

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MELISSA HANSEN f/k/a MELISSA NASH,

Claimant,

vs.

CORVEL CORP.,

Employer,

and

TRAVELERS INDEMNITY COMPANY OF CONNECTICUT,

Insurance Carrier,
Defendants.

File No. 5062631

ARBITRATION

DECISION

Head Notes: 1403.30; 1600; 1803;

Claimant, Melissa Hansen, formerly known as Melissa Nash, appeals from an arbitration decision filed on March 5, 2019. Defendants Corvel Corporation, employer, and its insurer, Travelers Indemnity Company of Connecticut, respond to the appeal. The case was heard on September 18, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 26, 2018.

This case involves a work-related injury which the parties stipulate occurred on November 14, 2013. In the arbitration decision, the deputy commissioner found defendants successfully established the affirmative defense of lack of timely notice under Iowa Code section 85.23 with respect to the alleged right hip and left lower extremity injuries. As such, the deputy commissioner found all other issues relating to the right hip and left lower extremity conditions were moot, including whether claimant is entitled to receive temporary disability benefits, permanent disability benefits, and medical benefits. The deputy commissioner found claimant satisfied her burden of proof to establish she sustained permanent impairment as a result of the stipulated right upper extremity injury. The deputy commissioner found claimant sustained five percent impairment of the right upper extremity as a result of the work injury. Lastly, the deputy commissioner found claimant failed to carry her burden of proof to establish entitlement to reimbursement from defendants for John Kuhnlein, D.O.'s independent medical examination (IME) under Iowa Code section 85.39.

Claimant asserts on appeal that the deputy commissioner erred in finding defendants met their burden of establishing the affirmative defense of lack of timely notice under Iowa Code section 85.23. Claimant also asserts the deputy commissioner erred in finding claimant's permanent disability is limited to the right upper extremity as opposed to the body as a whole. Claimant further asserts the deputy commissioner erred in denying healing period benefits in connection with claimant's right hip and left lower extremity conditions. Lastly, claimant asserts the deputy commissioner erred in denying claimant's requested past medical expenses relating to the right hip and left lower extremity conditions.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, those portions of the proposed arbitration decision filed on March 5, 2019, relating to issues properly raised on intra-agency appeal are affirmed in part, modified in part, and reversed in part.

I respectfully find the deputy commissioner erred in not addressing whether claimant met her burden of proof to establish the right hip and left lower extremity conditions were causally-related to the November 14, 2013, date of injury, prior to addressing the affirmative defense of notice.

In this regard, I find claimant failed to meet her burden of proof to establish the right hip and left lower extremity conditions are causally related to the November 14, 2013, date of injury.

Given the above finding, the issue of notice is moot. As such, I respectfully reverse the deputy commissioner's finding that claimant's right hip and left lower extremity injuries are barred due to lack of timely notice under Iowa Code section 85.23.

I affirm and adopt the deputy commissioner's finding that claimant satisfied her burden of proof to establish she sustained permanent impairment as a result of the stipulated right upper extremity injury.

I affirm and adopt the deputy commissioner's finding that claimant's permanent disability is limited to the right upper extremity.

I affirm and adopt the deputy commissioner's finding that claimant sustained five percent impairment to the right upper extremity as a result of the work injury.

I provide the following findings, conclusions, and analysis for my decision:

Prior to finding claimant's right hip and left lower extremity conditions were barred due to lack of timely notice under Iowa Code section 85.23, the deputy commissioner did not address whether claimant had met her burden of proving the right hip and left lower extremity conditions were causally related to the November 14, 2013, date of injury.

Once a claimant sustains the burden of showing that an injury arose out of and in the course of employment, the claimant prevails unless defendants can prove by a preponderance of the evidence an affirmative defense. Reddick v. Grand Union Tea Co., 296 N.W. 800 (Iowa 1941).

As such, this appeal decision will first address whether claimant met her burden of proof to establish the right hip and left lower extremity conditions are causally related to the November 14, 2013, date of injury. The parties stipulate that claimant sustained an injury to the right wrist on the date of injury. Defendants dispute that claimant sustained an injury to the right hip on the date of injury. Defendants further dispute causation for the alleged sequela injury to the left lower extremity.

