BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FRANCES STALLMAN, Claimant, vs. QUAKER OATS COMPANY, Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 5065202 APPEAL DECISION Head Notes: 1402.40; 1701; 1802; 1803; 2401; 2402; 2501; 3001; 3002; 4000.2; 5-9999

Defendants Quaker Oats Company, employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on January 25, 2019, and from a ruling on application for rehearing filed on February 13, 2019. Claimant Frances Stallman cross-appeals with respect to the ruling on rehearing. The case was heard on April 30, 2018, and was considered fully submitted before the deputy workers' compensation commissioner on June 8, 2018.

The deputy commissioner found claimant sustained an injury arising out of and in the course of her employment with defendant-employer. The deputy commissioner found claimant's injury manifested on December 5, 2016, and as such, the deputy commissioner found defendants failed to prove their affirmative defense of lack of timely notice under Iowa Code section 85.23, and their two-year statute of limitations defense under Iowa Code section 85.26. The deputy commissioner found claimant sustained injuries to both the right and left hand, which resulted in permanent partial disability. The deputy commissioner found claimant's injuries arose out of a single cumulative process. The deputy commissioner found the extent of disability is therefore measured by Iowa Code section 85.34(2)(s).[1] The deputy commissioner found the impairment ratings of Peter Pardubsky, M.D., resulted in a combined value of 14 percent impairment of the body as a whole, and awarded 70 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(s), commencing March 20, 2018.[2]

[1] Iowa Code section 85.34(2)(s) has since been moved by the Code Editor to 85.34(2)(t).

[2] The Arbitration Decision originally awarded 22 percent, or 110 weeks. However, the deputy commissioner modified that decision in his ruling on defendants' motion for rehearing, due to an error in combining Dr. Pardubsky's impairment ratings.

The deputy commissioner found claimant is entitled to receive healing period benefits from May 2, 2017, through July 31, 2017, and from September 14, 2017, through December 14, 2017. The deputy commissioner found claimant's gross average weekly wage for the injury is $1,485.00 and her weekly benefit rate is $906.96. The deputy commissioner found defendants are responsible for all of claimant's requested past medical expenses itemized in Exhibit 6, and liable for the cost of Dr. Pardubsky's impairment rating report. The deputy commissioner found defendants are entitled to receive a credit in the amount of $14,816.52 under Iowa Code section 85.38(2) for net payments made to claimant under a group disability plan. The deputy commissioner found defendants' denial of benefits was not unreasonable, such that claimant is not entitled to receive penalty benefits from defendants. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of $163.12.

Defendants assert on appeal that the deputy commissioner erred in finding claimant's bilateral thumb condition is related to her employment with defendant-employer. Defendants further assert the deputy commissioner erred in failing to find claimant's claims are barred by the two-year statute of limitations in Iowa Code section 85.26(1), as well as by the notice provisions of Iowa Code section 85.23. Defendants assert that if claimant's condition is compensable, the deputy commissioner erred in awarding permanent partial disability benefits. Finally, defendants assert the deputy commissioner erred in adopting claimant's calculation of the average weekly wage and the weekly benefit rate.

Claimant asserts on appeal that the deputy commissioner correctly decided the issues raised by defendants on appeal. Claimant asserts on cross-appeal that the deputy commissioner erred in calculating the amount of permanent partial disability benefits claimant is entitled to receive under Iowa Code section 85.34(2)(s). Claimant further asserts on cross-appeal that the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits.

Defendants assert on cross-appeal that the deputy correctly calculated claimant's permanent disability to be 70 weeks, and correctly declined to award penalty benefits.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code section 86.24 and 17A.15, those portions of the proposed arbitration decision filed on January 25, 2019, as modified by the ruling on application for rehearing filed on February 13, 2019, which relate to issues properly raised on intra-agency appeal are affirmed with additional comment and analysis as follows:

I affirm the deputy commissioner's finding that claimant sustained an injury arising out of and in the course of her employment with defendant-employer. I affirm

the deputy commissioner's finding that claimant's injury manifested on December 5, 2016. I affirm the deputy commissioner's finding that defendants failed to prove their affirmative defenses of lack of timely notice under Iowa Code section 85.23, and statute of limitations under Iowa Code section 85.26. I affirm the deputy commissioner's finding that claimant sustained injuries to both the right and left hand, which resulted in permanent partial disability. I affirm the deputy commissioner's finding that claimant's injuries arose out of a single cumulative process, and therefore the extent of disability is measured by Iowa Code section 85.34(2)(s). I affirm the deputy commissioner's finding that the impairment ratings of Peter Pardubsky, M.D., resulted in a combined value of 14 percent impairment of the body as a whole, which entitles claimant to receive 70 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(s). I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from May 2, 2017, through July 31, 2017, and from September 14, 2017, through December 14, 2017. I affirm the deputy commissioner's finding that claimant's average weekly wage for the work injury is $1,485.00 and her weekly benefit rate is $906.96. I affirm the deputy commissioner's finding that defendants are responsible for all of claimant's requested past medical expenses, and are liable for the cost of Dr. Pardubsky's impairment rating report. I affirm the deputy commissioner's finding that defendants are entitled to receive a credit in the amount of $14,816.52 under Iowa Code section 85.38(2) for the net payments made to claimant under a group disability plan. I affirm the deputy commissioner's finding that defendants' denial of benefits was not unreasonable, and claimant is not entitled to receive penalty benefits from defendants. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of $163.12.

