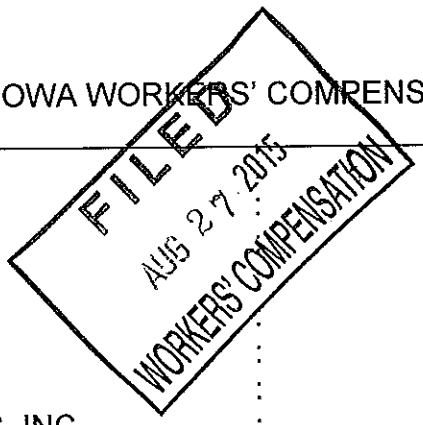
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



CHRISTINE CARLILE,	:	File No. 5047177
Claimant,	:	ARBITRATION
vs.	:	DECISION
POLARIS INDUSTRIES, INC.,	:	
Employer, Self-Insured, Defendant.	:	Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Christine Carlile has filed a petition in arbitration and seeks workers' compensation benefits from Polaris Industries, Incorporated, self-insured defendant.

This matter was heard by Deputy Workers' Compensation Commissioner Ron Pohlman on May 22, 2015 at Des Moines, Iowa. The record in the case consists of claimant's exhibits 1-22; defendant's exhibits A through F as well as the testimony of the claimant and Matt Zbylut.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury on September 4, 2013, which arose out of and in the course of her employment;
2. Whether the injury was the cause of any permanent disability;
3. The extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u);
4. The commencement date for payment of permanent partial disability benefits;
5. The claimant's weekly rate;
6. Whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27;

7. Whether the claimant is entitled to reimbursement for an independent medical evaluation pursuant to Iowa Code section 85.39; and

8. Whether the claimant is entitled to penalties pursuant to Iowa Code section 86.13.

FINDINGS OF FACT

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

The claimant at the time of the hearing was 56 years old. She has a GED. She attained a license as a certified nurse's aide but never worked as a nurse's aide. Her job work includes waitressing, cashiering, clerking and production. At the time that she was hired she did not have restrictions related to her ability to perform manual labor.

The claimant began working at Polaris on July 4, 2010 assembling all-terrain vehicles. Her job involved assembling box frames, putting on heat shields, wire harnesses, tailgates and applying decals. The last step is for the claimant to take the bed and attach it to the back of the all-terrain vehicle. The claimant was required to repetitively lift up to 35 pounds. In late January, early February 2013 the claimant had a fall on ice, which resulted in severe back pain. The claimant was prescribed hydrocodone after this incident. The hydrocodone prescription was renewed six days before the date of the alleged injury in this case. See Exhibit 3, page 9.

The claimant in her deposition denied an injury to her back in the fall on the ice asserting instead that it was her shoulder that was injured. See Exhibit F, page 34. The medical records related to that fall make no reference to shoulder complaints but specifically refer to severe back pain and back trauma. See Exhibit 3, pages 1-11. The claimant contended at hearing that she had had no physical problems performing her work activities before the injury alleged in this case, but the medical records following the slip and fall on the ice included restrictions on lifting at work. See Exhibit 3, page 6.

At the hearing the claimant denied that she had had attendance issues before her work injury, but after she was confronted with her attendance records and corrective notices admitted that she had had attendance issues in the past. The claimant denied at the hearing that at the time she was requested to take a drug test she was under the influence of any illegal drugs and was simply sick with the flu. However, the drug test indicated that she was positive for codeine, marijuana, morphine and opiates. See Exhibit 1, page 6. The claimant alleges that the marijuana in her system was due to her nephew smoking marijuana in her house. In fact, following the alleged date she was injured the claimant continued working full time performing her regular job duties without restriction or need of accommodations until she was terminated for failing the drug test on August 28, 2014.

The claimant alleges that on September 4, 2013 she was lifting a bed onto the back of an ATV when she felt something snap in her back resulting in sudden pain. The

claimant reported the injury to the company nurse, and she was sent to an on-site physical therapist. The therapist applied heat and cold pack treatment and recommended exercises. The claimant was temporarily placed in a lighter duty audit job until that line closed in November of 2013.

The claimant had an MRI on November 14, 2013, which revealed a mild disc bulge toward the right at L2-3 and a moderate right-sided disc bulge at L3-4, which appeared to impinge on the L4 nerve root and left-sided disc bulge at L4-5 with mild impingement of the left L5 nerve root. See Exhibit 6, page 1. The claimant was prescribed hydrocodone and administered three steroid injections.

The claimant was referred for a neurosurgical consult and diagnosed with degenerative disc disease.

Marc Hines, M.D., who performed the claimant's independent medical evaluation, diagnosed the claimant with facet syndrome causing bilateral pain to her knees and disc degeneration. He assigned the claimant a 34 percent permanent impairment rating of the whole person and restricted the claimant to no repeated bending, lifting, or lifting over ten pounds from the floor and no more than 30 pounds from the table. See Exhibit 11, pages 7, 8. However, the claimant acknowledged at the hearing that she did not tell her physicians she had had problems with her back before this alleged work injury. She did not tell her doctors she had been advised to avoid lifting at work before the work injury alleged in this case. Further, she told Dr. Hines that she would lift as many as 110 pieces that could weigh up to 200 pounds. See Exhibit 11, page 5. But at hearing she acknowledged that her job did not require lifting more than 35 pounds. The absence of prior back problems was key in Dr. Hines' analysis, as he referenced that she did not have a history of difficulties with her back. See Exhibit 11, pages 5, 6. Further, the claimant apparently never told Dr. Hines that she had been on hydrocodone for back pain for months before the work injury alleged in this case.

The claimant is not credible.

REASONING AND CONCLUSIONS OF LAW

The first issue in this case is whether the claimant has established that she sustained an injury, which arose out of and in the course of her employment on September 4, 2013.

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 R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and

circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant is not credible, and her report of injury and description of her prior back condition are simply not believable. The claimant has given exaggerated and inconsistent testimony and reports to her experts and treaters with respect to her condition before the incident alleged in this case. Her lack of credibility undermines the value to be given to any opinion that the incident described by the claimant caused the claimant's current back condition. In as much as the claimant has failed to meet her burden of proving a work injury all of the other issues alleged in this case are moot and will not be addressed.

ORDER

THEREFORE IT IS ORDERED:

That claimant take nothing from this file.

Costs of this action are taxed to the claimant pursuant to rule 876 IAC 4.33.

Signed and filed this 27th day of August, 2015.

Ron Pohlman

RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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RRP/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.