On November 14, 2013, claimant sustained an injury while assisting one of her patients. The injury occurred when she attempted to descend from the back of her patient's pick-up truck. In the process of transitioning from standing in the bed of the truck to a seated position on the tailgate, claimant came down faster than she anticipated onto her outstretched right hand. Claimant would later assert she also landed hard on her right buttock. (Hearing Transcript, page 22) She experienced immediate pain in her right wrist. (Id.) Claimant reported right wrist pain to her supervisor and an accident report was created. (See Joint Exhibit 35, page 314) Claimant testified she was unsure as to whether she experienced any right hip pain on the date of injury or on the date she filled out her accident report. (JE 41, Deposition Transcript, page 36; Hr. Tr., p. 23)

On November 18, 2013, claimant and her supervisor completed two separate accident reports. Claimant's accident report described hyperextending her right wrist when she went to sit at the end of a truck bed. (JE 35, p. 314) The supervisor's accident report tells the same sequence of events. (JE 35, p. 315) Both accident reports list only an injury to claimant's right wrist. (See JE 35, pp. 314-315)

Prior to the November 14, 2013, work incident, Claimant had a history of low back and right hip problems. In November 2001, Claimant was involved in a motor vehicle accident (MVA) wherein she was rear-ended at a high rate of speed. (See JE 5, p. 37) The MVA resulted in chronic low back and right hip pain. (See JE 3, p. 5)

Claimant began receiving treatment from pain management specialist Christian Ledet, M.D., in August 2002. (See JE 3, p. 4) At some point in time between August and December 2002, Dr. Ledet recommended and performed a radiofrequency denervation on the right at the L4-L5 and L5-S1 levels of claimant's spine. (See JE 3, p. 4) According to Dr. Ledet's medical records, the procedure helped with claimant's

low back pain, however, it did not reduce her overall symptomatology as she continued to present with right buttock and hip pain in December 2002. (JE 3, p. 4)

Eventually, claimant underwent a right hip arthroscopy with debridement of labral and articular cartilage, and a partial anterior capsulectomy with synovectomy, in August 2003. (JE 6, p. 42) Due to her persistent symptoms, claimant underwent a second right hip arthroscopy with partial labral resection and partial synovectomy in December 2006. (JE 8, p. 49) Claimant testified she continued to experience intermittent or occasional right hip pain between December 2006 and the November 14, 2013, work injury. (JE 41, Depo. Tr., pp. 16, 20, 24, 38) Dr. Ledet continued to treat claimant's low back and right hip pain through September 2008. (See JE 3, p. 12)

Two weeks prior to the November 14, 2013, work injury, claimant returned to Dr. Ledet's office with complaints of pain in her right low back, buttock, and leg. (JE 3, p. 13) The medical record discusses how claimant experienced these same symptoms more than 10 years prior. (Id.) Claimant reported she was experiencing a return of her symptoms and described the pain as daily, dull, and throbbing. (Id.) Dr. Ledet diagnosed claimant with lumbar spondylosis and facet syndrome. (JE 3, p. 14) Dr. Ledet recommended claimant undergo another denervation procedure at L4-L5 and L5-S1. (Id.)

On November 1, 2013, claimant phoned in a medication refill request to Dr. Ledet. (JE 3, p. 15) According to Dr. Ledet's notes, claimant was utilizing the medication for chronic low back and hip pain. (Id.) It is also noted that claimant utilized the medication to facilitate activities of daily living. (Id.)

On November 7, 2013, Dr. Ledet performed a second lumbar facet rhizotomy, on the right, at L4-L5 and L5-S1. (JE 3, p. 16)

Claimant testified she experienced a slow progression in right hip pain following the November 14, 2013, work incident. (Hr. Tr., p. 26) Claimant testified she began experiencing a general tightness in her hip, as well as a lot of pain in the buttocks and groin within a few weeks to one month after the work incident. (Id.) Claimant testified that when she experienced the above symptoms, she causally related them to the November 14, 2013, work incident. (Id.) The deputy commissioner found claimant's right hip injury manifested for purposes of the discovery rule – which was not asserted by claimant – on or about December 14, 2013, or one month after the work injury when claimant was, by her own testimony, aware of her injury and its relationship to her employment. The deputy commissioner also found claimant knew the seriousness of her injury as of December 14, 2013, because claimant was experiencing the same symptoms then, as she had experienced when she previously sustained a labral tear. (See JE 31, p. 302)

Despite believing that she sustained a labral tear on the date of injury, claimant did not present to any physician with complaints of right hip pain between November 14,

2013, and April 28, 2014. There is no evidence claimant reported right hip pain to any agents of defendant-employer between November 2013 and May 2015.

