

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MILDRED I. NYSTEL,

Claimant,

vs.

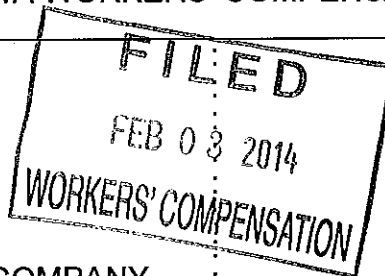
ALBERT LEA ELECTRIC COMPANY,

Employer,

and

AUTO-OWNERS INSURANCE,

Insurance Carrier,
Defendants.



File No.5041113

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Mildred I. Nystel, has filed a petition in arbitration and seeks workers' compensation benefits from Albert Lea Electric Company, employer Auto-Owners Insurance, insurance carrier, defendants.

This matter was heard by Deputy Workers' Compensation Commissioner Ron Pohlman on June 20, 2013 at Waterloo, Iowa. The record in the case consists of claimant's exhibits 1-17; defendants' exhibits A-I, as well as the testimony of the claimant and Carol Tucker.

ISSUES

The parties submitted the following issues for determination:

1. Whether the injury of July 25, 2011 was the cause of any disability;
2. Whether the claimant is entitled to healing period/temporary total disability benefits from July 25, 2011 through June 28, 2012 and from September 29, 2012 and continuing;
3. The nature and extent of claimant's entitlement to permanent partial disability;
and
4. Whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

FINDINGS OF FACT

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

Claimant at the time of the hearing was 63 years old. She is a journeyman electrician. This is a physically demanding job and typically the claimant worked on large industrial worksites. She was required to operate a trencher, install lights, receptacles, operate a drill and do a great deal of climbing. Her last job was in Britt, Iowa and began on June 13, 2011.

The claimant underwent surgery for a herniated disk on the left side at L5-S1 on July 19, 1989. She had an injection for left knee pain on October 12, 2010.

On July 25, 2011, the claimant was injured when she caught her foot stepping over a chop saw and fell down. She broke off two teeth which was her main concern at the time. She was laid off of this job on July 28, 2011. She was experiencing left knee pain and swelling. She advised the claim representative at that time of the knee problem. She was also experiencing low back pain. Her condition was getting progressively worse so she was sent to Kenneth McMains, M.D., by the defendants.

Dr. McMains saw the claimant on September 20, 2011 and at that time claimant complained of pain in her right leg and shoulder, as well as pain radiating down her right leg in the knee and foot. He noted that the claimant's right calf was one quarter inch smaller than her left calf. His impression was acute right sciatica with a chronic S1 radiculopathy. He saw her again on October 7, 2011 and at time he noted:

Today on reexamination 10/07/11, the worker has had improvement with decreased pressure and heaviness in the right hip area and knee, but now the major pain is in the ankle area laterally, worse with any walking, even for a short distance on uneven ground. The exam today again showed normal strength, normal reflexes at the knee and ankle with equal +5/5 EHLs. The worker still has a list on standing to the left, not putting what appears to be full weight on the right leg, and continues to walk with an abnormal gait. There was continued atrophy of the calf but full range of motion of the ankle and toes. The worker did have full range of motion of the back on flexion but had painful and marked restriction of movement on extension and essentially normal right and left lateral flexion.

(Exhibit A, page 1)

Dr. McMains recommended that claimant obtain an MRI of the low back before she returned to heavy work as an electrician. On October 20, 2011, Dr. McMains opined that the low back condition and right lower extremity problems were not related to the work incident of July 25, 2011 and opined that claimant was at maximum medical

improvement for the left leg and dental injury. Dr. McMains reaffirmed these opinions on May 20, 2013.

Claimant's attorney sent the claimant to Farid Manshadi, M.D., for an independent medical evaluation on March 20, 2013. Dr. Manshadi's impression was:

Impression:

- 1) Left sided knee pain with reduced range of motion with clinical evidence of patellofemoral syndrome
- 2) Right-sided low back pain and right lower extremity radicular symptoms with reduced sensation along the right L5 dermatome
- 3) MRI findings of right-sided disc protrusion at L4-L5 with moderate right-sided neural foraminal stenosis

(Ex. 12, p. 73)

Dr. Manshadi opines that claimant has a 5 percent permanent impairment of the left lower extremity. With respect to the low back Dr. Manshadi opines:

In regard to her back injury I also believe that she sustained right-sided radiculopathy which appears to be at L4-L4, at least on MRI and I think this is work related. Her previous back injury was on the left side and that was at L5-S1 and she had a complete recovery by her report and she did not have any more issues with that. I believe this back injury is related to the work injury of July 25, 2011. I believe Ms. Nystel has partial permanent impairment in regard to this work injury in regard to her back.

(Ex. 12, p. 73)

Dr. Manshadi opines claimant has a 6 percent permanent impairment of the body as a whole for the low back.

REASONING AND CONCLUSIONS OF LAW

The next issue is whether the injury was the cause of any disability.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

The record does not support that claimant sustained an injury to back and right lower extremity on July 25, 2011. It appears from this record that claimant had long term problems with her low back that ultimately has resulted in symptoms. The opinion of Dr. McMains, Connie Barthel, PA and Glenn Johnson, M.D., who saw claimant close in time to the injury are given greater weight than claimant's expert Dr. Manshadi. The record shows that claimant sustained temporary aggravation of her left knee and reached maximum medical improvement before she was laid off from her employment. Her left knee problems resulting in a total knee replacement are not established to be related to this work injury.

ORDER

THEREFORE, IT IS ORDERED:

Claimant take nothing from this file.

Costs of this action are taxed to the claimant pursuant to rule 876 IAC 4.33.

Signed and filed this 3rd day of February, 2014.



RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.