BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SYLVIA STRAWHACKER,

Claimant,

vs.

WAL-MART DISTRIBUTION,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5059327

ARBITRATION

DECISION

Head Note Nos.: 1108.50, 1402.20, 3203

STATEMENT OF THE CASE

Sylvia Strawhacker, claimant, filed a petition in arbitration seeking workers' compensation benefits from Wal-Mart Distribution employer and New Hampshire Insurance Company, insurance carrier. She also filed a claim against the Second Injury Fund of Iowa. Hearing was held on February 4, 2019 in Davenport, Iowa.

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.

Sylvia Strawhacker was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE8, claimant's exhibits 1-15, defendant's exhibits A-F, and the Second Injury Fund of Iowa's exhibits AA-BB. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on February 22, 2019, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained any permanent disability as the result of the stipulated August 13, 2015 work injury.

2. Whether claimant is entitled to alternate medical care.

3. Whether claimant has proven a qualifying second injury for purposes of his Second Injury Fund claim and, if so, claimant's entitlement to benefits against the Second Injury Fund of Iowa.

4. Assessment of costs.

FINDINGS OF FACT

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

Ms. Strawhacker sustained an injury to her right lower extremity which arose out of and in the course of her employment with Wal-Mart Distribution on August 13, 2015. At the time of the injury, Ms. Strawhacker was helping a co-worker move a table. She pivoted and felt a sharp, burning pain and a pop in her right knee. She tried to walk it off and was able to complete her work shift. During her shift she reported the injury to the assistant manager and she completed an incident report. Over the next few weeks she continued to have problems with her right knee. Her knee would swell and she also experienced burning, shooting pain. Ms. Strawhacker had difficulty turning and twisting. The pain in her knee woke her at night. (Testimony; Claimant's Exhibit 1)

In April of 2016, Ms. Strawhacker asked her employer if she could see a doctor. She explained she was still having problems and wanted to have it checked out. On April 6, 2016, Ms. Strawhacker completed another injury report in reference to the original August 13, 2015 date of injury. (Testimony; Joint Exhibit 4; Cl. Ex. 2)

On April 6, 2016, Ms. Strawhacker saw Rick Garrels, M.D. at Genesis at Work. She reported the table lifting incident to Dr. Garrels. Ms. Strawhacker explained that her symptoms had increased over time and were impacting her work. Dr. Garrels diagnosed prepatellar bursitis, right knee. He prescribed conservative treatment and allowed her to return to regular duty. (JE5, pp. 31-32)

Ms. Strawhacker returned to see Dr. Garrels on April 19, 2016. He provided her with a cortisone injection. He restricted her to climbing ladders and squatting on a rare basis. The injection helped for a short time, but her symptoms returned. Dr. Garrels

prescribed physical therapy. He eventually ordered an MRI and referred her to Dr. Suleman M. Hussain, an orthopedic doctor. (JE5, pp. 35-48)

An MRI was performed on July 12, 2016. The MRI revealed a tear involving the posterior horn of the medial meniscus with small knee effusion and osteoarthritis. (JE6, pp. 67-68)

On August 15, 2016, Ms. Strawhacker saw Dr. Hussain at ORA Orthopedics. Dr. Hussain reviewed the July 2016 MRI and noted an extruded medial meniscus, degenerative medial meniscus tear and advanced arthritis. He provided an injection for the knee. Dr. Hussain assessed her with bilateral knee grade III osteoarthritis, symmetric. He also noted history of large cancer resection on the right side. He felt the long-term prognosis would include a total knee arthroplasty, bilaterally. Ms. Strawhacker was counseled on weight loss and BMI restrictions for a total knee. There was no orthopaedic intervention needed at that time. She was to continue her current restrictions. (JE8, pp. 72-73)

Ms. Strawhacker returned to see Dr. Garrels on August 25, 2016. Ms. Strawhacker was restricted to no climbing ladders and squatting, and was to limit lifting to 25 pounds, limit pushing and pulling to 50 pounds, limit standing and walking to as tolerated, and avoid twisting and pivoting of her right knee. No further treatment was recommended, other than medication for symptom control. (JE5, pp. 50-51)

