Arbitration Award No. 762
IN THE MATTER OF ARBITRATION BETWEEN
INLAND STEEL COMPANY
Indiana Harbor Works
and
UNITED STEELWORKERS OF AMERICA
Local Union No. 1010
Grievance No. PIB-R11-93
Arbitrator: Clare B. McDermott
Opinion and Award
September 12, 1986
Subject: Sickness And Accident Benefits.
Statement of the Grievance: "The grievant, Ceasar Holguin Payroll No. 4999 was denied Sickness and Accident benefits from December 18, 1984 to Return To Work, in Violation of the P.I.B. Agreement.
"RELIEF SOUGHT: The grievant be paid all monies due.
"Violation is claimed of the Insurance Agreement sections 2.0, 2.9."
Agreement Provisions Involved: Paragraph 2.0 of the January 1, 1981 Program of Insurance Benefits Agreement.
Statement of the Award: The grievance is sustained.
Chronology
Filed: 1-15-85
Meeting with Local Union Representative: 3- 4-85
Minutes: 6-10-85
Meeting with International Union Representative: 10-25-85
Minutes: 1-6-86
Appealed to Arbitration: 1-13-86
Heard: 1-28-86
Appearances
Company
M. M. Roglich, Senior Representative, Labor Relations
R. B. Castle, Arbitration Coordinator, Labor Relations
T. L. Kinach, Section Manager, Advocacy, Arbitration & Administration, Labor Relations
V. Soto, Project Representative, Labor Relations
Dr. Rex Hooker, Section Manager, Medical Department
Norbert Chmura, Section Manager, 100" Plate Mill Dept.
Carnell Scott, Representative, Insurance & Services, Personnel Department
Edward Hamilton, Project Representative, Insurance & Services, Personnel Department
Marcia Jaron, Secretary, Labor Relations
Union
Bill Trella, Staff Representative
John Deardorff, Insurance Representative
Don Lutes, Secretary Grievance Committee
Ceaser Holguin, Grievant
Diane Holguin, Witness
Gavino Galvan, Chairman Grievance Committee
BACKGROUND
This PIB grievance from Indiana Harbor Works claims that Management's denying Sickness and Accident benefits to grievant for the period from December 18, 1984 through January 1, 1985 violated paragraphs 2.0 and 2.9 of the January 1, 1981 Program of Insurance Benefits Agreement.
Grievant began a period of absence on August 4, 1984 because he was totally disabled as a result of sickness so as to be prevented from performing the duties of his employment, as certified by his attending, licensed physician for a condition diagnosed as "Myofascial pain syndrome, cervical spine, r/o [rule out ] herniated disc." He received Sickness and Accident benefits for that condition, beginning August 17, 1984. Grievant continued to be absent for that reason into December of 1984. He was seen and examined by his treating physician, Dr. Millan, on December 17, 1984, who determined then that grievant would be able to resume work on January 2, 1985.

