

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACQUE OLSON,	:	FILED
Claimant,	:	SEP - 9 2015
vs.	:	WORKERS' COMPENSATION
BROOKS PARK RESORTS, LLC,	:	File Nos. 5043565, 5043574
Employer,	:	APPEAL
and	:	DECISION
BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY,	:	Head Note Nos.: 1108.50, 1402.40, 1801 1803.1, 2602, 4100
Insurance Carrier, Defendants.	:	

Claimant Jacque Olson appeals from an arbitration decision filed on August 12, 2014. The case was heard on May 30, 2014, and it was considered fully submitted on July 15, 2014, in front of the deputy workers' compensation commissioner.

The deputy commissioner determined that while claimant did prove she sustained an injury to her left lower extremity on May 28, 2012, she failed to prove her altered gait, her low back pain, DVT, or pulmonary embolism are related to the May 28, 2012, injury. The deputy commissioner also determined claimant proved that on September 27, 2012, she sustained only a temporary aggravation of a pre-existing low back condition, but failed to prove entitlement to any weekly benefits or future medical benefits. The deputy commissioner also declined to award medical benefits and costs submitted by claimant at hearing.

Claimant asserts on appeal that the deputy commissioner erred in determining that claimant's altered gait, low back pain, DVT and pulmonary embolism were not caused by the work injury of May 28, 2012. Claimant also asserts that the deputy commissioner erred in determining that claimant sustained only a temporary aggravation of her pre-existing low back condition on September 27, 2012. Claimant also asserts the deputy commissioner erred in not awarding industrial disability benefits and in not awarding medical benefits and costs submitted by claimant at hearing. Defendants assert that the decision of the deputy commissioner should be affirmed in its entirety.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of August 12, 2014, filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis:

Claimant argues on appeal that the deputy commissioner made inappropriate factual findings that constitute speculation. Specifically, claimant challenges the deputy commissioner's factual finding on page 3 of the arbitration decision, which states:

At the time of hearing Olson had a cane with her. I observed her with the handle of the cane in her hand; the bottom of the cane would touch the floor, but no weight was put on the cane. The necessity of the cane was not apparent to the undersigned.

I do not read the deputy's factual findings and detailed observations in the same light that claimant does. I do not read the above statement to be a factual finding that claimant does not need to use a cane. Rather, I take the above observation at face value that the deputy could not definitively determine the necessity of the use of the cane simply by lay observations at the time of hearing.

Regardless, I do not rely upon the deputy commissioner's findings as noted above in reaching my decision in this case. In that sense, any prejudice alleged by claimant is eliminated because I do not rely upon the findings claimant argues are objectionable.

Claimant also argues that the deputy commissioner engaged in speculation when the deputy noted the following on page 6 of the arbitration decision:

Olson testified that she saw Dr. Hines; however, based on his report it is unclear if Dr. Hines performed any type of physical examination of Olson. At one point he references an exam, but there is no other mention of what he examined or any findings in the report.

Review of Marc Hines, M.D.'s report discloses that he includes numerous sections within his report to detail his actions and findings. He includes a section pertaining to "Medical Records Reviewed," "Commentary," "History of Present Illness," "Permanency," "Etiology," "Permanent Medical Impairment," "Restrictions," and "Future Medical Treatment." (Ex. 12) Interestingly, Dr. Hines' report contains no mention of his actual physical examination or findings. In this sense, the deputy commissioner's findings are accurate. It is not possible from Dr. Hines' report to determine exactly what

type of physical examination he performed, what tests, if any, he performed, or the results of any such tests.

At exhibit 12, page 4, Dr. Hines notes, "the back pain that she is presently experiencing that I am able to identify on examination today is related to the asymmetric gait." Given this statement, I assume that Dr. Hines performed a physical examination of some type during his independent medical evaluation. To the extent that the claimant is concerned the deputy did not believe Dr. Hines performed a physical examination, I do not share that alleged finding by the deputy. Again, I assume that Dr. Hines performed a physical examination, although his credibility suffers given that he has not detailed any of his specific findings.

Claimant challenges the deputy's acceptance of Alexander Pruitt, M.D.'s medical opinion pertaining to claimant's gait alteration and resulting low back symptoms. Dr. Pruitt was the treating orthopaedic surgeon, who performed surgery on claimant's left knee. I find he is in a unique position to offer an opinion as to the cause of claimant's altered gait, given his ability to inspect the knee joint intra-operatively. I concur with the deputy commissioner's analysis and I also find Dr. Pruitt's opinions pertaining to the gait issues and permanent impairment to be the most convincing medical evidence in this record.

Claimant also challenges the deputy commissioner's findings pertaining to the development of a deep vein thrombosis and subsequent pulmonary embolism. Claimant underwent left knee surgery in November 2012. She developed the deep vein thrombosis and pulmonary embolism and sought treatment in July 2013.

Claimant provides the medical opinion of Dr. Hines in support of her contention that the pulmonary embolism is causally related to the left knee injury. However, Dr. Hines' opinion is not convincing on this issue. He does provide some justification for why a DVT would develop following claimant's knee surgery. Dr. Hines opines, "it seems quite likely, in fact, that the DVT could be related." (Ex. 12, p. 2)

The deputy noted that this is a less than definitive statement. Stating that something "could be" related is far less than saying that something is causally related within a reasonable degree of medical certainty. Claimant, however, challenges the deputy commissioner's interpretation and characterization of Dr. Hines' opinions. Claimant argues semantics and that the deputy erroneously found the weight of Dr. Hines' opinions to be lessened because he did not offer an opinion within a reasonable degree of medical certainty.

