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BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
AUG 05 2019
WORKERS COMPENSATION

MICHELE AXTELL, Claimant, vs. NORDSTROM DISTRIBUTION CENTER, Employer, Self-Insured, Defendant.	:	File No. 5063791 ARBITRATION DECISION Head Note Nos.: 1108.50, 1402.40, 1402.60, 1801, 1083, 2907

STATEMENT OF THE CASE

Michele Axtell, claimant, filed a petition in arbitration seeking workers' compensation benefits from Nordstrom Distribution Center, self-insured employer as defendant. Hearing was held on May 29, 2019 in Des Moines, Iowa.

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.

Claimant, Michele Axtell, was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits JE1-JE8 and Claimant's Exhibits 1-10. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on June 12, 2019, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant has reached maximum medical improvement (MMI).

2. Whether claimant sustained permanent disability as a result of the stipulated April 10, 2017 work injury. If so, the extent of permanent disability claimant sustained.

3. Whether claimant is entitled to healing period benefits from March 21, 2018 through November 6, 2018.

4. Whether claimant is entitled to payment of past medical expenses.

5. Whether claimant is entitled to additional medical care.

6. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Michele Axtell, has alleged injury to her right shoulder, thoracic spine, and low back as the result of an April 10, 2017 work injury. On the date of the injury Ms. Axtell was working as a processor at Nordstrom Distribution Center. She worked part-time. She typically worked 29 hours per week. She preferred part-time work because she had flexibility in her schedule which allowed her to decline work as needed. (Testimony)

As a processor, Ms. Axtell's job was to process freight. Her job generally entailed standing at her station, opening a carton that was typically at chest level, and processing merchandise. Ms. Axtell had to take the merchandise out of the box, scan it with a gun, mark it, sensor it, and then place the merchandise back into the box. She would then tape the box and put it onto rollers. The merchandise included shoes, jewelry, men's, women's, kids' clothing, plates, food, and gifts. Ms. Axtell believes that the job description in evidence is fairly accurate. The most she would typically lift would be approximately 50 pounds, but there were times that a carton could be heavier. She believes the heaviest merchandise she handled would probably be clothes and she could ask for help if needed. There was no sitting while working as a processor. While Ms. Axtell was working in the processing job, she was also asked, from time to time, to help train employees on how to work freight. (Testimony; Claimant's Exhibit 5, page 1)

At the time of the April 10, 2017 injury, Ms. Axtell was at her workstation receiving freight on the line from her left side. The freight was in a small, light box. She took the box off the line and moved it to her station. She removed the merchandise from the box, prepared the merchandise, returned the merchandise to the box, and placed the box back onto the conveyor belt. When she placed the box on the conveyor belt, the box did not get stuck on anything. She felt pain when she pushed the box back to the rollers with her right hand. She experienced sharp pain in her right shoulder which then shot down over to her left shoulder and then went down a little bit below her shoulder on her back. She stopped working, stretched her arms and then finished her shift. (Testimony)

On Monday, Ms. Axtell reported the incident to her supervisor. She was later directed to Medical Associates Clinic. On April 19, 2017, Ms. Axtell saw Erin Kennedy, M.D. for a new injury of the right shoulder which occurred on April 10, 2017. Ms. Axtell reported that as she was pushing a box to slide it across a surface away from her with her right arm, she felt sharp pain in her shoulder blade area, which shot across her back to the left side. She reported that the pain had remained at the right parascapular area for a day or two, then it resolved. The pain had since recurred twice, but then resolved. Yesterday the pain returned while she was working. Dr. Kennedy's assessment was muscle strain of right scapular region versus thoracic rib subluxation. Ms. Axtell was instructed to see a chiropractor two times for adjustments. Dr. Kennedy also prescribed a Medrol Dosepak and provided some work restrictions. (JE2, pp. 1-3)

Ms. Axtell returned to Dr. Kennedy on April 26, 2017 for recheck of right rhomboid strain. She reported that she had been to see a chiropractor twice without improvements. She was working light duty. Her pain remained the same. Dr. Kennedy's assessment was right-sided thoracic back pain. She ordered physical therapy in an attempt to settle down inflammation of claimant's rhomboid muscle and allow better mobility. The restrictions continued. She was to use over-the-counter ibuprofen and return in two weeks. (JE2, pp. 4-6)