On December 12, unaware that Dr. Millan was going to examine grievant on December 17 and, of course, without knowing that he would release grievant for work as of January 2, 1985, the Company wrote to grievant, requesting that he submit to a physical examination by its physician. The Company says that request was made because of the nature of grievant's disability and the alleged period of convalescence.
Grievant was examined on December 18, 1984 by the Company's Associate Medical Director, Dr. Hooker, who determined that he had good range of motion in the cervical spine, that his left shoulder area was much improved, and that neurological evaluation resulted in negative findings, with no atrophy or loss of strength in the upper extremities. Based on those findings, Dr. Hooker said grievant was able to return to work, and further Sickness and Accident benefits were terminated.
Grievant returned to work on January 3, 1985, apparently on the basis of his attending physician's advice.
This grievance followed, with the Union noting that grievant had satisfied the requirements of paragraph 2.0 of the Program of Insurance Benefits, namely, that he had become totally disabled as a result of his sickness so as to be prevented from performing the duties of his employment and that a licensed physician had so certified. The grievance requests payment of Sickness and Accident benefits for the period in dispute, that is, from December 18, 1984 through January 1, 1985.
The Union stresses that grievant was examined by Dr. Millan, his treating physician, on December 17, one day before the Company doctor's examination, and was found still to be disabled. Grievant testified he continued to receive medication, by injection and orally, between his December 17 examination by Dr. Millan and by Dr. Hooker on December 18 until he returned to work in January, and that he was seen again by Dr. Millan on December 28, 1984.
The Company notes that grievant's job at the critical time was the Job Class 4 Stamper-Marker, which stamps or marks identifying information on plate. It uses a stamp holder for the steel stamps. It strikes them with a hammer to mark information on plate and chalks and paints data on it. The holder weighs about one and one-half or two pounds and, with stamps in it, would weigh between three and three and one-half pounds. The hammer weighs one and one-half pounds.
The Union urges that grievant's attending physician's medical opinion, since he examined and treated grievant many times over a period of about four months, is entitled to greater weight than that of the Company's doctor, who saw grievant only once.
The Company argues the exact opposite, on the ground that its doctor was more aware of the specific nature of the duties called for by grievant's Stamper-Marker job than was grievant's doctor and, therefore, that he was better qualified to decide whether or not grievant was totally disabled from performing those duties. Management says that no suggestion appears in this record to explain what therapeutic benefit grievant would have gained from the additional two weeks off work. The Company believes that, after four and one-half months of medical attention and recuperation, grievant's physical status had reached the recovery stage and that there would be no dramatic change in his condition over another two-week period.
In essence, the Company position is that Dr. Hooker's opinion establishes that grievant no longer was totally disabled so as to be prevented from performing his employment duties and, therefore, that Sickness and Accident benefits no longer were due. The Company says Dr. Millan released grievant for active employment prospectively, despite apparently diagnosing an unchanged condition. That is said to be a contradiction belying the medical necessity for an additional two weeks off work.
The Union says the issue is whether an employee is to be considered totally disabled when so certified by his treating physician, or only when examined once by a Company physician. It notes that Dr. Hooker said grievant was "much improved" but not that he was totally well. The Union notes, moreover, that Dr. Hooker did not even discuss grievant's situation, much less consult about it, with Dr. Millan.
Dr. Hooker said that myofascial pain syndrome was a painful condition of the cervical area and neck and shoulder, with muscle spasms and exquisite tenderness and weakness, and limited range of motion of neck and shoulder, depending upon the tenderness point. He said when he saw grievant he had mild discomfort in his left neck and the top of his left shoulder.
Dr. Hooker took grievant's medical history and observed how grievant carried himself, how he held his head and shoulder, how he raised and tilted his head, and whether there were muscle spasms, or limited motion. He palpitated areas of discomfort and tenderness and checked reflexes for nerve problems and strength and numbness. He palpitated grievant's neck and shoulder, had him turn his head up and down and side to side, and tested biceps and triceps reflexes with a hammer. He tested for strength by having grievant grip his (Dr. Hooker's) forefingers and pull toward him (the doctor), and tested grievant's triceps by having him push downward.

