



1 of 100 DOCUMENTS

CHRISTOPHER MCCLURE, PETITIONER, vs. STATE OF ILLINOIS - IDOC, RESPONDENT.

NO. 13WC 16865, 14WC 01523

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF SANGAMON

15 IWCC 99; 2015 Ill. Wrk. Comp. LEXIS 98

February 5, 2015

JUDGES: Kevin W. Lamborn; Thomas J. Tyrrell; Michael J. Brennan

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, permanent partial disability 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 July 24, 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.

DATED: FEB 5 - 2015

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION 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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Bloomington**, on **June 26, 2014**. After reviewing all [*2] 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?

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

FINDINGS

On **April 22, 2013 and December 5, 2013**, 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 to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$ **72,800.00**; the average weekly wage was \$ **1,400.00**.

On the date of accident, Petitioner was **47/48** years of age, *married* with **2** dependent [*3] children.

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 \$ **0** for TTD, \$ **0** for TPD, \$ **0** for maintenance, and \$ **0** for other benefits, for a total credit of \$ **0**.

Respondent is entitled to a credit of \$ **0** under Section 8(j) of the Act.

ORDER

Pursuant to the attached findings of fact and conclusions of the Arbitrator finds and orders as follows:

Respondent shall pay all the reasonable and related outstanding medical bills, as set forth in Petitioner's Exhibit 3, directly to the medical providers pursuant to the Medical Fee Schedule set forth in Section 8(a) of the Act.

Petitioner failed to show any permanent partial disability resulting from either of the above referenced accidents.

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 [*4] 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

July 15, 2014

Date

The Arbitrator hereby makes the following findings of fact:

Petitioner testified that while working at the Logan County Correction Center, he was injured twice. The incidents, which will be discussed in detail below, occurred on April 22, and December 5, 2013.

Petitioner testified that, on April 22, 2013, an inmate in segregation threw a clear odorless liquid through an opening in the segregation cell. Specifically, this liquid made contact with Petitioner's face, left ear, eyes, nose, mouth and left arm. Petitioner stated that the liquid caused physical irritation on the contact points. Petitioner testified that the liquid was clear and had no discernible smell. Petitioner stated that the liquid was not brown or yellow and did not smell of urine or feces. The liquid left no stains. Petitioner immediately reported the incident and washed his face at [*5] the healthcare unit.

Although there are no specific guidelines for what to do when plashed with an unknown liquid, Petitioner testified that it is commonly accepted practice to immediately seek medical attention. Pursuant to this practice, Petitioner sought treatment at the Springfield Clinic on April 22, 2013. Pathology tests were performed and Petitioner was instructed to remain diligent for signs on infection. The medical record for this date indicates that Petitioner's eye was "a little irritated" but that Petitioner had no vision problems. Petitioner's medications on this date included Zegerid, Diclofenac Sodium, Hydrocodone, Amitriptyline, Lisinopril, and Hydrochlorothiazide, which all have potential side effects that include dry skin, rashes, and mouth sores. The diagnosis was that of a possible exposure to a contagious disease. (PX. 1).

The following day, April 23, 2013, Petitioner presented to a different clinic. Midwest Occupational Health Associates, with complaints of *mild* left eye irritation and a headache. A second round of blood born pathogen tests were performed that were *identical* to those performed one day prior. (PX. 2)

On April 26, 2013, Petitioner sought [*6] additional treatment Springfield Clinic with complaints a migraine headache which began with, and had not subsided since, the accident. Petitioner complained that his migraine medication did not alleviate this migraine. Petitioner noted increased stress after the incident, and testified that increased stress had, in the past, been a trigger for his chronic migraines. The record indicates that Petitioner had prior eye irritation, but appears to indicate that the irritation was in the past and not ongoing. The same is true of Petitioner's skin irritation. On this date, Petitioner was told that his blood-borne pathogen tests were negative. (PX 1).

