

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA RIOS,

Claimant,

vs.

JOHN DEERE WATERLOO WORKS,

Employer,
Self-Insured,
Defendant.



File No. 5053450

ARBITRATION

DECISION

Head Notes: 1108, 1402.30

STATEMENT OF THE CASE

Maria Rios, claimant, filed a petition in arbitration seeking workers' compensation benefits from John Deere Waterloo Works, self-insured employer as defendant. Hearing began on April 28, 2017 in Des Moines, Iowa and was completed on May 1, 2017 in Waterloo, Iowa.

Vanessa Gomez, Juana Andrade, Maria Rios, Martin Ozga, Luis Garcia, and Ryan Cawelti testified live at trial. It should be noted that Juana Andrade testified via an interpreter. The evidentiary record also includes Joint Exhibits 1-19, Claimant's Exhibits 1-29, and Defendant's Exhibits A-L.

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.

The parties submitted post-hearing briefs on May 12, 2017.

ISSUES

The parties submitted the following issues for resolution:

1. Whether the stipulated November 15, 2013 injury was the cause of permanent disability? If so, the extent of industrial disability claimant is entitled to receive, including whether claimant is permanently totally disabled and/or an odd-lot employee.
2. Whether the stipulated November 15, 2013 injury was the cause of temporary disability?

3. The appropriate commencement date for any permanency benefits.
4. Whether claimant is entitled to past medical benefits?
5. Whether claimant is entitled to reimbursement for an IME under Iowa Code section 85.39?
6. Whether claimant is entitled to alternate medical care?
7. What, if any, credit defendant is entitled to receive?
8. Whether penalty should be assessed against the defendant?
9. Assessment of costs.

FINDINGS OF FACT

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

The parties have stipulated that on November 15, 2013, claimant, Maria Rios, sustained an injury which arose out of and in the course of her employment with John Deere. Claimant contends that the November 15, 2013 fall down stairs caused trauma-induced fibromyalgia, chronic fatigue syndrome, central sensitization syndrome, a brain injury, and injuries to her back and neck, leaving the claimant with progressively worsening physical and cognitive difficulties. Claimant further contends that these conditions have rendered her wheelchair bound and dependent on others for care. Defendant does not dispute that claimant fell down stairs at work on November 15, 2013; however, the number of stairs she fell down is in dispute. Additionally, defendant disputes that claimant's conditions are related to the fall at work on November 15, 2013.

This is a complex case. The central issue boils down to whether the claimant is entitled to any additional workers' compensation benefits as a result of her fall. I find claimant has failed to carry her burden of proof to show by a preponderance of the evidence that she is entitled to any additional benefits.

At the time of the 2013 work injury Maria worked at John Deere as an engineer. Her presentation at the April 28, 2017 arbitration hearing was in stark contrast to a functional engineer. At the arbitration proceeding Maria arrived in a wheelchair which was pushed by her husband and/or friends. She was not in the hearing room during the testimony of the other witnesses; she was in other parts of the building being tended to by her husband and/or friends. If Maria sits in the wheelchair for too long she becomes sore; for Maria's testimony her husband transferred her from the wheelchair to a chair. Maria is sensitive to bright lights. Unfortunately, the lights in our Des Moines hearing rooms are motion activated and do not have light switches; there was no way to turn off or dim the lights. Maria wore sunglasses during her brief testimony. Maria struggled during her testimony and was only able to undergo a portion of direct examination. The testimony she did provide was very slow with long gaps of time between her attorney's question and her answer. Maria appeared confused and dazed. The beginning of her testimony was more coherent than the end. During her testimony construction noise from outside the hearing room began; Maria testified the noises hurt her head. The noise appeared to greatly affect her ability to concentrate. It was unclear to the

undersigned if Maria understood all of the questions posed to her. During her testimony her head hurt and she became nauseous. Her testimony was stopped because she was not feeling well. During this time she retched and vomited and at one point said she lost control of her bladder. A description of the events is contained in the hearing transcript. Maria was unable to continue with her testimony on that date. Therefore, the parties and undersigned reconvened in Waterloo on May 1, 2017. The Waterloo hearing room did have a light switch so she was able to testify in a dark room. However, similar to her direct examination in Des Moines, Maria struggled during her testimony. Maria testified that she did remember her fall at work but she did not remember how many steps she fell down. She often gave unclear or unresponsive answers to the defense attorney's questions. It was not clear to the undersigned if Maria could even understand the questions posed to her. Her testimony was of little value and it was decided that the cross-examination would conclude.

As noted, there is no dispute that Maria sustained an injury arising out of and in the course of her employment when she fell down some stairs at work on November 15, 2013. However, there is controversy surrounding the details of the fall and the events thereafter. There are differing accounts of the details surrounding the fall.