Claimant first presented for medical treatment related to her work injury on December 18, 2013. (See JE 16, p. 118) If claimant's testimony regarding the progression of her right hip pain is to be believed, claimant would have been experiencing significant pain in her right hip at the time she first presented to her authorized treating physician on December 18, 2013. The December 18, 2013, medical record is void of any reference to right hip pain or a right hip injury. (JE 16, p. 118)

Claimant returned to her authorized treating physician on January 10, 2014, and February 7, 2014. (JE 16, pp. 121-122) The medical records from these appointments do not mention right hip pain or a right hip injury. (Id.)

The first medical record to reference right hip pain is dated April 28, 2014. (JE 18, p. 182) Claimant presented to Christopher Nelson, D.O., on her own accord. Claimant did not request medical treatment for her right hip from defendant-employer. The April 28, 2014, medical record does not mention the November 14, 2013, work injury, or claimant's belief that her right hip condition stemmed from that injury. Claimant testified she reported the right hip condition as work-related at this initial visit; however, when defendants approached Dr. Nelson in that regard, he definitively stated claimant did not report the right hip condition as work-related at the April 28, 2014, medical appointment. (Tr., p. 28; JE 19, p. 218)

In the April 28, 2014, medical record, claimant provided that she had been experiencing right hip pain for five to six months. (JE 18, p. 182) The same medical record provides claimant's right hip pain had increased two weeks prior to the April 28, 2014, appointment. (Id.) Similarly, physical therapy records from May 29, 2014, provide claimant's right hip pain began in November 2013, and she had experienced an exacerbation of her right hip pain in March 2014. (JE 21, p. 225) While the five-to-six-month history of right hip pain reported by claimant aligns with the November 14, 2013, date of injury, this timeline also aligns with claimant's October 30, 2013, and November 1, 2013, appointments with Dr. Ledet, wherein claimant presented with complaints of low back, buttocks, and leg pain. (JE 3, pp. 13-16)

On April 30, 2014, Dr. Nelson reviewed claimant's MRI report and confirmed his initial opinion that claimant had sustained a recurrent right labral tear. (JE 18, p. 186) On June 2, 2014, claimant underwent a right hip arthroscopy with labral repair, femoral osteochondroplasty, and lysis of adhesions. (JE 18, p. 188; JE 31, p. 290)

On June 25, 2014, Dr. Nelson returned claimant to work without restrictions. Dr. Nelson noted on claimant's return to work form that the right hip injury was not work-related, further evidencing that claimant did not report the right hip condition as work-related when she first presented to Dr. Nelson in April 2014. (JE 18, p. 190)

Claimant presented to Dr. Nelson's office for follow-up appointments on July 2, 2014, September 3, 2014, and December 3, 2014. (JE 18, pp. 191-196) At no point in this time period did claimant relate her right hip pain to the November 14, 2013, work injury. (Id.)

On January 23, 2015, claimant presented to Alan Braun, M.D. of Mercy Arthritis and Osteoporosis Center. (JE 22, p. 247) Claimant complained of joint pain in her right hip. According to the medical record, claimant told Dr. Braun that her symptoms had been present for years, and "she thinks they began after a car accident in 2001." (Id.) The medical record does not discuss the November 2013, work injury or the mechanism of injury. Dr. Braun diagnosed claimant with myofascial pain syndrome with muscle and joint pain on the right side of the body. Dr. Braun also diagnosed claimant with a torn hip labrum. Dr. Braun related both conditions to claimant's 2001 motor vehicle accident. (JE 22, p. 250)