Dr. Kennedy continued to provide conservative treatment to Ms. Axtell. At the July 5, 2017 appointment Ms. Axtell reported that her pain was limited to her right rhomboid area. By July 19, 2017, she reported to Dr. Kennedy that she had no pain at all, just a sense of tightness in the right rhomboid area when her back was fatigued with heavier lifting, but the tightness quickly resolved. Dr. Kennedy returned her to full duty and anticipated MMI by August 1, without any permanent impairment. (JE2, pp. 7-13)

Ms. Axtell returned to her regular job and continued performing her processing job until mid-October 2017. She returned to see Dr. Kennedy on October 13. Ms. Axtell reported that she had gradually developed pain at her right parathoracic area and right lateral gluteus muscle. She felt the pain was similar to what she previously experienced but her pain was in a slightly different location. Dr. Kennedy's assessment was muscle strain of the right scapular region, right-sided thoracic back pain, and gluteal tendinitis of the right hip. Dr. Kennedy noted that this might be a continuation of her previous injury, but she could not state this with certainty. She recommended massage therapy and trying to avoid rotational movements at work. (JE2, pp. 14-17)

Dr. Kennedy saw Ms. Axtell again on November 3, 2017. Ms. Axtell reported pain at the right parathoracic area just under the shoulder blade and far right thorax overlying torso musculature. She was experiencing pain even just sitting in a chair and leaning back against the right parathoracic area. The assessment was right-sided thoracic back pain and muscle strain of right scapular region. Dr. Kennedy requested massage and physical therapy. She also restricted Ms. Axtell to 25-pound lift and try to avoid rotational movements. Ms. Axtell reported that the massages did help her pain.

However, by the end of November she continued to experience symptoms. Ms. Axtell was restricted to lifting no more than 5 pounds in either arm. (JE2, pp. 18-26)

By January 2, 2018, Ms. Axtell returned for a recheck of her low back and right shoulder. She reported a great deal of improvement with chiropractic care and physical therapy exercises. Her pain was a 2 out of 10 at its worst and there were also periods where she was nearly pain free. The plan was for 4 more chiropractic visits. Ms. Axtell was instructed to work full duty, 2 hour shifts for one week, then 4 hour shifts for one week. The remainder of her shifts were to be with 5-pound max and no repetitive reaching with her arms. She was to return in two weeks. (JE2, pp. 27-31)

Ms. Axtell returned on January 15, 2018 to see Dr. Kennedy. She reported that she had good and bad days, with her pain ranging from 2 to 8 out of 10. Ms. Axtell stated she was in a lot of pain after approximately 30 minutes of work. On examination, Dr. Kennedy noted that she did not wince during the exam, she did not appear guarded, and was not tender over her paracervical or sternocleidomastoid muscles. Ms. Axtell's shoulder posture and muscle bulk were normal. She was not tender over the shoulder yolk, AC joint or shoulder girdle. Ms. Axtell had full and fluid range of motion of her right shoulder. She was slightly tender over the right rhomboid. The doctor's assessment was muscle strain of right scapular region. Dr. Kennedy noted she had dysfunction of the musculature of the upper back about the right scapular. Dr. Kennedy felt this was multifactorial, both personal and work-related factors. Conservative care options had been exhausted without indication for further workup through advanced imaging or surgical consult. Dr. Kennedy recommended a second opinion in occupational medicine or an independent medical evaluation (IME). (JE2, pp. 32-35)

On January 23, 2018, Ms. Axtell was sent by the defendant to Kenneth McMains, M.D. at Allen Occupational Health. Ms. Axtell completed a pain diagram which indicated that her pain was on the right side of her body in her back, scapular area, thoracic and lumbar spine. There was no indication of any symptoms in either foot, the gluteal muscle, or either lower extremity. Prior to her arrival, Dr. McMains reviewed Ms. Axtell's medical records. Dr. McMains conducted an interview and physical examination of Ms. Axtell. His diagnosis was chronic rhomboid myofascial pain. He explained to Ms. Axtell that she has a muscle that fatigued easily causing discomfort. There did not appear to be any actual injury to the muscle that would require any sense of healing. With regard to future treatment, Dr. McMains recommended continued stretching exercises and working on her posture to keep tension off of the trapezius and rhomboid. He felt that if Ms. Axtell were to heat and stretch the muscle and use a military stance with walking, sitting, standing, and driving, then the issue should resolve very quickly. Dr. McMains stated that Ms. Axtell did not have any restrictions, she was returned to full activity. He felt the August 1, 2017 MMI date was reasonable. Dr. McMains opined that she had no permanent partial impairment. (JE6)

