

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHEILA GUITER,

Claimant,

vs.

GRAPE TREE MEDICAL
STAFFING, LLC.

Employer,

and

WESCO INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5067812.01

ARBITRATION

DECISION

Head Note No. 1402.40

STATEMENT OF THE CASE

Claimant, Sheila Guiter, filed a petition arbitration seeking worker's compensation benefits from Grape Tree Medical Staffing (Grape Tree), employer, and Wesco Insurance Company, insurer, both as defendants. This matter was heard on October 9, 2020, with the final submission date of November 6, 2020.

The record in this case consists of Joint Exhibits 1-9, Claimant's Exhibits 1-3, Defendants' Exhibits A-K, and the testimony of claimant. Joint Exhibits are labeled in the index both numerically and alphabetically. For purposes of clarity, all Joint Exhibits are referred to numerically.

The parties filed a hearing report at the commencement of the arbitration review hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration review 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's injury resulted in a permanent disability; and if so,
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. The commencement date of benefits.
4. Costs.

FINDING OF FACT

Claimant was 45 years old at the time of hearing. Claimant has a GED. Claimant has degrees as an LPN and an RN. (TR pages 10-11). Claimant is also certified as an Iowa Certified Assessment Coordinator (ICAC).

Since claimant became an LPN, claimant has largely worked in nursing jobs and supervisory positions in healthcare. Claimant worked as an occupational health nurse for John Deere from October, 2015, through March, 2016. She worked as a case manager for Care Initiatives Hospice Care in 2016. (Exhibit C, pp. 12-15 and TR pp. 43-44)

Claimant began working for Grape Tree in 2016. Grape Tree is a temporary staffing nursing agency. (TR p. 46) Claimant said she worked approximately 50 locations for Grape Tree, but primarily worked at two to three different places. (TR p. 47)

Claimant's prior medical history is relevant. In December, 2011, underwent surgery for a left knee medial meniscal tear. (JE 1)

In December, 2016, claimant was assessed as having a right knee sprain. (JE 2) In February, 2017, claimant underwent surgery for a right medial meniscal tear. (JE 3, p. 7).

On November 28, 2017, a resident struck claimant in the knee with a walker. Claimant testified the blow to her knee did not cause her to fall to the ground following the accident. (TR pp. 49-50)

On November 28, 2017, claimant was evaluated by Amy Montgomery, D.O. Claimant was assessed as having a right lateral collateral ligament strain. Claimant was treated with medication, referred to an orthopedic specialist, and told to use crutches if necessary. (JE 4).

Claimant was evaluated by Sreedhar Somisetty, M.D., on December 7, 2017. Claimant was assessed as having a possible right lateral meniscus tear. Claimant was given a cortisone injection in the right knee and given exercises. (JE 3, p. 10)

Claimant returned to Dr. Somisetty on December 20, 2017, with complaints of continued pain. An MRI of the right knee was recommended. (JE 3, p. 12)

Claimant underwent an MRI on January 4, 2018. It showed evidence of a partial tear of the ACL. Claimant was told another surgery may not be beneficial and that she was heading toward a total knee replacement on the right. Claimant was prescribed physical therapy. (JE 3, pp. 13-14)

On February 9, 2018, claimant was evaluated by Christopher Vincent, M.D. Dr. Vincent did not believe claimant had a significant injury to the ACL. Dr. Vincent noted that if claimant's symptoms had not improved, he would recommend viscosupplementation to aid with pain and swelling. (JE 6, pp. 27-29)

On February 16, 2018, claimant was seen by Tanetta Main, ARNP. Claimant indicated pain in her right knee and left hip. (Exhibit 2, p. 16)

On March 12, 2018, March 19, 2018, March 26, 2018 and April 2, 2018, claimant was given Orthovisc injections in the right knee. (JE 6, pp. 30-34)

On April 9, 2018, claimant returned to NP Main. Claimant had pain in the right knee and left hip. (Exhibit 2, p. 11)

Claimant returned to Dr. Vincent on May 4, 2018. Claimant had intermittent pain and swelling. Records indicate claimant had significant relief with injections. Claimant had left hip pain. Claimant still had knee pain with prolonged standing. Dr. Vincent had no further treatment to offer. He found that claimant had significant osteoarthritis in the knee. Dr. Vincent opined that claimant had maximally improved. He returned claimant to work with no restrictions on May 29, 2018. (JE 6, pp. 37-38)

On May 29, 2018, claimant was evaluated by Steven Aviles, M.D., for left hip pain. Claimant indicated she had left hip pain beginning in January, 2018, that was worsening. Dr. Aviles assessed claimant as having trochanteric bursitis. He expected claimant's condition to improve on its own. (JE 7, pp. 41-43)

In a June 21, 2018, letter, Dr. Vincent opined the claimant's November 28, 2017, injury did not result in permanent impairment. He noted claimant had pre-existing dysfunction of the knee. He did not recommend further medical treatment. (JE 6, p. 39)

In the August 20, 2018, letter, Dr. Aviles opined that claimant had no permanent impairment or permanent restrictions regarding the left hip. (JE 7, p. 44)

In a November 12, 2018, report, Mark Taylor, M.D., gave his opinion of claimant's condition following an Independent Medical Evaluation (IME). Claimant had right knee pain. Claimant also had left hip pain. Activity aggravated claimant's condition. Dr. Taylor opined that claimant's right knee injury was caused by the November 28, 2017, injury. He also opined that it appeared likely that the left hip pain resulted as sequelae of the right leg injury and claimant's substantially altered gait pattern. (Exhibit 1, p. 7)