On February 27, 2015, claimant returned to Dr. Ledet for the first time since undergoing the rhizotomy procedure on November 7, 2013. (JE 3, p. 18) Claimant complained of ongoing difficulties with low back pain, primarily on the right side. The medical record states claimant was also experiencing right hip pain. The medical record is silent as to the cause of these conditions. (See JE 3, pp. 18-19) At hearing, claimant testified she told Dr. Ledet about the November 14, 2013, work injury. (Tr., p. 67) However, according to a signed letter from Dr. Ledet, dated July 15, 2017, claimant did not report that her complaints were the result of a work injury. (JE 4, p. 36)

It is unclear when claimant definitively provided notice of her alleged right hip injury to defendants. The parties appear to agree that May 28, 2015, is the earliest possible date claimant could have provided such notice. (See Claimant's Appeal Brief, page 5)

The first medical record wherein claimant definitively asserts that her right hip condition is related to the November 14, 2013, work injury, is dated May 26, 2015. (JE 18, p. 197) The "Reason For Visit" section of Dr. Nelson's medical record is substantially different from all prior records. In this record, Dr. Nelson block-quoted claimant's oral history. The record provides,

Patient states: "Right hip pain. Psoas strains repetitively. [In November 2013] fell onto tailgate of patient's truck while helping him with getting wheelchair on broken lift. Fell hard onto right buttocks when getting down."

(Id.) Subsequent to claimant's May 26, 2015, appointment, Dr. Nelson drafted a causation letter, dated May 28, 2015. (JE 19, p. 217) Dr. Nelson would later provide that claimant requested he draft the letter for her attorney following the May 26, 2015, appointment. (See JE 19, p. 218)

It appears Dr. Nelson's May 28, 2015, causation opinion is based solely on claimant's updated oral history. (See JE 19, p. 217) The record provides,

Upon further discussion today, we discussed Melissa's work-related hip injury on 11/13/13. She was taking a wheelchair out of a car. She had a slip and fall. She landed with a direct blow to the hip. Since that time, her pain increased. This pain was eventually treated surgically by myself. This was after failure of relief with activity modification, rest, anti-inflammatories, stretching, muscle relaxers, and narcotic pain medication. I do feel that Melissa's recent episode of hip pain is related to this injury, with a reasonable degree of medical certainty.

(JE 19, p. 217)

On August 14, 2017, Dr. Nelson authored a letter to defense counsel. (JE 19, p. 218) In the letter, Dr. Nelson provided that claimant did not describe her right hip condition as a work-related injury at her initial office visit on April 28, 2014. (Id.) Dr. Nelson further provided it was his belief that claimant asked him to draft the May 28, 2015, causation opinion for her attorney. (Id.)

In his closing remarks, Dr. Nelson states the question of causation rests on whether claimant's right hip pain started with the alleged November 14, 2013, fall. (JE 19, p. 218) Dr. Nelson provides, "If Ms. Hansen had no hip pain prior to this fall, and then had severe pain after this fall, I do think the fall would more likely than not be the cause of her pain." (Id.) Essentially, Dr. Nelson's opinion rests on claimant's credibility.

The evidentiary record contains two additional causation opinions.

Claimant presented to John Kuhnlein, D.O., for purposes of an independent medical examination (IME), on April 20, 2017. (JE 31, p. 282) Dr. Kuhnlein produced his IME report on October 2, 2017. (See Id.) With respect to causation, Dr. Kuhnlein began his opinion by noting claimant's right hip presents a very complicated picture. (JE 31, p. 301) After discussing claimant's medical history, Dr. Kuhnlein opined it is more likely than not that the recurrent labral tear identified on the April 29, 2014, MR Arthrogram was directly and causally related to the November 14, 2013, work injury. (Id.)

Claimant presented to Corey Welchlin, D.O. for an IME on April 12, 2016. (JE 26, p. 264) Dr. Welchlin diagnosed claimant with femoral acetabular impingement syndrome of the right hip, with a recent aggravation from a fall in November 2013. (JE 26, p. 268) Dr. Welchlin believed claimant had sustained a temporary aggravation of the right hip condition on November 14, 2013. (Id.) Dr. Welchlin opined the symptoms associated with a temporary aggravation of the underlying osteoarthritic condition would have resolved within six weeks of the date of injury. (Id.) Dr. Welchlin opined claimant would have been in a significant amount of discomfort had she sustained a significant injury to the right hip on November 13, 2014. (Id.)