Claimant served her answers to interrogatories on May 25, 2016. In the answer to interrogatory 6, there is a description of the fall and events shortly thereafter. However, this description provided in 2016 is not entirely consistent with the description provided shortly after the fall. I find the description provided to the medical providers immediately after the fall to be more persuasive than an account provided years later. (Ex. 18, p. 9)

Maria's deposition was taken on September 28, 2016. However, the deposition was cut short because Maria was unable to coherently answer questions. (Ex. 15)

As noted, I found Maria's hearing testimony in this case to be of little to no value. The undersigned was unable to ascertain if the claimant even understood the questions that were being posed to her. Therefore, with regard to the circumstances surrounding her fall no weight can be given to any of her responses. The only other person who was present at the time of her fall was Praveen. I give great weight to Praveen's testimony about what happened at or about the time of the fall.

At the time of the fall Maria was walking down a flight of stairs at John Deere. The only other person in the area at the time was another John Deere employee, Praveen Nagilla. Thus, there are only two individuals with firsthand information about the fall. In 2013 Praveen worked as a senior reliability engineer and worked in the same building as Maria. Praveen was walking up the first floor stairs at the time of Maria's fall. There was a landing in between the first set of stairs that Praveen was walking up and the second floor stairs that Maria was walking down. Each set of stairs consisted of 12 steps. (Exhibit 16)

Praveen did not testify live at the hearing; however, his deposition was taken by claimant's counsel on November 29, 2016. (Ex. 16) Claimant's counsel asked Praveen to describe what he saw when Maria fell down the stairs, he responded:

I saw her – I was coming from – I was in the first floor and she was coming from second floor. I saw her falling down from the second floor stairs halfway through, and I was in the middle of the first floor stairs. After she fell down, I asked her if she's okay and if she needs help. She said she's okay and she doesn't need any help. She got up and went in her direction, I went in mine.

(Ex. 16, p. 2)

Praveen then described the fall in more detail. He testified that he did not see the beginning of her fall. He heard a scream and then saw Maria falling. He believes she began falling at about the sixth or eighth step. Maria's right shoulder hit the rail, she did a one and a half roll down the steps and there was contact with her head. Maria landed on her back with her entire body on the landing area between the two sets of stairs. Praveen had to go up a couple of steps from where he was to get to Maria. Praveen testified that he went to her right away and that he does not remember any loss of consciousness by Maria. He offered his hand to her; she took his offer, and stood up. He estimates that she was on the landing 1-3 seconds before he reached her. Praveen asked her if she needed any help and she said no. He estimates that the two of them were on the landing a total of 20 to 30 seconds. Maria then walked down the next flight of stairs. Praveen watched Maria go down the first couple of steps to make sure that she was able to climb down; he testified that she looked fine so he left. (Ex. 16)

I find Praveen's testimony to be persuasive. He is the only person who was present at the time of the fall who can provide a coherent account of the events. Additionally, Praveen's testimony regarding no loss of consciousness by Maria is supported by the first treatment record dated November 18, 2013 from the John Deere Occupational Health in-plant clinic and by the notes from Unity Point dated November 19, 2013. Furthermore, I find Praveen's testimony regarding the details surrounding the fall and the events immediately after the fall to be more persuasive than the testimony of Maria's husband because Maria's husband was not present at the time of the fall. I find Maria fell down approximately 6-8 steps. During her fall she struck her right shoulder and head. I find that Maria did not lose consciousness.

We now turn to Maria's treatment after the fall. On November 18, 2013, Maria reported to the in-plant clinic that on Friday between 1:30 and 2:00 she was starting down the stairs to go to the lower level and did not know what happened. She missed a step and did not know if she tripped, but she did fall. She tumbled down the flight of stairs. Maria said a coworker was coming up the stairs at the same time and stopped to be sure she was okay. Maria reported no loss of consciousness. She said the fall happened so fast she was not sure what she hit but she knew that everything hurt. She

went back to work after the fall and finished her work day. She essentially did nothing all weekend. She had a really bad headache and was nauseated but did not vomit. She also experienced some dizziness and double vision. She still did not feel well, but she was feeling better than she did on Friday or over the weekend. She still experienced headaches and dizziness if she moved too fast. Maria said almost every part of her body hurt, her shoulders, her back, her abdomen, her thighs, and ankles, just everything. The clinic noted that Maria had multiple contusions, muscles aches, and pains from the tumble and fall. The notes also stated that given her description of the fall and her symptoms she did sustain a mild concussion. The clinic felt that Maria's soreness would continue for another week or so but that her headaches and nausea should resolve within the next 24-48 hours. (Ex. J1, pp. 1-2)