On February 9, 2018, Nordstrom sent a letter to Ms. Axtell. The letter advised her that, based on Dr. McMains' opinions, no further treatment or testing was necessary due to the work injury. Ms. Axtell had reached MMI. Therefore, Nordstrom was unable to make further payments for treatment under her workers' compensation claim. They would only cover treatment through January 24, 2018. (Cl. Ex. 3, p. 1)

Ms. Axtell returned to work and her symptoms increased. She asked to return to Dr. Kennedy. Because defendant did not authorize additional treatment, Michelle sought treatment on her own with Crista Weber, ARNP. In a March 23, 2018 note Crista Weber, ARNP of Medical Associates Clinic took Ms. Axtell off of work from Monday, February 26, 2018 through Wednesday, May 2, 2018. (JE1, p. 19; Testimony)

ARNP Weber ordered MRIs. On March 22, 2018, Ms. Axtell underwent an MRI of the thoracic spine. The MRI revealed moderate multilevel arthritis greatest at T7-8 with protrusion that came in contact with the spinal cord. There was also mild edema within the right anterior superior aspect of the T10 vertebral body which was most likely degenerative. She also underwent an MRI of the lumbar spine. The MRI revealed mild to moderate multilevel degenerative disk disease from L3-L4 through L5-S1; shallow right paracentral disk protrusion at L3-L4 with slight contacting of the traversing right L4 nerve root; and minimal contacting of the bilateral traversing L5 nerve roots secondary to circumferential disk bulging. ARNP Weber recommended more physical therapy and an epidural injection. Ms. Axtell was referred to Phillip M. Spence, D.O. (JE1, pp. 15-21)

The last time Ms. Axtell worked at Nordstrom was in March of 2018. At that time, Ms. Axtell asked ARNP Weber to take her off of work. She applied for FMLA leave and short-term disability benefits. (JE1, pp. 20-21)

On May 2, 2018, Ms. Axtell saw Dr. Spence at Medical Associates Clinic. Ms. Axtell reported that she had difficulty lifting items greater than 5 pounds. She had pain with turning, twisting, reaching, bending, and standing longer than 30 minutes. She was not working because her primary care physician had kept her off work. She had numbness and tingling present within the chest location, as well as within the right leg. Ms. Axtell denied any specific radiating pain at the time of the appointment. She reported that the majority of her pain was in the right lumbar and buttock location. Her next most tender area was within the right periscapular location. Dr. Spence's assessment was thoracic right medial periscapular pain and right lateral chest numbness secondary to possible thoracic radiculopathy versus rhomboid strain with enthesopathy, thoracic and lumbar degenerative disc disease, and constant stiffness. The doctor suspected that Ms. Axtell's thoracic and lumbar pain may be related to lumbar radiculopathy because she did have some numbness in the right lateral chest and right lateral leg. However, he noted there was no sign of any acute radicular findings. There was also no evidence of any definitive neuropathic pain. Dr. Spence felt it was possible that the patient may have a concurrent rhomboid strain with enthesopathy. There was evidence of a sacral, pelvic, lower extremity dysfunction. He

recommended a TSH to evaluate her claim for some recent weight gain. She had also noted that she had some heat and cold intolerance. He also recommended ESR and CRP tests to evaluate her constant stiffness. Dr. Spence prescribed a Medrol Dosepak. Dr. Spence gave her work restrictions. His recommendation included consideration of a referral to Timothy J. Miller, M.D., for possible epidural steroid injections in the thoracic and lumbar spine. (JE1, pp. 22-26)

Ms. Axtell advised Nordstrom of the restrictions from Dr. Spence and was told that they did not have any work available for her within those restrictions. (Testimony)

Ms. Axtell returned to see Dr. Spence on May 16, 2018. She reported some benefit for a day or two from Medrol Dosepak, but then the pain gradually recurred. The testing Dr. Spence ordered was essentially normal. Ms. Axtell was now reporting that the majority of her pain radiated from the lumbar spine into the right calf and foot location. She also reported bilateral foot tingling that was constant in nature. Her pain was 10 out of 10. There were times when her pain did improve to a 5 out of 10. Dr. Spence suspected that the majority of her pain was related to a lumbar radiculopathy. She also appeared to have some neuropathic pain within the bilateral feet in the right calf location. He suspected possible thoracic radiculopathy; however, the thoracic MRI did not demonstrate any specific impingement on the more symptomatic right side. He referred Ms. Axtell to Dr. Miller for epidural steroid injections. (JE1, pp. 27-30)