In a letter dated February 13, 2017, Dr. Welchlin provided updated opinions following a review of additional medical records. (See JE 26, p. 270) Dr. Welchlin did not provide a listing of the specific medical records he reviewed. Dr. Welchlin opined that following his review of the updated records, he could not state within a reasonable degree of medical certainty that the work incident of November 14, 2013, aggravated claimant's pre-existing right hip condition. (See Id.)

As previously noted, instead of addressing whether the right hip and sequela left lower extremity injuries were causally related to the original date of injury, the deputy commissioner first addressed whether defendants had proven the affirmative defense of notice by a preponderance of the evidence.

As part of his analysis, the deputy commissioner addressed several concerns with claimant's credibility. (See Arbitration Decision, pages 6, 11, 13-15) The deputy commissioner found claimant withheld information concerning her right hip injury and misled the employer concerning her understanding of the cause of her hip condition. Specifically, the deputy commissioner found:

Claimant's actions of withholding information concerning her right hip injury and misleading the employer concerning her understanding of the cause of her hip condition significantly impacts her credibility in this matter.

(Arb. Dec., p. 11)

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed the credibility of claimant. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings. That being said, I find it appropriate to expand on the deputy commissioner's findings. I provide the following additional analysis:

In the matter at hand, claimant's credibility issues are heightened by the fact she has worked as a nurse case manager in the realm of workers' compensation since at least September 2009. As a nurse case manager, claimant is more aware than most injured workers of the process involved in workers' compensation claims. Her conscious attempts to manipulate that process significantly impacts her credibility in this case.

Claimant testified at her deposition and at hearing that she knew within a few weeks she had sustained an injury to her right hip as a result of the November 14, 2013, work injury. (Hr. Tr., p. 26; JE 41, Depo. p. 36) Despite allegedly knowing this causal connection, claimant did not report her right hip injury to defendants between December 2013 and May 2015. Claimant's conscious decision to withhold information from the defendants, thereby impeding its ability to direct claimant's care and effectively

investigate the full extent of claimant's injuries significantly impacts claimant's overall credibility.

Several of the assertions claimant made at hearing are contradicted by the evidentiary record. Claimant testified she discussed the November 14, 2013, injury with Dr. Nelson when she first presented to his office for treatment of her right hip pain on April 28, 2014. (Hr. Tr., p. 28) According to Dr. Nelson, claimant did not mention the November 14, 2013, work injury at her initial appointment. (JE 19, p. 218) Claimant also testified to her belief that she discussed the work-relatedness of her symptoms with Dr. Ledet. (Hr. Tr., p. 67) In a letter dated July 15, 2017, Dr. Ledet states claimant had not alleged any relationship between her complaints and any work injury since he assumed claimant's care in February 2015. (JE 4, p. 36)

For purposes of analyzing the issue of notice under Iowa Code section 85.23, the deputy commissioner accepted claimant's testimony that she knew within a few weeks that she had sustained an injury to her right hip as a result of the November 14, 2013, work injury. The deputy commissioner did not assess the logic or credibility of such an assertion. Claimant's testimony regarding her knowledge of the injury, while consistent, is not supported by contemporaneous medical records. The evidentiary record is void of any medical records documenting claimant definitively asserted her right hip condition was work-related between November 14, 2013, and May 27, 2015. This, despite the fact claimant was presenting to independent physicians who were under no obligation to report the right hip condition to defendants.

Claimant offers no reasonable explanation as to why she decided against reporting her injury as work-related until May 2015. Even if one accepts that claimant was concerned about an additional work injury negatively impacting her employment relationship with the defendant-employer, claimant offered no reasonable explanation as to why she did not describe her right hip condition as a work-related injury to her own independent physicians.

The majority of claimant's medical records between April 2014 and May 2015 do not assert any particular aggravating event. However, at least one medical record provides an alternative explanation for claimant's right hip pain.