On November 19, 2013, Maria called John Deere Occupational Health and reported that she still had a significant headache, continued to be nauseated, and did not feel well. She was told to go to the emergency department for further evaluation. (Ex. 17, p. 44) Subsequently, Maria went to Unity Point Health. She reported that she fell down approximately 12 steps at work on Friday and hit the back of her head. Since Saturday she has had headache, neck pain, dizziness, pain, and generalized body aches. She noted that today her headaches were worse; she had poor concentration, nausea, and had vomited twice yesterday and today. She was positive for photophobia. The assessment was fall down stairs, headache, concussion, and multiple contusions. Again, there is no mention of loss of consciousness. Maria was admitted to the hospital for treatment of post-concussive headache. A CT scan showed no evidence of acute intracranial abnormality. The hospital note did state that Maria was positive for "dizziness and headaches. Negative for focal weakness, seizures and loss of consciousness." (Ex. J2, p. 11) Maria did not have any neurological deficits. The diagnosis was post-concussive headache-continues, fall, dizziness-related to post-concussive syndrome, and hypotension-stable. She was discharged on November 20, 2013 at 1:07 p.m. (Ex. J2, pp. 1-39)

On November 20, 2013 at 1:27 p.m. Maria was seen at Allen Occupational Health Services. She reported she was walking down stairs when she fell and hit everything. This time she reported that she did have a loss of consciousness. She said she woke up on the floor with bruises all over her body. She had been in the hospital since yesterday with nausea and vomiting, headache, blurry vision, and confusion. She reported pain to her right thigh and stiff neck. The diagnosis was "CHI/concussion." (Ex. J3, p. 4) She was released to limited duty. (Ex. J3, pp. 1-5)

On November 21, 2013, Maria was scheduled for a meeting with John Deere Safety at 12:30. However, Maria was confused and went to the Occupational Health Clinic at Deere because that is what she thought she was told to do. The notes indicate that Maria took her medication that morning and felt very sleepy and took a nap. She reported that when she opened her eyes she became dizzy and nauseated. (Ex. 17, pp. 46-47)

Maria was seen again at the in-plant clinic on Friday, November 22, 2013. Maria reported that her headache was better that morning but riding to work made it worse. The sun also made her head hurt and made her nauseous. (Ex. 17, p. 46)

Maria returned to the in-plant clinic on November 25, 2013; again she saw Jean Osgood, NP. The note indicates she was there for follow up of head injury. On November 15, 2013 she fell down several steps at work, hitting her head but was not knocked out. Maria called the on-call provider the night of the 18th because she was nauseous and had thrown up a couple of times. Maria was told to go to the emergency room but she stayed at home. On the 19th she did not come in to work. Instead, she worked at her computer from home in the morning but the computer was causing her head to hurt so she went and lay back down in the afternoon. Around 3:30 on the 19th she called to report significant headache and continued nausea. Maria was again told to go to the emergency department. Maria did go to the emergency room and was admitted overnight. She was released on the 20th to return to work as tolerated. Maria did come in to work on the 21st and checked in with the plant nurse. She also saw the nurse on the 22nd. She continued to have some minor aches and pains but was feeling better. The notes indicate that she drove herself to work today without any problems. Maria still had some mild nausea but had not thrown up anymore. She continued to have mild headaches, but she also had a prior history of headaches before her fall at work. The assessment was status post fall resulting in a mild concussion and multiple contusions. Maria was instructed that if her headaches became more severe or if she had visual changes or significant distress then she should follow up with her primary care provider. She was released for regular work. (Ex. J1, pp. 3-4, 20-25; Ex. 17)

On November 26, 2013, Maria checked in with the clinic and reported that she continued to have mild headache and nausea. (Ex. 17, p. 44) Maria returned to the clinic on November 27, 2013. She reported her headaches were worse last night and that morning. She had a busy night taking children to activities. She took Motrin and went to bed without supper. (Ex. J1, p. 26)

Due to the Thanksgiving holiday Maria then had four days off of work, from November 28, 2013 through December 1, 2013. Maria went to the in-plant clinic on December 2, 2013. She reported that she had a good weekend in Chicago with no problems. She still experienced dull headache, but she was back to taking her vitamin B12 which helped her get rid of her headache last year. (Ex. 17, p. 43) Maria had her job performance review later that day on December 2, 2013.

There is a gap in the medical notes until January of 2014. However, there was testimony at hearing regarding this timeframe. Ryan Cawelti testified live at the hearing. Ryan was hired by John Deere in 1998. Ryan is currently the manager of Worldwide Engine Market Planning for John Deere; he has held that position since 2016. (Testimony)

In 2012 Ryan managed the OEM Project Management Team. Ryan was Maria's direct supervisor beginning in August of 2012. John Deere's fiscal year runs from

November 1 through October 31; John Deere conducted their reviews for the previous fiscal year in November. Because Ryan was only Maria's supervisor for a couple of months for the fiscal year of 2012, Ryan's boss conducted the performance review for Maria for that year; Ryan did provide guidance based on the time he was Maria's supervisor.

