BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JO ANN KONCHAN, Claimant, vs. ENGLISH VALLEY NURSING CARE CENTER, Employer, and BERKSHIRE HATHAWAY HOMESTATE INSURANCE CO., Insurance Carrier, Defendants.	:	File Nos. 5068222, 5068223 A P P E A L D E C I S I O N Headnotes: 1402.20; 1402.30; 1402.40; 1801; 1803; 1804; 2204; 2501; 2502; 2907; 5-9999

Claimant Jo Ann Konchan appeals from an arbitration decision filed on February 16, 2022. Defendants English Valley Nursing Care Center, employer, and its insurer, Berkshire Hathaway Homestate Insurance Company, initially cross-appealed, but withdrew their cross-appeal in their appeal brief. The case was heard on March 18, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 26, 2021.

In the arbitration decision, the deputy commissioner found claimant failed to meet her burden of proof to establish the May 5, 2016, and May 15, 2016, incidents are substantial factors in causing claimant's leg pain, back pain, and mental conditions, and the deputy commissioner found the remaining issues are moot, other than reimbursement of the cost of claimant's independent medical examination (IME). Pursuant to Iowa Code section 85.39, the deputy commissioner found defendants should be assessed $3,872.50 for the cost of the first IME of claimant performed by John Kuhnlein, D.O., in 2018. The deputy commissioner found the parties should pay their own costs of the arbitration proceeding.

On appeal, claimant asserts the deputy commissioner erred in finding claimant failed to prove the May 5, 2016, and May 15, 2016, incidents are substantial factors in causing her leg pain, back pain, and mental conditions. Claimant asserts it should be found on appeal that she is permanently and totally disabled, or, alternatively, claimant asserts she is entitled to a running award of temporary benefits, and claimant asserts defendants should be responsible for claimant's medical bills and future medical care.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the arbitration decision filed on February 16, 2022, is affirmed, with the following additional and substituted analysis.

Without further analysis, I affirm the deputy commissioner's finding that defendants should be assessed $3,872.50 for the cost of the first IME of claimant performed by Dr. Kuhnlein in 2018, and I affirm the deputy commissioner's finding that the parties should pay their own costs of the arbitration proceeding.

With the following additional and substituted analysis, I affirm the deputy commissioner's finding that claimant failed to prove the May 5, 2016, and May 15, 2016, incidents are substantial factors in causing claimant's leg pain, back pain, and mental conditions.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held an injury occurs "in the course of employment" when:

> . . . it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> . . . a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

I agree with the deputy commissioner's finding that claimant failed to prove the May 5, 2016, and May 15, 2016, incidents are substantial factors in causing her leg pain and back pain. No physician has opined the May 5, 2016, and May 15, 2016, incidents are substantial factors in causing claimant's leg pain. No treating physician has opined the May 5, 2016, and May 15, 2016, incidents are substantial factors in causing claimant's back pain. The only physician to find the May 5, 2016, and May 15, 2016, incidents are substantial factors in causing claimant's back pain is Dr. Kuhnlein, an occupational medicine physician who performed two IMEs for claimant.

Dr. Kuhnlein examined claimant on two occasions, on March 28, 2018, and on July 14, 2020, and he diagnosed claimant with chronic musculoskeletal low back pain. (Ex. 1) Dr. Kuhnlein found claimant sustained two acute injuries in May 2016, and opined:

> . . . [b]oth injuries would be related to her work for English Valley Care Center. She subsequently developed chronic low back pain as a direct result of these 2 injuries. Ms. Konchan describes multiple falls since then and states that a February 12, 2017 fall permanently aggravated her lumbar

> symptoms. This particular fall that produced a permanent change in her symptoms would be a sequela to the original May 5, 2016, injury.

(Ex. 1, p. 8)

As correctly noted by the deputy commissioner, during his second examination, Dr. Kuhnlein was aware claimant had commenced treating with Lara Lazarre, M.D., a neurologist, for headaches. However, Dr. Kuhnlein was not provided with Dr. Lazarre's records after June 2020. (Ex. 1) In her subsequent records, Dr. Lazarre documented claimant was having balance problems, numbness and weakness in her arms and legs and Dr. Lazarre assessed claimant with Parkinson's disease. Dr. Lazarre commenced treating claimant for Parkinson's disease, including pharmacological treatment and occupational therapy to work on her balance issues. (JE 12, pp. 371e-k)

In reaching his conclusion that claimant's chronic musculoskeletal low back pain was caused by the work injury and that the 2017 fall was a sequela of the May 5, 2016 incident, Dr. Kuhnlein did not explain the lack of objective findings noted by Ernest Perea, M.D., a treating occupational medicine physician, Benjamin MacLennan, M.D., a treating orthopedic surgeon, or Jeffrey Westpheling, M.D., an occupational medicine physician who performed an IME of claimant for defendants. No treating physician has found the February 12, 2017, fall is a sequela of the May 5, 2016, incident. As with the deputy commissioner, I do not find Dr. Kuhnlein's opinion persuasive.

With the following additional and substituted analysis, I also affirm the deputy commissioner's finding that claimant failed prove that the work injury caused her to develop sequelae mental health conditions.

