

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

WATERLOO COMMUNITY)	Case No. CVCVo60597
SCHOOL DISTRICT,)	
)	
Employer,)	
)	
UNITED WISCONSIN)	
INSURANCE CO.,)	
)	
Insurance Carrier,)	
Petitioners,)	ORDER ON JUDICIAL REVIEW
)	
vs.)	
)	
GRACIELA DEMALDONADO,)	
)	
Respondent.)	

Telephonic oral argument in this judicial review proceeding was scheduled for November 20, 2020. Appearing for Respondent was attorney Casey W. Steadman. There were no other appearances. Respondent consequently waived oral argument.

Upon review of the Petition, the administrative record and the court file, the court enters the following Order.

BACKGROUND FACTS AND PROCEEDINGS

This matter is a judicial review of a workers' compensation claim brought by Defendants/Petitioners Waterloo Community School District and United Wisconsin Insurance Co. (together, WCSD) against Claimant/Respondent Graciela de Maldonado (Graciela). Graciela sustained admitted injuries to her bilateral knees in a fall at work on June 14, 2017¹. She also alleged injuries to numerous other body parts as a result of the fall.

¹ The Iowa legislature significantly changed the workers' compensation statutes in the 2017 session. However, as this injury occurred prior to July 1, 2017, the old law is applied.

An arbitration hearing was held on September 16, 2019. The presiding Deputy workers' compensation commissioner (the Deputy) issued a comprehensive decision on December 27, 2019. The Deputy found Graciela had proved permanent injuries arising out of and in the course of employment to her bilateral knees, right ankle, hips and low back. The Deputy also found Graciela had developed increased whole-body myofascial and arthritic pain, and anxiety and depression.

WCSD appealed to the Iowa workers' compensation commissioner (the Commissioner). On July 24, 2020, the Commissioner affirmed the Deputy's ruling. WCSD timely sought judicial review.

FINDINGS OF FACT

Graciela is a 51-year-old Hispanic female resident of Waterloo, Iowa. (HT 41). She speaks Spanish as her primary language. (*Id.* at 4). She resided in Mexico from birth until approximately 1985, after which she performed field work in the United States for three or four years. (Ex. 4-48; HT 25). Graciela then returned to Mexico for six years to raise a child. (Ex. 4-48). She took up permanent residence in the United States in approximately 1995. (*Id.*).

Graciela completed her high school education in Mexico in 1984. (Ex. 4-47; HT pp. 24-25). She then received approximately a year of training as a secretary and stenographer in Mexico. (Ex. 4-47; HT 25). Graciela did not complete her training. She has never performed the job duties of a secretary or stenographer. (HT 25).

Graciela's employment generally has been physically demanding. As noted, she performed field work from 1985 to 1989. (Ex. 4-48; HT 25). Her job consisted of picking fruit from trees. (Ex. 4-48). Graciela then performed childcare until 1995, when IBP hired her. (Ex. 4-48; HT 25). Her work at IBP involved using a knife to remove a pig's flesh

from behind the ears, cut out the tongue, and divide the removed flesh into multiple sections. (HT 26). She then performed a job sewing at Powers for three months sometime around 1999 – 2001. (Exs. 1-3; 4-49).

On February 1, 2002, Graciela applied to WCSD for a full-time job as a baker. (Ex. 6 at 90-91). She requested unspecified accommodations in her application. (*Id.* at 91). Graciela testified at hearing that she requested the accommodations for residual back pain from a prior injury. (HT 34). A medical examiner hired by WCSD found Graciela had a normal examination other than right knee crepitus. (JE3-6). Graciela's baker job required making cookies, brownies and bread. (HT 32). Graciela performed the job without restrictions. (HT 34).

In 2004, Graciela changed positions and became a WCSD custodian. (HT 34). Later she was promoted to head custodian and was given supervisory responsibilities. (*Id.* at 38). Her custodial work required moving the lawn, snow removal, cleaning the school building, performing building maintenance, emptying trash, and cleaning up litter and spills. (Ex. 5 at 69-74; HT 39).

WCSD carefully details the physical requirements necessary for the above job tasks. Custodians must be able to place and remove items from shelves at varying heights, climb ladders, stairs, scaffolding, and ramps. (Ex. 5-69). They must stoop and kneel. (*Id.*). Standing and walking are constant. (*Id.* at 70). Lifting and carrying is constant at 25 pounds and can reach up to 100 pounds on an occasional basis. (*Id.* at 71). Charles Callaway (Callaway), the district custodial manager, testified these demands were accurate other than the lifting limit, which he believed to be 50 pounds. (*Id.* at 52). Callaway then clarified there was a lot of heavy furniture moving during the summer that would exceed 50 pounds. (*Id.*).

Graciela worked as a custodian or head custodian without accommodations until her June 14, 2017, work injury. (HT 40). She no prior WCSD work injuries of significance. (*Id.*). Graciela testified she had hoped to work in her custodial position as long as she could, ideally for twenty or more years from the time of injury. (*Id.* at 40-41).

On June 14, 2017, Graciela was cleaning a bathroom at WCSD. (HT 41). After completing her job, she slipped and her legs skidded apart in opposite directions. (*Id.*). When she tried to stabilize herself, she overcompensated and struck her knees together. (*Id.*). Graciela then fell on the bathroom floor, landing directly on her knees with the joints locked. (*Id.*). She heard cracking in her knees and could not rise from her position. (*Id.*). Graciela also could not move her feet. (*Id.* at 42). There was a burning pain in her bilateral knees, right worse than left. (*Id.*). There was also low back pain. (*Id.* at 43).