It should be noted that in November of 2012 (one year prior to the fall), John Deere had concerns about Maria's attendance and her ability to provide a clear message; Maria was not meeting the expectations of her position, a salary grade 7 project manager. Maria struggled to provide her teams with proper guidance and direction. Despite these concerns Maria generally received a positive performance review. Ryan explained that John Deere has a "successful" rating which is very broad, and the only other rating option is "performance needs improvement" (PNI). Ryan and his boss had a discussion about which rating to give Maria. It was decided to give her a successful performance rating, but their areas of concern had to be addressed by Maria in the coming year. (Testimony)

For the 2013 fiscal year (11/01/12 – 10/31/13), Maria worked on a product that was challenging but within the scope of her salary grade and position. Ryan felt she was struggling in that role so he changed the scope of her job to help her be more successful. Maria was aware that John Deere had concerns about how she handled this project. Ryan removed her from that more challenging project and put a different grade 7 project manager in that role. He then assigned Maria projects that were much smaller in scope. Unfortunately, Maria's same performance trend continued. Her attendance continued to not meet expectations; she had a lot of absences due to illnesses and personal family issues throughout the year. Maria's effectiveness at work was still marginal; she did not have the ability to convey messages clearly to her project teams. Additionally, there were concerns about the quality of her work; timeliness, coordinating with other groups, inability to stay on task, seemingly trying to avoid direct interactions, and lack of clarity of message. Ryan communicated his concerns to Maria throughout the year in weekly conversations which involved a lot of coaching. Ryan felt that the "wheels fell off" at their midyear review which took place in May of 2013. Maria was late in delivering her portion of the review to Ryan. Maria did acknowledge that there were things that "we" could do better in the future. The feedback that Ryan and his boss gave Maria was that she needed to take ownership of why she was not able to manage her deadlines. Ryan testified that consideration was given to moving Maria to a position that did not require much decision-making on her part. Prior to the fall on November 15, 2013, Ryan talked to Maria about different positions; she even applied for one of the positions. (Testimony)

Ryan testified that he had his group's year-end reviews scheduled for the week of November 18, 2013. However, Maria did not complete her portion of the year-end review in time; the deadline was November 8, but she did not complete her portion until November 12, 2013. Ryan did not have time to review her comments, enter his comments, and have them approved by his boss in time to have her review the week of November 18. Thus, Maria's review did not take place until December 2, 2013. At that

point, she was given a PNI rating. This rating was based on her job performance through October 31, 2013; it was based on pre-fall job performance. Because the successful rating was so broad a PNI rating was very rare at John Deere. Ryan, his boss, and the human resources manager for the division met with Maria regarding her review. There were also follow-up meetings with Maria to document her expectations and goals. They created a performance needs improvement plan which set forth what was needed to remove the PNI rating during the next year. Ryan testified that prior to the fall Maria was functionally employable but she was not a desired employee. (Testimony)

Ryan became aware that Maria had a fall at work within a few days of her November 15, 2013 fall. He noted she missed several days in November as a result of the fall but that her attendance was actually okay in December of 2013. He noticed that it was after the winter holiday that she began missing extended amounts of time. (Testimony; Cl. Ex. 25, pp. 120-21)

This brings us to the beginning of the 2014 calendar year. On January 4, 2014, Maria went to the Covenant Medical Center. The note states that Maria had a new problem; her episode started yesterday. Maria reported coughing, sinus pressure, sore throat, and headache. She reported she had a headache for the past three days and nausea that day. Her head pain was rated as a 10. The physical exam portion of the notes states that Maria was oriented to person, place, and time. Her head was normocephalic. The assessment was influenza and sinusitis. (Ex. J10, pp. 1-2)

On January 15, 2014, Maria called the in-plant clinic and requested to see a company doctor regarding concentration problems that she was experiencing. Maria's husband had noticed she had problems concentrating. For example, she drove past her exit on the interstate and her husband asked her where she was going. She also mentioned she had a goal after her review with her boss to follow through with things in a timely manner. Additionally, she noticed that sometimes when she reads her own emails they do not make sense. The nurse informed Maria that she should follow up with her own doctor because she had been released to full duty after the fall. (Ex. J1, p. 26)

On February 12, 2014, Maria saw Ameer X. Almullahassani, M.D. at Unity Point. Maria reported that she had a headache for the past two years. For the last few months it was a continuous headache, mainly in the frontal area and radiating to the occipital area. Maria said that the pain was usually between 4 and 5 but could reach 10. She also reported blurred vision and seeing stars. Dr. Almullahassani performed a spinal tap and 20 mL of fluid was removed. Maria reported that her headache improved. The doctor's assessment was pseudotumor cerebri. He started Maria on Diamox 250 mg twice a day. (Ex. J5, pp. 1-2)

