

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA BOTELLO-LIRA,

Claimant,

vs.

SPARBOE FARMS, INC.,

Employer,

and

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5066181

ARBITRATION

DECISION

Head Note Nos.: 1108.50, 1402.40, 1803,
2907, 3203

STATEMENT OF THE CASE

Maria Botello-Lira, claimant, filed a petition in arbitration seeking workers' compensation benefits from Sparboe Farms, Inc., employer and Nationwide Agribusiness Insurance Company, insurance carrier and from the Second Injury Fund of Iowa as defendants. Hearing was held on October 24, 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.

Maria Botello-Lira and Nita Nurmi were the only witnesses to testify live at trial. Ms. Botello-Lira testified via the use of interpreter, Karen Deters. The evidentiary record also includes Joint Exhibits JE1-JE10, Claimant's Exhibits 1-13, and Defendants' Exhibits A-B, and Second Injury Fund Exhibits AA-FF. All exhibits were received without objection, with the exception of Exhibit 9 of the Joint Medical Exhibits. Defendant employer objected to JE9 on the basis that those records were not served timely and defendants did not have an opportunity to respond to the information contained in the record. Defendants' objection was overruled. Joint Exhibit 9 was

admitted into evidence. However, the evidentiary record was left open to allow the defendant employer an opportunity to obtain rebuttal evidence. The rebuttal evidence was marked as Defendants' Exhibit C-001 through C-004 and received on December 5, 2019 and the evidentiary record was closed at that time.

The parties submitted post-hearing briefs on January 13, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained any permanent disability as the result of the November 28, 2016 work injury. If so, the extent of disability she sustained to her left lower extremity.
2. Whether defendant employer is responsible for past medical expenses.
3. Whether claimant is entitled to be reimbursed pursuant to Iowa Code section 85.39 for the independent medical evaluation (IME).
4. Whether claimant is entitled to alternate medical care.
5. Whether claimant sustained a prior qualifying loss to her right lower extremity on January 1, 2004.
6. Claimant's entitlement, if any, to benefits from the Second Injury Fund of Iowa.
7. The commencement date for any benefits from the Second Injury Fund of Iowa.
8. Whether the Second Injury Fund of Iowa is entitled to a credit under Iowa Code section 85.64. If so, the extent of that credit.
9. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Maria Botello-Lira, began working for Sparboe Farms, Inc. in June of 2015. At the time of hearing she was 46 years old and lived in Mesa, Arizona.

Ms. Botello-Lira asserts that she sustained an injury to her left lower extremity on November 28, 2006, while working at Sparboe Farms. At that time, she was working as a machine operator in the breaking room. This job involved removal of inferior eggs

from a breaking machine. On November 28, 2006, Ms. Botello-Lira slipped and fell on some oil and water near a drain in front of a hand washing station. She testified that her left foot slipped out in front of her and she fell onto her left knee and her left knee cracked. She screamed because of the pain and she was unable to move. Jim, her supervisor, was called over. He tried to help her up, but she instructed him not to touch her and not to move her. Another employee was called over, and the supervisor and other employee helped to get her into a wheelchair. Ms. Botello-Lira was screaming in pain while they put her in a wheelchair. She was wheeled to the office to complete an injury report. She was then taken to the hospital. (Testimony; Claimant's Exhibit 3, page 4)

Ms. Botello-Lira was seen at Mercy Medical Center in New Hampton. The notes indicate that she had anterior left knee pain. X-rays were taken. The diagnosis was contusion of the left knee. (JE2, pp. 4-6)

The next day Ms. Botello-Lira went to Allen Occupational Health. She reported ankle pain and anterior left knee pain. She rated her pain as 7.5 out of 10. An x-ray of the left ankle showed soft tissue swelling surrounding the lateral malleolus, but no osseous abnormality. X-rays of the left knee showed no fractures or dislocation, no cortical erosion or irregularity, and joint spaces were normal. The diagnosis was a contusion to the left knee and left ankle strain. She was provided a knee brace, a splint for her ankle, and a set of crutches. (JE3, pp. 19-26)