The doctor said grievant had a good range of motion and no weakness in his upper extremities and no significant discomfort. There was no numbness, and his reflexes were present and equal bilaterally. The doctor did not recall any really sensitive areas, no muscle spasm, or evidence of atrophy.
Dr. Hooker said his examination methods were the same as those employed by Dr. Millan.
The witness said he discussed grievant's job duties. Grievant demonstrated his motions at work, and the doctor concluded he was able to perform them. He told grievant that, and grievant said nothing but that his treating physician had not released him for work.
The Union stresses that grievant received injections by Dr. Millan when he saw him on December 17 and that, as Dr. Hooker agreed, prompt relief from pain follows such injections. It argues, therefore, that, when Dr. Hooker examined grievant one day after his injections, grievant would not have presented sensitive areas within twenty-four hours of having received such injections. That is said to explain why Dr. Hooker found only mild discomfort on December 18. Dr. Hooker said the injections the day before would not increase grievant's strength but would free him from pain.
Dr. Hooker said he did not speak to Dr. Millan about his conclusion on grievant's condition because he could not see what he might learn from Dr. Millan.
Grievant said he first had symptoms of this problem in August of 1984. He had a lot of pain in his shoulder and chest, and for two or three weeks he was seeing a chiropractor. The pain got worse, and he missed work one day and was rushed to St. Catherine's Hospital. He was told he was suffering muscle spasms and that he should see his family physician. He went to Dr. Millan on an emergency basis. Dr. Millan examined him, administered medication at first and said, if grievant did not feel better, he should return to the hospital. Grievant went to the hospital, was given an x-ray, and received heat therapy twice a day. Dr. Millan also did acupuncture on grievant on an out-patient basis. There were more injections and then Dr. Millan examined or manipulated grievant every day and gave injections every three days. Grievant was admitted to the hospital again in late October. Thereafter there were more injections, and they gave relief from pain for about thirty-two hours. Grievant was taking Valium, too, as prescribed by Dr. Millan.
Grievant saw Dr. Millan again on December 28, but he was not examined then.
Grievant said his examination by Dr. Hooker was not the same as those by Dr. Millan. He said Dr. Hooker had him raise his arms, felt his back, used a little hammer, and that was it. He thinks he told Dr. Hooker that he had had a shot the day before.
Grievant says he has discomfort all the time but that now he can do his job, with proper treatment. He is off Valium but takes Tylenol 4, codeine, and a relaxant.
The Company says Dr. Millan's medical opinion should be discounted here because he did not look at the whole scope of this problem, in that he allegedly did not regard grievant's actual duties. It says this is a two-part determination that is made up of a medical decision, which must then be tied to the relevant job duties. It is argued that two employees could suffer from the same condition and one would be able to perform his duties and the other would not because they were on a different job and were different in nature. Dr. Millan allegedly did not make the tie-in of grievant's medical condition with his job duties. The Company urges that, in contrast, Dr. Hooker did take full account of grievant's Stamper-Marker duties.
The Company notes that its Dr. Hooker appeared and testified and was cross-examined, but that grievant's Dr. Millan did not appear to testify.
FINDINGS
There are few, if any, material facts in dispute here. There are two conflicting medical opinions, and each, standing alone, is not unpersuasive. Considered together, however, they are so conflicting that in other circumstances they might just about result in a standoff.
Each party stresses the strong points in its medical expert's position and opinion and scouts claimed weaknesses in the other's medical expert's position and opinion. And there are firm points in each with, of course, some vulnerable aspects in both. Grievant's Dr. Millan apparently did not know all about the duties of grievant's Stamper-Marker job, but the Company's Dr. Hooker seems not to have known much more than what grievant told him, until after his December 18 examination and opinion. Moreover, Dr. Hooker did not have the advantage of Dr. Millan's familiarity with grievant's condition from his multiple examinations and treatment of grievant over a period of about four months.
The Arbitrator is not equipped by training or experience to draw conclusions on this subject, independent of medically expert opinion. But that is not necessary here. A significant point is that these two medical experts were not differing about grievant's disability over long periods of time. On the contrary, only fifteen days are involved. In light of that crucial fact, it would be cutting things much finer than the nature of the art would admit to decide that Dr. Hooker's one examination and opinion should be seen as so undercutting

Dr. Millan's opinion, based on serial examinations and treatment over a period of approximately four months, as to warrant ignoring or overriding it. This seems particularly apt when it is realized that Dr. Hooker examined grievant within twenty-four hours of his having received injections by Dr. Millan, which Dr. Hooker agrees would have given grievant significant relief from pain. That is, Dr. Hooker agrees that grievant's condition when he saw him on December 18 probably was temporarily better than it was on December 17, when Dr. Millan last examined grievant.

Accordingly, the preponderance of the evidence establishes that grievant was totally disabled as a result of his medical condition so as to be prevented from performing the duties of his employment, and Dr. Millan, a licensed physician, so certified. That made grievant eligible for Sickness and Accident benefits for the fifteen-day period in dispute. Thus, the grievance will be sustained.

AWARD

The grievance is sustained.

/s/ Clare B. McDermott
Clare B. McDermott
Arbitrator