On February 20, 2014, Maria called the neurology department at Unity Point and reported severe numbness in her hands, confusion, and no improvement in her headache since she started the Diamox. (Ex. J5, p. 3)

On February 21, 2014, Maria signed a John Deere form to request disability pay. The form indicated that the first day she missed work was February 13, 2014 and her last day worked was February 12, 2014. She estimated that her return to work date would be April 24, 2014. The form asked for an explanation of what symptoms or impairments prevented her from being able to perform the essential functions of her job. The response states, "stiff neck, headaches, back pain, leg numb, nausea, hand numb, change in vision, tiredness/sleepy." (Ex. J1, p. 5)

On February 21, 2014, a health care provider's statement of employee disability was also completed. The disabling diagnosis was pseudotumor cerebri with the date of disability commencing on February 13, 2014. The list of symptoms included loss of vision, severe headaches, dizziness, paresthesias, and difficulty with concentration and focus. The doctor noted that Maria seemed unsteady and that conversation was frequently interrupted when she was trying to remember her train of thought. The doctor noted Maria was not capable of screen work or higher order processing. Maria was limited to standing 10 minutes at a time for each two hours of the day; the same limitation applied to walking. The doctor felt she needed to be out of work and was also not able to drive. The form was signed by Meredith Christ, D.O. (Ex. J1, pp. 6-7; 4 J4, pp. 3-4)

Maria spoke with the neurology department at Unity Point on February 28, 2014. She reported that since she decreased her Diamox to 250 mg at bedtime her headaches were back to where they were when she first started treating there. She was also still experiencing side effects from the medication. Referral to Mayo Clinic was made. (Ex. J5, pp. 1-4)

Maria continued to see Dr. Christ in March of 2014. The doctor's assessment was listed as pseudotumor cerebri. (Ex. J4, p. 5)

Maria was seen at the Mayo Clinic on April 3, 2014. There are additional treatment records from the Mayo Clinic dated through November 14, 2016. An MRI of Maria's brain was performed on April 4, 2014. The MRI showed "no focal mass, focal atrophy, or foci of restricted water diffusion. Stable scattered nonspecific FLAIR/T2 hyperintensity of hemispheric white matter, likely reflect chronic small vessel ischemia, effects of migraine headaches, or residua of prior infectious or inflammatory disease. These are of doubtful clinical significance." (Ex. J7, p. 13) Throughout this time Maria saw a variety of specialists.

During Maria's multiple visits at The Mayo Clinic, the diagnoses/impressions for Maria included but were not limited to: Chronic migraine without aura, lumbar spine pain, both lower extremity paresthesias and weakness, left leg pain, headache, dizziness, chronic pain, fibromyalgia, patellofemoral syndrome, right, posterior tibial tendon pain of the right lateral ankles, no evidence of rheumatoid arthritis, anterior knee pain syndrome, medial ankle pain, anxiety, history of concussion in 2010, right L5 spondylosis with chronic stress reaction of left L5 pars interarticularis, dysphonia, cognitive communication deficits, adjustment disorder, flaccid neurogenic bladder,

probable traumatic brain injury with loss of consciousness, central sensitization disorder, post-operative headache exacerbation, post-operative altered mental status, query hypoactive delirium, motion provoked transient vertigo, visually provoked unsteadiness, bilateral chest wall pain, and multiple somatic complaints. (Ex. J7)

In late October of 2014, Maria contacted John Deere to request her medical records to complete Social Security Disability forms. At that point she was using a walker to walk. (Ex. J1, p. 27) In December of 2014, the notes indicate that she was not able to drive but could perform ADLs on most days and was capable of making independent decisions. However, there had been instances when she forgot about food on the stove and started some fires. Her friends help with the kids' activities. (Ex. J1, p. 28)

On January 21, 2015, David Deeter, M.D., entered a note in the in-plant records. Dr. Deeter stated he had a phone conversation with Maria's primary care physician (PCP), Dr. Christ, to discuss the medical basis for Maria's continued disability. Dr. Deeter felt that the several disabling diagnoses were more subjective in nature and were not typically continuously disabling in the long term. He felt that the diagnoses also did not appear to align well with the degree of impairments indicated in this case. Dr. Christ confirmed that Maria had multiple medical specialists conduct medical investigations which had not revealed objective medical findings to support a specific diagnosis or explanation for her continuing disability. Dr. Deeter's note indicated that Dr. Christ confirmed her opinions that Maria was not malingering. Although Dr. Christ accepted that no other explanation was yet to be found. Dr. Christ was reluctant to accept the recent diagnosis of conversion reaction. (Ex. J1, pp. 29-30)

Maria's testing and treatment has been extensive. While all of the records in evidence were reviewed by the undersigned they are not summarized in this decision. The primary issue in this case is whether Maria's conditions are related to the stipulated work injury. There are a variety of expert opinions in the file regarding causation. However, prior to discussing the expert opinions in this matter it is important to note some of Maria's prior medical history.