With respect to the deputy commissioner's decision that claimant's injury arose out of and in the course of her employment, I specifically affirm the deputy commissioner's finding that Dr. Pardubsky's medical opinions are most convincing. Defendants argue that the deputy commissioner rejected the opinions of three physicians in favor of Dr. Pardubsky's opinion, which defendants contend was inconsistent and therefore unreliable. It should be noted that the first opinion upon which defendants rely is not from a physician at all, but from Madelyn Pilcher, ARNP. Ms. Pilcher works at the Quaker Oats Health Center, and appears to have seen claimant once with respect to her bilateral thumb pain, on December 13, 2016. (Joint Exhibit 1, p. 2) Ms. Pilcher later issued a report on January 17, 2017, indicating she shared with claimant that bilateral thumb pain in women in their later 50's is most commonly caused by arthritis. (Jt. Ex. 1, p. 3) Ms. Pilcher further noted she encouraged claimant to make a claim, although it is "unlikely to be considered a work related injury." Id. Ms. Pilcher goes on to note that there were "many activities that Ms. Stallman performs repetitively, daily, that may cause an exacerbation (pain) of an already present condition. However, it cannot be ruled out that Ms. Stallman performs duties outside of work that would have the same consequences." Id. Ms. Pilcher then confirms that claimant's X-rays confirmed arthritis. Id.

Ms. Pilcher's opinion does not address whether claimant's work resulted in a material aggravation of claimant's arthritis, although Ms. Pilcher does note claimant's

work may cause an exacerbation. The fact that claimant's activities outside of work may also exacerbate her pain is immaterial, as a cause is proximate if it is a substantial factor in bringing out the result; it need not be the only cause. 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). Further, ARNP Pilcher works for defendant-employer, and is not a physician qualified to provide a causation opinion. As such, I agree with the deputy commissioner that Ms. Pilcher's causation opinion is not as convincing as that of Dr. Pardubsky.

The second medical opinion defendants reference is that of Lawrence J. Goren, M.D. Dr. Goren is employed by Onsite Innovations, which is located in New Jersey. Dr. Goren provided an opinion letter dated February 3, 2017, to defendant-employer. (Jt. Ex. 1, p. 4-5) It appears from Dr. Goren's letter that Onsite Innovations actually employs the staff in the Quaker Oats Health Center, as he begins by noting he "discussed the case of Frances Stallman with my employees who work in the Medical Department at Quaker in Cedar Rapids." (Jt. Ex. 1, p. 4) Dr. Goren notes he reviewed ARNP Pilcher's records, claimant's X-Rays, and the worksite evaluation performed by Haylee Mercer, an athletic trainer with Quaker Oats Health Center. Id. Based on that, Dr. Goren opined that while the evaluation of claimant's job duties "certainly give credence to the fact that the patient has symptoms arising from that existing condition," he did not believe the "ergonomic and risk analysis" of the job revealed any activities that would cause or accelerate claimant's arthritis. Id. at 4-5. Dr. Goren concluded there is "no evidence that this condition is anything other than CMC joint arthritis which is commonly found in females over 50." Id. at 5.

Claimant testified she had never spoken with, or had seen, Dr. Goren. (Hearing Transcript, p. 43) Claimant also testified Ms. Mercer did not observe claimant performing all of her job duties, only the loading and unloading portion of her job. (Tr., p. 44) Given that Dr. Goren did not examine or even speak with claimant, and his understanding of claimant's job duties is based on an incomplete worksite evaluation, I find his opinion is not reliable. As such, I affirm the deputy commissioner's finding that Dr. Goren's opinion is not as convincing as that of Dr. Pardubsky.