On May 31, 2018, Ms. Axtell saw Dr. Miller for a lumbar epidural steroid injection. Ms. Axtell testified that the injection helped control the pain, but it never relieved her pain. She returned to see Dr. Miller in June of 2018. She did not see any specific improvement with oral steroid pack, nor with the lumbar spine injection. Ms. Axtell felt that her pain was related to lifting back in April of 2017, the pain had migrated over time from thoracic to lumbar. Dr. Miller did not feel there was any further interventional treatment to offer her. It was not clear to Dr. Miller why there would be migratory pain from the thoracic to lumbar spine over time. (JE7; testimony)

On June 15, 2018, Ms. Axtell returned to Dr. Spence regarding her low back pain and bilateral leg hypersensitivity. Her symptoms were essentially unchanged except the hypersensitivity in both feet had improved. Dr. Spence's assessment was "[l]ow back pain with bilateral leg hypersensitivity related to neuropathic pain secondary to lumbar radiculopathy with complicating lumbar degenerative disc disease." (JE1, p. 34) He recommended she see Dr. Miller for additional injections. (JE1, pp. 31-35)

Ms. Axtell saw Dr. Spence again on June 26, 2018. She had met with Dr. Miller the prior week and he did not feel she would benefit from additional injections. A referral to Dr. Chapman was pending. She continued to have right greater than left leg pain, particularly in the foot. Her pain was fairly constant with radiation into her right buttock. She also continued to have pain under her right shoulder blade, although the

pain was less intense. Dr. Spence's assessment was lumbar radiculopathy and thoracic back pain. (JE1, pp. 35-36)

Dr. Chapman reviewed the thoracic MRI and indicated Ms. Axtell was not a surgical candidate. He recommended she continue with conservative management with her primary care physician. (JE1, p. 37)

On July 19, 2019 Crista Weber, ARNP authored a "To Whom It May Concern" letter regarding Ms. Axtell's short-term disability claim for an absence beginning on March 26, 2018. ARNP Weber stated that Ms. Axtell had been under her care for "treatment of **low back pain and lower extremity hypersensitivity related to neuropathic pain secondary to lumbar radiculopathy complicated by lumbar degenerative disc disease**. Pain is described as burning in the lower extremities and sharp in the low back. She has **no motor deficits** (motor strength 5/5 bilateral LE), and **gait is not antalgic**." (JE1, p. 38) (emphasis in original)

Ms. Axtell saw Crista Weber, ARNP on November 6, 2018 for follow-up of mid to low back pain. The notes reflect that Ms. Axtell had initially injured her right shoulder in April of 2017 and later developed more mid to low back pain. At this visit, Ms. Axtell reported a sharp pain in her mid-back under the right bra line, intermittent right arm tingling, and burning in both feet. Her pain increased with any type of repetitive work, pushing, pulling, or lifting. ARNP Weber stated it was difficult to know if this was related to the previous work injury. She suspected the situation was complicated by underlying degenerative disc disease. Ms. Axtell had not worked for Nordstrom since March of 2018. (JE1, pp. 47-49; testimony)

On December 18, 2018 ARNP Weber signed a check the box type letter authored by claimant's counsel. She indicated that Ms. Axtell's diagnoses were "right shoulder pain, mid-low back pain and mid-low back pain with radiculothapy [*sic*]." (JE1, p. 52) ARNP Weber agreed that Ms. Axtell sustained a work-related injury on April 10, 2017 at Nordstrom which caused and/or materially and substantially aggravated these diagnoses. She also believed that Ms. Axtell's conditions would likely be permanent, but she had not placed her at MMI because she hoped Ms. Axtell would improve. At that time, ARNP Weber had restricted Ms. Axtell to no lifting over 5 pounds, no bending, no twisting, no pushing, and no standing over 30 minutes. As a result of those restrictions, Ms. Axtell had been off of work. ARNP Weber indicated that due to the work-related condition, she was referring Ms. Axtell to a physical medicine and rehabilitation doctor for treatment. Additionally, she confirmed that she prescribed Lyrica to help Ms. Axtell with nerve pain. She felt the medication was necessary due to the work injury. (JE1, pp. 52-54) Unfortunately, this letter does not provide any rationale for her opinions. She does not explain why she now felt Ms. Axtell's conditions were work-related, but in April of 2017 she was not certain. Additionally, ARNP Weber does not explain how the work injury could have materially and substantially aggravated the diagnoses. ARNP Weber does not explain the migratory nature of Ms. Axtell's symptoms. Also, she does not note any objective findings to support her opinions.