A review of medical records reveals that Maria sought treatment for some similar symptoms prior to the 2013 fall at work. In 2006 Maria complained of light sensitivity and headaches two to three times per week when she worked at a computer. In December of 2010 Maria fell down some stairs but did not sustain any head trauma; although some medical records indicate she did sustain a concussion as a result of that fall. In 2011 Maria sought treatment for headaches and dizziness. Some of the treatment notes refer to the headaches as bilateral frontal. She also complained of recurrent migraines, vomiting, and photophobia. She sought treatment on several occasions for migraines. The records indicate that in 2012 Maria experienced horrible headaches and light sensitivity. She was in a motor vehicle accident in 2012 and reported that since the accident she had been having trouble with her migraines. She also reported numbness and pain in her legs and back. She had a lot of headaches which were getting worse and now were almost constant. She reported dizziness and

confusion. Maria reported that stress at home and work made her symptoms worse. Maria told the provider that she did have a fall and concussion in late 2010. Maria underwent an MRI in 2010 due to her increased daily headaches; the MRI was normal. In 2013 Maria again sought treatment for headaches, nausea, light-headedness, and generally feeling off. She reported that she had increased stress in her life due to a recent separation from her husband and she was in the process of moving. The headaches were described as bilateral, frontal, temporal, parietal, and occipital. (Ex. A, C, & D)

In 2012 Maria was seen at the Mayo Clinic for significant pain and blurry vision. David A. Ahlquist, M.D. found no organic explanation for her symptoms. The doctor felt there could be some potential for psychiatric overlay and referred Maria for a psychiatric evaluation. (Ex. E, pp. 1-3) The notes from Mayo's psychology department indicate they felt she had health anxiety. In January of 2012 Maria reported that during the last week her symptoms markedly disrupted her job, social life, and family life. (Ex. E)

In April of 2013, Maria again sought treatment for migraines, nausea with vomiting, dizziness, and photo/phonophobia. In May of 2013, Maria was taken via ambulance to the emergency department due to negative side effects of her migraine medication. Later in May of 2013, Maria returned to the emergency room complaining of migraine with blurring vision. Maria's husband spoke to a nurse and reported that they were going through a separation. He also noted that every time Maria had these symptoms there had been something emotional going on, and he thought that was what triggered her headaches. When this occurred the husband would come to her aid. Because Maria reported numbness on her right side along with a headache, a CT scan of her head was conducted; the scan was negative. (Ex. F)

At the hearing several witnesses including Vanessa Gomez, Juana Andrade, and Luis Garcia testified about their interactions with and observations of Maria both before and after November 15, 2013. Additionally, Maria's minor daughter Natalie Garcia was interviewed by claimant's counsel on a recorded video. Maria Cerda also participated in a recorded video. (Ex. 26) While their testimony is compelling it is still the claimant's burden to show by a preponderance of the evidence that there is a causal connection between the fall and her disability. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability.

We now turn to the expert opinions in this case. While at the Mayo Clinic, Maria received treatment from Billie Anna Schultz, M.D., Division Chair for Brain Injury Program. Dr. Schultz saw, evaluated, and treated Maria on several occasions. On November 1, 2016, at the request of claimant's counsel, Dr. Shultz gave her sworn statement. Claimant's counsel asked the doctor what present diagnoses were causally related to Maria's fall down the stairs in 2013. The doctor responded, "I would list, utilizing the Mayo classification system, a probable or mild traumatic brain injury with loss of consciousness, the subsequent cognitive difficulties that she is having, the headaches." (Ex. 1, p. 9) Dr. Schultz also stated that the fall was a substantial factor in

causing Maria to suffer a traumatic brain injury, and Maria was still suffering from the effects of that injury.

Although Dr. Schultz treated Maria on numerous occasions and has extremely impressive credentials, her opinion cannot be relied upon because the opinions are premised on an inaccurate history. A review of the Mayo notes reveals that Dr. Schultz was given a history of claimant falling down an entire flight of stairs and sustaining a loss of consciousness. Dr. Schultz's history also states that immediately after the fall Maria felt like she was going to pass out. (JE7, pp. 186-190) However, based on the testimony of Praveen and Maria's initial reporting of the accident I found that there was no loss of consciousness. Even Dr. Schultz's diagnosis of "mild traumatic brain injury with loss of consciousness" is not supported by the facts of this case. Because Dr. Schultz's opinions are based on an incorrect history; her opinions cannot be relied upon.