Dr. Taylor recommended claimant undergo additional opinions regarding the right leg and left hip. He found that claimant was not at MMI. He also opined that if further care was not approved, he found claimant at MMI as of May 29, 2018. He found claimant had a 10 percent permanent impairment to the right lower extremity to the knee for loss of range of motion. He found claimant had a 7 percent permanent impairment to the left lower extremity for the hip. He recommended claimant not lift or carry more than 30-35 pounds occasionally. (Exhibit 1, pp. 7-8)

On April 16, 2019, claimant was evaluated by Bradley Scott, D.O., for right knee pain. Claimant was assessed as having osteoarthritis in the right knee. An MRI was recommended. (JE 8)

An MRI of claimant's right knee taken on August 22, 2019, showed degenerative changes with degenerative tears of the medial meniscus. (JE 9, p. 48)

In a June 12, 2019, report written by defendant's counsel, Dr. Somisetty gave his opinions regarding claimant's condition. He opined that claimant's November 28, 2017, incident only caused a temporary aggravation of claimant's pre-existing condition. He opined surgery was not necessary regarding the November 28, 2017, incident. He also indicated that claimant did not express any left hip pain or mental health injury complaints to him. (Exhibit A)

In a July 1, 2019, letter, Dr. Vincent indicated that he had reviewed the records from Drs. Taylor, Somisetty, Scott and Aviles. Dr. Vincent believed Dr. Taylor's report erred as Dr. Taylor found claimant was not yet at MMI, but still assigned a permanent impairment rating for the knee and hip. He also found Dr. Taylor's rating of the right knee not convincing as it was based on loss of range of motion in the right knee. This was contrary to the findings of Drs. Vincent, Scott and Somisetty who found claimant had full range of motion of the right knee in extension. He also opined that Dr. Taylor's diagnosis of trochanteric bursitis is a condition related to deconditioning and lack of exercise. (Exhibit B, pp. 6-7) Dr. Vincent reiterated that claimant had reached MMI as of May 4, 2018, and had no permanent impairment. (Exhibit B, pp. 6-7)

In a January 9, 2020, report, Dr. Taylor indicated he had reviewed Dr. Vincent's letter of July 1, 2019. He indicated any rating he gave to claimant was a provisional rating as claimant was not at MMI. Dr. Taylor also stood by his opinions regarding claimant's loss of range of motion in the knee. (Exhibit 3)

CONCLUSION OF LAW

The first issue we determine 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 R. App. P. 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 she sustained a permanent disability to her knee and hip caused by the November 28, 2017, injury.

Three experts have offered their opinions regarding claimant's right knee injury. Dr. Somisetty was a physician chosen by claimant. Dr. Somisetty is an orthopedic specialist. (Exhibit G, p. 23) He is the only expert in this case to have treated claimant both before and after the November 28, 2017, date of injury. (JE 3) In a June 12, 2019, report, he opined claimant's November 28, 2017, injury caused, at most, a temporary aggravation. (Exhibit A2)

Claimant was treated by Dr. Vincent for an extended period of time. Dr. Vincent also opined that the November 28, 2017, incident caused a temporary aggravation of an underlying condition and that claimant had no permanent impairment or permanent restrictions from the injury. (JE 6, pp. 37-39)

Dr. Taylor found claimant had a permanent impairment to the right knee based on a loss of range of motion. (Exhibit 1, p. 8) Dr. Taylor's opinion regarding the right knee is problematic. On May 4, 2018, Dr. Vincent found claimant had normal range of motion and extension of the right knee. (JE 6, p. 36) On December 7, 2017, Dr. Somisetty found that claimant had normal range of motion of the right knee. (JE 3, p. 10) On May 16, 2018, Dr. Scott also found that claimant had normal range of motion in the right knee. (Exhibit 8, see also exhibit B, p. 6)

Three orthopedic surgeons who treated claimant between December, 2017, and April, 2019, all found claimant had normal range of motion of the right knee. Given this record, the opinions of Dr. Taylor regarding permanent impairment to the right knee are found not convincing.

Three orthopedic surgeons found that claimant had normal range of motion of the right knee. Two of those orthopedic surgeons opined that claimant had no permanent impairment of the right knee. The opinions of Dr. Taylor regarding permanent impairment of the right knee are found unconvincing. Given this record, claimant has failed to carry her burden of proof she sustained a permanent impairment regarding the right knee injury.

Regarding the left hip, claimant was evaluated by Dr. Aviles, an orthopedic specialist, for the left hip. Dr. Aviles found that claimant had no permanent impairment to the left hip. (JE 7, p. 44) Dr. Taylor's IME report regarding the hip does not appear to show any instability, strength or any other objective deficits in finding that claimant has a permanent impairment to the hip. Dr. Taylor also notes that if claimant has further treatment to the left hip, her left hip condition could potentially resolve. (Exhibit 3, p. 23) Given this record, it is found that the opinions of Dr. Aviles are more convincing than those of Dr. Taylor regarding permanent impairment to the left hip. Given this record, claimant has failed to carry her burden of proof she has a permanent impairment to the left hip from the November 28, 2017, date of injury.

As claimant has failed to carry her burden of proof she has a permanent impairment in regard to either the right knee or the left hip injury, all other issues are moot.

Costs are assessed at the discretion of this agency. As claimant has failed to carry her burden of proof on any of the issues in dispute in this matter, each party shall pay their own costs.

ORDER

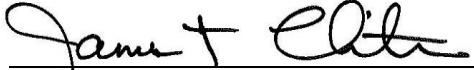
THEREFORE, IT IS ORDERED:

That claimant shall take nothing in the way of permanent partial disability benefits from this proceeding.

That each party shall pay their own 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 17th day of February, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Edwin Detlie (via WCES)

Andrew Tice (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.