BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA BRACKETT, Claimant, vs. CDS GLOBAL, INC., Employer, and TRAVELERS INDEMNITY CO. OF CT., Insurance Carrier, Defendants.	FILED JAN 26 2018 WORKERS COMPENSATION	File No. 5055996 ARBITRATION DECISION Head Note Nos.: 1108.50, 1402.40, 1801, 2501, 2907

STATEMENT OF THE CASE

Teresa Brackett, claimant, filed a petition in arbitration seeking workers' compensation benefits from CDS Global, Inc., employer, and Travelers Indemnity Company of Connecticut, insurance carrier, as defendants. Hearing was held on August 21, 2017, in Des Moines, Iowa.

Claimant, Teresa Brackett, was the only witness who testified live at trial. The evidentiary record also includes Joint Exhibit JE1, Claimant's Exhibits 1-8, Defendant's Exhibits A-F.

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 parties submitted post-hearing briefs on September 12, 2017.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury on January 7, 2015?

2. Whether permanency is ripe for determination? If so, the appropriate commencement date for the permanent partial disability benefits.

3. Whether the injury is the cause of permanent disability? If so, the extent of permanent disability claimant sustained to her left lower extremity as a result of the January 7, 2015 work injury.

4. Whether the injury is the cause of temporary disability? If so, claimant's entitlement to any such benefits.

5. Whether claimant is entitled to past medical benefits?

6. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Teresa Brackett, has alleged that she sustained an injury to her left knee while working at CDS Global, Inc. (hereinafter "CDS"). Defendants deny that she sustained a compensable injury and further deny that she sustained any permanent impairment.

Ms. Brackett was hired by CDS in 2007. She continued to work there until May of 2015 when she was laid off due to a work shortage. Ms. Brackett worked at CDS as an Operations Manger 3; she supervised close to 150 employees. Approximately 40-50% of her job involved standing on the floor working; the remainder of her duties consisted of office work. In 2014 some lifting requirements were added to her job duties, including lifting LifeTouch boxes which contained boxes of full sheet magnets. The boxes weighed as much as four gallons of milk. Ms. Brackett testified that when she was lifting the boxes she would use her left leg as her anchor leg. Ms. Brackett felt a heaviness in her left leg that would often resolve by the afternoon. However, in early January of 2015 the heaviness did not resolve. Additionally, her left knee had swollen significantly. Ms. Brackett decided to seek treatment for her left knee. (Testimony)

Ms. Brackett has alleged a Friday, January 2, 2015 injury to her left knee as the result of lifting boxes at work. She first sought treatment with her primary care physician, John Zittergruen, D.O., on Thursday, January 8, 2015. The clinical notes state that she had left knee swelling and pain since Sunday. She reported that she had been pushing barrels at work and thought this activity may have caused the problem. Another clinical note from the same date states, she was pushing a heavy waste basket full of magnets as well as shoveling heavy snow over the weekend. She reported that her left knee was painful and swollen. The doctor felt she had chondromalacia of her left knee. He recommended a knee sleeve for support, ibuprofen, and ice. (JE1, pages. 4-6)

On January 8, 2015, Ms. Brackett completed an injury report for the defendant employer. She stated the date of injury was January 2, 2015. She noted pain and swelling in her left knee. When asked, how did the injury occur? Ms. Brackett replied previous knee issues – pushing irritated knee. When asked, what date did you first

consider your condition to be work related? She replied that she did not feel it was because of previous issues with her knee. (Ex. C, p. 10)

Ms. Brackett returned to Dr. Zittergruen's office on February 6, 2015. She reported left knee pain since January 8, 2015. She said she did go out and snow blow her driveway on Sunday and inflamed the knee again. She was wondering if she could get a cortisone injection. The assessment was osteoarthritis of the left knee. She was given an injection. The office also recommended that she continue with the ibuprofen and ice. She was to follow-up in one week. (JE1, pp. 9-10)

On July 16, 2015, Ms. Brackett reported that the cortisone injection lasted for 3 to 4 months. Dr. Zittergruen issued a hand-written note indicating that Ms. Brackett had left knee pain since January and would require surgery. Dr. Zittergruen recommended referral to Dr. Weresh at DMOS. (JE1, p. 11-16)

On December 18, 2015, Ms. Brackett returned to Dr. Zittergruen's office seeking another injection for her knee. She reported that her left knee remained quite stiff and sore especially after she had been sitting for a while. The doctor noted quite a bit of swelling in her legs bilaterally. (JE1, p. 17)