Claimant also relies on the expert opinions of K.C. Fleming, M.D., at the Mayo Clinic. Dr. Fleming works under the general medicine division and is the Director for the Fibromyalgia and Chronic Fatigue Clinic. He saw Maria on two occasions; the last time was December of 2015. At the request of claimant's counsel, he provided a sworn statement on November 1, 2016. Dr. Fleming based his expert opinions on a fall down a set of stairs with a loss of consciousness; this history is not correct. Additionally, it is not known what, if any, pre-November 15, 2013 medical history Dr. Fleming had when he rendered his opinions. Thus, it is not known if Dr. Fleming's opinions were based on a complete history. For these reasons, Dr. Fleming's opinions cannot be relied upon. (Ex. J7; Ex. 2)

Claimant also relies on the opinions of Richard Roberts, Ph.D. at the Unity Point Neurology Clinic; a treating neuropsychologist. (Ex. 5) Dr. Roberts opined that Maria has become "vocationally disabled due to cognitive and neurobehavioral deficits she acquired after [sic] sustained head trauma after falling down the stairs at the building of her former employer, John Deere." (Ex. 3, p. 1) Dr. Roberts also stated that "[h]ead trauma due to falling down an extended flight of stairs can have a particularly poor clinical outcome because such a fall usually entails sustaining multiple blows to the skull instead of just a single blow (e.g., one knock-out punch to the head)." (Ex. 3, p. 1) In the present case, Maria did not fall down an extended flight of stairs; she fell 6 to 8 stairs. Additionally, Dr. Roberts' description of multiple blows to the skull is not supported by Praveen's description of the fall. Dr. Roberts' opinion is also based on an inaccurate history and cannot be relied upon. Furthermore, it is not known if Dr. Roberts had a complete medical history because he simply notes that he only reviewed the relevant portions of roughly 2500 pages of medical records; it is unknown what history he did or did not consider. For these reasons, I find that the opinions of Dr. Roberts are not persuasive.

Claimant relied on the opinions of Dr. Manshadi who treated Maria and also conducted an IME. Dr. Manshadi's opinions are also based on an inaccurate history. In the treatment portion of his notes, Dr. Manshadi states that Maria fell and rolled over 18

steps with a loss of consciousness. (Ex. J9, pp. 4-5) In other documentation Dr. Manshadi states that Maria sustained a traumatic brain injury after taking a fall over two sets of stairs at work. (Ex. J9, p. 49) In his IME report, Dr. Manshadi again stated that Maria rolled down 18 steps and sustained a loss of consciousness. (Ex. 4, p. 3) Because Dr. Manshadi's opinions are based on an inaccurate history his opinions cannot be relied upon.

Unfortunately, Dr. Gallagher's opinions are also based on an inaccurate history. Dr. Gallagher stated that Maria "fell down (20 + ?) stairs while working at John Deere on November 15, 2013, and was discovered by a coworker, apparently unconscious." (Ex. 5, p. 2) This history is simply not correct and therefore, his opinions cannot be relied upon. Additionally, it is also not clear if Dr. Gallagher had a complete history of Maria's pre-fall symptoms. He makes brief mention of her pre-fall migraines on page 3 of his report. He also mentions a letter from claimant's counsel dated August 24, 2016, which outlined the chronology of events; unfortunately, that letter is not in evidence and therefore it is not known what information it conveyed to Dr. Gallagher. Based on the evidentiary record, it is unclear if he was aware of the extent of her medical history, including, but not limited to, migraines, dizziness, blurry vision, and anxiety. Therefore, it is not clear if Dr. Gallagher had a complete history at the time he rendered his opinions. For these reasons, Dr. Gallagher's opinions cannot be relied upon.

Maria also relies on the opinions of Robin Sassman, M.D. who she saw for an IME at the request of her attorney. Similar to the other doctors that claimant relies upon, Dr. Sassman has an inaccurate history. Dr. Sassman's opinions are based on a history of Maria falling down two flights of wooden stairs and sustaining a loss of consciousness. Because Dr. Sassman's opinions are premised upon an inaccurate history they cannot be relied upon.

Richard Neiman, M.D. also issued his opinions regarding Maria. Dr. Neiman reports the following history, "She basically fell down 20 steps. She was initially unconscious according to her husband, and the coworkers stayed with her." (Ex. 7, p. 2) Because Dr. Neiman's opinions are premised upon an inaccurate history they cannot be relied upon. Furthermore, for many of the conditions that Dr. Neiman relates to her fall at work he fails to set forth any rationale for his opinions. (Ex. 7)