Months prior to the May 28, 2015, appointment wherein claimant reported her right hip condition as work-related for the first time, claimant presented to Mercy Arthritis and Osteoporosis Center. (JE 22, p. 247) Claimant complained of joint pain in her right hip. According to the medical record, claimant told her physician that her symptoms had been present for years, and that she believed her symptoms began after a motor vehicle accident in 2001. (Id.) The medical record does not discuss the November 2013, work injury or the mechanism of injury. However, the physician did diagnose claimant with myofascial pain syndrome with muscle and joint pain on the right side of her body. The physician also diagnosed claimant with a torn hip labrum. The physician related both conditions to claimant's 2001 motor vehicle accident. (JE 22, p. 250)

The history of present illness detailed in the January 23, 2015, record is particularly perplexing in light of claimant's alleged knowledge that her then-current right hip condition was causally related to the November 14, 2013, work injury.

Claimant's testimony regarding her knowledge of the injury, while consistent, is not supported by any other witnesses. In December 2013 or January 2014, claimant asserts she confided in her co-worker, Lori Waymire, that she was, "pretty confident" she had injured her right hip on the date of injury. (JE 41, Depo. p. 37; Hr. Tr., pp. 26-27) Claimant did not produce a written statement or call Ms. Waymire as a witness to validate her claims at hearing. Additionally, claimant testified at hearing she may have told one of her supervisors at work that her right hip complaints were related to the November 14, 2013, injurious event in May or June 2014. (Hr. Tr., pp. 62-64) Like the deputy commissioner, I do not find this statement to be credible. (Arb. Dec., p. 6) The statement is contradicted by the May 1, 2014, electronic correspondence providing she did not know the cause of her right hip condition. Moreover, claimant had not even reported the injury as work-related to Dr. Nelson in May or June 2014.

While the following deviations were not egregious, it is worth noting claimant's description of the injurious event was not consistent throughout the entirety of this case. (See JE 35, p. 314; JE 41, Depo. pp. 35-36, 40; Hr. Tr., p. 22; JE 31, p. 201) Most notably, claimant's rendition of events did not initially include landing with a "direct blow to the hip." (*Compare* JE 35, p. 314 *and* JE 16, p. 118 *with* JE 19, p. 217) As previously discussed, the accident reports and initial medical records only report claimant landing on her outstretched right hand. (See JE 35, pp. 314-315; JE 16, p. 118)

Ultimately, this case comes down to the credibility of claimant's testimony. Viewed in isolation, it is unlikely any one of the above contradictions would lead to the conclusion claimant is not credible. However, when viewed as a whole, and in light of the fact claimant consciously withheld information, thereby frustrating the workers' compensation system, these contradictions support the conclusion that claimant is not credible. For these reasons, I modify the credibility findings implied by the deputy commissioner and I expressly find claimant is not a credible witness.

Having found claimant is not a credible witness, I cannot accept the causation opinions of Drs. Nelson and Kuhnlein as both opinions rely, in part, on claimant's credibility.

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).

In his August 14, 2017, letter, Dr. Nelson provides that the question of causation rests on whether or not claimant's right hip pain started with the alleged November 14, 2013, fall. (JE 19, p. 218) Dr. Nelson states, "If Ms. Hansen had no hip pain prior to this fall, and then had severe pain after this fall, I do think the fall would more likely than not be the cause of her pain." (Id.) The contemporaneous medical records do not reflect claimant was experiencing severe pain in her right hip after the alleged November 14, 2013, fall. As previously discussed, claimant did not present for medical treatment related to the right hip until April 28, 2014, at which time she noted an exacerbation in right hip pain having occurred two weeks prior to her appointment. Moreover, there is evidence that claimant was experiencing low back, right buttocks, and leg pain prior to the November 14, 2013, work injury. (See JE 3, pp. 13-16)

I do not find Dr. Nelson's opinion to be convincing. His causation opinion rests on claimant's credibility. Having found claimant is not a credible witness, I cannot accept Dr. Nelson's causation opinion.