Ms. Botello-Lira returned to Allen Occupational on December 7, 2016. Her knee was better. She had been wearing a splint during the day. They referred her for physical therapy. She returned to Allen Occupational on December 21, 2016. She was better, but continued to have symptoms. An MRI was recommended. (JE3, pp. 27-35)

Ms. Botello-Lira underwent a left knee MRI on January 5, 2017. The MRI demonstrated that the medial and lateral meniscus were intact. Additionally, the anterior and posterior cruciate ligaments were preserved. There was mild increased signal in the medial fibers of the quadriceps tendon near the patella which could represent a strain. The MRI also showed a small amount of fluid deep to the distal patellar tendon which suggested bursitis. (JE3, pp. 36-37)

On January 9, 2017, Ms. Botello-Lira returned to Allen Occupational. She reported her knee pain was still a 6 or 7 out of 10. She arrived at her appointment wearing a brace and using crutches. There was a discussion about the fact that the MRI showed no internal knee problems. They recommended a visit to an orthopaedic doctor for probable injury to her patella. She was to continue with physical therapy. (JE3, pp. 38-41)

Ms. Botello-Lira saw Roswell M. Johnston, D.O. at Cedar Valley Medical Specialists on January 23, 2017. Dr. Johnston noted that she had been in therapy without any improvement. Ms. Botello-Lira had been using the braces on both her knee and her left ankle. Dr. Johnston felt that she sustained a direct contusion to the left

knee when she fell and a degree of sprain in her left ankle. He found no indication of anything surgical. He felt continued use of her braces and continued restricted duties were reasonable. (JE4, pp. 52-53)

On February 9, 2017, Ms. Botello-Lira saw Kenneth McMains, M.D. at UnityPoint Occupational Health. Dr. McMains noted that she had completed a series of physical therapy and she reported that it did help somewhat, but she said once she stopped therapy the knee would not move again and she could not bend her knee without discomfort. Dr. McMains indicated that she was not progressing as one would expect, with an essentially normal MRI and therapy. He noted that she was complaining of low back pain, which was first reported today, and started approximately two weeks ago, while she was using crutches. Her left ankle was continuing to improve and had full range of motion. He recommended a second orthopedist for a consultation to provide help in treating her knee, likely with an injection to the patellar area. He recommended that she continue with therapy. (JE3, pp. 42-48)

Ms. Botello-Lira saw Robert Bartlet, M.D. for a second opinion at Cedar Valley Medical Specialists on February 15, 2017. She reported to Dr. Bartlet that she did not think therapy was helping. His diagnosis was left knee pain with distal quadriceps strain. He felt there was no indication for surgical treatment. He recommended continued therapy and seated work only. Ms. Botello-Lira returned to Dr. Bartlet on March 3, 2017. Again, he found no surgical indication. He recommended an ultrasound of her left leg to make sure she did not have a deep vein thrombosis (DVT). The ultrasound was performed on March 8, 2017 and was normal. Dr. Bartlet felt it was difficult to determine maximum medical improvement (MMI) because this was a somewhat unusual case. (JE4, pp. 54-57; JE2, p. 17)