During the April 26, 2013 visit, Petitioner was referred to a psychiatrist. However, Petitioner never sought such treatment. Petitioner claimed that workers' compensation insurance would not cover psychiatric treatment, but produced no such denial letter. Petitioner also testified that he did not seek psychiatric treatment because he felt that he would be ostracized by his co-workers for seeking such help.

On April 29, 2013, one week after the accident, a report was issued showing that Petitioner's blood borne pathogen test returned negative [*7] results. (PX 2). Petitioner was scheduled for a June 6, 2013 follow-up for more testing to confirm that the first test did not return any false negatives. The results for the June 6, 2013 test came back on June 10, 2013 and returned negative results. (PX. 2). Similarly, on June 10, 2013, the inmate that threw the clear odorless liquid onto Petitioner had similar blood born pathogen tests that returned negative results. (PX.2)

At trial, Petitioner testified as to his mental condition between the accident date and the date on which he received the test results. During this time, Petitioner sought no medical treatment for his alleged mental conditions, and thus there is no medical evidence to support his testimony. Moreover, Petitioner's stress, due to not knowing the results, was temporary and was alleviated once his results were returned one week later on April 29, 2013. Thus the trial record shows that Petitioner's alleged mental conditions were, at worst, temporary in nature. With regard to exposure, Petitioner testified that he had a prior hepatitis vaccination.

Petitioner testified that the December 5, 2013 incident occurred when an inmate spit on him. Petitioner stated the saliva [*8] contacted his mouth, eyes, nose, and ears. Like before, Petitioner immediately reported the incident and sought treatment at the health unit. Later that day, Petitioner went to the Springfield Clinic where he was told to follow up at Midwest Occupational Health Associates. Blood-borne pathogen testing was not recommended because there was no blood or any unknown bodily fluid which in turn placed Petitioner at a low risk of contracting a disease. (PX 1). The medical record reflects that Petitioner expressed understanding in response to this recommendation. (PX. 1).

Petitioner testified that he was unable to follow-up with MOHA because Respondent did not approve his visit. Petitioner received a letter stating that he had not submitted a complete workers' compensation packet. Petitioner testified that he submitted all of his workers compensation paperwork on time. Petitioner did not offer into evidence any materials from his workers' compensation packet. Similarly, Petitioner did not testify as to any inquires made on his behalf as to what was missing from his packet. Petitioner's actions indicate that he did not intend to seek further treatment at MOHA. Petitioner's desire not to seek [*9] further treatment is reinforced by his posture at trial in that he did not file a 19(b) petition or request authorization for further treatment.

On December 18, 2013, Petitioner returned to Dr. Michael Brewer at Springfield Clinic with complaints of mental stress following the accident. Petitioner testified that he had blood work done which returned negative results. Petitioner testified that the spitting incident resulted in a loss of consortium and caused mental stress. Similar to the earlier injury, this stress was at worst temporary. With regard to exposure, Petitioner testified that he had a prior hepatitis vaccination. Petitioner was also diagnosed with maybe having some mild perioral dermatitis, for which he was prescribed metronidazole creame. The medical record from this discusses food and soda as a possible source of aggravation, but does not offer a causation opinion with regard to the spitting incident. In fact, the medical record appears to treat the symptoms

related to the spitting as being different in source than Petitioner's skin condition. (The record discusses the skin condition as "the other issue" in a manner that suggests it is unrelated to the spitting issue) [*10] (PX. 2). No eye issues were discussed on this date.

Petitioner testified that, as a result of having saliva in his eye, he can no longer wear contacts. Petitioner stated he saw an ophthalmologist, but that the ophthalmologist could not offer a diagnosis or causation opinion. The records for the ophthalmologist visit not included in the medical records, nor was a bill submitted for such a treatment date. Thus Petitioner's claim remains an unsubstantiated medical conclusion not offered by a medical expert and found only in Petitioner's testimony.

F. Is Petitioner's current condition of ill-being causally related to the injury and did he suffer any permanent partial disability as a result?

