

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MICHELLE HAMMJE,

Claimant,

vs.

COBO INTERNATIONAL,

Employer,

and

HASTINGS MUTUAL INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

JUL 03 2018

WORKERS COMPENSATION

File No. 5065854

ARBITRATION

DECISION

Head Note Nos.: 1803, 2502

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STATEMENT OF THE CASE

Claimant, Michelle Hanje, filed a petition in arbitration seeking workers' compensation benefits from Cobo International (Cobo), employer, and Hastings Mutual Insurance Company, insurer, both as defendants. This matter was heard in Des Moines, Iowa on June 12, 2018.

The record in this case consists of Joint Exhibits 1-5, Claimant's Exhibit 1, Defendants' Exhibits A-C, and the testimony of claimant.

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

Whether the injury is a cause of a permanent disability; and if so,

The extent of claimant's entitlement to permanent partial disability benefits;

Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

### FINDINGS OF FACT

Claimant worked at Cobo building wire harnesses. Claimant testified her job required repetitive use of hand drills and needle nose pliers. Claimant said her job also required her to do constant twisting with her hands.

Claimant said her right middle finger began aching sometime in 2015. Claimant testified that over time her finger began to ache more and more. She said her finger became locked and she had to manually unlock her finger with her left hand.

On November 9, 2015, claimant was evaluated by Rachel Oliverio, D.O. for pain in the right middle finger. Claimant was assessed as having a trigger finger related to work. Claimant was also assessed as having a ganglion cyst on the right wrist not related to work. Claimant was given restricted work duty, treated with medication, and referred to an orthopedic surgeon. (Joint Exhibit 2)

On November 12, 2015, claimant was seen by Katie Gratz, P.A. Claimant was assessed as having a trigger finger that would likely need surgery. Claimant was treated with medication. (Jt. Ex. 3, pp. 1-4)

On December 5, 2015, claimant was evaluated by Levi Gause, M.D. Claimant was assessed as having a trigger finger in the right middle hand. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 5, pages 1-2)

On January 5, 2016, claimant underwent a trigger finger release surgery on the right middle finger. Surgery was performed by Dr. Gause. (Jt. Ex. 4, p. 5)

Claimant returned to Dr. Gause in follow up between January 2016 and February 2016. (Jt. Ex. 5, pp. 6-9) Claimant saw Dr. Gause on February 17, 2016. Claimant had full range of motion in the right long finger. Claimant was allowed to return to work after physical therapy was completed. (Jt. Ex. 5, p. 9)

Claimant testified, at hearing and in deposition, that approximately 6 weeks after she returned to work at Cobo, her employer terminated her. The only reason given was it was in the best interest for all parties. Claimant testified she worked at Cobo for approximately 11 years. (Ex. C, Deposition p. 18)

In an April 7, 2016 letter, Dr. Gause found claimant had reached maximum medical improvement (MMI). He did not believe claimant needed further medical treatment. He also opined that claimant had no permanent impairment or permanent restrictions. (Jt. Ex. 5, p. 11)

In a December 15, 2017 report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an IME. Claimant indicated constant pain in the right hand with swelling and stiffness. Claimant wore a brace at night. Claimant had difficulty making a fist because of her right middle finger. Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Bansal found that claimant had a 12 percent permanent impairment to the second digit on the right hand. This value converted to a 2 percent permanent impairment to the right hand and upper extremity. (Claimant's Ex. 1)

Claimant testified that because of difficulty with her finger, she has loss of grip strength and has lost stamina in her right hand. Claimant said she has loss of range of motion in her middle finger. Claimant said her middle finger on the right will not bend all the way and she cannot make a fist. She said that she wears a brace on her right hand at night to help with sleep due to pain in the injured finger. Claimant says her hand swells.

### CONCLUSIONS OF LAW

The first issue to be determined is whether claimant's injury resulted in a permanent disability.

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 Rule of Appellate Procedure 6.14(6).

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).

Claimant contends her trigger finger injury resulted in a permanent disability. Claimant credibly testified that approximately two and one-half years after her surgery, she continues to have issues with loss of strength, stamina and range of motion in the middle right finger and right hand. Claimant testified she has to wear a brace at night to help with pain and to enable her to sleep.

Two experts opined regarding permanent impairment in claimant's finger and hand. Dr. Gause performed surgery on claimant's finger. He opined that claimant had no permanent impairment. Dr. Gause gives little explanation or analysis as to why claimant has no permanent impairment for her finger and hand.

Dr. Bansal evaluated claimant on one occasion for an IME. Dr. Bansal provided a detailed analysis of why claimant has a permanent impairment to her finger and hand. Dr. Bansal's opinions regarding permanent impairment are referenced to The Guides. Dr. Bansal's opinions regarding permanent impairment are corroborated by the credible testimony of claimant regarding her continued problems with her finger and hand. Given this record, it is found that Dr. Bansal's opinion regarding permanent impairment is more convincing than that of Dr. Gause.

Dr. Bansal found that claimant had a permanent impairment to the finger and hand. Claimant credibly testified she continues to experience problems with her finger and right hand two and one-half years after surgery. Given this record, claimant has carried her burden of proof she sustained a permanent disability caused by her November of 2015 work injury.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

Under the Iowa Workers' Compensation Act permanent partial disability is categorized as either to a scheduled member or to the body as a whole. See section 85.34(2). Section 85.34(2)(a)-(t) sets forth specific scheduled injuries and compensation payable for those injuries. The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). Compensation for scheduled injuries is not related to earning capacity. The fact-finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Dr. Bansal found that claimant had a 12 percent permanent impairment to the middle finger. Under Iowa Code section 85.34(2)(c), claimant is due 3.6 weeks of permanent partial disability benefits (12 percent x 30 weeks).

The final issue to be determined is whether claimant is due a reimbursement for Dr. Bansal's IME exam.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Dr. Gause, the employer-retained physician, gave his opinions of claimant's permanent impairment in an April 7, 2016 letter. In a December 15, 2017 report, Dr. Bansal gave his opinions regarding claimant's permanent impairment. Given the chronology of the reports, claimant has carried her burden of proof that she is due reimbursement for Dr. Bansal's IME.

#### ORDER

#### THEREFORE, IT IS ORDERED:

That defendants shall pay claimant three point six (3.6) weeks of permanent partial disability benefits at the rate of three hundred sixty-four and 87/100 dollars (\$364.87) per week, commencing on February 17, 2016.

That defendants shall pay accrued weekly benefits in a lump sum.

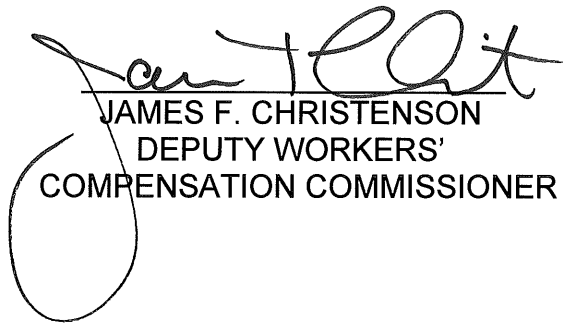
That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall pay the costs of Dr. Bansal's IME.

That defendants shall pay costs.

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

Signed and filed this 3<sup>rd</sup> day of July, 2018.



JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

James P. Hoffman  
Attorney at Law  
PO Box 1087  
Keokuk, IA 52632-1087  
jamesphoffman@aol.com

Tiernan T. Siems  
Attorney at Law  
10330 Regency Pkwy. Dr.  
Omaha, NE 68114-3736  
tsiem@eslaw.com

JFC/srs

**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.