

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBORAH KELLY,

Claimant,

vs.

CLEANING CONNECTION, INC.,

Employer,

and

SELECTIVE INSURANCE COMPANY
OF AMERICA,Insurance Carrier,
Defendants.

File No.: 5048171

A P P E A L

D E C I S I O N

Head Note Nos.: 2500, 1402.60

Claimant Deborah Kelly appeals from an arbitration decision filed on November 27, 2019. Defendants Cleaning Connection, Inc., employer, and Selective Insurance Company, insurer, respond to the appeal. The hearing was held on March 12, 2019, and the case was considered fully submitted in front of the deputy workers' compensation commissioner on April 19, 2019.

On August 12, 2020, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

In the arbitration decision, which addressed only claimant's claim for medical benefits, the deputy commissioner found claimant failed to prove her multi-level spinal fusion surgery was causally related to the February 22, 2012 work injury. The deputy commissioner alternatively found that the fusion surgery was not medically reasonable or necessary. As a result, the deputy commissioner found claimant was not entitled to reimbursement for the costs associated with the fusion surgery. The deputy commissioner likewise found claimant failed to prove her spinal cord stimulator was causally related to the February 22, 2012 work injury. The deputy commissioner concluded claimant failed to prove any of the medical expenses contained in Claimant's Exhibit 6 were compensable.

Claimant filed an application for rehearing in which she sought clarification regarding expenses related to the medications contained in Claimant's Exhibit 6. The deputy commissioner did not make a ruling on claimant's application, meaning the application was deemed denied. Claimant then filed a notice of appeal.

On appeal, claimant argues all of her medical expenses following her workers' compensation settlement are causally connected to the February 22, 2012 date of injury.

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 86.24 and 17A.15, the arbitration decision filed on November 27, 2019 is affirmed in its entirety with the additional analysis set forth below regarding claimant's claim for expenses related to her prescription medication.

I affirm the deputy commissioner's finding that claimant failed to prove the fusion surgery was causally related to the February 22, 2012 work injury. I likewise affirm the deputy commissioner's alternative finding that the fusion surgery was not medically reasonable or necessary. I therefore affirm the deputy commissioner's finding that claimant failed to prove her entitlement to payment or reimbursement for medical expenses relating to the fusion surgery.

I also affirm the deputy commissioner's finding that claimant failed to prove the spinal cord stimulator was causally related to the February 22, 2012 work injury. As a result, I affirm the deputy commissioner's finding that claimant failed to prove her entitlement to payment or reimbursement for medical expenses relating to the spinal cord stimulator.

I affirm the deputy commissioner's findings, conclusions and analysis regarding these issues in their entirety.

On rehearing and again on appeal, claimant asserts she is entitled to reimbursement for the costs of the prescription medications contained in Claimant's Exhibit 6. While all of the sought-after expenses were incurred after claimant's fusion surgery, claimant asserts she is entitled to reimbursement because some of these same medications were being prescribed by Kurt Smith, D.O., the original authorized treating physician, prior to her surgery as well.

While claimant is correct that Dr. Smith began prescribing baclofen and hydrocodone before the fusion surgery, there is no opinion in the record regarding whether those medications or any other medications for which claimant now seeks

reimbursement were causally related to the February 22, 2012 work injury. In his most recent response to defendants' counsel in March of 2018, Dr. Smith indicated claimant would continue to require hydrocodone, diazepam, baclofen, and gabapentin for various periods of time, but he made no affirmative statement on causation. (Joint Exhibit 12, p. 218) And as discussed above, I affirmed the deputy commissioner's determination that Dr. Smith's opinion was not convincing as it pertained to the causal relationship between the fusion surgery and the February 22, 2012 work injury. Without any affirmative expert opinion on causation, I find there is insufficient evidence to determine whether the medications for which claimant seeks reimbursement were causally related to the February 22, 2012 work injury.

While the employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law, it is claimant who 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. Iowa Code § 85.27; 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).

In this case, I found there was insufficient evidence to determine whether the prescription medications for which claimant seeks reimbursement were causally related to the February 22, 2012 injury. I therefore conclude claimant failed to carry her burden to prove her entitlement to these expenses.

With this additional analysis, I affirm the deputy commissioner's finding that claimed failed to prove her entitlement to payment or reimbursement for any of the medical expenses contained in Claimant's Exhibit 6.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 27, 2019 is affirmed in its entirety with the above-stated additional analysis.

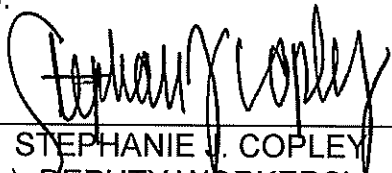
Claimant takes nothing in this medical benefit proceeding.

Defendants remain liable for any future causally related medical expenses.

Pursuant to rule 876 IAC 4.33, each party shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Defendant 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 27th day of August, 2020.



STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Milligan (via WCES)
Jeffrey Lanz (via WCES)