Further, Crista Weber is an ARNP, not a doctor. For these reasons, I find that her opinions are not terribly persuasive.

Ms. Axtell underwent a functional capacity evaluation (FCE) on February 14, 2019; this was done at the request of her attorney. The FCE placed her in the light category of physical demand work. The FCE showed she was capable of waist to floor lifting 30 pounds rarely, 20 pounds occasionally, and 10 pounds frequently; waist to crown 20 pounds rarely, 10 pounds occasionally, and 0 pounds frequently; front carry 30 pounds rarely, 20 pounds occasionally, and 10 pounds frequently. She was also limited in her ability to forward bend, and crouch. She was also limited with elevated work, sitting, standing, walking, kneeling, reaching, and stairs. Ms. Axtell was in pain after the FCE and does not feel that she is capable of performing the work activities as outlined in the FCE on a daily basis. (Cl. Ex. 2; testimony)

On February 20, 2019, Nordstrom authored a letter to Ms. Axtell. The letter advised Ms. Axtell that her 365 days of medical leave would end on March 21, 2019. If Nordstrom did not hear from her by March 22, 2019 then her employment would be separated. (Cl. Ex. 3, p. 2)

On March 21, 2019, at the request of her attorney, Ms. Axtell saw Sunil Bansal, M.D. for an IME. Dr. Bansal opined that Ms. Axtell sustained the following diagnoses as the result of the April 10, 2017 work injury: T5-T6 disc protrusion; T7-T8 disc protrusion, and L4-L5 disc protrusion. He opined that as the result of the work injury, she continued to have pain in her right shoulder and shoulder blade, right mid back, and right lower back. At night her right arm would fall asleep occasionally. Also, her right leg and foot sometimes went numb if she sat for a long time. Dr. Bansal opined that Ms. Axtell aggravated her thoracic spine and lumbar disc bulging from pushing the box at work while in a forward bent position. He assigned three percent whole person impairment for her thoracic spine and five percent whole person impairment for the lumbar spine. Dr. Bansal agreed with the restrictions as set forth in the FCE. He placed Ms. Axtell at MMI as of November 6, 2018, the date of her last visit with ARNP Weber. He recommended additional epidural injections. (Cl. Ex. 1) In his report Dr. Bansal failed to address the migratory nature of Ms. Axtell's symptoms. Ms. Axtell initially reported an injury to her right shoulder in April of 2017. In July, she reported no pain, only tightness in her right rhomboid area. In October, Ms. Axtell reported pain in her right parathoracic area and right lateral gluteus muscles. Eventually, Ms. Axtell also began reporting constant bilateral foot tingling. Because Dr. Bansal failed to address these issues, I find that his opinions do not carry great weight.

On March 25, 2019, ARNP Weber ordered an MRI of the cervical spine. (JE1, p. 58) At the time of the hearing, ARNP Weber was prescribing Lyrica to help with Ms. Axtell's symptoms. Ms. Axtell continues to follow-up with ARNP Weber. Ms. Axtell saw her approximately two weeks before hearing. (JE1, p. 57)

At hearing Ms. Axtell testified that she continues to have problems. For example, she has problems just getting out of bed, trying to take a shower, or even just going to the bathroom. Simply standing still hurts and sitting also hurts. She can only sit for about 30 minutes before her back starts to throb. She can only stand for maybe 5 minutes without holding onto something. If she walks too far her entire back and the right side of her legs hurt, and her hips become really painful. She cannot sleep through the night due to pain in her shoulders and back. She takes Lyrica for nerve pain in her feet. The medication is prescribed by ARNP Weber. (Testimony)

The first issue that must be addressed is whether claimant has reached MMI from the stipulated April 10, 2017 work injury. Claimant contends she is not at MMI because she continues to treat with ARNP Weber. However, Ms. Axtell testified that she saw ARNP Weber a couple of weeks before hearing and there was a discussion about MMI and that she thought Ms. Axtell probably would not get better. I find Ms. Axtell has reached MMI. Dr. Kennedy originally indicated that Ms. Axtell would achieve MMI as of August 1, 2017. Dr. McMains felt it would be reasonable and acceptable to continue with Dr. Kennedy's date of August 1, 2017. Even claimant's own IME doctor, Dr. Bansal, has opined that she has reached MMI. (Cl. Ex. 1, p. 11) I find Ms. Axtell reached MMI from the April 10, 2017 work injury as of August 1, 2017.

We now turn to the issue of permanent impairment. Claimant contends that her ongoing symptoms are related to the work injury and that she has sustained permanent impairment. Claimant relies on the opinions of Dr. Bansal. He is the only medical provider in this case to render an impairment rating to Ms. Axtell. For the reasons stated above, I do not find the opinions of Dr. Bansal to be persuasive. Furthermore, his opinions are not consistent with the record as a whole. The opinions of Dr. McMains are more consistent with the record as a whole. I find the work injury of April 10, 2017 did not cause any permanent disability. Rather, Ms. Axtell sustained a muscle strain in her right scapular region that was temporary in nature. Defendants provided her with appropriate conservative treatment. By the end of July 2017, Ms. Axtell was pain free and only experienced some tightness. She returned to work without any restrictions. When she sought additional treatment in October her symptoms were in a different location. As noted above, as time went on claimant's symptoms changed. I find claimant has failed to show how the migratory, current symptoms are related to the April 10, 2017 work injury. I find claimant has failed to demonstrate that her symptoms after August 1, 2017 are related to the work injury.

Claimant is seeking an award of temporary total disability benefits from March 21, 2018 through November 6, 2018. Defendant has stipulated that Ms. Axtell was off work during this period of time. As noted, claimant has not demonstrated that her symptoms after August 1, 2017 are related to the work injury. I further find claimant has failed to demonstrate that she missed any time from work from March 21, 2018 through November 6, 2018 as the result of the work injury.

Ms. Axtell is seeking payment of past medical expenses as set forth in Joint Exhibit 8. A review of Joint Exhibit 8 reveals the vast majority of medical expenses she is seeking payment for are dated after August 1, 2017. I found she failed to demonstrate that her symptoms after August 1, 2017 are related to the work injury. Thus, I find any unauthorized treatment after August 1, 2017 was not reasonable and necessary because of the work injury and therefore is not the responsibility of the defendant.

We now turn to the medical expenses incurred prior to August 1, 2017. There is a CVS Pharmacy expense dated May 3, 2017, in the amount of $17.39 for Tramadol prescribed by Dr. Kennedy. At this time, Dr. Kennedy was an authorized treating physician. I find this expense was reasonable and necessary as the result of the work injury. Defendant is responsible for this medical expense.

Claimant is asking for future treatment for her work injury. Because claimant failed to prove that her symptoms after August 1, 2017 are related to the work injury, I find defendant is not responsible for any future treatment.

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 Rule of Appellate Procedure 6.14(6).

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).

Based on the above findings of fact, I conclude claimant failed to carry her burden of proof to show that she sustained any permanent disability as the result of the work injury. As such, claimant is not entitled to any permanent partial disability benefits as the result of the April 10, 2017 work injury.

Claimant is seeking temporary total disability benefits from March 21, 2018 through November 6, 2018. When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1). However, based on the above findings of fact, I conclude claimant failed to show that she was disabled by the work injury during this period of time. As such, claimant failed to prove entitlement to temporary total disability benefits.

Claimant is seeking payment of past medical expenses. 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). Based on the above findings of fact, I conclude the only submitted medical expense that defendant is responsible for is the CVS Pharmacy expense dated May 3, 2017, in the amount of $17.39 for Tramadol prescribed by Dr. Kennedy.

Claimant is also seeking future medical treatment. However, because claimant failed to show by a preponderance of the evidence that her ongoing symptoms are related to the April 10, 2017 work injury, defendants is not responsible for ongoing medical treatment. Claimant's request for additional treatment is denied.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the agency. Because claimant was generally 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:

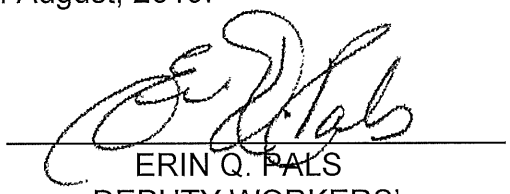
Defendant is responsible for past medical expenses as set forth above.

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 5th day of August, 2019.



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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.