The record reflects that on April 22, 2013, Petitioner was not exposed to a blood born pathogen. Petitioner's blood-borne pathogen test was negative as was that of the segregated inmate that splashed him. In fact, due to the inmate's segregation, and since the inmate had no blood borne pathogens, there was no possibility of Petitioner contracting a blood-borne pathogen from the incident in question. The Arbitrator finds that there is no causal connection between accident and exposure to any blood-borne [*11] pathogens.

The record reflects that Petitioner complained of skin irritation as a result of the April 22, 2013 Accident. The medical record reflects that Petitioner's complaints of skin irritation subsided after the first physician visit. Furthermore, Petitioner sought no further treatment for any skin conditions until after two weeks after the second incident on December 18, 2013. Since Petitioner went without complaint or treatment for almost eight months, the evidence in the record does not support a finding of causation between petitioner's complaints at trial of ongoing skin ailments and the accident of April 22, 2013. The Arbitrator finds causal connection between the April 22, 2013 accident and the temporary skin irritation the ended on the same day.

The record reflects that Petitioner complained of eye irritation as a result of the April 22, 2013 accident and continued to have complaints on April 23, 2013. Petitioner had no complaints of eye irritation on April 26, 2013 and the medical records submitted into evidence show that Petitioner did not have resumption of such complaints until after the second incident. Petitioner's testimony at trial did not indicate that any irritation, [*12] related to the April 22, 2013 accident, occurred after April 26, 2013. Accordingly, the Arbitrator finds causal connection between the April 22, 2013 accident and the temporary eye irritation that subsided on April 23, 2013.

At trial, Petitioner complained of various forms of stress and mental ailments related to not knowing whether he had contracted a blood-borne illness. The medical records show that Petitioner wanted to "see a psychiatrist to make sure that his mental status was satisfactory for working in the prison." (PX. 2). That same medical record notes no specific complaints of mental illness. The record contains no diagnosis, no prognosis, and no treatment recommendations outside of a psychiatrist referral. This is the only medical record in the file that touches upon Petitioner's mental health. Accordingly, the arbitrator finds no medical causation between Petitioner's allegations of mental ailments at trial and the accident in question.

The Arbitrator notes, that with regard to Petitioner's mental ailment allegations, Petitioner also alleged at trial that the psychiatrist referral was denied by workers' compensation. However, the medical and billing records submitted into [*13] evidence, and Petitioner's own testimony, suggest that Petitioner's decision not to seek psychiatric treatment was his alone. According to the record, Petitioner put all of his medical bills through group health. (PX. 3) When asked at trial, Petitioner explained that he told the treating facilities that his medical insurance was Health Alliance. Petitioner never explained to any facility that his injuries were workers' compensation in nature. Petitioner did this despite knowing that the time of treatment that this was a workers' compensation claim. At trial, Petitioner testified that he completed his workers' compensation packet and was aware that his claim had been accepted. Petitioner did not testify that he received a denial letter regarding psychiatric treatment. In either event, Petitioner had been putting all his treatment through group health and it is unclear why he did so. However, it is even more confusing as to why an alleged denial of psychiatric treatment under workers' compensation would preclude him from going about business as usual and putting his treatment through group health.

Moreover, Petitioner testified that he did not want to seek psychiatric treatment due [*14] to an alleged stigma that might be applied to him. The Arbitrator finds this testimony to lack credibility. The Petitioner filed two workers compensation claims alleging psychological injuries as a result of the two above referenced accidents. The claims are

public records. The Petitioner knew or should have known that the claims would be investigated by the Respondent and that his co-workers might become aware of said claims.

The record reflects that Petitioner complained of migraines following the April 22, 2013 accident. Petitioner testified that he had a prior migraine history, and that stress increased the intensity and frequency of his migraines. The medical records show that Petitioner had a prior history of migraines and was prescribed medication to treat his condition at the time of the accident. On April 26, 2013, Petitioner was given a toradol injection for his headache. After April 26, 2013, Petitioner did not seek treatment for migraines until the second injury. The Arbitrator finds that Petitioner failed to meet his burden of proof with regards to causation because there is no medical opinion, or any other evidence, confirming a causal connection between Petitioner's [*15] migraines, which subsided on April 26, 2013, and the accident in question.

