

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 CONCEPCION MOLINA,

Claimant,

vs.

WELLS ENTERPRISES, INC.,

Employer,
Self-Insured,
Defendant.

File No. 21010516.01

ARBITRATION DECISION

Headnotes: 1402.30

STATEMENT OF THE CASE

Claimant, Concepcion Molina, filed a petition in arbitration seeking workers' compensation benefits from Wells Enterprises (Wells), self-insured employer. This matter was heard on August 8, 2022, with a final submission date of September 6, 2022.

The record in this case consists of Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 8, Defendant's Exhibits A through E, and the testimony of claimant, William Sitzmann and Jon Robinson. Serving as interpreter was Piet Koene.

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.

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.
2. Whether the injury is a cause of a temporary disability.
3. Whether the injury is a cause of permanent disability.
4. The extent of claimant's entitlement to permanent partial disability benefits.
5. Commencement date of permanent partial disability benefits.
6. Costs.

FINDINGS OF FACT

Claimant was 60 years old at the time of hearing. Claimant was born in Tijuana, Mexico. Claimant graduated from high school. Claimant speaks some English but needed an interpreter at hearing. (Hearing Transcript, pages 21-22)

Claimant has done cleaning in an apartment complex. Claimant did production work at a candy company. Claimant also did cleaning at Tyson. (Tr., pp. 24-27)

Claimant began at Wells in February of 2015. (Tr., p. 27) Claimant began at Wells in the sanitation department. She moved to a production line job to earn more money. (Tr., p. 29) Claimant testified her job on the production line required her to repeatedly grab popsicles or Dilly Bars off the production line and pack them into boxes. She also was required to pack the boxes into larger containers. (Tr., pp. 30-35)

Claimant's job description indicates the production line work required working with both hands 8-10 hours per day. (Claimant's Exhibit 3, page 22)

Claimant's prior medical history is relevant. In 2015 claimant was assessed as having rheumatoid arthritis. (Joint Exhibit 5, p. 66)

In January of 2017, claimant was evaluated for pain in her arms, left shoulder, neck and back by Jenna King, D.O. Claimant indicated she had memory problems. Claimant indicated she had difficulty walking and moving her arms due to rheumatoid arthritis. Options for treatment for rheumatoid arthritis were discussed. Claimant was recommended to take Plaquenil and Enbrel to treat her condition. Claimant was told she would have irreversible joint damage if she did not actively treat her rheumatoid arthritis. (JE 5, pp. 66-69)

In April of 2017, claimant was treated for pain in her hands and wrists and swelling in her wrists. Claimant had been unable to work for four days. Claimant was not taking medications as recommended in her last visit. Claimant was assessed as having erosive rheumatoid arthritis. (JE 5, pp. 73-76)

In October of 2017, claimant underwent a cervical CT scan. It showed erosions of the C1-C2 joint. (JE 5, p. 81)

In February of 2018, claimant was evaluated as having seropositive rheumatoid arthritis and neck pain and erosion at the C1-C2 level. (JE 5, pp. 83-87)

In March of 2018, claimant was seen in follow-up, in part, for her rheumatoid arthritis and neck pain. Claimant had tenderness at the wrists, elbows, and knees. Claimant also had painful range of motion in the bilateral shoulders. (JE 5, pp. 90-94)

Claimant returned in follow-up in June of 2018 for rheumatoid arthritis. Claimant was more symptomatic for her rheumatoid arthritis. Claimant was difficult to treat because she did not like to take her medications. Claimant indicated she was going to Mexico to seek out "natural" treatments. (JE 5, pp. 95-99)

Claimant was seen in September 2018 for multiple conditions. Claimant still had uncontrolled rheumatoid arthritis. Claimant reported her bilateral wrist pain was at a level 8 on a scale of 1 to 10. (JE 5, pp. 100-104)

Claimant returned in March of 2019. Records indicate claimant was finally ready to go on medication for rheumatoid arthritis as providers in Mexico confirmed her diagnosis. Claimant had bilateral wrist pain at a level of 7 on a scale of 1 to 10. (JE 5, pp. 106-110)

On June 24, 2020, claimant went to the occupational health department at Wells and complained of pain and swelling in her right wrist and the dorsal portion of the hand. Claimant indicated pain was due to staff shortages and having to pack faster on the production line. Claimant was told to ice her wrist and hand and use hand supports. Claimant was also told to take ibuprofen. (JE 8, p. 156)