Graciela was seen on the date of injury at Allen Occupational. (JE3-11). The history recorded 6/10-10/10 pain in the knees, right worse than left. (JE3-11, 3-13). Her back and ankle (side unspecified) were noted to be sore. (JE3-11). She was prescribed ibuprofen and was instructed to use crutches and ice. (JE3-14). Graciela was restricted to seated work only. (*Id.*). On June 21, 2017, she reported ongoing cramping and burning in the knees and an MRI of the right knee was ordered. (JE3-15 to 3-18).

On June 21, 2017, Graciela also saw Dr. Palma at Cedar Valley. (JE5-53). She had developed decreased flexion and extension in the right knee. (JE5-54). She reported her fall at work and described increased physical activity on the job that aggravated prior myofascial symptoms. (JE5-53).

On June 28, 2017, an MRI was performed at Allen Memorial Hospital (Allen Hospital). (JE7-87 to 7-88). The primary diagnosis was a partial tear of the medial collateral ligament, increased signal in the semimembranosus tendon representing a low-

grade partial tear, and a small joint effusion. (*Id.*). Other relevant findings included fissuring of the cartilage in the patella and medial tibiofemoral compartment and edema. (*Id.*).

On June 29, 2017, Graciela returned to Allen Occupational. (JE3-20 to 3-22). She indicated burning pain going down her right leg all the way to the ankle. (JE3-20). While she indicated left knee pain, examination was limited to the right side. (JE3-20 to 3-22). Restrictions were maintained and she was provided a patellar stabilizer. (JE3-22). Subsequent treatment failed to resolve her symptoms and she was referred for an orthopedic examination.

On July 26, 2017, Graciela was seen by Dr. Thomas Gorsche (Dr. Gorsche) at Cedar Valley Orthopedics (Cedar Orthopedics). (JE6-64). Dr. Gorsche diagnosed a valgus injury to both knees, right worse than left. (*Id.*). He rated Graciela's at a level of 5/10, right worse than left. (*Id.*). He noted that Graciela moved with a "very antalgic gait." (*Id.* at JE6-64 to 6-65). Dr. Gorsche recorded a normal left knee examination. (JE6-65). For the right knee, he recorded a reduced range of motion. (*Id.*). He noted pain throughout the right knee, particularly at the medial joint line and over the medial collateral ligament. (*Id.*). Dr. Gorsche diagnosed Graciela with right knee pain, a stretched medial collateral ligament, and degenerative changes of the medial meniscus. (*Id.*). Restrictions were maintained. (*Id.*). Dr. Gorsche prescribed a course of physical therapy. (*Id.*).

On August 16, 2017, Graciela returned to Dr. Gorsche. (JE6-64 at 6-66). He dismissed her radiology findings as "basically negative" and ordered additional physical therapy. (*Id.*). Dr. Gorsche asked Graciela why she was using a crutch. (*Id.*). Graciela

said the therapist recommended it. (*Id.*). Dr. Gorsche told her to stop using the crutch. (*Id.*).

On August 30, 2017, Graciela returned to Dr. Gorsche. (JE6-64 at 6-66). She reported she had discontinued using crutches and had a sharp pain in her right knee while moving. (JE6-64 at 6-67). Dr. Gorsche recommended a cortisone injection. (*Id.*). Graciela said she wished to speak to another physician. (*Id.*).

On September 6, 2017, Graciela was seen at Peoples Clinic for the first time in over a year. (JE4 at 4-35, 4-38). She reported increased stress and lack of sleep. (*Id.* at 4-38). She reported she had “not been allowed to go back to work” and that she was “stressed about how long this process is taking.” (*Id.* at 4-39). Graciela was diagnosed with anxiety associated with depression. (*Id.* at 4-41). She was prescribed trazadone. (*Id.*).

On September 13, 2017, Graciela returned to Allen Occupational for assessment of left knee pain. (JE3-27). She indicated bilateral burning pain in the lower extremities of 7-8/10. (JE3-27 at 3-28). She stated her knees would sometimes lock or give out. (*Id.*). Examination showed edema and crepitus with abnormal deep flexion and weight bearing. (*Id.* at 3-29). Graciela was instructed to limit physical exertion and to avoid use of stairs, prolonged sitting, standing, or walking, weight bearing, and kneeling, squatting, crawling, and crouching. (*Id.* at 3-30).

On September 14, 2017, Graciela returned to Dr. Gorsche for assessment of the right and left knee. (JE6-68). On examination, the left knee demonstrated global tenderness. (*Id.*). The right knee had limited extension. (*Id.*). A cortisone injection was performed on the right knee. (*Id.* at 6-69). An MRI of the left knee was ordered. (*Id.*). Graciela’s restrictions were maintained. (*Id.*).

On September 22, 2017, an MRI of the left knee was performed at Allen Hospital. (JE7-89). It identified mild chondromalacia in the patella and a small popliteal cyst. (*Id.*).

On September 26, 2017, Graciela returned to Dr. Gorsche. (JE6-70). He said he had no diagnosis other than pain. (*Id.*). No relief was noted from the cortisone injection. (*Id.*). Dr. Gorsche decided to “get her moving along.” (*Id.*). Graciela’s restrictions were reduced to no climbing or squatting and no carrying above 25 pounds. (*Id.*).

On October 10, 2017, Graciela again saw Dr. Gorsche. (JE6-70 at 6-71). To convince Dr. Gorsche of her symptoms, she showed him a picture of her legs swollen at the end of the day. (*Id.*). He had no diagnosis for her complaints and reduced her restrictions to no squatting or kneeling. (JE6-70 at 72). He prescribed Tolectin. (*Id.*).