DECEMBER 5, 2013 ACCIDENT -- CAUSAL CONNECTION

The record reflects that on December 5, 2013, Petitioner was not exposed to a blood-borne pathogen. Blood-borne pathogen testing was not recommended because there was no blood or any unknown bodily fluid which in turn placed Petitioner at a low risk of contracting a disease. (PX 1). The medical record reflects that Petitioner expressed understanding in response to this recommendation. (PX. 1). Petitioner testified that he was not exposed to blood. The medical records show that neither Petitioner nor the inmates were infected with such pathogens. Petitioner did not testify, or inform a medical professional of contact with any such fluids. As there are zero medical records to support Petitioner's argument, the Arbitrator finds that there is no causal connection between accident and exposure to any blood-borne pathogens.

Petitioner testified that he suffered a skin condition as the result of being spit on. In support of his claim, petitioner offered no medical causation opinion. Petitioner's skin diagnosis is perioral dermatitis, which means skin condition around [*16] and near the mouth. The medical records related to this condition appear to discuss it as a condition that is wholly separate from the spitting incident with the only relation being that it started around the same time. No pathology tests were recommended because Petitioner was at low risk for contracting hepatitis or HIV. (PX. 1). Petitioner did not seek further treatment, despite the fact that he could have through his group health insurance. The Arbitrator finds that Petitioner failed to meet his burden of proof with regards to causation because there is no medical opinion, or any other evidence, in the record confirming a causal connection between Petitioner's skin condition and the accident in question.

At trial Petitioner testified that he could no longer wear contacts because some spit got into his eye. Petitioner testified that because some spit went into his eye, his eyes now itched whenever he would wear contacts. Petitioner's testimony is not supported by medical opinion or evidence. Only the December 5, 2013 medical record discusses potential eye irritation related to the spitting incident, which states that Petitioner eyes "have not been irritated." The record is from the [*17] date of accident and states that Petitioner, contrary to his testimony, was wearing glasses and not contacts. During the December 5, 2013 visit, the doctor saw no redness and no signs of conjunctivitis. Petitioner alleged that he saw an ophthalmologist for his eye condition, but did not submit any records of such a visit. Furthermore, at trial Petitioner testified that the ophthalmologist could not determine the cause of his alleged eye condition. The Arbitrator finds that Petitioner failed to meet his burden of proof with regards to causation because there is no medical opinion, or any other evidence, confirming a causal connection between Petitioner's eye condition and the accident in question.

At trial Petitioner complained of various forms of stress and mental ailments related to the spitting incidents. The only medical record that discusses stress related to the December 5, 2013 incident is the December 18, 2013 treatment record. (PX.1). The record states that Petitioner took a "few days off because he *was* quite stressed mentally." (PX. 1) (*emphasis added*). The record uses the past-tense with regard to Petitioner's claimed stress and offers no diagnosis or treatment [*18] recommendations. The Arbitrator finds that Petitioner failed to meet his burden of proof with regards to causation because there is no medical opinion, or any other evidence, confirming a causal connection between Petitioner's stress and the accident in question.

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?

The parties have stipulated, and the Arbitrator orders, that Respondent shall pay all reasonable and related outstanding medical bills, as set forth in Petitioner's Exhibit 3, pursuant to the Medical Fee Schedule set forth in Section 8(a) of the Illinois Workers' Compensation Act.

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

In light of the Arbitrator's findings of no causal connection to any ongoing conditions related to either of the Petitioner's accidents, the issue of permanent partial disability becomes moot.

Legal Topics:

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDI Administrative Proceedings Claims Filing Requirements Workers' Compensation & SSDI Administrative Proceedings Evidence Witnesses Workers' Compensation & SSDI Benefit Determinations Medical Benefits General Overview