Between June 24, 2020, and September 24, 2020, claimant saw the occupational nurse at Wells approximately 15 times for similar complaints in the right wrist only. Claimant continued to wear wrist supports during this period. Records indicate that on August 31, 2020, September 9, 2020, September 15, 2020, and September 24, 2020, her condition was slowly improving. (JE 8, pp. 156-170)

On September 17, 2020, claimant was evaluated by Stephanie Walker, PA-C, for pain in the right wrist. Claimant indicated she began noting pain in the right wrist in approximately May of 2020. Claimant had done some light duty work, which helped her symptoms. Claimant was assessed as having right wrist tendinitis and carpal tunnel symptoms. Claimant was given a splint to wear at night. She was told to ice the wrist and continue with ibuprofen. Claimant was returned to work with limited use of the right hand. (JE 1, pp. 1-3)

Claimant returned to Physician's Assistant Walker on September 24, 2020. Claimant was still having difficulty with work. Claimant had a pain level of 3 on a scale of 10. Claimant was prescribed physical therapy. (JE 1, pp. 4-5)

On November 9, 2020, claimant returned to Physician's Assistant Walker. Claimant had an MRI that showed a tear of the scapholunate ligament in the right wrist. Claimant's pain level was 2 on a scale of 10. Claimant was told to continue with her wrist splints and ice. Claimant was returned to work with no use of the right hand. (JE 1, p. 11)

Claimant testified she was off work from approximately November 2020 through February 2021 due to Covid-19. She said the symptoms in her right hand did not resolve during that period of time. (Tr., p. 72)

On February 4, 2021, claimant was evaluated by Rodney Cassens, M.D., for right wrist pain. Claimant had returned to work and was wearing a splint. Claimant was recommended to see an orthopedic specialist. (JE 1, p. 13)

On March 4, 2021, claimant returned to Dr. King in follow-up regarding her rheumatoid arthritis. Dr. King noted at that time,

She is afraid to go on immunosuppressive therapy because of her recurrent sinusitis issues but we discussed that her rheumatoid arthritis is severe and causing the start [of an] effusion in the right wrist and she already has erosions at the atlantoaxial joint, which can lead to instability, subluxation. She has a lot of fatigue and part of the reason why she could be getting recurrent infections is because her rheumatoid arthritis is not well controlled.

(Ex. 5, p. 116)

On March 11, 2021, claimant was evaluated by Yorell Manon-Matos, M.D. Claimant had pain and swelling in the right wrist since May of 2020. Claimant had occasional pain in the left wrist. Claimant was assessed as having bilateral wrist scapholunate advanced collapse pattern of arthritis, right worse than left. Bilateral corticosteroid injections in the wrist were recommended and chosen as a treatment option. Claimant was provided with a new right wrist brace and given restrictions of 5-pound lift on the right. (JE 4, pp. 42-44)

Claimant returned to Dr. Manon-Matos on May 6, 2021. Claimant indicated little relief from the injection. Claimant was again assessed as having bilateral wrist scapholunate advanced collapse pattern of arthritis, right worse than left. A right wrist MRI was recommended. Claimant was returned to work and limited to lifting 1-2 pounds on the right with occasional grip, pinch, push, pull, and reach. (JE 4, pp. 48-50)

Claimant had an MRI of the right wrist on May 26, 2021. It showed:

1. Extensive cysts/erosions with active bone marrow edema (suspected advanced inflammatory arthropathy).
2. TFCC degeneration with central disc and ulnar styloid attachment tears.
3. Multiregional flexor and extensor tenosynovitis.
4. Mild ECU tendinosis with slight subluxation.
5. Multiregional moderate volume joint effusions with synovitis and mild swelling.

(JE 4, pp. 53-54)

Claimant returned to Dr. Manon-Matos on August 12, 2021. Claimant continued to have wrist pain, right greater than left. Claimant's symptoms were aggravated at work. Claimant wore a wrist brace on the right. Claimant was assessed as having bilateral wrist scapholunate advanced collapse pattern of arthritis, right worse than left, bilateral ulnocarpal impaction, right worse than left, rheumatoid arthritis. Dr. Manon-Matos noted:

Most of her pain is related to the bilateral wrist SLAC pattern form of arthritis . . . She declined repeat corticosteroid injections. She also declined surgery. At this point, the patient is at MMI. She is not sure she can perform light duty. Hence, advised a trial of regular work. If she is unable to perform her job duties, the patient will need a formal capacity evaluation with an occupational health specialist.