Maria's primary care physician is Dr. Christ. Dr. Christ treated Maria both before and after the fall in November of 2013. On December 8, 2016, Dr. Christ answered eleven questions set forth by claimant's counsel. Dr. Christ indicated that the following diagnoses were more likely than not directly or indirectly caused by her November 15, 2013 fall down the stairs at John Deere: traumatic brain injury, materially worsened migraines related to the traumatic brain injury, central sensitization syndrome, fibromyalgia, chronic fatigue syndrome, and hypotonic neurogenic bladder. (Ex. 27, p. 1) Unfortunately, Dr. Christ fails to provide any rationale for her opinions. Additionally, it is not clear what history Dr. Christ based her opinions on. A review of the records shows that in Dr. Christ's initial notes there is no mention of whether there was or was not a loss of consciousness at the time of the fall. Throughout the remainder of

the doctor's treatment records there are notations that state claimant did lose consciousness after the fall, and there are other notations that state she did not lose consciousness after the fall. (Ex. J4, pp. 24-87) The notes also merely mention that she fell at work; there are no details as to how far she fell or what she struck on her way down. Based on the evidence, the undersigned is unable to ascertain what details Dr. Christ had regarding the fall. For these reasons, Dr. Christ's opinions also cannot be relied upon.

Defendant relies in part on the opinions of Robert Dallas Jones, Ph.D. (Ex. L) Dr. Jones is a neuropsychologist at the University of Iowa Hospitals and Clinics. Dr. Jones reviewed the pre-injury and post-injury medical records which were provided to him. Additionally, he also reviewed the depositions of Jean Osgood and Praveen Nagilla. Dr. Jones also attempted to examine Maria. Dr. Jones ultimately did not causally relate Maria's ongoing complaints to her fall on November 15, 2013. Dr. Jones felt that Maria's ongoing complaints were not consistent with an individual who sustained a mild concussion. Dr. Jones stated, "Records indicate that she had some initial symptoms that would be consistent with a postconcussive syndrome (e.g. headache), however, she has clearly declined significantly over time, which would be highly unusual for an uncomplicated or mild concussion." (Ex. L, p. 4)

As previously noted this is a complex case. The undersigned must rely on expert opinions to determine if claimant's disability is causally connected to the work injury. Based on an analysis of all the expert opinions in this case I find that claimant has failed to carry her burden of proof to show that any of her ongoing conditions, complaints, or symptomatology are related to the November 15, 2013 fall at John Deere. While I sympathize greatly with Maria and her family, there is a lack of reliable expert evidence to support her claim for the workers' compensation benefits she is seeking.

Because I have found that claimant has failed to carry her burden of proof with regard to causation, all other issues, other than reimbursement for an 85.39 examination and costs, are moot.

Claimant is seeking reimbursement for the IME of Dr. Sassman and mileage to attend the IME. Dr. Sassman's IME was conducted on April 4, 2016. (Ex. 6) I find that the record is void of any evidence that defendant obtained an evaluation of claimant's impairment prior to this date. Therefore, defendant is not responsible for reimbursement of the IME or the transportation expenses.

Claimant is seeking an assessment of costs. Because claimant was not successful in her claim I exercise my discretion and do not assess costs against the defendant. Each party shall bear their own costs.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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.

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about,

not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. 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. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

In Maria's case, the expert medical evidence was considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Under Iowa law, the weight to be given to an expert opinion is determined by the finder of fact. In this case the weight given to the expert testimony was affected by the accuracy of the facts each expert relied upon. Because the experts that claimant relied upon did not have accurate or complete facts their opinions were not accepted. Based on the above findings of fact, I conclude that claimant failed to carry her burden of proof to demonstrate by a preponderance of the evidence that she is entitled to any additional weekly or medical benefits as a result of this proceeding.

We now turn to the issue of reimbursement for the IME. Claimant is seeking reimbursement for the IME of Dr. Sassman and mileage to attend the IME. Section 85.39 states in pertinent part:

After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination.

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

Section 85.39 entitles an injured worker to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. Proof of employer's liability for the alleged injury, is not a requisite for entitlement for an 85.39 IME. Dodd v. Fleetguard, 759 N.W.2d 133 (Iowa App. 2008).

In the present case defendant did not retain any physician to provide an opinion on permanent disability. The Commissioner has held that for a deputy to conclude that an opinion of no causation or an opinion that a return to work with no restrictions is the equivalent of a zero impairment opinion is incorrect. See Streit v. Streit Construction, File No. 5043612 (Comm. Cortese 12/7/16) Thus, the undersigned must conclude that the prerequisites of Iowa Code section 85.39 were not met. Because claimant failed to follow the requirements of Iowa Code section 85.39, claimant is not entitled to reimbursement for the IME of Dr. Stoken or for the associated mileage.

Finally, we turn to the issue of costs. Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy commissioner hearing the case unless otherwise required by the rules of civil procedure. Because claimant was not successful in her claim, I exercise my discretion and do not assess costs against the defendant. Each party shall bear their own costs.

ORDER


THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

Each party shall bear their own costs.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 26th day of October, 2017.


ERIN Q. PALS
DEPUTY WORKERS'
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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.