In reaching his conclusion regarding the mental claim, the deputy commissioner noted:

> With respect to Konchan's mental injury claim, only one expert opined. That is Dr. Wadle. He concluded Konchan did not have a diagnosable mental health condition. He tied her mental issues to chronic pain. As discussed above, there is an insufficient basis to conclude Konchan's ongoing and worsening pain complaints were caused by the alleged May 2016 falls while working at English Valley. Therefore, Konchan has not met her burden of proof on the question of causation with respect to her alleged mental injury.

(Arb. Dec. p. 11)

The record establishes that more than one expert issued a causation opinion on claimant's mental injury claim. Margaret Burchianti, DNP, ARNP, with adult psychiatry at the University of Iowa Hospitals and Clinics ("UIHC"), also provided a causation opinion. (Ex. 13)

Claimant's family practice physician, Lisa Schweibert, M.D., referred claimant to Burchianti. On March 31, 2017, claimant commenced treatment with Burchianti and claimant continued to treat with Burchianti at the time of the hearing. (JE 2, p. 45; Ex. 13) When Burchianti issued her opinion letter on January 22, 2021, claimant had attended 32 therapy sessions with her.

During claimant's first appointment with Dr. Perea on June 1, 2016, claimant presented using a walker that had not been prescribed by a treating physician. Dr. Perea noted, "I believe she has a huge psychological component to her pain and we will use standard of care and compassion and bring her along to recover completely. We walked approximately 25 feet with no falls or untoward events." (JE 4, p. 233) When she returned to Dr. Perea on June 10, 2016, Dr. Perea noted, "I believe also anxiety and depression may be a valuable workup tool to evaluate her for barriers to resolution of what appears to be mechanistically not so dramatic mechanism to explain the symptoms we have seen of almost complete withdrawal on the part of our patient." (JE 4, pp. 235-36)

On August 8, 2016, Dr. Perea responded to a check-the-box letter from defendants, clarifying that his recommendation for psychiatric pain management was not related to the work injury. (JE 4, p. 249)

Dr. Perea later responded to a check-the-box letter from defendants' counsel on September 14, 2016, agreeing claimant did not sustain permanent injuries to her left knee or lumbar spine arising out of the May 5, 2016, work incident and claimant "did not sustain a psychological injury as a result of any workplace physical or cumulative trauma." (JE 4, p. 253) Dr. Perea further agreed that the restrictions he provided to claimant on July 27, 2016 were personal to her and not as a result of any workplace physical or cumulative trauma. (JE, p. 253)

In her January 22, 2021, opinion letter, Burchianti opined,

> I have observed a decline in Ms. Konchan's mental health and a worsening of her depression and anxiety symptoms over the last three years – a decline that clearly followed the toll of chronic pain and physical debilitation. Because of her pain and debilitation, she was unable to engage in work and many other meaningful activities. When I first started meeting with Ms. Konchan, she met criteria for adjustment disorder with mixed anxiety and depressed mood. Her depression symptoms worsened to the point that she started meeting criteria for major depressive disorder by October 2018 and continued to experience high levels of anxiety related to health and health-related stressors and chronic insomnia related to chronic pain, depression and anxiety.
>
> In my professional opinion, Ms. Konchan's psychiatric symptoms are all sequelae of the 2016 work-related injury. The chronic pain and all the financial and psychosocial stressors, which have followed from her physical

> debilitation, unemployment and this worker's compensation case, have caused the major depression and anxiety.

(Ex. 13, p. 133)

Claimant has not alleged a mental-mental injury caused by her employment with defendant-employer. No expert has opined claimant has sustained a mental-mental injury caused by her employment with defendant-employer.

On appeal claimant alleges an underlying physical injury does not have to be compensable to recover for a physical-mental injury, relying on Heartland Specialty Foods v. Johnson, 731 N.W.2d 397 (Iowa Ct. App. 2007). In Johnson, the claimant was involved in a fight with a coworker where she sustained a mark on her neck, a headache, and her clothes were ripped. The claimant in Johnson subsequently developed a mental health impairment. On remand, the deputy commissioner found claimant's two treating physicians indicated claimant's injury during the fight was a substantial factor in precipitating the treatment for her mental health impairment. The court of appeals determined the deputy's reference to the physicians' opinions reflects he accepted the opinions in finding causation, even though no industrial disability was awarded for the mark or headache Johnson sustained during the fight.

Claimant in this case alleges she sustained mental health sequelae of physical conditions she attributes to the May 5, 2016, and May 15, 2016, incidents. As correctly determined by the deputy commissioner, claimant failed to meet her burden to prove the May 5, 2016, and May 15, 2016, incidents were substantial factors in causing her leg pain, back pain and mental conditions. Unlike the claimant in Johnson, where the development of claimant's mental condition was tied to the fight, Burchianti did not tie the mental conditions to the actual incidents in May 2016, but rather to claimant's chronic pain and physical debilitation which were not caused by the work injury. I do not find Burchianti's opinion that the work incidents caused the mental condition to be persuasive. I affirm the deputy commissioner's finding that claimant failed to prove she sustained mental health conditions caused by her employment with defendant-employer.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 16, 2022, is affirmed with the above-stated additional and substituted analysis.

Claimant shall take nothing in the way of weekly benefits from these proceedings.

Defendants shall reimburse claimant three thousand eight hundred seventy-two and 50/100 dollars ($3,872.50) for the cost of Dr. Kuhnlein's first IME in 2018.

Pursuant to 876 IAC 4.33(7) the parties shall paying their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 20th day of July, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Joanie Grife (via WCES)

Robert Gainer (via WCES)