On February 16, 2017, x-rays of Ms. Bracket's left knee were taken. The radiology report stated that she had pain for the past 2 years. The impression was mild patellofemoral joint and medial compartment. (JE1, pp. 7-8)

On February 17, 2017, Ms. Brackett returned to see Dr. Zittergruen. Her knee was very painful and limiting her lifestyle significantly. She was no longer able to go up and down steps without pain and was not able to exercise. She no longer mowed her lawn or used her snow blower. (JE1, p. 18)

On February 22, 2017, Dr. Zittergruen issued a letter to claimant's counsel. He noted that prior to January of 2015, Ms. Brackett had never complained of left knee pain. The doctor felt that the work activities Ms. Brackett was performing from October 2014 through January 2015 certainly aggravated and accelerated the progression of osteoarthritis in her left knee. With regard to future medical treatment, he recommended an MRI to assess the degree of her knee problems. He noted that a routine x-ray of her knee from February showed a progression of her arthritic changes, especially in the medial joint space and the patellofemoral joint space. He opined that the work she performed from October through January hastened the need for future medical treatment of Ms. Brackett's left knee. Dr. Zittergruen further opined that as a result of the work-related injury, Ms. Brackett should be restricted to no repetitive bending at the knee and no pushing or pulling greater than 10 pounds. He also felt she should not go up and down steps, because that would aggravate her underlying condition. (Cl. Ex. 5)

On March 12, 2016, Dr. Zittergruen sent a letter to defense counsel. He stated that he did feel the work related activity during which she was pushing a heavy barrel of magnets on or about January 7 may have aggravated her underlying knee osteoarthritis, but certainly did not cause it. He noted that one month later she returned

for a cortisone injection which provided her symptomatic relief. The doctor also stated that shoveling snow also certainly could have aggravated her knee pain as well. He felt she would probably have continued problems with her left knee osteoarthritis over the coming years and may eventually require a knee replacement. Dr. Zittergruen did think this is a work related issue. (Ex. B)

On April 13, 2017, Dr. Zittergruen authored another letter to claimant's counsel. He stated that Teresa did suffer a significant injury to her knee in the work-related incident of October 2014 to January of 2015. He felt that this most likely was a permanent impairment injury, but he could not verify that until an MRI was performed. (Ex. 6)

On May 19, 2017, Craig R. Mahoney, M.D. of Iowa Ortho performed an IME at the request of the defendants. His assessment was arthritis of the left knee. Ms. Brackett denied having any symptoms, after complete recovery of the arthroscopic procedure 30 years ago, until the work injury. Dr. Mahoney felt that the injury 30 years ago and the required arthroscopic intervention put her at increased risk for early degenerative joint disease. He also noted other concerns including obesity and a history of autoimmune Graves' disease. She had received multiple injections with only temporary success. He felt an MRI should be considered. Based on his review of the records, radiographic review, and his examination, he opined that Ms. Brackett had arthritis prior to the work events. He believed the work events temporarily exacerbated the pre-existing condition. Based on his findings, he believes Ms. Bracket would ultimately have developed clinically significant arthritis at some point in her life regardless of the work-related activity. (Ex. A, pp. 1-5)

In June 29, 2017, Dr. Mahoney issued a letter to defense counsel. Dr. Mahoney did not believe any permanent disability was causally related to the January 7, 2015 work incident. It was his opinion that the patient has an exacerbation of preexisting arthritis, which in all likelihood would have happened anyway. (Ex. A, p. 6)

It is noted by the undersigned that in August of 2014, Ms. Brackett began working a second job for additional income at Fareway Grocery. She worked at Fareway approximately 16 to 20 hours per week. She worked as a grocery clerk. Her employment with Fareway ended on January 3, 2015. (Ex. D)

Ms. Brackett testified that she did have knee surgery in her early 20s. Following recovery from her surgery she remained very active. She played volleyball and softball, cared for her own lawn, and performed snow removal for herself and for the homes of family members. Prior to her work lifting duties in October of 2014 through January of 2015, she did not experience pain in her left knee. She also did not seek treatment for her left knee with Dr. Zittergruen prior to that time. (Testimony)

Following the work events in October of 2014 through January of 2015, Ms. Brackett continued to treat conservatively and refrained from additional lifting at work, yet her symptoms did not improve. Eventually, Dr. Zittergruen recommended surgery and another MRI. (JE1, p. 11; Cl. Ex. 5, p. 21)