On March 13, 2017, Ms. Botello-Lira returned to Dr. McMains. He noted that Ms. Botello-Lira had failed to improve with conservative treatment and was referred for two orthopedic consultations. She also failed to improve after 23 sessions of physical therapy. She continued to report pain in her left knee and leg both anteriorly and posteriorly to the foot. She then developed pain in her shoulder on the right due to use of a crutch on that side. She had discontinued therapy and been on light duty status. She continued to use a crutch and knee brace, with marked limited motion of her knee with pain in all areas of the knee and calf on light touch and pain in the shoulder area with light touch, rating her pain at a 7 or 8 out of 10. Dr. McMains noted that she had consistently shown a non-physiological pain drawing, which he felt demonstrated no evidence of true dermatomal muscle or joint pain. After a chart review, interview lasting 30 minutes, and an examination, Dr. McMains set forth his answers to the questions posed to him by the nurse case manager. His diagnoses included non-physiological left knee pain and non-physiological right shoulder pain. Dr. McMains stated there were no objective findings and that her complaints were subjective. He recommended that Ms. Botello-Lira return to normal activity because there was "no evidence of any injury per se to her extremity, either her left leg or right shoulder." (JE3, p. 50) He felt she should discontinue use of the crutch and that would help clear up the shoulder symptoms. He also recommended she start using her legs without the braces because she had a

normal work up of her legs. He released her to full activity. He placed her at MMI as of March 13, 2017 with no permanent partial impairment and no restrictions. (JE3, pp. 49-50)

On March 23, 2017, Dr. McMains issued a missive to the nurse case manager. He noted that Ms. Botello-Lira had presented to the clinic with complaints of leg pain. It was explained to her that her case was closed on March 13, 2017 and that she should follow-up with her primary care physician. (JE3, p. 51)

Ms. Botello-Lira has sought some treatment on her own for her left knee. On March 29, 2017 she saw a doctor in New Hampton, Iowa at Mercy Medical Clinic. The impression was left knee pain. They recommended she ice and use Tylenol or ibuprofen as needed. (JE5, pp. 58-59)

On April 16, 2018, Ms. Botello-Lira went to Stem Health in Lincoln, Nebraska. The assessment was pain in the left knee. Ms. Botello-Lira wanted another MRI and the medical provider was going to request one. She returned to this same clinic on January 2, 2019, with pain in left knee, left hip, and left foot. She described her pain as deep and intense. X-rays of her left foot and knee were negative. She reported that she had lost her balance and strength in her leg and fell. She then underwent a short course of physical therapy at Lincoln Orthopedic Physical Therapy. (JE6, pp. 65-75; JE8)

At the request of the defendant employer and insurance carrier, Ms. Botello-Lira underwent an IME with Dean K. Wampler, M.D. on May 13, 2019. Dr. Wampler stated that she sustained a contusion to her left anterior knee and possibly a left ankle sprain due to the November 28, 2016 work injury. He noted that her left ankle sprain had resolved. He felt that her initial exam findings and response to treatment appeared appropriate. However, approximately 8 weeks after the fall her condition turned into an abnormal pattern of pain behavior. He is not able to provide a medical basis or logical explanation for her continued pain complaints. He felt she had pain behavior without objective knee abnormality. Because there were no exam or diagnostic findings to explain her severe knee pain, he felt there was no diagnosis to assign. Based on his examination, he felt that her knees had identical crepitus and therefore did not experience an aggravation to her patellofemoral arthritis. He opined she did not require any permanent activity restrictions due to the fall at work. Additionally, he did not feel she had sustained any permanent impairment. (Defendants' Ex. A)

On August 22, 2019, Ms. Botello-Lira underwent a functional capacity evaluation (FCE) with Todd Schemper, P.T. This was performed at the request of claimant's attorney. Ms. Botello-Lira was found to have given maximum effort. During the FCE, the therapist measured ranges of motion. (Cl. Ex. 7)

Also on August 22, 2019, Ms. Botello-Lira underwent an IME, at the request of her attorney, with Sunil Bansal, M.D. She told Dr. Bansal that she could only stand for 30 minutes. Dr. Bansal stated that she had injured her left knee on November 28, 2016

and her right ankle in 2004. For her left knee, Dr. Bansal placed Ms. Botello-Lira at MMI as of August 22, 2018. He placed her at MMI for the 2004 injury 6 months after the surgery date for her right ankle. Dr. Bansal assigned 10 percent lower extremity impairment for her left knee for having 102 degrees of knee flexion. For the 2004 injury he assigned 2 percent lower extremity impairment due to 14 degrees inversion of the right ankle. He permanently restricted Ms. Botello-Lira to no frequent kneeling or squatting, avoid multiple stairs, and no prolonged standing or walking greater than 20 minutes at a time. Due to her right ankle injury he also restricted her to avoid walking on uneven ground. (Cl. Ex. 9)

