BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHARON MURPHY, Claimant, vs. OTTUMWA REGIONAL HEALTH CENTER, Employer, and SAFETY NATIONAL CAS. CORP., Insurance Carrier, Defendants.	File No. 21006375.01 ARBITRATION DECISION Headnotes: 1402.30; 1403.30

STATEMENT OF THE CASE

Claimant, Sharon Murphy, filed a petition in arbitration seeking workers' compensation benefits from Ottumwa Regional Health Center, employer, and Safety National Casualty Corporation, insurer, both as defendants. This case was heard on January 6, 2023, with a final submission date of February 17, 2023

The record in this case consists of Joint Exhibits 1 through 24, Claimant's Exhibit 1, and the testimony of claimant.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. The extent of claimant's entitlement to temporary benefits.

FINDINGS OF FACT

Claimant was 79 years old at the time of hearing. Claimant graduated from high school. Claimant began working for Ottumwa Regional Health Center (ORHC) in 1981. (Joint Exhibit 17, deposition pages 9-12)

Claimant worked as a phlebotomist for ORHC. Claimant worked a graveyard shift from 9:00 p.m. to 7:00 a.m. On December 4, 2020, claimant was sitting at a computer. She got up from the computer to get printed labels. Claimant testified she got up but did not recall what happened after that. (Testimony, pages 17-18)

Claimant testified a co-worker found her on the floor of her work area in blood and vomit. Claimant had limited consciousness. Claimant was taken to the emergency room at ORHC. (Tr., p. 18; JE 2, p. 24) When claimant regained consciousness, she did not remember what happened. (JE 2, p. 32)

Photographs of the work area where claimant fell are found at Joint Exhibit 22.

Claimant had a CT scan of her head. It showed a subgaleal hematoma on the left aspect of the occipital bone. The CT scan did not explain claimant's fall. Claimant was referred for further testing. (JE 2, p. 32)

Claimant underwent an EEG, which was normal. (JE 4, p. 47) Claimant also underwent an echocardiogram and an EKG, which were also normal. (JE 4, p. 45)

Claimant was kept in the hospital for two days. She was evaluated for a stroke, cardiac issues, and for central nervous system issues. All tests were negative. Claimant had no dizziness, vertigo, or lightheadedness. (JE 5, p. 78)

Claimant testified at hearing that doctors were unable to identify any cause for her fall. (Tr., p. 50) Claimant testified that nobody knows what caused her fall. (Tr., p. 50)

Claimant testified that when she was in the hospital, her belongings were put in a Menards shopping bag, and not in a hospital-issued bag. Claimant said she does not know who put the items in the bag. She said she does not know why her items were in a Menards bag and not a hospital bag. (Tr., pp. 28-31)

Claimant testified she was released from the hospital on December 6, 2020. (Tr., p. 18)

Claimant was wearing a pair of New Balance tennis shoes at the time of the injury. She testified that after she was home from the hospital, for approximately two weeks, she looked at her clothing in the Menards bag. Claimant testified that upon examination she found a paperclip stuck in the sole of her shoe. (Tr., pp. 24-25) Photographs of the shoes are found in Joint Exhibit 12.

Claimant testified she did not know where or how the paperclip became stuck in her shoe. (Tr., pp. 33-34) She testified she did not tell anyone, when she found the shoe in the Menards bag, that there was a paperclip on the shoe. She said she did not

report the paperclip to the insurance company or anyone at the hospital. (Tr., pp. 34-36)

On December 10, 2020, defendant-insurer took claimant's statement regarding her work accident. In the statement, claimant said she went to a labeler in the computer area of her office after she printed labels. (JE 21, p. 180) She said that she walked to the labeler and fell down. Id. Claimant said she did not know how she fell. (JE 21, pp. 181, 186)

Claimant indicated in the statement she did not believe there was anything on the floor that made her hit her head. She said the cleaning "ladies" in her work area usually kept the floors pretty clean. (JE 21, pp. 193-194)

In an affidavit, Samantha Meinders indicated she was the human resource specialist for defendant-employer. In the investigation of claimant's claim, Ms. Meinders took photos of the accident area and spoke with claimant. Ms. Meinders indicated that in her investigation of the claim, she was not aware of claimant's belief that claimant slipped on a paperclip. During the investigation of the claim, it is Ms. Meinders' understanding claimant did not recall how she fell. (JE 24)

Claimant testified at hearing there were paperclips laying all over the lab where she worked. (Tr., p. 41) She testified in deposition there were paperclips all over the floor in her work area. (JE 17, p. 6, depo p. 19)