(JE 4, pp. 61-64)

Claimant testified she declined surgery with Dr. Manon-Matos as she was fearful of a poor outcome. She said she wanted to have a second opinion regarding surgery. (Tr., pp. 41-42)

Claimant testified she tried to return to work. She said that she worked part of the day on August 13, 2021, but had to stop due to wrist pain. Claimant said personnel at Wells told her to go home. (Tr., pp. 43-45) Claimant said the last day she worked at Wells was August 13, 2021. (Tr., p. 75; Ex. 8, page 45)

In an August 26, 2021, report, Douglas Martin, M.D., gave his opinions of claimant's condition following a records review. Dr. Martin opined claimant's complaints were due to her ongoing difficulties with rheumatoid arthritis. He did not believe claimant's rheumatoid arthritis was aggravated or exacerbated by work. Dr. Martin believed claimant's symptoms were a natural progression of claimant's rheumatoid arthritis. (JE 6, p. 138)

Dr. Martin opined that claimant had pre-existing degenerative changes in her wrists and the findings on her MRI are the consequences of untreated rheumatoid arthritis conditions. (JE 6, p. 139)

On September 23, 2021, claimant was evaluated by Dr. King. Claimant's rheumatoid arthritis was flaring and remained uncontrolled. Claimant was taking leflunomide. Claimant did not want to take other medications. (JE 5, p. 135)

In a June 1, 2022, report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an IME. Claimant had constant pain in both hands, right worse than left. Claimant had pain in her left elbow and numbness in all fingers. Claimant had difficulty with gripping. Claimant's last day of work at Wells was on August 13, 2021. (Ex. 8, pp. 44-45)

Dr. Bansal assessed claimant as having right and left wrist scapholunate advanced collapse pattern of arthritis and right and left wrist ulnocarpal impaction. He found that claimant had a 10 percent permanent impairment to the right upper extremity, converting to a 6 percent permanent impairment to the body as a whole. He opined that claimant had a 5 percent permanent impairment to the left upper extremity, converting to a 3 percent permanent impairment to the body as a whole. (Ex. 8, pp. 47-48)

Dr. Bansal opined claimant aggravated her bilateral wrist arthritic condition from her cumulative work at Wells over the years. He opined claimant's job duties led to acceleration of her degenerative arthritis conditions, followed by carpal collapse and midcarpal arthritis. (Ex. 8, p. 48) He opined claimant was a surgical candidate for a bilateral SLAC wrist surgery. (Ex. 8, p. 49)

In a June 29, 2022, letter, Dr. Martin opined claimant's job duties at Wells were not a significant or substantial factor in her bilateral hand condition. He also opined claimant's alleged anxiety and/or depression did not have a relationship to her work at Wells. (JE 6, pp. 141-142)

Claimant testified she had difficulty with memory. (Tr., p. 77) She said she had arthritis in her feet and not her hands. (Tr., p. 47)

Claimant said she cannot return to work as a housekeeper. She does not believe she could return to work at Wells. (Tr., p. 52)

Claimant said her children and other family members do her housekeeping and mow her lawn. (Tr., pp. 52-53) Claimant says she has some difficulty with activities of daily living and difficulties with sleeping. (Tr., pp. 53-54) Claimant testified she has applied for work at Walmart but was not hired. (Tr., p. 51)

CONCLUSION OF LAW

The first issue to be determined is whether claimant sustained a work injury that arose out of and in the course of employment at Wells.

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. 6.904(3).

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" refer 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 Elec. 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 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).