Dr. Garrels placed Ms. Strawhacker at MMI for her right knee as of August 25, 2016. He felt that she did require continued Naproxen. On October 4, 2016, he noted that she did not have any restrictions. (JE5, p. 56) However, in the clinical notes before and after October 4, 2016, Dr. Garrels assigned restrictions. Specifically, he stated Ms. Strawhacker would require the restrictions until she had a knee replacement. (JE5)

In July of 2017, Dr. Garrels stated that Ms. Strawhacker's need for knee replacement was not related to the August 13, 2015 work injury; rather, it was the result of her preexisting degenerative arthritis. Dr. Garrels opined that the work injury did not materially aggravate, exacerbate, or speed up the arthritic process or the need for the knee replacement. He placed her at MMI for the work injury and stated that she did not require any additional treatment related to the work injury. Additionally, Dr. Garrels opined that Ms. Strawhacker did not require any permanent restrictions as a result of the work injury. He believed her need for permanent restrictions, if any, would be related to her preexisting condition. The doctor also stated she did not sustain any permanent impairment as the result of the August 13, 2015, work injury. (Def. Ex. C)

In August of 2017, Dr. Hussain offered his opinions regarding Ms. Strawhacker. He did not think that her need for a knee replacement was related to the work injury of August 13, 2015. He felt it was more consistent with pre-existing degenerative osteoarthritis. He believed that was why she was also having symptoms on her other side, because the left side also showed similar findings on x-ray. Dr. Hussain did not think that the work event aggravated or sped up the degenerative process. He felt the

August 13 event was a temporary aggravation of the underlying condition. He opined she had reached MMI from the work injury and that any further care would be related to her degenerative pre-existing osteoarthritis and not related to the work injury. Dr. Hussain agreed that she did not require any permanent restrictions due to the work injury. He also stated she did not sustain any permanent impairment related to the work injury. (Def. Ex. D)

On October 10, 2017, Dr. Garrels opined that Ms. Strawhacker's knee complaints were consistent with a temporary aggravation of a pre-existing condition. He recommended use of NSAID medications and activity restrictions to treat intermittent temporary aggravation of symptoms. (Defendants' Ex. B, p. 2)

At the request of her attorney, Ms. Strawhacker underwent an independent medical examination (IME) with Richard L. Kreiter, M.D. on February 7, 2018. (Cl. Ex. 4) With regard to the right lower extremity, Dr. Kreiter diagnosed varus deformity of the knee with narrowing and chondromalacia of the medial compartment, with patellofemoral chondromalacia causing chronic pain and impairment. Dr. Kreiter felt that Ms. Strawhacker had not reached a plateau of her right lower extremity symptoms. He felt she was slowly deteriorating. Because she was not at MMI, he offered a provisional impairment rating. Dr. Kreiter offered some recommendations for treatment. He noted she had been given the opinion that a total knee replacement would be needed; however, he felt that because she was young and overweight a total knee replacement at this time would not be long lasting. Dr. Kreiter restricted her to rare kneeling; she was advised to avoid stairs, no ladder climbing, no jumping and perhaps a 25 to 30-pound weight limit. Dr. Kreiter stated, "Ms. Strawhacker had a pre-existing arthritic condition in her right knee which was lighted up with a twist and pop while lifting at Walmart. The knee condition previously was asymptomatic and this was an aggravation and acceleration of pre-existing condition and now is more permanent." (Cl. Ex. 4, p. 15) In the history portion of his notes, Dr. Kreiter stated that prior to the August 13, 2015 work event, Ms. Strawhacker had never had treatment for a right knee condition by an MD, DO, or chiropractor. (Cl. Ex. 4, p. 16) However, a review of the evidence in this case demonstrates that this statement is inaccurate. Ms. Strawhacker was seen at Bergthold Chiropractic from April of 2015 through and beyond the date of the work injury for complaints of pain and discomfort over both of her knees. (Def. Ex. E) I find that Dr. Kreiter's opinions are based on an inaccurate and incomplete history and therefore his opinions cannot be relied on.