On October 31, 2017, Graciela saw Dr. Gorsche for the last time. (JE6-70 at 73). He stated he did not have a good diagnosis and recommended a second opinion. (*Id.*). While not knowing what was wrong with her, he reduced her restrictions to no squatting. (*Id.*).

On November 2, 2017, Graciela went to Peoples Clinic for a second opinion of her bilateral knee pain. (JE 4-42). She stated she could not fully extend her left leg and both the left leg and knee were hurting due to compensation for the right leg. (*Id.*). Graciela told the doctor “I need my life” and “I need to move my body.” (*Id.*). Her MRI was reviewed. (*Id.*). She was advised to return to Allen Occupational and request a second opinion. (*Id.*).

On November 16, 2017, Graciela saw Dr. Benjamin Torrez (Dr. Torrez) at Cedar Valley. (JE5-55). Graciela recounted a history of bilateral knee pain, weakness, instability, stiffness, swelling, catching, and locking. (*Id.*). On examination, the right knee demonstrated medial and lateral joint line tenderness with limited range of motion and

significant tightness. (*Id.*). The left knee was positive for patellofemoral grinding. (*Id.*). Graciela was diagnosed with a right knee bucket handle lateral meniscus tear and left knee patellofemoral syndrome. (*Id.*). A left knee injection was performed and it was determined to proceed with surgery for the right knee. (*Id.*).

On December 5, 2017, Graciela was seen by Dr. Torrez at Allen Hospital for right knee surgery. (JE7-90). The diagnosis was a partial lateral meniscus tear, medial plica, grade 2 chondromalacia in the lateral component, grade 3-4 chondromalacia in the patella, and grade 3 chondromalacia in the medial femoral condyle. (*Id.*). Dr. Torrez performed a partial lateral meniscectomy, Hoffa's fat pad partial excision and plica excision, and a chondroplasty of the patella and medial femoral condyle. (*Id.*).

On December 18, 2017, Graciela returned to Cedar Orthopedics and was seen by ARNP Elizabeth Hoy (Hoy), for surgical follow-up. (JE6-74). Graciela was not doing well and reported pain levels of 10/10 while active. (*Id.*). She was completely restricted from work. (*Id.* at 6-75). On December 28, 2017, Graciela was released back to sit-down work and driving. (*Id.* at 6-76).

On January 11, 2018, Graciela returned to Dr. Torrez at Cedar Orthopedics with her physical therapist. (JE6-74 at 77). The therapist reported no sensation in the right posterior knee and that it seemed to be stuck. (*Id.*). Pain ranged from 3/10 to 10/10. (*Id.*). Graciela was diagnosed with arthrofibrosis and restricted from work. (*Id.* at 6-78).

On January 12, 2018, Graciela was seen by Dr. Torrez at Allen Hospital. (JE7-93). A right knee manipulation with injection under anesthesia was performed. (*Id.*). Graciela testified that the right knee manipulation was "the worst thing that could have happened." (HT 44). After recovering from the anesthesia, the pain migrated from her knee to her entire body. (*Id.*). She developed extremely high blood pressure due to the pain and had

to go to the emergency room. (JE 4-45; HT 44). She testified she continues to take blood pressure pills. (HT 45).

On January 24, 2018, Graciela was seen at Peoples Clinic for follow-up of high blood pressure. (JE4-45). By history, she had presented to the Allen Hospital emergency room the previous day with headaches, dizziness, right-sided shoulder and arm pain, and elevated blood pressure. (*Id.*). Her blood pressure reached a maximum of 202/87 in the emergency room. (*Id.*). It remained elevated at 150/98. (*Id.* at 4-47). Graciela said “I have a lot of pain throughout my whole body.” (*Id.* at 4-45). On examination, it was noted she walked slowly with a limp. (*Id.* at 4-46). Her blood pressure medication was adjusted and she was instructed to get her handicap sticker renewed by Dr. Torrez. (*Id.* at 4-47).

Graciela also reported increased anxiety due to worries about chronic knee pain. (JE4-45 at 4-47). She was advised to stop home measurements of blood pressure because it was worsening her anxiety. (*Id.*). Follow-up for depression was recommended. (*Id.*).

On January 30, 2018, Hoy returned Graciela to sit-down work only. (JE6-81). On February 12, 2018, Dr. Torrez responded to a letter dated February 6, 2018, from the workers’ compensation carrier. (*Id.* at 6-82). He stated that Graciela could try standing in four-hour shifts with a progression of two hours every two weeks until she reached eight hours. (*Id.*). In a follow-up note he recommended 10 minutes of sitting down each hour. (*Id.* at 6-83).

On March 5, 2018, Graciela returned to Dr. Torrez at Cedar Valley. (JE5-56). A new MRI of her right knee was reviewed and demonstrated the following:

1. Complex interstitial tear of the distal quadriceps tendon, with laminar separation of the deep-middle and middle-superficial layers, without retracted microtear.
2. Grade 3 chondromalacia of the patella, with severe chondral thinning of the patellar apex.

3. Chronic MCL sprain, without active inflammation.

(*Id.*). Graciela was assessed with a rupture of the right quadriceps tendon, chondromalacia, and sciatica (back pain resulting from irritation of the sciatic nerve). (*Id.*). New pain radiating from the hip down to the foot was also noted. (*Id.*). Another arthroscopy with synovectomy and right quad tendon repair was recommended. (*Id.* at 5-56). Restrictions were maintained. (*Id.* at 5-57). A referral to a neurosurgeon for sciatica was recommended. (*Id.*).

