

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUANA PALACIOS,

Claimant,

vs.

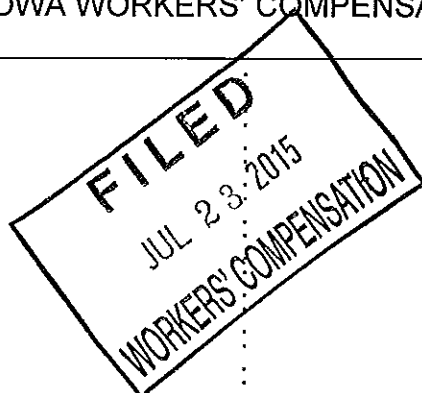
HNI CORPORATION,

Employer,

and

ACE INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5046904

ARBITRATION

DECISION

Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Juana Palacios, has filed a petition in arbitration and seeks workers' compensation benefits from HNI Corporation, employer, and Ace Insurance Company, insurance carrier defendants.

This matter was heard by Deputy Workers' Compensation Commissioner Ron Pohlman on May 27, 2015 at Davenport, Iowa. The record in the case consists of claimant's exhibits 1-18; defendants' exhibits A-G as well as the testimony of the claimant through interpreter Laura Castro.

Defendants objected to Exhibit 19 as a late report. Ruling was reserved for this decision. Defendants' objection is overruled. The exhibit is not unduly prejudicial.

ISSUES

1. The issues in this case are whether the claimant sustained an injury on March 3, 2014, which arose out of and in the course of employment. Defendants contend that if the claimant sustained an injury it was a sequela of an injury the claimant sustained to her left arm.
2. There is an issue related to rate identified on the hearing report, but the parties agreed that the rate for this case is the same as the rate for the April 18, 2012 work injury.

3. The claimant seeks payment of medical expenses pursuant to Iowa Code section 85.27;
4. Whether the claimant is entitled to payment for an independent medical evaluation pursuant to Iowa Code section 85.39; and
5. Whether the claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27.

FINDINGS OF FACT

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

The claimant is 53 years old. She was born in El Salvador and attended school for nine years there. She can speak limited English. She began working for HNI Corporation June 4, 2007 and is still employed there. The claimant sustained an injury to her left shoulder April 18, 2012 and underwent surgery for her shoulder on October 23, 2013. She returned to work the following day, October 24th with restrictions on her left arm and left upper extremity.

She was given a job cleaning machines lifting tubes. The tube job required the claimant to work overhead with her right arm. This was repetitive work. The claimant developed problems with her right shoulder and sought care in March 2014. See Exhibit 4, page 27.

On March 6, 2014 the claimant sought care at her family clinic for her right shoulder reporting this history:

She is having 4 week history of right shoulder pain, in anterior shoulder. This is worse if she reaches forward, lifts arm above head. She has pain when driving or when performing certain activities at work. She feels radiation of pain toward elbow. She denies any right shoulder numbness or tingling. She feels "bites of pain" even when she is not actively moving her arm.

(Exhibit 4, page 27)

The claimant sought care with Theron Jameson, D.O., the employer's orthopedic physician, who had been treating her left shoulder on March 31, 2014. Dr. Jameson advised the claimant that he was not authorized to treat her right shoulder. See Exhibit 5, page 51.

The claimant continued to treat with her family medical clinic for her right shoulder, and on May 12, 2014 her family physician, Eleanor Lisa Lavadie-Gomez, M.D. suggested that the claimant consider a referral to Physiatry and Rehabilitation. In July 2014 the claimant saw Brett Lockman, D.O. for treatment of her other work injuries that

are not subject of this petition, but Dr. Lockman suggested that the claimant would benefit from ultrasound-guided bicep tendon sheath injection. See Exhibit 6, page 54.

The claimant would like Dr. Lockman to provide her this care.

On March 2, 2015 the claimant saw Robin Sassman, M.D. for an independent medical evaluation at her attorney's request. Dr. Sassman opines with respect to the right shoulder:

With regard to the right shoulder, Ms. Palacios states that her symptoms in her right shoulder began in approximately February of 2014. This was after her left shoulder surgery. She found that after the surgery she was using her right upper extremity more and started to notice symptoms. She denies having any symptoms in the right shoulder prior to this occurring. Therefore, it is my opinion that the right shoulder symptoms came about as a result of compensating for the left shoulder injury.

(Ex. 1, p. 13)

Dr. Sassman recommends that the claimant have an MRI of the right shoulder to determine if any internal derangement exists and evaluation by an orthopedic specialist. Dr. Sassman recommends that the claimant continue care with Dr. Lockman. Dr. Sassman provided an impairment rating for the right shoulder but noted that that opinion would change if the claimant had further treatment.

REASONING AND CONCLUSIONS OF LAW

The first issue in this case is whether the claimant sustained a work injury on March 3, 2014.

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. 6.14(6).

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" referred 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 Electric 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.

Defendants argue that the claimant did not sustain an injury but that if she did it was sequela of the left shoulder. The greater weight of evidence in the record indicates that the claimant sustained an injury to her right shoulder as a result of her work. It is also clear that the claimant's right shoulder work was the result of the claimant compensating for her left shoulder restrictions. Claimant argues that this is not a sequela case because the right shoulder problem was the result of work and thus a separate injury as opposed to a situation where an injury was sustained in the course of employment and then subsequent problems flowed from that, which may have occurred off the job. The undersigned agrees with the claimant's argument. A sequela is something that naturally flows from a work injury such as a reaction to medication or an error during surgery. See Kauffman v. Second Injury Fund of Iowa, File No. 5022780 (Arb. July 25, 2008); See also Lawyer and Higgs, Section 4:4, page 32.

The parties listed rate as an issue in this case but agreed that the rate should be the same rate as the April 18, 2012 decision, so this issue will not be addressed.

The claimant requests medical care and payment of medical expenses pursuant to Iowa Code section 85.27.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

The claimant has incurred \$1,558.59 in medical expenses and mileage as a result of her right shoulder through treatment at Mercy West Liberty, her family practice clinic; Dr. Lockman, IWP and mileage. The claimant has established that she sustained a work injury, and these medical expenses are for treatment of this right shoulder injury. The claimant is entitled to payment of these medical expenses and to be reimbursed for those that she has personally paid. The claimant requests that she have continued care with Dr. Lockman. Dr. Lockman has provided care for the claimant's left shoulder that has been beneficial, and the claimant is entitled to care with Dr. Lockman for her right shoulder.

The next issue is whether the claimant is entitled to reimbursement for her independent medical evaluation with Dr. Sassman pursuant to Iowa Code section 85.39.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

There has been no rating obtained by the defendants which the claimant believes to be too low. Thus, the claimant is not entitled to payment of the evaluation by Dr. Sassman. However, the cost of the report from Dr. Sassman is taxable as a cost under rule 876 IAC 4.33.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay claimant's medical expenses pursuant to Iowa Code section 85.27 and shall reimburse those expenses that she has personally paid, as shown in Exhibit 16.

Defendants shall provide and pay for care for the claimant's right shoulder with Dr. Lockman including treatment he prescribed or referrals he may make.

Defendants shall pay the costs of this action in the amount of three thousand six-hundred forty-nine and 80/100 dollars (\$3,649.80) pursuant to rule 876 IAC 4.33.

Signed and filed this 23rd day of July, 2015.



RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Anthony J. Bribriesco
Attorney at Law
2407 - 18th St., Ste. 200
Bettendorf, IA 52722
ajbribriesco@netexpress.net
Anthony@bribriescolawfirm.com

Timothy W. Wegman
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266
tim.wegman@peddicord-law.com

RRP/sam

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.