Similarly, I cannot accept the causation opinions of Dr. Kuhnlein. In the October 2017, IME report, Dr. Kuhnlein's description of the mechanism of injury was consistent with the description given by claimant in her deposition and at hearing. (JE 31, p. 286) However, claimant reported that in addition to issues within her right wrist, she also experienced a gnawing sensation in her right hip, but she "wanted to watch and see what happened with the hip." (JE 31, p. 287) Dr. Kuhnlein's report also provides that claimant's right hip pain increased as a result of the November 14, 2013, injury, but her concerns with the right upper extremity injury took precedence in terms of her initial medical care. (Id.) This rendition of events is not supported by the initial medical records. Claimant did not complain of right hip pain or present for medical treatment related to the right hip until April 28, 2014. (See JE 18, p. 182) Claimant's complaints of increased right hip pain following the November 24, 2013, work injury are entirely dependent on claimant's testimony. Dr. Kuhnlein appears to accept claimant's statements without comparison or comment on any discrepancies.

Dr. Kuhnlein's report further provides claimant presented to Dr. Nelson on her own because she wanted to confirm her suspicion that she had sustained a recurrent tear prior to reporting the injury as work-related. Again, this statement is not supported

by the evidentiary record. Dr. Nelson diagnosed claimant with a recurrent tear and scheduled surgery for that condition in May 2014. Presumably, this was the confirmation claimant was seeking. However, when claimant e-mailed defendant-employer to request time off to undergo the recommended surgery, she did not report her belief that the need for surgery was causally related to the November 14, 2013, work injury. Instead, claimant expressly provided she did not have any idea what she did to aggravate her right hip. (See JE 38, p. 333) Despite allegedly confirming her suspicions in May 2014, claimant did not report the injury as work-related until at least May 2015. (See JE 18, p. 197)

Dr. Kuhnlein asserts claimant's labral tear occurred as a direct result of the November 14, 2013, injury. Dr. Kuhnlein offered no explanation as to how claimant could have sustained an acute labral tear on November 14, 2013, while not presenting for medical treatment until April 28, 2014. This is particularly perplexing given Dr. Welchlin's opinion that claimant would have been in significant pain following such an injury on November 14, 2013. (JE 26, p. 268)

The majority of Dr. Kuhnlein's causation opinion rests on the accuracy of the claimant's reported injury. Because I found claimant is not a credible witness, I cannot accept the causation opinions of Dr. Kuhnlein with respect to the right hip injury.

It might be argued that application of the discovery rule could possibly render the right hip condition compensable. However, claimant did not assert the applicability of the discovery rule in this matter. More importantly, however, in order for the discovery rule to be applicable in this matter, this agency would have to disregard claimant's consistent testimony that she knew her injury was both work-related and serious in approximately December 2013. This agency would also have to disregard the credibility findings originally made by the deputy commissioner and affirmed by the undersigned.

Having rejected the causation opinions of Dr. Nelson and Dr. Kuhnlein, and having found claimant was not credible in her testimony, I find claimant failed to prove she sustained an injury to her right hip on November 14, 2013, that arose out of and in the course of her employment with defendant-employer. I also find claimant failed to prove she sustained a sequela injury to the left lower extremity as a result of the alleged right hip injury. I find claimant is not entitled to an award of medical or indemnity benefits for the right hip and the left lower extremity conditions.

Because I find claimant failed to meet her burden of proving a causal connection between the right hip and left lower extremity conditions, it is unnecessary to address the deputy commissioner's findings with respect to the notice requirements under Iowa Code section 85.23. I therefore reverse the deputy commissioner's findings regarding the affirmative notice defense as moot.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 5, 2019, is affirmed in part, modified in part, and reversed in part.

Defendants shall pay claimant twelve and one-half (12.5) weeks of permanent partial disability benefits. Prior to the evidentiary hearing, the parties stipulated that defendants are entitled to a credit of seventeen and one-half (17.5) weeks of compensation.


All weekly benefits shall be paid at the stipulated weekly rate of one thousand two hundred forty-five and 10/100 dollars (\$1,245.10) per week.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33 defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand two hundred thirty-four and 59/100 dollars (\$1,234.59), and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed this 6th day of July, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jason Neifert Via WCES

Aaron T. Oliver Via WCES