BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUL 24 2018
WORKERS' COMPENSATION

MELISSA GOSS,	:	File No. 5051761
Claimant,	:	ARBITRATION
vs.	:	DECISION
SECOND INJURY FUND OF IOWA,	:	Head Note Nos.: 1108.50; 1402.20; 1402.40; 3202
Defendant.	:	

STATEMENT OF THE CASE

Melissa Goss, claimant, filed a petition in arbitration seeking workers' compensation benefits from the Second Injury Fund of Iowa, as defendant. Hearing was held on May 15, 2018 in Council Bluffs, Iowa.

Claimant, Melissa Goss, was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE5, claimant's exhibit 1-2, defendant's exhibits A-H.

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.

The case was fully submitted upon receipt of the parties' post-hearing briefs on June 29, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant is entitled to any benefits from the Second Injury Fund of Iowa?
2. What, if any, credit the Second Injury Fund should receive.

FINDINGS OF FACT

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

Claimant, Melissa Goss, has alleged that she sustained a first qualifying injury to her right upper extremity on May 7, 2014 and a second qualifying injury to her left upper extremity on May 27, 2014. I find claimant has failed to show entitlement to any benefits from the Second Injury Fund of Iowa (SIF).

At the time of the alleged dates of injury Ms. Goss was employed with LifeServe Blood Center as a screener/phlebotomist. She performed hand-intensive work. She alleges that as a result of her work she sustained a cumulative injury to her right elbow on May 7, 2014. She alleges a separate cumulative injury to her left elbow on May 27, 2014.

Claimant did enter into settlements with the employer, LifeServe Blood Center ("LifeServe"), and its insurance carrier, Travelers Indemnity Company of Connecticut ("Travelers"), for the May 7, 2014 and May 27, 2014 dates of injury. On February 17, 2017, this agency approved an Agreement for Settlement for the May 7, 2014 injury. The papers state that LifeServe and Travelers agreed to pay claimant 4 percent of the left upper extremity. Also, on February 17, 2017, this agency approved an Agreement for Settlement for the May 27, 2014 injury. The papers state that LifeServe and Travelers agreed to pay claimant 4 percent of the right upper extremity. (SIF Ex. F & G) I find that the settlement documents are not accurate. Also, I find that the SIF was not a party to those settlement agreements and therefore, is not bound by the terms.

At the request of claimant's attorney, Ms. Goss underwent an IME with Sunil Bansal, M.D. He summarized her treatment as follows:

> Ms. Goss was first seen by her primary care physician for her right elbow pain, and it was felt that it was due to her work activities. She was advised to report this to her employer, which she did, and she was sent to an occupational health clinic. She was placed on work restrictions for her right upper extremity, and provided with splints and an injection into her right elbow.
>
> She had a few follow-up visits, then about a month after her first visit she reported her left upper extremity symptoms to the occupational physician. Because she was not improving, she was sent to an orthopedist. She was given injections into both of her elbows, and sent to physical therapy. She was given a platelet rich plasma injection into her right elbow. This did not help, and actually worsened her pain. She was then sent for an MRI of her right elbow only at that point, as her left side was not as bad. After review of her MRI, she underwent surgery on her right elbow.
>
> She was not satisfied with the treatment she received from the orthopedist, and she was sent for a second opinion to a different orthopedist. Her left-sided symptoms continued to worsen, and she underwent surgery on her left elbow. She also reported her left shoulder

> pain to the orthopedist, but apparently her shoulder injury was denied by workers' compensation. She went to yet another orthopedist for her left shoulder complaints, and an MR/arthrogram was performed. This was negative for any tears, and she was sent to physical therapy. However, this only aggravated her pain.