On December 17, 2020, claimant was evaluated by Kristin Beermann, A.R.N.P. in follow-up care. Claimant had headaches and dizziness after the fall. Claimant was assessed, in part, as having unexplained syncope and a concussion with loss of consciousness for approximately 30 minutes. (JE 1, pp. 7-13)

On December 29, 2020, claimant was evaluated by J. Tyler Bertroche, M.D., for a head injury after falling at work. Claimant was assessed as having benign paroxysmal positional vertigo (BPPV). The Epley maneuver was performed on claimant, and claimant was instructed on how to perform the Epley maneuver. (JE 5, pp. 78-82)

In a February 1, 2021 letter, defendant-insurer informed claimant that her claim for workers' compensation benefits was denied for the reason that claimant's employment did not cause or contribute to her condition. (JE 23, p. 229)

In an August 24, 2021 letter, defendants' counsel notified claimant's first attorney, Edwin Detlie, that because claimant's fall was unexplained and occurred for no known cause, the claim should be handled under claimant's personal insurance. (JE 18, p. 149)

On August 4, 2021, claimant was evaluated by Marc Molis, M.D., for another opinion regarding her concussion. Claimant said she worked in a lab where there was dirt and debris, especially paperclips, all over the place. Claimant said she may have slipped on a paperclip but was not 100 percent sure. Claimant reported some continued dizziness. Claimant also reported slower thinking, loss of memory and difficulty with concentration. Claimant was recommended to engage in therapies for compensation for cognition and language deficits. (JE 6, pp. 83-85)

On August 9, 2021, claimant was seen in physical therapy. Claimant still had headaches, light and sound sensitivity. Claimant occasionally got dizzy and had some issues with memory. Claimant believed she may have gotten a paperclip in her shoe, which caused her to fall. Claimant was recommended to have exercise, including, but not limited to gait training, training to improve balance and soft tissue manipulation. (JE 7, pp. 89-93)

In a June 17, 2022 letter, defendant-employer notified claimant she was terminated from her employment with ORHC effective June 17, 2022. (JE 13, p. 136)

On August 19, 2022, claimant was evaluated by Frederick Blodi, D.O. Claimant had blurred vision with no explanation from ocular pathology. Claimant's blurred vision was thought to be possibly secondary to a head injury. Claimant indicated she fell, slipping on a paperclip at work. (JE 8, pp. 99-100)

Claimant returned to Dr. Blodi on August 30, 2022. Claimant's vision had improved, but claimant still had blurred vision. (JE 8, pp. 101-102)

In a September 28, 2022 report, Irving Wolfe, D.O., gave his opinion of claimant's condition following an independent medical evaluation (IME). Claimant said she got up to walk to a printer, and the next thing she knew, she was in the emergency room. (JE 10, p. 118) Claimant said she unpacked her clothes after getting home and found a paperclip stuck in the bottom of her shoe. (JE 10, p. 119)

Claimant said she had pain rotating her neck and head. She said she had pain doing household chores due to neck pain. Claimant had some issues with memory. Claimant indicated she was having issues with dizziness and vertigo, but these symptoms were no longer present. (JE 10, p. 119)

Dr. Wolfe diagnosed claimant as having a closed head injury resulting in a concussion with resultant post-traumatic headaches, neck pain and cognitive impairment. (JE 10, p. 121)

When asked about causation of the fall, Dr. Wolfe indicated: "After review of the medical records and after my face-to-face interview and physical examination performed upon Ms. Murphy, I am unable to opine within a reasonable degree of medical certainty the specific likely source for Ms. Murphy's fall." (JE 10, p. 122)

Dr. Wolfe opined claimant was not at maximum medical improvement (MMI). He recommended consulting with a pain management specialist, Botox injections and neuropsychological testing to further assess claimant's cognitive strengths and weaknesses. (JE 10, p. 122) Dr. Wolfe indicated that if claimant were to be given a permanent impairment rating, claimant would be found to have a 13 percent permanent impairment to the body as a whole. (JE 10, p. 123)

Claimant testified she has neck and head pain if she tries to do too much. She said her head pain makes sleeping difficult. (Tr., pp. 21-22) Claimant says she gets routine cortisone injections in her head to deal with pain. Claimant says she takes Tylenol every 4 hours for pain. (Tr., p. 20) Claimant testified that given her complaints

and problems with head pain, she does not believe she could return to work at her prior job. (Tr., p. 27)

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. 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 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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).

Iowa Code section 85.61(7)(c) states in relevant part that personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not

arise out of and in the course of employment and are not compensable under this chapter.

The employer has the burden of proof to establish an affirmative defense. Nelson v. Cities Service Oil Co., 259 Iowa 1209, 1214, 146 N.W.2d 261 (Iowa 1966)

In Bluml v. Dee Jay's, Inc., 920 N.W.2d 82, 86 (2018), the Iowa Supreme Court noted that an idiopathic fall is a fall due to the employee's personal condition. There is little evidence in the record indicating that claimant's fall in this case was idiopathic in nature.

Defendants contend claimant's injury in this case is an unexplained fall from one level surface to the same level surface. Defendants argue that because claimant's injury is an unexplained fall, claimant's claim for benefits is not compensable under Iowa Code section 85.61(7)(c).

Claimant testified she believes that a paperclip stuck in her shoe caused her to fall at work. (Tr., pp. 24-26) Photographs of claimant's shoes show a paperclip stuck in the toe of the shoe. Claimant testified that no doctors were able to identify any cause for her fall. (Tr., p. 50) She testified that nobody knows what caused her fall. (Tr., p. 50)

Claimant's own expert, Dr. Wolfe, indicated he was unable to opine the likely source of claimant's fall. (JE 10, p. 122)

As noted, claimant testified she believes a paperclip stuck in the toe box area of her shoe caused her to fall at work. Claimant testified she found the paperclip in her shoe approximately two weeks after her accident. She said her shoes and clothing were stored in a Menards bag. (Tr., pp. 24-25)

Claimant testified she did not know when or how the paperclip became stuck in her shoe. (Tr., pp. 33-34) She testified she did not know why her clothes were in a Menards bag instead of a customary hospital bag. (Tr., pp. 49-50) She testified she did not report the paperclip to the insurance company or anyone at the hospital. (Tr., pp. 34-35)

On December 10, 2020, defendant-insurer took claimant's statement. In the statement, claimant said she did not know how she fell. There is no mention of a paperclip in her statement. (JE 21, pp. 181-186) In the same statement, claimant indicated she did not think there was anything on the floor that caused her fall. (JE 21, pp. 193-194)

Claimant was evaluated on December 17, 2020, and December 29, 2020. There is no indication of a paperclip causing her fall in either record. (JE 1, pp. 7-13; JE 5, pp. 78-82)

As noted above, claimant's first attorney involved in this case was Mr. Detlie. It does not appear from correspondence that Mr. Detlie was aware of a paperclip in claimant's shoe. (JE 18, p. 149)

The first mention in the medical record of a paperclip as the potential cause of a fall is found on August 4, 2021. (JE 6, pp. 83-85)

To summarize, claimant testified she found a paperclip in her shoe in mid-December of 2020. She did not tell the insurer or the hospital staff about the paperclip in her shoe. The record indicates her first attorney, Mr. Detlie, was not aware of a paperclip as a possible cause for her fall. Claimant was evaluated by medical providers between December of 2020 to July of 2021. There is no reference to a paperclip as a causation of the fall in any of these records. Claimant's early statements, following the accident, indicate the floors were kept clean in her work area. Statements made after August 2021 indicate the floors were dirty and littered with paperclips. It was not until August of 2021, over eight months after the accident, that references appear regarding a paperclip as the cause of claimant's fall. Given these inconsistencies in the record, it is found that claimant's testimony that she believes the paperclip in her shoe is the cause of her fall, is not convincing.

Claimant testified that no doctor has indicated the cause of her fall. She testified that nobody knows the cause of her fall. Claimant's own expert does not know what caused her fall. Claimant's testimony regarding her belief that a paperclip caused her fall is not convincing. Given this record, defendants have carried their burden of proof that claimant's fall in this case is an unexplained fall. As such, claimant's injury is found not to have arisen out of and in the course of employment under Iowa Code section 85.61(7)(c).

As claimant has failed to carry her burden of proof her injury arose out of and in the course of employment, all other issues are moot.

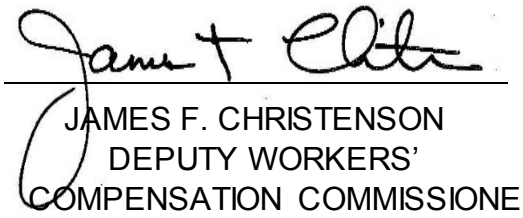
ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from this case.

That both parties shall pay their own costs.

Signed and filed this ___28th___ day of April, 2023.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jason Neifert (via WCES)

Lara Plaisance (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.