The deputy may be correct in that Dr. Hines' actual language is less definitive than would otherwise be expected of a medical opinion. However, for purposes of my analysis, I assume that Dr. Hines was offering a causal connection opinion within a reasonable degree of medical certainty.

However, claimant's treating physicians disagree with Dr. Hines on this issue. Dr. Pruitt, the treating surgeon, opines that the DVT and resulting pulmonary embolism are not related to the knee surgery at Ex. A1, p. 2 and Ex. A5, p. 18. He explains that the surgery is too remote in time from the development of the DVT in Ex. A1, p. 2.

Even more convincing is claimant's personal physician, Brett Olson, M.D. Dr. Olson opined that, "Given the time elapse between the date of surgery in November 2012 and the pulmonary embolism, the surgery could not have cause[d] the deep vein thrombosis and resulting pulmonary embolism." (Ex. A4, p. 8) Again, Dr. Olson is claimant's personal physician. He has no reason to offer a medical opinion that is contrary to the desires of his patient. Dr. Olson's explanation is convincing.

I find the opinion of Dr. Olson to be the most convincing medical opinion in this case on the issue of whether the pulmonary embolism is causally related to the left knee injury. Therefore, I find that the deep vein thrombosis and resulting pulmonary embolism are not proven to be related to the left knee injury.

Claimant challenges the finding by the deputy that claimant's second work injury, a low back injury occurring on September 27, 2012, was only a temporary aggravation. As I review the medical evidence, I do not identify any opinions that specifically state claimant sustained a permanent aggravation or permanent impairment as a result of the September 27, 2012, work injury.

In fact, Dr. Hines is the claimant's IME physician. He opines, "She continues to have back pain, this was worsened on September 27, 2012, however, I believe that the back pain that she is presently experiencing that I am able to identify on examination today is related to the asymmetric gait and primarily related to the left knee pain, therefore as a secondary effect." (Ex. 12, p. 4) This opinion was rejected for the reasons noted with respect to the May 28, 2012, injury date. However, Dr. Hines does not offer an opinion that the September 27, 2012, work injury caused a permanent aggravation, a permanent injury, or permanent impairment to claimant's low back.

The other medical professionals addressing this issue all conclude that the September 27, 2012, injury was only a temporary aggravation. For instance, claimant's chiropractor, Michelle Schwartz-Webb, D.C., opined that this was a temporary aggravation. (Ex. A2, pp. 3-4) Claimant's treating orthopaedic surgeon, Dr. Pruitt, also opined that claimant's back condition was not related to the September 2012 incident at work. (Ex. A1, p. 1)

Another orthopaedic surgeon, Jason C. Hough, M.D., evaluated claimant before turning her care over to Dr. Pruitt. Dr. Hough last evaluated claimant on October 5, 2012. He opined, "the symptoms affecting her back were a transient condition which would resolve itself." (Ex. A3, p.5) Dr. Hough further clarified that "any ongoing symptoms in her back would not be related to any work injury." (Ex. A3, p. 6)

None of the treating medical professionals has imposed permanent work restrictions for claimant's back, though she apparently had some restrictions after a back surgery performed long before these work injuries.

I concur with the presiding deputy and I find the opinions of the treating physicians, including Dr. Hough, Dr. Pruitt, and Dr. Schwartz-Webb, convincing, particularly in light of the fact that there is not a contrary medical opinion that specifically states the September 27, 2012, work injury caused a permanent injury, permanent aggravation, permanent impairment, or permanent restrictions to claimant's low back.

Having found the altered gait, low back symptoms, and pulmonary embolism not related to the May 2012 injury, I conclude that claimant has not established entitlement to industrial disability benefits, nor has she established her claim for permanent total disability benefits. Having found claimant's current back condition not related to the May 2012 injury date and having found that claimant failed to prove a permanent injury to her back as a result of the September 2012 injury date, I concur with the deputy's analysis pertaining to medical expenses claimed. I affirm on all of these issues.

Finally, claimant seeks assessment of her vocational expenses as costs in this matter. Similar to the deputy, I do not find the vocational opinions to be helpful given that claimant failed to prove entitlement to industrial disability benefits. Defendants prevailed on all of the major disputed issues in this case. Therefore, exercising this agency's discretion, I conclude that claimant's vocational expenses should not be assessed as costs in this matter.

ORDER

THEREFORE, IT IS ORDERED:

The August 12, 2014, arbitration decision is affirmed in its entirety.

All costs of this appeal are taxed against claimant.

Signed and filed this 9th day of September, 2015.



JOSEPH S. CORTESE II
IOWA WORKERS'
COMPENSATION COMMISSIONER

Copies to:

E. W. Wilcke
Attorney at Law
1510 Hill Avenue
PO Box 455
Spirit Lake, IA 51360
ewwilcke@qwestoffice.net

Robert Gainer
Attorney at Law
1307 - 50th St
West Des Moines, IA 50266
rgainer@cutlerfirm.com

Charles E. Cutler
Attorney at Law
1307 - 50th St.
West Des Moines, IA 50266-1782
ccutler@cutlerfirm.com