As detailed above, claimant has a long history of rheumatoid arthritis dating back to 2015. (JE 5, p. 66) In 2017, claimant told Dr. King she had difficulty walking or moving her arms due to rheumatoid arthritis. (JE 5, p. 66)

In 2018 through 2019 claimant actively treated with Dr. King for rheumatoid arthritis. In September of 2018, claimant reported her wrist pain at a level “8” on a scale of 10. In March of 2019, she reported that she was at a pain level in her wrist of 7 on a scale of 10. (JE 5, pp. 102, 107)

Claimant had concerns and fears with using medication recommended by Dr. King to treat her rheumatoid arthritis. Claimant was informed that failure to treat her rheumatoid arthritis would cause irreversible joint damage throughout her body. (JE 5, pp. 69, 99) Dr. King’s record indicates claimant was difficult to treat for rheumatoid arthritis as claimant did not take prescribed medications or steroids. (JE 5, pp. 76, 95)

In 2021, claimant had an MRI of the right wrist that showed multiple erosions of the carpal bones compatible with inflammatory arthritis. (JE 5, p. 111) Dr. King told claimant in March of 2021, that her rheumatoid arthritis was severe and causing the findings in her right wrist. (JE 5, p. 116)

Claimant treated with Dr. Manon-Matos on four occasions for wrist pain. In August of 2021, Dr. Manon-Matos indicated that “. . . most of her pain is related to bilateral wrist SLAC pattern form of arthritis.” (JE 4, p. 63)

Dr. Martin gave his opinions of claimant’s condition following review of claimant’s records. Dr. Martin opined claimant’s wrist condition was due to her ongoing difficulties with rheumatoid arthritis and claimant’s wrist condition was not related to her work at Wells. (JE 6, pp. 138-139)

In a June 1, 2022, report, Dr. Bansal opined claimant aggravated her bilateral wrist arthritis due to her work she performed at Wells. He opined her job duties at Wells accelerated her degenerative arthritis. (Ex. 8, p. 48)

There are several problems with Dr. Bansal’s opinion regarding causation. As noted, claimant was off work due to Covid from November 2020 through February 2021. Claimant indicated her symptoms in her wrists did not improve at all during the approximately three-month absence from work. Dr. Bansal offers no explanation why claimant’s symptoms were accelerated due to work, and yet did not abate during her three-month absence from work.

Second, as noted in the Findings of Fact, claimant had complaints of wrist pain in 2018 and 2019, pre-injury, that were at a level of 7 and 8. (JE 5, pp. 102, 107) Records

after claimant's alleged date of injury indicate claimant's pain levels in her wrists had decreased to a level "0" or "2." (JE 8, p. 168; JE 1, p. 11; JE 3, p. 39) Dr. Bansal offers no explanation why claimant's self-reported pain levels markedly improved after the alleged date of injury.

Dr. King opined that the findings on claimant's MRI of 2021 were caused by her rheumatoid arthritis. (JE 5, p. 116) Dr. Manon-Matos opined that most of claimant's pain was related to her rheumatoid arthritis. (JE 4, p. 63) Dr. Bansal offers no rationale to dispute the causation opinions made by treating physicians.

Based on the above-described issues, Dr. Bansal's causation opinion regarding claimant's condition is found not convincing.

Claimant had severe rheumatoid arthritis dating back to 2015. Records from 2017 indicate claimant had problems moving her wrists due to rheumatoid arthritis. Claimant's self-reported pain scores were more severe pre-injury than post-injury. Dr. King and Dr. Manon-Matos both indicate claimant's symptoms are largely due to her rheumatoid arthritis. Dr. Martin opined that claimant's symptoms were due to rheumatoid arthritis and were not related to her work at Wells. Dr. Bansal's opinions regarding causation are found not convincing. Based on these facts, and as detailed above, it is found that claimant has failed to carry her burden of proof she sustained an injury to her bilateral upper extremities that arose out of and in the course of employment with Wells.

Claimant also alleges that she has a mental injury caused by her work at Wells. Claimant offered no testimony at hearing regarding a mental injury. No expert has opined claimant has a work-related mental injury. There is no evidence in the records claimant has any permanent impairment or restrictions regarding a mental injury. Based on these facts, claimant has also failed to carry her burden of proof she sustained a work-related mental injury that arose out of and in the course of her employment at Wells.

As claimant has failed to carry her burden of proof she sustained a physical or mental injury that arose out of and in the course of her employment at Wells, all other issues are moot.

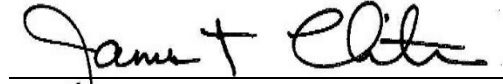
ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from this case.

That both parties shall pay their own costs.

Signed and filed this 29th day of December, 2022.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Judy Freking (via WCES)

Al Sturgeon (via WCES)

Steven Durick (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.