(Cl. Ex. 1, p. 11)

In his report Dr. Bansal explained claimant's injury. He stated:

> At the time of her injuries, Ms. Goss was employed by Lifeserve Blood Center as a phlebotomist. As a result of her repetitive and physically demanding work activities, she sustained injuries to her bilateral elbows and left shoulder.
>
> Her right elbow became painful first, as she is right-handed. After she was seen by a physician and placed on work restrictions for her right upper extremity, she overcompensated with her left arm and quickly developed similar symptoms in her elbow, as well as her left shoulder.

(Cl. Ex. 1, p. 10)

Russell DeGroote, M.D., one of the physicians who treated Ms. Goss, diagnosed bilateral tennis elbow. Another treating physician, Daniel Gaffney, M.D., stated, "she developed right lateral elbow pain in May of 2014. She soon thereafter developed left lateral elbow pain. The doctor noted that Ms. Goss "thinks they essentially began together." (JE5, p. 1) At hearing Ms. Goss testified that her left upper extremity symptoms began because her left upper extremity had to do more because she had restrictions on her right upper extremity. Her left upper extremity symptoms began quickly after she had restrictions placed on her right upper extremity. Ms. Goss agreed that the symptoms in both of her upper extremities were caused by the same repetitive work. (Testimony)

Ms. Goss argues that it is purely speculation to conclude that the second tear, the second injury, must be due to one arm duty. However, this argument is not persuasive. Even claimant's own expert, Dr. Bansal has stated, "After she was seen by a physician and placed on work restrictions for her right upper extremity, she overcompensated with her left arm and quickly developed similar symptoms in her elbow, as well as her left shoulder." (Cl. Ex. 1, pp. 10 & 15)

I find that Ms. Goss sustained an injury to her right upper extremity as a result of the May 7, 2014 injury. I further find that her left upper extremity symptoms naturally and proximately flowed from the first injury. Additionally, I find that the left upper extremity is a sequela of the right upper extremity injury. The evidence demonstrates that the left upper extremity symptoms developed shortly after Ms. Goss had restrictions placed on her right upper extremity. I find that Ms. Goss has failed to demonstrate that

she sustained a second, distinct injury. Thus, I find that Ms. Goss has failed to demonstrate that she is entitled to benefits from the Second Injury Fund of Iowa.

Because Ms. Goss has failed to demonstrate entitlement to benefits from the Second Injury Fund of Iowa all other issues are rendered moot.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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); Dunlavey 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).

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).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

Iowa Code section 85.34(2)(s) states, "The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such . . . ." The SIF correctly argues that the statute states the dispositive inquiry is whether the cause of the symptoms may be traced back to a single accident, not whether the symptoms manifested on the same date. Because Ms. Goss's left upper extremity symptoms developed as a sequela of her right upper extremity condition it is compensable as part of her May 7, 2014 injury. Therefore, claimant has failed to establish a second qualifying injury and is not entitled to benefits from the SIF.

Claimant argues that the Agreement for Settlements that she entered into with the defendant employer, LifeServe, and its insurance carrier, Travelers establish that she sustained to separate scheduled member cases. I conclude that the settlement documents are not accurate because they do not reflect the accurate body part. Further, I conclude that even if they were accurate those settlements are not binding on the SIF. The Fund is not bound by settlements between the claimant and employer. See Grahovic v. Second Injury Fund, File No. 5021995 (App. October 9, 2009).

Claimant also argues that the evidence demonstrates that she sustained two separate injuries to two separate scheduled member injuries. However, based on the above findings of fact, I conclude that claimant failed to establish by a preponderance of the evidence that she sustained two qualifying injuries. As such, I conclude that claimant has failed to establish entitlement to any benefits from the SIF.

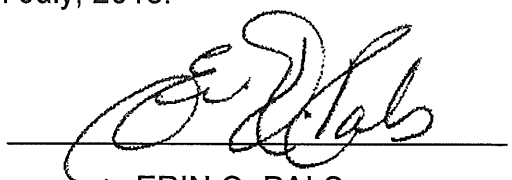
ORDER

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 24th day of July, 2018.



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EQP/kjw

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.