Dr. Zittergruen opined that the work activities aggravated and accelerated the progression of Ms. Brackett's osteoarthritis in her left knee. He further opined that the work activities hastened her need for future treatment of her left knee. He believed that the injury was most likely the cause of permanent impairment, but he cannot state the extent of the impairment without the recommended MRI. As a result of the work injury, Dr. Zittergruen did restrict her to no repetitive bending at the knee and no pushing or pulling greater than ten pounds. He also felt that she should not go up and down steps. Dr. Mahoney agreed that Ms. Brackett had a preexisting condition that was exacerbated by the work activity. Dr. Mahoney's opinion that the condition might have manifested at some point in time, regardless of her work activities, is not persuasive. Ms. Brackett did not have symptoms leading up to the work injury, since the work injury she has continued to have symptoms. I find that Dr. Zittergruen's opinions carry great weight in this case. His opinions are well-reasoned and consistent with the evidence as a whole. I find that Ms. Brackett has shown by a preponderance of the evidence that her left knee injury arose out of and in the course of her employment. I further find that as a result of the work injury, Ms. Brackett needs additional treatment as recommended by Dr. Zittergruen.

Because Ms. Brackett requires additional treatment, I find that she has not yet reached maximum medical improvement (MMI). Thus, the issue of permanency is not ripe at this juncture. In order for permanency to be brought before this agency an original notice and petition for a review-reopening must be filed within the statute of limitations.

Because Ms. Brackett sustained a compensable injury to her left knee, the defendants are responsible for the reasonable and necessary medical expenses incurred as a result of that injury; this includes past and future expenses. Claimant is seeking payment of past medical expenses as set forth in Claimant's Exhibit 2. I find that the expenses listed in Claimant's Exhibit 2 were incurred as a result of the work injury and were for reasonable and necessary medical treatment. I find that defendants are responsible for these past medical expenses. Additionally, defendants are responsible for future medical expenses pursuant to Iowa Code section 85.27.

Claimant is also seeking temporary benefits from January 8, 2015 through January 9, 2015. Because claimant sustained a compensable injury she is entitled to temporary benefits as set forth in Iowa Code sections 85.33 and 85.34. It has not yet been determined if claimant has sustained any permanent disability; therefore, at this point, any temporary benefits would be classified as temporary total disability benefits (TTD). As such, due to the statutory four-day waiting period, I find TTD benefits are not yet owed to claimant.

Claimant is also seeking an assessment of costs. Because claimant was generally successful in her claim, I find that an assessment of costs is appropriate. Defendants are assessed appropriate costs under 876 IAC 4.33.

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 Rule of Appellate Procedure 6.14(6)(e).

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 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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the

claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Based on the above findings of fact, I conclude that claimant sustained a compensable injury to her left knee. I further conclude that her ongoing symptoms are the result of her work-related activities as opined by Dr. Zittergruen. Because I concluded she is not at MMI, permanency is not ripe at the time.

Claimant is seeking medical benefits under Iowa Code section 85.27. 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. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Based on the above findings of fact, I conclude that claimant has carried her burden of proof to show that the past medical expenses she submitted were incurred as a result of the work injury. I further conclude that the treatment was reasonable and necessary as a result of the work injury. As such, defendants are responsible for those past medical expenses. With regard to future medical expenses, defendants shall provide medical benefits as set forth in Iowa Code section 85.27.

Claimant is seeking payment of temporary benefits. Claimant has demonstrated that she sustained a compensable injury and could be entitled to temporary benefits. Because it has not yet been determined if Ms. Brackett sustained any permanent disability as a result of the work injury, any such benefits would be considered temporary total disability benefits at this point. When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury, beginning on the fourth day of disability after the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1). To date, claimant has only shown that she was disabled from January 8, to January 9, 2015 as a result of the injury. Thus, claimant is not yet owed any temporary benefits; however, this will likely change as she receives additional treatment.

Costs are to be assessed at the discretion of the deputy commissioner hearing the case. I exercise my discretion and award appropriate costs as specifically set forth in 876 IAC 4.33.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of eight hundred fifty and 77/100 dollars ($850.77).

Pursuant to Iowa Code 85.27, defendants shall be responsible for all reasonable and necessary medical expenses.

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 26th day of January, 2018.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.