On March 29, 2018, Graciela was seen by Dr. Matthew Bollier (Dr. Bollier) at University of Iowa Hospitals and Clinics (UIHC). (JE8-95). He recorded complaints of bilateral leg and groin pain, ranging from 2/10 at the start of the day to 8-9/10 at the end of the day. (*Id.*). Other symptoms included numbness, pulsation, heaviness, and inflammation throughout the lower legs, with increased swelling after activity. (*Id.*). Graciela stated that the right knee felt like it would give way. (*Id.*). On examination, Dr. Bollier found significant quad atrophy in the right leg compared to the left. (*Id.* at 8-96). Range of motion was also significantly reduced. (*Id.*). There was tenderness to palpation, particularly over the lateral joint line. (*Id.*). Graciela's gait was noted to be antalgic. (*Id.*). X-rays showed a stable disuse osteopenia and small joint effusion in the right knee. (*Id.* at 8-97). Dr. Bollier diagnosed Graciela with bilateral knee pain. (*Id.*). He recommended proceeding with a capsular release of the right knee following strengthening in physical therapy. (*Id.*). A total knee replacement was noted as a possible future consideration due to "early arthritis." (*Id.*). Graciela was restricted to office-type work only. (*Id.*).

On May 3, 2018, Graciela returned to Cedar Valley for an EMG of the right leg and paraspinal muscles. (JE5-61). The results were normal. (*Id.*).

On May 14, 2018, Graciela returned to Dr. Bollier at UIHC for the right knee only (JE8-102). Her pain had not improved, though she felt her strength had increased. (*Id.*). She was noted to be using a cane to ambulate. (*Id.*). Anxiety, excessive worry, and excessive nervousness were noted as new since the last visit. (*Id.*). On examination, Graciela's gait was still antalgic, though improved from the prior visit. (*Id.* at 8-103). Sensation in the right leg was diminished along the entire foot, anterolateral lower leg, and anterolateral thigh. (*Id.*). It was diffusely tender to palpation and was stiff with passive range of motion. (*Id.*). Additional therapy and a TENS unit were prescribed. (*Id.*). On May 23, 2018, Dr. Bollier approved use of a riding lawnmower. (*Id.* at 8-105).

On June 14, 2018, Graciela was seen by ARNP Elayne Gustoff (Gustoff) at UIHC for increased right knee pain. (JE8-102 at 8-106). Gustoff conducted the first full examination of Graciela in some time. She recorded bilateral knee and low back pain, which she rated at 7/10. (*Id.*). Graciela stated she had been using a lawnmower at work, which was causing "nerve-like sensations" and swelling in the right lower back. (*Id.*). Graciela also reported that her right lower leg was always colder than the left and appeared a darker red. (*Id.*).

On a list of positive symptoms, Gustoff listed pain in the legs, swelling of the feet and legs, joint and muscle pain, excessive worry, and excessive nervousness. (*Id.*). On examination, Graciela was noted to have an antalgic gait. (*Id.* at 8-107). Gustoff also stated Graciela's right leg was "markedly" colder than the left with visible color change. (*Id.*). The right knee remained stiff. Graciela was diagnosed with right knee pain and dysesthesias. (*Id.*). Gustoff recommended evaluation with the pain clinic for possible chronic regional pain syndrome (CRPS) followed by a functional capacity exam (FCE) with Dr. Chen. (*Id.*). Graciela was restricted to seated work only. (*Id.*).

On June 27, 2018, Graciela returned to Gustoff. (JE8-102 at 8-108). She continued to have bilateral knee and low back pain, as well as temperature and color changes in her right leg. (*Id.*) Graciela stated she felt like her right knee was bone on bone. (*Id.*) Gustoff recorded that Graciela was “feeling down or depressed” and exhibited “excessive worry” and “excessive nervousness.” (*Id.*) Graciela was assessed with right knee pain, dysesthesias, and severe quad weakness. (*Id.* at 8-109). Restrictions were maintained. (*Id.*) Physical therapy for pain desensitization, range of motion, and strengthening was ordered. (*Id.*)

From July 16, 2018, to November 20, 2018, Graciela worked a light duty job at WCSD as a clerk typist. (Ex. 5-78). She filed papers, sorted mail, and did similar tasks with paperwork. (*Id.*) Botchway testified that this was a “created position” that does not normally exist. (*Id.* at 5-59). When asked why the position ended, he said “it wasn’t a position” and stated there was no need for her duties outside of a particular busy time period. (*Id.* at 5-60).

On August 1, 2018, Graciela was seen by Dr. Chen at UIHC on referral from Dr. Bollier and the workers’ compensation carrier’s risk management company. (JE8-110). She reported 8/10 pain. (*Id.*) The review of systems included joint and muscle pain, swelling of the feet and legs, depression, anxiety, excessive worry, and excessive nervousness. (*Id.* at 8-111). On examination, Graciela had an antalgic gait with limited motion in the right knee. (*Id.* at 8-112).