Ms. Botello-Lira has also received treatment in Arizona. On April 24, 2019, she reported right-sided inguinal pain and vaginal irritation for the past day. The clinic wanted to rule out appendicitis. (JE9, pp. 90-91)

She was seen on June 17, 2019 at Su Clinica Del Valle in Arizona. She reported that she had a work injury while living in Nebraska. She was on light duty for a hand injury when she bent down to pick up a lid and was pushed in the back by a forklift and she fell forward. She reported that she had persistent back pain and was terminated on January 4. She was unable to sit for longer than one hour. She felt worse when at rest and slightly better when walking. On July 10, 2019, she returned to review the findings of the lumbar MRI. In mid-August she returned for follow up on her symptoms of herniated disk. (JE9, pp. 92-97)

Ms. Botello-Lira returned to the Arizona clinic on August 24, 2019 with left knee pain and swelling. She reported that she had left knee pain since an accident in Iowa. She reported that she was told that her knee likely required surgery. The pain radiated between the low back and the knee. An MRI of the left knee was recommended. An August 26, 2019 MRI of the left knee was performed. Again, the menisci and ligaments were intact. The impression was suspect mild lateral patellofemoral impingement/patellofemoral tracking abnormality, but no significant patellofemoral chondromalacia. She was seen again for left knee pain on September 3, 2019. The treatment recommendations included seeing an orthopedic surgeon, begin course of physical therapy, and have a trial of SynovX tendon and ligament injections. (JE9, pp. 98-101; JE10, p. 104)

The last clinical notes in evidence from Su Clinica Del Valle are dated September 26, 2019. Ms. Botello-Lira was seen for back pain. (JE9, pp. 102-03)

Following the November 28, 2016 injury, Ms. Botello-Lira continued to work at Sparboe Farms until she voluntarily quit sometime around May of 2017. She did not miss any time from work due to her injury except for appointments. Ms. Botello-Lira testified that shortly after she was returned to work full-duty and was denied further medical care, she gave her two weeks' notice and moved to Nebraska to be with her children. However, in her answers to interrogatories she stated that she left Sparboe Farms in approximately June 2017, which is several months after she returned to unrestricted work. (Cl Ex. 2, p. 3)

After Sparboe Farms, Ms. Botello-Lira went to work for American Staffing, a temp agency in Nebraska. She worked there for approximately one month. In late 2017 she took a job at Golden Corral in Lincoln, Nebraska. This was a full-time job that involved cutting meat. She was on her feet for her entire shift. In February of 2018, Ms. Botello-Lira went to work for Universal Pure, a meat packing plant. She worked a full-time job that involved her removing meat from boxes and stacking the meat to thaw. Her job required her to either be on her feet or her knees. Her job there ended in January of 2019. The only other place she has worked since was at a Burger King for three days in Mesa, Arizona. (Cl. Ex, 2, p. 2; Testimony)

Ms. Botello-Lira contends that she sustained permanent disability as the result of the November 28, 2016 injury to her left lower extremity. Three doctors have rendered their opinions on the issue of permanent impairment of her left knee as the result of the November 18, 2016 work-related injury.

