issue. Dr. Jacob testified that, "The problem here is that the accident really is not an accident to the hip joint, it is a lifting activity." Res. Ex. 6, p. 17. The mechanism of Petitioner's injury does not correlate to an injury to the hip joint. It can cause a temporary period of pain, not permanent damage to the hip. Dr. Jacobs and Dr. Andersson stated that these flare-ups of pain can happen with any activity of daily living. Res. Ex. 6 and 7.

The Arbitrator is persuaded by this point along with clear evidence that Petitioner's left hip was just as bad, if not worse and in need of treatment. Dr. Brooker simultaneously treated both of Petitioner's hips including injections and recommendation for replacement. Further, on October 25, 2007, bilateral hip x-rays were taken that showed degeneration was more severe in the left hip. Dr. Jacobs [*28] recommended bilateral total hip replacement at the time of his I ME examination on July 20, 2009. Petitioner's right hip treatment was not accelerated by the March 30, 2007 accident as he was simultaneously receiving left hip treatment for his severe degeneration.

Lastly, Petitioner's hip condition healed and returned to baseline to a degree that allowed him to resume and perform full time work duties starting November 1, 2007. The Petitioner continued to do a heavy demanding job until when he was taken off work in Mary, 2008. The Arbitrator finds this six month period where Petitioner continued in his labor-heavy employment to be a significant factor in determining whether the Petitioner's accident caused a temporary exacerbation or a permanent shift of his baseline relating to the hip condition.

Based on these factors, the Arbitrator concluded that Petitioner suffered a temporary exacerbation of his right hip condition but that the condition subsided and Petitioner returned to work on November 1, 2007.

Left Hip

The Arbitrator finds that Petitioner did not sustain any injury to his left hip on March 30, 2007. The Arbitrator infers that any indication to the contrary by Midland [*29] Orthopedic Associates was typographical error, as evidenced by the Medical History completed by Petitioner at his first visit on November 29, 2007. The medical evidence as a whole shows that all of Petitioner's complaints were to the right hip. Petitioner himself testified that he did not injure his left hip as a result of the lifting accident on March 30, 2007. He did not experience symptoms in his left hip that required treatment until after he had the right total hip replacement in 2009. His first complaint of left hip symptoms was to Dr. Levine on January 8, 2010. As such, the Arbitrator finds that Petitioner's condition of ill-being as it relates to the left hip is not causally-related to the accident at work on March 30, 2007.

Lower Back

Petitioner claims injury to his lower back as a result of the accident of March 30, 2007. There is a notation of low back pain at the company clinic on April 2, 2007. Petitioner has consistently complained of right groin and low back pain to all providers. A lumbar spine MRI on June 18, 2007 revealed multi-level disc bulges with moderate foraminal stenosis at L4-5. Drs. Andersson and Brooker had opined that Petitioner's low back pain would [*30] improve once his right hip condition was no longer aggravating it. However, Mr. Wiley continued to complain of back pain post surgery. There is testimony that Mr. Wiley aggravated his low back pain due to increased activity and/or fishing trips.

All three physicians, Dr. Brooker, Dr. Anderson and Dr. Jacobs have opined that that Petitioner's low back pain was a result of his poor ambulation from his hip pain, not as a result of the March 30, 2007, accident. Pet Ex. 5, Res. Ex. 6 and 7. Multiple MRIs of his lumbar spine reveal degenerative findings in the back. However, Petitioner was able to work in his full duty capacity until the accident. The Arbitrator finds that the accident on March 30, 2007 did caused a temporary exacerbation of Petitioner's pre-existing degenerative condition but that said condition subsided by October 13, 2007. Dr. Anderson's medical records clearly indicate that on the September 25, 2007, visit, the Petitioner's low back pain symptoms were not that intense and he had reached MMI with regards to his back. Res. Ex. 6, p. 19.

Petitioner returned to work on October 31, 2007, and was able to work full duty with no low back complaints until May 28, 2008, when [*31] he was taken off work for his hip pain. Therefore, the Arbitrator finds that the Petitioner's current condition of ill-being relating to his back is not related to the accident on March 30, 2007.

J. In support of the Arbitrator's Decision with regards to whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Right Hip

Dr. Brooker and Dr. Jacobs have opined that all of the medical treatment to date was reasonable and necessary. (R.E. 7, p. 15) (P.E. 5, p. 14). Therefore the issue regarding the medical bills stems on whether the right hip medical condition was causally connected. The Arbitrator awards medical bill for treatment regarding the right hip and low back until medical service date from date of accident till November 1, 2007 based on the causal connection finding that the right hip was a temporary exacerbation..

Petitioner's Fee Schedule Analysis of the outstanding medical bills is attached and has been made a part of Arbitrator's Exhibit No. 1.

Specifically, the Arbitrator awards the following [*32] charges:

- . Advocate Trinity Hospital services August 16, 2007 through November 1, 2007.
- . Chicago imaging, Ltd., services August 16, 2007 through October 26, 2007.
- . University Pathologists, P.C., bills from March 31, 2007 through November 1, 2007.

The Arbitrator awards these bills subject to the fee schedule and allows Respondent credit for payment of the same.