Dr. Chen had Graciela undergo specific testing for mental health conditions and had Graciela fill out four separate psychological questionnaires. (JE8-110 at 8-112, 8-114). These included the PROMIS (Patient-Reported Outcomes Measurement Information System) 10 Global Health, ORTHO PCS (Pain Catastrophizing Score),

ORTHO FABQ (Fear Avoidance Behavior Questionnaire), and HADS (Hospital Anxiety and Depression Score) questionnaires. Dr. Chen found Graciela had hypersensitivity of the nervous system, high pain catastrophizing, high fear avoidance behavior, and severe anxiety and depression. (*Id.*). Dr. Chen assessed Graciela with chronic pain of the right knee, quadriceps weakness contributing to an antalgic gait and knee pain, severe anxiety contributing to pain, and severe depression contributing to pain. (*Id.* at 8-115). Dr. Chen recommended she pursue alternative work duties allowing her to remain in a seated position. (*Id.*). Graciela was prescribed duloxetine and restricted from kneeling or squatting with the right knee. (*Id.*).

On August 31, 2018, Graciela returned to Dr. Chen. (JE8-110 at 8-116). His findings were largely the same, but in his review of symptoms he also noted the presence of back pain. (*Id.* at 8-117). He prescribed Cymbalta and Lyrica. (*Id.* at 8-123). Due to ongoing complaints of leg swelling and color change, a triple phase bone scan was ordered to determine if Graciela had CRPS. (*Id.*). Restrictions were maintained. (*Id.*).

On September 21, 2018, Graciela was seen at UIHC for the bone scan. (JE8-110 at 8-124). It showed bilateral, left greater than right, first MTP degenerative osteoarthritis, mild hyperperfusion and hyperemia of the left leg and foot suggestive of underlying inflammatory process, and mild right patellar osteoarthritis. (*Id.* at 8-125).

On October 1, 2018, Graciela had her last appointment with Dr. Chen. (JE8-110 at 8-126). Her review of symptoms continued to note back pain as well as gait problems. (*Id.* at 8-127). Medication had not been helpful for her symptoms. (*Id.*). The bone scan of the right knee was noted to show decreased uptake compared to the left, which Dr. Chen attributed to disuse. (*Id.*). Dr. Chen placed Graciela at maximum medical improvement (MMI). (*Id.* at 8-132). He assigned permanent work restrictions of no

kneeling, squatting, or crawling with the right knee, with sitting and standing as tolerated. (*Id.*). She was restricted from lifting more than 20 pounds on an occasional basis. (*Id.*). Based on her right flexion contracture of 20 degrees, he assigned 35% impairment of the right lower extremity. (*Id.*).

On November 30, 2018, Graciela was seen for an IME by Dr. Stanley Mathew (Dr. Mathew). (Ex. 2-25). Dr. Mathew identified the following conditions:

1. Chronic bilateral knee pain status post right knee partial lateral meniscal tear.
2. Chondromalacia lateral compartment, chondromalacia of the patellae, chondromalacia of the medial femoral condyle.
3. Status post right knee arthroscopy, partial lateral meniscectomy, Hoffa's fat pad partial excision and plica excision, chondroplasty patella, and medial femoral condyle.
4. Right knee arthrofibrosis status post manipulation under anesthesia.
5. Bilateral lower extremity pain and weakness.
6. Neuropathic pain of the right lower extremity.
7. Myofascial pain syndrome.
8. Depression.
9. Anxiety.
10. Enthesopathy of the lumbar spine.
11. Enthesopathy of the hips.

Dr. Mathew related the above conditions to Graciela's work injury. (*Id.* at 2-29). He stated the right knee injury was a direct cause for her surgeries, neuropathic pain, exacerbation of myofascial pain syndrome, and worsening of prior low back pain. (*Id.*). He also stated that her poor body mechanics led to her favoring her left side, leading to a progressive decline in mobility and function. (*Id.*).

Dr. Mathew assigned a whole person impairment rating of 14% to the right lower extremity, 10% to the left lower extremity, and 5% to the low back, for a total functional whole person impairment of 28%. (Ex. 2-25 at 2-29, 2-30). He recommended further care for her myofascial pain syndrome and depression via a physiatrist and medical psychologist. (*Id.* at 2-30). He also recommended evaluation by a chronic pain specialist

and an orthopedic doctor with an eye towards a possible right knee replacement. (*Id.*). Dr. Mathew restricted Graciela to working in a seated position, lifting no more than 20 pounds, no prolonged standing and walking, and no bending or squatting. (*Id.*).

From December 10, 2018, through June 7, 2019, Graciela worked a second light duty job as a clerk typist at WCSD. (Ex. 5-78). Botchway testified that Graciela was unable to perform the duties of this position and was terminated from it. (*Id.* at 5-58). When asked to clarify, he described an inability by Graciela to communicate effectively with parents, students, staff members, and fellow employees. (*Id.*) She also struggled with typing. (*Id.*). Botchway stated he did not know whether Graciela's issues were due to a language barrier or some other problem. (*Id.* at 5-58, 5-59).

On December 17, 2018, Dr. Mathew signed an opinion letter clarifying some of his opinions. (Ex. 2 at 31-35). He notably identified three types of pain – neuropathic pain limited to the right lower extremity, chronic muscular and arthritic pain in the bilateral extremities and low back, and whole-body myofascial pain/fibromyalgia. (*Id.* at 31-33). He related these pain syndromes to Graciela's work injury. (*Id.*). Dr. Mathew stated his office could handle management of Graciela's pain, leading to a reduction in pain symptoms and increased quality of life. (*Id.* at 34).

On January 4, 2019, Dr. Manshadi saw Graciela for a second IME. (Ex. 1-6). He causally related right knee and ankle pain, left knee pain, right-sided SI joint dysfunction, and anxiety and depression to her work injury. (Ex. 1-6 at 1-10). He also stated that her myofascial pain and arthritis had been aggravated by her work injury. (*Id.*). Dr. Manshadi assigned 14% impairment of the whole person to the right knee, 3% impairment to the right ankle, 5% impairment to the low back, 3% impairment to anxiety and depression,

3% impairment to myofascial pain, and 2% impairment to the left lower extremity. (Ex. 1-6 at 1-11). This totaled 27% impairment to the whole person. (*Id.*).