Dr. McMains opined that Ms. Botello-Lira does not require any permanent restrictions and did not sustain any impairment as the result of the November 28, 2016 knee contusion. (JE3, p. 50) Dr. Wampler examined her on May 13, 2019 and opined that there are no “exam or diagnostic findings to explain Ms. Botello’s [sic] severe knee pain.” (Ex. A, p. 7) He noted she had equal mild patellofemoral arthritis and crepitus in both knees. He opined that she did not require any work-related restrictions and sustained zero percent impairment as the result of the November 28, 2016 work injury. After reviewing additional medical documentation provided to him, he reaffirmed his opinions in a December 4, 2019 report. (Ex. A, pp. 8-9; Ex. C)

Dr. Bansal has also offered his opinions. He is the only doctor to opine that Ms. Botello-Lira sustained any permanent impairment as the result of her November 28, 2016 injury. However, I do not find the opinions of Dr. Bansal to be persuasive. His report fails to provide any rationale for why he believes she sustained an injury to her left knee which resulted in any permanent disability on November 28, 2016. He fails to explain why her alleged lost range of motion to her left knee is related to the fall. He also does not address the gap in medical treatment prior to December of 2018. Additionally, he does not address the fact that she worked for Sparboe Farms for approximately two months after the injury, and she worked for several employers after the November 2016 injury in jobs that required standing for entire shifts. Dr. Bansal’s report is not well-reasoned and not persuasive.

I find the opinions of Dr. McMains and Dr. Wampler carry greater weight than those of Dr. Bansal. I find that Ms. Botello-Lira sustained zero percent functional impairment to her left lower extremity and does not require any permanent restrictions as the result of the November 28, 2016 work injury.

Ms. Botello-Lira is seeking payment of medical expenses as set forth in Claimant’s Exhibit 12 which she contends are related to the November 28, 2016 work injury. Claimant is seeking payment of physical therapy sessions at Lincoln Orthopedic from November 2, 2019 through January 16, 2019. On January 2 and 4, 2019 she was

seen for an injury with Universal Pure, not for her knee. (JE8, p. 87) I find these are not the responsibility of Sparboe Farms because they are not related to the November 28, 2016 work injury. On January 11, 2019, Ms. Botello-Lira was seen for left knee pain, but it was following a fall at home. There is no medical opinion that causally relates the need for this treatment to the November 28, 2016 work injury. I find this expense not the responsibility of Sparboe Farms because it is not related to the November 28, 2016 work injury. The remainder of the treatment dates do not have corresponding clinical notes; therefore, it is impossible for the undersigned to find that these are related to the work injury. Thus, I find defendants are not responsible for any medical expenses from Lincoln Orthopedic Physical Therapy.

Ms. Botello-Lira is also seeking payment of medical expenses incurred at Su Clinica Del Valle from August 24, 2019 through September 26, 2019. However, no physician has opined that the November 28, 2016 work injury necessitated this treatment. Thus, I find claimant has failed to demonstrate that defendants should be responsible for these medical expenses.

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); Dunlavy 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 Ms. Botello-Lira failed to prove that she sustained any permanent disability to her left lower extremity as the result of the November 28, 2016 work injury. As such, she has not demonstrated any entitlement to permanent disability benefits.

Ms. Botello-Lira is seeking payment of past medical expenses in connection with the work injury. In Iowa, 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 claimant failed to carry her burden of proof to establish that the medical expenses were necessitated by the November 28, 2016 work injury. Defendants are not responsible for the medical expenses set forth in Claimant's Exhibit 12.

Ms. Botello-Lira has asserted a claim against the Second Injury Fund of Iowa. Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

Ms. Botello-Lira failed to carry her burden of proof to show by a preponderance of the evidence that she sustained any permanent disability as the result of the November 28, 2016 work injury. As such, she has failed to demonstrate entitlement to any benefits from the Second Injury Fund. Because she failed to prove that she sustained a second qualifying injury, the issue of whether she sustained a first qualifying injury is moot.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I find that claimant was not successful in her claim. As such, I exercise my discretion and find that an assessment of costs against the defendants is

not appropriate in this case. Every party shall be responsible for their own costs. All remaining issues have been rendered moot.


ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

Defendants 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 March, 2020.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Samuel Aden (via WCES)

Anne Clark (via WCES)

Sarah Christine Timko (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.