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IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

MIRZA CUFUROVIC, Petitioner,	]	CASE NO. CVCV138996
vs.	]	
TYSON FOODS, INC., Respondent.	]	ORDER

This matter was submitted to the court for review following a determination by the Workers Compensation Commission that claimant was ineligible for disability benefits. The record was submitted to the court; however, after review the court determined that defendant's exhibit F had not been provided to the court for review. The parties were notified and the parties provided to the court exhibit F.

The court has now had an opportunity to review all of the relevant matters and case law and hereby FINDS:

Statement of the Case

Claimant was employed by defendant. Claimant alleged a work-related injury causing disability. Defendant denied that any injury was work-related.

Hearing was held on January 9, 2018, before the Honorable William Grell, deputy worker compensation commissioner. An arbitration decision was entered on April 16, 2018, finding in favor of defendant and that claimant had failed to carry her burden of proof.

Claimant filed an appeal of this decision. On November 8, 2019, Joseph S. Cortese, II, workers compensation commissioner, affirmed the arbitration decision of April 16, 2018. This action followed.

Applicable Law

Claimant's Petition for Judicial Review of Final Workers Compensation Agency Decision is based upon the ground for relief stated in Iowa Code Section 17A.19(10). Particularly, claimant relies upon the following provisions in support of her Petition for Judicial Review:

> 10. The court may affirm an agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal, and including declaratory relief, if it determines the substantial rights of the person seeking

judicial relief had been prejudiced because the agency action is in any of the following:

f. Based upon a determination of fact clearly vested by the provisions of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when the record is viewed as a whole. For the purposes of this paragraph, the following terms have the following meaning:

(1) "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient for a neutral, detached and reasonable person to establish a fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

(2) "Record before the court" means the agency record for judicial review, as defined by this chapter, supplemented by any additional evidence received by the court under the provisions of this chapter.

(3) "When the record is viewed as a whole" means the adequacy of the evidence in the record before court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all the relevant evidence in the record cited by any party that supports it, including any determination of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material finding of fact. Iowa Code Section 17A.19(10)(f). On judicial review, courts are bound by the agency's fact determinations if those determinations of fact are support by the substantial evidence in the record as a whole.

A claimant has the burden of proving by a preponderance of the evidence that the injury actually occurred and that it both arose out of and in the course of employment. *Quaker Oats v. Ciha*, 552 N.W.2d 143 (Iowa 1996).

A claimant has the burden of proving by a preponderance of the evidence that an injury is the proximate cause of the disability on which the claim is based. A cause is a proximate cause if it is a substantial factor in bringing about the injury and it need not be the only cause. *George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148 (Iowa 1997). The question of causal connection is essentially within the domain of expert testimony. The expert evidence must be considered with all other evidence introduced bearing upon the causal connection between the injury and the disability. An expert opinion may be accepted or rejected, in whole or in part. *St. Luke's Hospital v. Gray*, 604 N.W.2d 646 (Iowa 2000).

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For a personal injury to be compensated under the Workers Compensation Law, the impairment must be resulting from an injury which comes about not through the natural build up and tearing down of the human body but because of trauma. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. *Ellingson v. Fleetwood, Inc.*, 599 N.W.2d 440 (Iowa 1999).

Statement of Facts

Claimant's work history and medical history are accurately set out in the arbitration decision of April 16, 2018. They need not be repeated here in their entirety.

At issue herein is the opinion of three expert witnesses.

Claimant was seen by Dr. Robert L. Gordon, M.D. Although Dr. Gordon was unsure of the cause of claimant's back condition, he opined that claimant's history and medical records did not support a conclusion that the condition was work-related. In his ruling of April 16, 2018, deputy commissioner Grell stated "I have difficulty in accepting or finding Dr. Gordon's opinions entirely convincing given that he is not a back surgeon and admits he cannot identify the specific cause of claimant's condition." This court gives deference to the determination of deputy commissioner Grell and likewise gives little weight to the opinions of Dr. Gordon.

Claimant also saw Dr. Trevor R. Schmitz, M.D. Dr. Schmitz opined that claimant's condition was not work-related.

Dr. Schmitz's opinion was based primarily on two beliefs. First, Dr. Schmitz stated that low back injuries are caused by age and genetic factors. Deputy commissioner Grell did not accept this "notion" noting that as an agency, numerous back injuries are seen that are caused by lifting and work activity. This court again gives deference to the findings of deputy commissioner Grell in not accepting this premise as a basis for Dr. Schmitz's opinion.

Dr. Schmitz also based his opinion that claimant's condition was not work-related on defendant's exhibit F, a video showing the job duties for claimant's position at Tyson. This video shows little, if any, lifting or duties which would result in a low back injury.

Claimant also saw Dr. Arnold E. Delbridge, M.D. Dr. Delbridge opined that claimant's low back condition was related to her employment at Tyson. Dr. Delbridge based his opinion on duties not shown in the work video (exhibit F) but rather duties which required much heavier lifting at greater frequency.

Deputy commissioner Grell found that the basis for Dr. Delbridge's opinion was not support by the evidence presented.

In joint exhibit 8 at page 25, Dr. Delbridge describes the work duties of the claimant as they were understood by him. In his description, Dr. Delbridge states that claimant had to repetitively lift boxes weighing 10 pounds, sometimes 30 pounds, and sometimes 60 pounds. She believed that the heaviest lifting she had to do while performing one job duty was 70 pounds. While doing a job in the bone-in department, Dr. Delbridge believed that claimant had to lift up to 100 to 110-pound boxes repeatedly. Dr. Delbridge further found that although the claimant was working in the cold chain department which required lesser lifting, she often was working in those departments which required greater lifting. Further in exhibit 8 at page 29, Dr. Delbridge describes claimant's work duties as having to lift repetitively weights up to 100 to 110 pounds and depending on the day, had to do it multiple times especially if the line broke down.

In a letter dated October 19, 2017, shown in exhibit 8 at page 32, Dr. Delbridge stated that it was his conclusion that claimant lifted quite heavy objects on a repetitive basis day-after-day. It was further his conclusion that her spine issues are the result of cumulative trauma from heavy lifting over a period of time.

It was the findings of deputy commissioner Grell that the job duties set forth by Dr. Delbridge were not an accurate description of claimant's work activities. This court, however, notes that in claimant's deposition shown as defendant's exhibit A at page 11, claimant states that in working in one department she would be required to lift boxes weighing at 10, 30 or even 60 pounds. At page 15 of that deposition, claimant testified that when working in the bone-in department, you might have to end up lifting 100, 110-pound boxes. And on page 16 of that deposition, claimant further testified that in the cold chain department you would not have to lift that much weight, maybe 10, 30 or 60 pounds but on other lines you would have to lift boxes of 100 to 110 pounds.

In claimant's trial testimony at page 35, claimant discussed lifting boxes of loins that weighed 70 pounds. On page 36 she again talked of lifting boxes which weighed up to 70 pounds. On page 40 of her deposition she talked about lifting boxes when working in the bone-in department that weighed anywhere from 40 to 110 pounds. On page 41 of her trial testimony she stated that she was required to lift 75 to 80 boxes in an 8-hour shift and on page 42 spoke of working in a department where she was required to lift 70 to 100 boxes a day.

The deposition testimony and trial testimony of the claimant regarding her job duties are consistent with each other and are consistent with the job duties stated by Dr. Delbridge as the job duties he relied upon in making his determination that the claimant's condition was job related.

Further adding to the reliability of the description of claimant's job duties and therefor the opinion of Dr. Delbridge is the testimony of defense witness Enes Kajtecovic who at pages 34 and 92 of the trial transcript corroborated the work duties of claimant as stated in her trial testimony. It is also of significance that the job description for the job performed by claimant required the ability to lift 100 pounds (page 93, trial transcript).

The opinion of Dr. Schmitz was based upon a job video which was an incomplete and inaccurate description of the duties which claimant performed at Tyson. The opinion of Dr. Delbridge was based upon a job description consistent with trial and deposition testimony of claimant and corroborated by defendant's own witness.

Although deputy commissioner Grell found the testimony of claimant to not be credible, on all material evidence contained in her deposition and trial testimony regarding her job duties while working at Tyson, her statements were consistent. This testimony of claimant was consistent with the job description described by Dr. Delbridge in his opinion that claimant's low back condition was job-related. And claimant's testimony regarding her job duties at Tyson were corroborated by defendant's own witness.

It is the finding of this court that the determination of fact by the Workers Compensation Commission is not supported by substantial evidence in the record when the record is viewed as a whole. This court therefore determines that claimant has proven by a preponderance of the evidence that her work activities at Tyson were a substantial contributing factor to her lower back injury. The matter must therefore be referred back to the Workers Compensation Commission for determination of all other matters which were determined moot due to the commission's previous ruling herein.

IT IS THEREFORE HEREBY ORDERED:

1. That the ruling of the Iowa Workers Compensation commissioner finding that claimant failed to prove by a preponderance of the evidence that her low back injuries were work-related and that this matter should be dismissed is hereby REVERSED.

2. This matter is hereby remanded to the Iowa Workers Compensation Commission for further rulings consistent with the court's finding herein regarding those matters determined to be moot based upon the commission's previous ruling.

3. Costs herein are taxed to defendant.

Clerk to provide copies to counsel of record.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV138996	M CUFUROVIC VS TYSON FOODS INC

So Ordered

Bradley J. Harris, District Court Judge,
First Judicial District of Iowa