Dr. Manshadi recommended a right ankle brace, chronic pain treatment, and a right knee replacement “sooner rather than later.” (*Id.*). He also recommended counseling and medication for depression and anxiety. (*Id.*). Dr. Manshadi restricted Graciela to sit-down work with sitting, standing, and walking as needed. (*Id.*). He recommended no lifting over 15 pounds on an occasional basis. (*Id.*). She was to avoid repetitious bending or twisting, climbing ladders, stairs, and slipper or uneven surfaces. (*Id.*).

On February 13, 2019, Dr. Manshadi wrote an addendum to his report after having reviewed old IBP medical records from circa 2000, which he had not recalled earlier. (Ex. 1-12). He agreed there had been some ongoing issues with myofascial pain and arthritis, but noted Graciela had performed her job without difficulty to date, therefore, his opinions remained the same. (*Id.*).

On February 24, 2019, Dr. Bollier conducted a chart review evaluation for WCSD’s adjustor. (JE8-110 at 8-133, 8-136). He did not examine Graciela. (JE8-110 at 8-136). Dr. Bollier opined that her need for a knee replacement was due to pre-existing degeneration of the knee. (*Id.* at 8-137). He stated there was no report of back pain in the UIHC clinic notes. (*Id.*).

On March 26, 2019, Graciela filed an alternate medical care claim for her pain syndromes, anxiety and depression, and right knee complaints. (Agency Record). WCSD denied liability. (Agency Record).

On April 25, 2019, Graciela attended an IME with Dr. Jonathon Fields (Dr. Fields) at the request of WCSD. (Ex. E-1). He assessed her with chronic back pain unrelated to

her work injury. (*Id.* at 6). Dr. Fields incorrectly stated there was no reference to back pain in the Allen Occupational records. (JE3-11; Ex. E-6). He also incorrectly recorded Graciela as stating her back pain had always been the same. (Ex. E-6; HT at 67-68). Dr. Fields did not reference the findings of sciatica and back pain noted in the records of Dr. Torrez, Gustoff, or Dr. Chen. (Ex. E at 1-7).

On May 31, 2019, Graciela returned to Dr. Bollier for further evaluation. (JE8-138). She was noted to have antalgic gait and making use of a cane. (JE8-138 at 8-139). He stated there was no significant improvement since her last visit. (*Id.*). No further intervention was recommended “related to work comp.” Dr. Bollier recommended a lumbar spine MRI “outside of work comp.” (*Id.*). Restrictions were maintained. (*Id.*).

On June 17, 2019, Dr. Mathew signed a second opinion letter after he had the opportunity to review the IBP medical records and Dr. Manshadi’s, Dr. Bollier’s, and Dr. Fields’s subsequent reports. (Ex. 2 at 36-37). He affirmed his original opinions and stated explicit disagreement with the causation opinions of Dr. Bollier and Dr. Fields relating to the right knee replacement and whole-body injuries. (*Id.*).

On July 20, 2019, Dr. Ascheman, a nonmedical psychologist, performed an independent records review. (Ex. D-1). Dr. Ascheman opined there was insufficient evidence to result in a diagnosis of depression or anxiety. (Ex. D-1 at D-4).

Graciela has not worked since the end of her last clerk typist position. (HT 50). She currently performs homemaking tasks and goes to school for English and computer skills. (HT 53-54). Graciela has applied for dozens of jobs without success since her termination from WCSD. (Ex. 5 at 80-86; Ex 6 at 92-102). This includes jobs both in the WCSD system and elsewhere.

CONCLUSIONS OF LAW

The burden is upon the claimant to prove both that the injury “arose out of” and “in the course of” his or her employment. *Koehler Elec. v. Wills*, 608 N.W.2d 1, 3 (Iowa 2000). An injury “arises out of” the employment when there is a causal relationship between the employment and the injury, and the injury must be a “rational consequence of the hazard connected with the employment.” *2800 Corp. v. Fernandez*, 528 N.W.2d 124, 128 (Iowa 1995) (citations omitted). Graciela has the burden of proving by a preponderance of the evidence that her alleged injuries arose out of and in the course of her employment. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991). A possibility of causation is not sufficient; a probability is necessary. *Holmes v. Bruce Motor Freight, Inc.*, 215 N.W.2d 296, 297 (Iowa 1974). The question of causal connection is within the domain of expert testimony. *Lithcote Co.*, 471 N.W.2d at 66. The weight to be given expert opinions is for the Commissioner to decide. *Id.*

The district court’s review of final agency action is governed by Iowa Code chapter 17A (2013). *Mike Brooks, Inc. v. House*, 843 N.W.2d 885, 888 (Iowa 2014). Under chapter 17A, the district court acts in an appellate capacity to correct errors of law. *Id.* The district court is bound by the Commissioner’s findings of fact as long as those findings are supported by substantial evidence. *Evenson v. Winnebago Indus., Inc.*, 881 N.W.2d 360, 333 (Iowa 2016).

Substantial evidence is “the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1). While reviewing an agency action, the district court may only reverse or modify if the Commissioner’s

decision is erroneous under one of the provisions set forth in section 17A.19(10)(a)-(n), and a party's substantial rights were prejudiced as a result. *Gits Mfg. Co. v. Frank*, 855 N.W.2d 195, 197 (Iowa 2014). Therefore, the district court should reverse only "upon a showing that the commissioner's application of law to the facts of this case meets the demanding 'irrational, illogical, or wholly unjustifiable' standard of section 17A.19(10)(m)." *Midwest Ambulance Serv. v. Ruud*, 754 N.W.2d 860, 865 (Iowa 2008).