The defendant-employer and insurance carrier dispute that Ms. Strawhacker sustained any permanent disability as a result of the work injury. In support of their position, the defendant-employer and insurance carrier rely on the opinions of Dr. Hussain and Dr. Garrels. I find the opinions of Dr. Hussain and Dr. Garrels to be more persuasive than the opinion of Dr. Kreiter. I find the opinions of Dr. Hussain to be well-reasoned. He noted that Ms. Strawhacker's need for a knee replacement was not related to the work injury of August 13, 2015. The doctor felt it was more consistent with pre-existing degenerative osteoarthritis and that was why she was also having symptoms on her other side. The opinions of Dr. Garrels are consistent with the

opinions of Dr. Hussain. Dr. Kreiter is the only doctor to assign any permanent impairment or permanent restrictions because of the work injury. Unfortunately, Dr. Kreiter's opinions are based on an incomplete and inaccurate history. Thus, I find that the claimant has failed to carry her burden of proof to show that she sustained any permanent impairment as the result of the August 13, 2015 work injury.

With regard to the August 13, 2015 work injury, claimant is seeking additional medical care for her right knee. Claimant is seeking an appointment with an orthopaedic doctor for an evaluation of her right knee and a refill of a prescription. The defendant-employer and insurance carrier denied these requests based on the opinions of Dr. Garrels and Dr. Hussain. In July of 2017, Dr. Garrels opined that Ms. Strawhacker did not require any additional treatment related to the work injury. (Def. Ex. C) In August of 2017, Dr. Hussain offered his opinions regarding Ms. Strawhacker. He felt she had reached maximum medical improvement (MMI) from the work injury and that any further care would be related to her degenerative pre-existing osteoarthritis and not related to the work injury. (Def. Ex. D) Dr. Kreiter is the only doctor who has indicated that any treatment Ms. Strawhacker requires for her right knee is necessitated by the work injury. However, for the reasons set forth above, I find that the opinions of Dr. Garrels and Dr. Hussain carry greater weight than the opinions of Dr. Kreiter. Thus, I find Ms. Strawhacker has failed to carry her burden of proof to demonstrate that any additional care for her right knee is reasonable and necessary because of the work injury.

Ms. Strawhacker is also seeking reimbursement from the defendant-employer and insurance carrier for mileage she contends she incurred due to the August 13, 2015 injury. (Attachment to hearing report) The defendant-employer and insurance carrier argue that the trips claimed by Ms. Strawhacker on April 6, 2016 and May 22, 2017 to and from Genesis Health Group are duplicative of the April 6, 2016 and May 22, 2017 trips to Genesis Occupational Health. Based on a review of the evidence, it does appear that these trips are duplicative. Thus, I agree with the defendant-employer and insurance carrier's contention that $13.60 should be reduced from the claim for mileage reimbursement. Defendants did not dispute the remaining medical mileage charges. I find the defendant-employer and insurance carrier shall reimburse claimant for the remainder of her medical mileage reimbursement claim. Thus, the defendant-employer and insurance carrier shall reimburse claimant for the remaining requested medical mileage.

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 R. App. P. 6.14(6)(e).

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).

Ms. Strawhacker also asserts a claim against the Second Injury Fund of Iowa. Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

In the present case, I found that Ms. Strawhacker failed to establish a second qualifying injury. Because Ms. Strawhacker failed to establish a second qualifying injury she cannot demonstrate entitlement to benefits from the SIF. Having found that claimant did not prove a compensable, work-related right lower extremity injury occurred on August 13, 2015, I conclude that claimant failed to establish a second qualifying injury for purposes of her Second Injury Fund claim. Therefore, I conclude that claimant

has failed to establish Second Injury Fund liability, and her petition against the Second Injury Fund should be dismissed.

Claimant is seeking reimbursement from the defendant-employer for medical mileage. 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 concluded Ms. Strawhacker was entitled to reimbursement of the submitted medical mileage as set forth above.

Claimant is seeking an assessment of costs. Because claimant was generally not successful in her claims, I exercise my discretion and do not assess costs. All parties shall pay their own costs.

All remaining issues are rendered moot.

ORDER

THEREFORE, IT IS ORDERED:

Defendant-employer and insurance carrier shall reimburse medical mileage as set forth above.

Claimant shall take nothing from the Second Injury Fund of Iowa.

Claimant shall take nothing further from these proceedings.

All parties shall pay their own costs.

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 25th day of March, 2019.

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.