Left Hip

Based upon the Arbitrator's conclusions on causal connection above, and the record as a whole, the Arbitrator denies any medical charges related to the left hip. The evidence shows that Petitioner did not injure his left hip in the accident of March 30, 2007. Any expenses listed in Petitioner's Fee Schedule Analysis to be for the left hip is denied. Specifically, the Arbitrator denies the following charges:

- . Advocate Trinity Hospital from August 4, 2010 to present.
- . Affiliated Radiologists, S.C. on January 3, 2012 and January 19, 2012.
- . Chicago Imaging, Ltd. From December 31, 2010 to present.
- . Midland Orthopedic Associates for left hip injections on July 16, 2008 and October 6, 2008.
- . Midwest Diagnostic Pathology for services on August 4, 2010.
- . Midwest Orthopedics at Rush, LLC, for services on August [*33] 17, 2010, February 1, 2011, March 3, 2011, January 3, 2012, January 19, 2012, February 3, 2012, and March 6, 2012 with Dr. Levine.
- . Provident Hospital all services. No medical records were introduced to support these charges.
- . Dr. Shah for services on April 24, 2007, May 29, 2007, May 31, 2007, December 22, 2007, May 20, 2008, May 29, 2008, May 31, 2008, June 3, 2008, June 7, 2008, June 30, 2008, August 21, 2008, August 28, 2008, September 2, 2008, March 9, 2010, August 5, 2010, September 25, 2010, February 7, 2011, February 19, 2011, August 2, 2011, August 16, 2011, December 1, 2011, January 2, 2012, January 12, 2012, February 20, 2012, May 1, 2012, July 9, 2012, August 2, 2012, August 7, 2012, October 2, 2012, October 4, 2012, November 15, 2012, and December 4, 2012.
- . University Anesthesiologists, S.C. for services on January 19, 2012.

The Arbitrator notes that Medicare is claiming Conditional Payments for some of the above-listed dates. Specifically, the payment to Rush University Medical Center on January 3, 2012 is not causally-related. The Arbitrator also notes that First Recovery Group is requesting reimbursement on behalf of Advocate Health Partners for services of Dr. [*34] Brooker for the left hip injection on July 16, 2008 that is not causally-related. Only the right hip injection on this date is related. Further, the cervical services on January 29, 2008 are not causally-related.

Lower Back

Based on the above findings and the record as a whole, the Arbitrator awards medical bill for treatment to the lower back up to the return to work date of November 1, 2007. The arbitrator notes the MMI date of September 25, 2007 based on the records and opinion of Dr. Anderson. Res. Ex. 6, p. 19.

Specifically, the Arbitrator awards the following:

- . Advocate Trinity Hospital services on April 6 and April 19, 2007.
- . Chicago Imaging, Ltd. Services on April 6 and April 19, 2007.
- . Dr. Shah's services on April 6, 2007, April 12, 2007, April 16, 2007, August 14, 2007, August 17, 2007, August 20, 2007, October 22, 2007, October 25, 2007, October 29, 2007, November 1, 2007.

In conclusion, the Arbitrator awards medical for the back till the return to work date of November 1, 2007. The Arbitrator has specifically allowed for the follow-up visit bill with Dr. Shah on November 1, 2007 which is past Dr. Anderson's MMI note.

*K. In support of the Arbitrator's Decision [*35] with regards to what temporary total disability benefits Petitioner is entitled to, the Arbitrator finds the following:*

Petitioner claimed entitlement to TTD benefits from March 31, 2007 through October 31, 2007, May 29, 2008 through August 12, 2008, and November 19, 2009 through May 18, 2010. Respondent claimed Petitioner was only entitled to TTD benefits from March 31, 2007 through October 31, 2007. Respondent paid Petitioner \$ 13,230.13 for this TTD period. Petitioner returned to work for Respondent on November 1, 2007.

Dr. Shah then took Petitioner back off work for his low back and right hip pain on May 28, 2008. Petitioner was improved enough following right hip injection by Dr. Brooker to return to work on August 13, 2008. He worked full duty when he was terminated on August 18, 2008. He underwent his right total hip arthroplasty on November 19, 2009. Based on the above findings and the record as a whole, the Arbitrator finds that was entitled to and did receive TTD for the period of March 31, 2007 through October 31, 2007. Additional TTD benefits are denied.

*L. In support of the Arbitrator's Decision with regards to the nature and extent of Petitioner's injury, the Arbitrator [*36] finds the following:*

The lifting accident on March 30, 2007 caused temporary exacerbation to Mr. Wiley's right hip and lower back. Petitioner returned to full duty work on November 1, 2007 and continued in this capacity until May 28, 2008. Dr. Shah then took Petitioner back off work for his low back and right hip pain on May 28, 2008. Petitioner was improved enough following right hip injection by Dr. Brooker to return to work on August 13, 2008. He worked full duty when he was terminated on August 18, 2008. He underwent his right total hip arthroplasty on November 19, 2009.

A valid FCE on July 25, 2007 had found Mr. Wiley capable of performing at the medium physical demand level. Respondent's two Section 12 examiners opined that even with right hip replacement, Mr. Wiley should be restricted to sedentary work. Petitioner's treating physician, Dr. Levine, advised against high-impact activities.

Petitioner has undergone post-operative therapy, labs and injection for low back pain. He has had good relief of his hip pain but suffers from extensive back pain. He has never been cleared to return to the heavy physical work and has not worked for any other employer since August 2008.

The [*37] Arbitrator has found that the Petitioner's injury to his low back was a temporary aggravation of his degenerative condition. He reached MMI six months following his work related accident on or about September 25, 2007. Petitioner successful returned to full time work after this date and continued in this capacity until May 28, 2009. Therefore, the Arbitrator finds permanency at 5% loss of man as a whole for the right hip injury and 5% loss of man as a whole for the low back injury. Arbitrator awards a total of 50 weeks at the rate of \$ 427.24/week.

Signature of Arbitrator

8/13/14

Date

Legal Topics:

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