"If the findings of fact are not challenged, but the claim of error lies with the agency's interpretation of the law, the question on review is whether the agency's interpretation was erroneous, and [the district court] may substitute [their] interpretation for the agency's." *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006) (citing Iowa Code § 17A.19(10)(c)). In addition, if "the claim of error lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." *Id.* (citing Iowa Code §§ 17A.19(10)(i), (j)). "[T]he commissioner as the fact finder has the responsibility for determining credibility of witnesses," and the district court is "bound by the commissioner's findings if supported by substantial evidence." *Sherman v. Pella Corp.*, 576 N.W.2d 312, 320 (Iowa 1998).

ANALYSIS

A. The right knee condition is a portion of Graciela's 65% industrial disability rating. Graciela sustained an admitted injury to her right knee. (Hearing Report). It is stipulated that Graciela sustained permanent disability to her right lower extremity. *Id.* The parties do not contest the functional impairment rating of the right knee is 35% to the right lower extremity. However, due to receiving multiple injuries

extending into the whole-person, as discussed in subsequent sections, the Commissioner correctly assessed the right knee injury under an industrial analysis. Iowa Code § 85.34(2)(u).² The findings and conclusions on this issue should be affirmed.

B. The left knee condition is a portion of Graciela's 65% industrial disability rating. Graciela sustained an admitted injury to her left knee. (Hearing Report). The Commissioner found in his decision that Graciela sustained permanent disability to her left lower extremity. Due to receiving multiple injuries extending into the whole-person, the Commissioner assessed the left knee injury under an industrial analysis. Iowa Code § 85.34(2)(u).

There is objective evidence of left knee abnormalities. Graciela had a left knee MRI demonstrating objective findings. (JE7-89). On November 16, 2017, Dr. Torrez diagnosed Graciela with left knee patellofemoral syndrome based on this study. (JE5-55). Further, Graciela complained of left knee pain to every medical provider she was referred to. (JE3-11; JE5-55; JE6-64; JE8 at 95, 106). As late as June 27, 2018, Dr. Gustoff at UIHC recorded bilateral knee pain at a level of 4-7/10. (JE8-108). Graciela's September 21, 2018, bone scan provided additional objective evidence, demonstrating first MTP degenerative osteoarthritis of the left leg and mild hyperperfusion and hyperemia of the left leg and foot suggestive of underlying inflammatory process. (JE8-108 at 8-125).

Dr. Mathew and Dr. Manshadi assigned functional impairment ratings and restrictions to the left knee. Graciela acknowledges that relevant information was not initially provided to Dr. Manshadi or Dr. Mathew. While the court does not condone the

² This claim predates the 2017 changes to the workers' compensation statute and was arbitrated under the old version of the law. The substantially modified industrial disability statute is now found under Iowa Code § 85.34(2)(v).

way in which this failure to disclose occurred, concerns about this deficiency were alleviated when the information was later provided to both doctors and they were given the opportunity to amend their opinions. (Ex. 1-12; Ex. 2 at 36-37).

The question of causal connection is within the domain of expert testimony. *Lithcote Co.*, 471 N.W.2d at 66. There are sufficient expert opinions for the Commissioner to rely upon in determining Graciela sustained a permanent impairment to the left knee. The weight to be given expert opinions is for the Commissioner to decide. *Id.* The Commissioner's reliance on the opinions of Dr. Mathew and Dr. Manshedi is not "irrational, illogical, or wholly unjustifiable." The findings and conclusions on this issue should be affirmed.

C. Graciela sustained a physical injury to the low back and body as a whole. If a claimant is found to have sustained permanent disability to a single unscheduled body part or condition as a result of her work injury, she is entitled to industrial disability. Iowa Code § 85.34(2)(u). The unscheduled physical body parts at issue here include the low back, hip, and myofascial pain. There is also a right ankle injury that would factor into the total impairment. The Commissioner correctly determined that Graciela sustained permanent disability due to all of the above conditions.

Graciela's right ankle impairment is discussed only by Dr. Manshadi. His statement is unrebutted. (Ex. 1-11). This injury is related and was properly assessed.

Graciela has a well-established history of low back and hip pain due to her work injury. As previously stated, her low back pain dates to her original evaluation following the date of injury. (JE3-11). Dr. Torrez assessed her with sciatica from her nerve injury and recommended a referral to a neurosurgeon. (JE5-56). He also noted pain radiating from the hip down to the foot. (*Id.*). Both Dr. Gustoff and Dr. Chen at UIHC recorded

ongoing back complaints throughout Graciela's treatment at UIHC. (JE8-101 at 8-106, 8-108, 8-117, 8-127).

Both Dr. Mathew and Dr. Manshadi causally related Graciela's back pain to her work injury and assigned permanent impairments of 5% of the whole person. (Ex. 1-11; Ex. 2-30). They carefully considered, and discarded, her past history of a back injury at her prior employer IBP when reaching their conclusions. (Ex. 1 at 11-12; Ex. 2 at 32, 37). This determination was reasonable. As Dr. Manshadi pointed out, Graciela worked at WCSD without difficulty for 14 years performing her assigned job duties. (Ex. 1-11).