The third medical opinion defendants reference is that of Theron Jameson, D.O. Dr. Jameson performed an independent medical evaluation (IME) at defendants' request on February 17, 2018. (Defendants' Exhibit A) Dr. Jameson was able to speak with and examine claimant in person, although claimant testified the examination was quite short. (Tr., p. 51) Dr. Jameson's report also indicates he was provided with the actual job description from claimant's job as storeroom keeper. (Ex. A, p. 3) Dr. Jameson's opinion is therefore entitled to more weight than those of ARNP Pilcher and Dr. Goren. However, while Dr. Jameson opines he does not believe claimant's bilateral thumb/hand condition is related to her work activities at defendant-employer, he does not provide any analysis as to whether claimant's work caused a material aggravation of the arthritic condition. While one might assume Dr. Jameson would not find a material aggravation caused by work, the fact that there is no explanation or reasoning provided

is problematic. As such, I affirm the deputy commissioner's finding that Dr. Jameson's opinion is not as convincing as that of Dr. Pardubsky.

Finally, with respect to Dr. Pardubsky, defendants argue his opinions are confusing and conflicting, making them unreliable. After defendants denied claimant's claim, she filed for short-term disability. Dr. Pardubsky completed a Disability and Leave Statement on April 12, 2017, prior to claimant's first surgery on her right hand. (Jt. Ex, 3, p. 24-26) On the form, where it asked whether the condition is work-related, Dr. Pardubsky checked the box for "no." (Jt. Ex. 3, p. 25) Claimant had right thumb surgery on May 2, 2017. (Jt. Ex. 4, p. 1) Later, on August 30, 2017, Dr. Pardubsky signed a letter authored by claimant's attorney, indicating he agreed with the statements that the cause of claimant's CMC joint arthritis is multifactorial, and that claimant's repetitive use of her hands with gripping and fingering frequently throughout her workday for many years is a material aggravating factor of her condition and the need for surgery. (Jt. Ex. 3, p. 40-41)

Prior to claimant's second surgery for her left hand, Dr. Pardubsky again completed a Disability and Leave Statement. (Jt. Ex. C, p. 7-9) The second form was prepared on September 7, 2017, and again Dr. Pardubsky checked "no" for the question regarding whether the condition is work-related. Id. at 8. Claimant's left thumb surgery took place on September 19, 2017. (Jt. Ex. 4, p. 3-4) On February 28, 2018, Dr. Pardubsky again signed a letter authored by claimant's attorney, indicating he agreed with the statements that the cause of claimant's CMC joint arthritis in her left hand is multifactorial, and that claimant's repetitive use of her hands with gripping and fingering frequently throughout her workday for many years is a material aggravating factor of her condition and the need for surgery. (Jt. Ex. 3, p. 42-43)

Defendants argue that the deputy commissioner erred in finding Dr. Pardubsky's "conflicting opinions" to be more convincing. However, the "opinion" that the injury was not work-related is nothing more than a check mark on a disability insurance form. As claimant argues in her brief, the form did not ask whether the condition was aggravated by work activities. Further, the underlying arthritis that was the basis for the short-term disability claim was not work-related. Rather, claimant's work caused a material aggravation of her underlying condition. Additionally, before rendering his opinion that claimant's work was a material aggravating factor of her condition and the need for surgery, Dr. Pardubsky was provided with a job description and a physical functional analysis of claimant's job, as well as claimant's description of the hand-intensive work activities she performed over her many years of employment with defendant-employer. (Jt. Ex. 3, p. 28-39) Claimant also testified that Dr. Pardubsky told her, with respect to whether her condition was work-related, that it was a "grey area." (Tr., p. 59) This is consistent with Dr. Pardubsky's opinion that the causes of her bilateral joint arthritis is multifactorial. Dr. Pardubsky is the only medical practitioner who actually treated claimant's arthritis. He had complete information regarding claimant's job duties, not only in 2016 but also for the many years prior. Based on all of these findings, I affirm the deputy commissioner's finding that Dr. Pardubsky's opinion is the most convincing.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 25, 2019, as modified by the ruling on application for rehearing filed on February 13, 2019, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits from May 2, 2017, through July 31, 2017, and from September 14, 2017, through December 14, 2017, at the weekly benefit rate of nine hundred six and 96/100 dollars ($906.96).

Defendants shall pay claimant seventy (70) weeks of permanent partial disability benefits at the weekly benefit rate of nine hundred six and 96/100 dollars ($906.96) commencing March 20, 2018.

Defendants shall receive a credit in the amount of fourteen thousand eight hundred sixteen and 52/100 dollars ($14,816.52) under Iowa Code section 85.38(2) for net payments made to claimant under the group disability plan.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay five hundred fifty dollars ($550.00) for the cost of Dr. Pardubsky's IME.

Defendants shall pay the past requested medical expenses itemized in Exhibit 6. Defendants pay claimant directly for any out-of-pocket medical expenses.

Defendants shall pay medical mileage to claimant of two hundred eighteen and 19/100 dollars ($218.19).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred sixty-three and 12/100 dollars ($163.12), and the parties shall spit the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on the 16th day of June, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Andrew M. Giller Via WCES

Timothy W. Wegman Via WCES