Dr. Mathew and Dr. Manshadi also had a clear mechanism of injury to rely upon in making their opinions. Graciela's medical records are replete with references to an antalgic gait following her injury. (Ex. 6-64; Ex. 8 at 96, 103, 107; 112, 115, 139). Dr. Manshadi credibly related Graciela's SI joint dysfunction to a result of "poor body mechanics and overcompensation" on this basis. (Ex. 1-10).

Dr. Mathew, while noting a history of arthritic pain in the low back, similarly stated that Graciela's antalgic gait had worsened this pain. (Ex. 2-32). There are ample expert opinions for the agency to rely on to arrive at a determination there was permanent impairment to low back and hip. The weight given expert opinions is for the Commissioner to decide. *Lithcote Co.*, 471 N.W.2d at 66. The Commissioner's reliance on the opinions of the Dr. Mathew and Dr. Manshadi is not "irrational, illogical, or wholly unjustifiable."

Graciela's whole-body or myofascial pain is causally tied to her right knee surgeries. On January 12, 2018, Graciela had a right knee manipulation with Dr. Torrez. (JE7-93). After recovering from the anesthesia, the pain migrated from her knee to her

entire body. (HT 44). She developed extremely high blood pressure due to the pain and required her to go to the emergency room for treatment. (JE 4-45; HT 44).

Graciela's new myofascial symptoms are severe compared to her prior myofascial pain. Prior to her work injury, her symptoms were so well under control she was going three to six months or more between visits. (JE5 at 5-48 to 5-52). She was on low doses of medication and performing home exercises. (JE5 at 5-52).

Dr. Mathew opined that a common cause of whole-body pain is a sudden traumatic event, identifying the initial work injury and corrective surgeries. (Ex. 2-33). This is in line with Graciela's testimony and records of the right knee manipulation and subsequent care. While Dr. Mathew could not precisely quantify the pain, Dr. Manshadi agreed with his causation opinion and assigned 3% impairment to the whole person. (Ex. 1-11).

The Commissioner correctly found that Graciela sustained permanent disability due to the above conditions. There is sufficient evidence to justify his finding. The Commissioner's reliance upon the above facts is not "irrational, illogical, or wholly unjustifiable." The findings and conclusions on this issue should be affirmed.

D. Graciela sustained a mental injury to the body as a whole. Mental injuries are also unscheduled body parts not otherwise listed in the Iowa Code. Iowa Code § 85.34(2)(u). The mental components at issue are anxiety and depression. The Commissioner correctly determined that Graciela sustained permanent disability due to these conditions.

Graciela's mental conditions appear in the record as early as September 2017, only a few months after the initial injury. At that time, she reported to Peoples Clinic that she had "not been allowed to go back to work" and that she was "stressed about how long this process is taking." (JE 4-41). She was prescribed trazadone. (*Id.*). On January 24, 2018,

Graciela again reported to the Peoples Clinic increased anxiety due to worries about chronic knee pain during her high blood pressure episode. (JE4-47). She was advised to stop home measurements of blood pressure because it was worsening her anxiety. (*Id.*). As previously stated, her blood pressure issue was causally related to her right knee manipulation. (JE4-45; HT 44).

Dr. Bollier and Dr. Chen assessed Graciela with anxiety and depression on multiple occasions. (JE8 at 8-102, 8-111). Dr. Chen ran psychiatric tests on three different dates of service. (JE8 at 8-112 to 8-114, 8-120 to 8-122, 8-129 to 8-131). In each instance, Dr. Chen found evidence of severe anxiety and depression. (*Id.*).

Dr. Manshadi and Dr. Mathew both assessed Graciela with anxiety and depression as a result of her work injury. (Ex. 1-11; Ex. 2-29). Dr. Mathew specifically questioned Graciela about anxiety and depression and did not rely solely upon her records. (HT 66). Dr. Manshadi assigned a 3% impairment of the whole person to her anxiety and depression. (*Id.*). The opinions of Dr. Manshadi and Dr. Mathew are credible given their medical background in pain and its effects. (Ex. 1 at 14-22; Ex. 2 at 38-39).

The opinions of Dr. Manshadi and Dr. Mathew are supported by the testimony of Graciela and her daughter, Maria. Maria testified that Graciela changed from someone who was optimistic about everything to someone who continually felt useless and down. (HT 17). She also stated that Graciela now becomes angry easily. (*Id.*). Maria specifically contrasted this with prior incidents of distress Graciela experienced over the death of her mother and worrying about her son. (*Id.* at 18-19). Graciela testified she is currently taking medication and attending counseling to try to move on with her life. (*Id.* at 54-55).

The Commissioner correctly found that Graciela sustained permanent disability due to the above conditions. Sufficient evidence supports his finding. The Commissioner's

reliance upon the above facts is not “irrational, illogical, or wholly unjustifiable.” The findings and conclusions on this issue should be affirmed.

E. Whether Graciela is entitled to reimbursement of costs awarded by the Commissioner. WCSD did not file a cross-appeal on judicial review and makes no request to reverse the Commissioner’s determination on costs. Graciela represents that WCSD has indicated to her that it no longer disputes this issue. The Commissioner’s assessment of costs should therefore be affirmed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Commissioner’s findings and conclusions on the five issues raised are supported by substantial evidence and are not irrational, illogical, or wholly unjustifiable or an abuse of discretion. The Commissioner’s order is affirmed in its entirety and the Petition is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are assessed to WCSD.



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
CVCV060597	WATERLOO COMMUNITY SCHOOL DIST ET AL VS GRACIELA DEMALDONADO

So Ordered

A handwritten signature in cursive script, reading "Jeanie Vaudt", is written above a horizontal line.

Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa