
IN THE IOWA DISTRICT COURT FOR POLK COUNTY

RAWDA MOHAMED
Petitioner/Claimant,

Case No. CVCV063416

v.

ATRIUM HOLDING COMPANY and
GALLAGHER BASSETT/SOMPO,
Respondents/Defendants.**RULING ON PETITION FOR JUDICIAL
REVIEW**

This matter came before the Court on October 21, 2022, for hearing on Petitioner Rawda Mohamed's Petition for Judicial Review. Petitioner was represented by attorney Samuel Aden. Respondents, Atrium Holding Company (Atrium) and Gallagher Bassett/SOMPO (collectively, Respondents), were represented by attorney William Scherle. Having entertained the arguments of counsel, having reviewed the court file (including the briefs provided by the parties and the certified administrative record), and being otherwise fully advised in the premises, the Court now rules and, for the reasons stated herein, **DENIES** Petitioner's Petition for Judicial Review.

I. BACKGROUND FACTS AND PROCEEDINGS¹**A. Petitioner's Personal and Employment History**

Petitioner was born in Madani, Sudan, and for the last 15 years has been a resident of Des Moines, Iowa. Petitioner completed high school and one year of college in Sudan before leaving the country. Apart from three months of ESL classes, Petitioner has not had any additional formal education. Petitioner understands a small amount of spoken English, but neither reads nor writes any English. Petitioner has two daughters. At the time of the Arbitration Hearing, Petitioner was 51 years of age.

Petitioner did not hold any jobs before arriving in the United States in approximately 2008. Petitioner's first job in the states was with Atrium at the Sheraton in West Des Moines. There,

¹ The factual background is derived from assertions in the Arbitration Decision and the parties' briefs. The Court is not making factual determinations here, but simply providing background to the dispute.

Petitioner worked in housekeeping. Petitioner worked at the Sheraton for approximately one year before going to work at Tyson. At Tyson, Petitioner was a line worker and was responsible for cutting and packaging meat. The job required Petitioner to be on her feet for most of the day and involved both bending and twisting.

After working at Tyson for a year, Petitioner operated a daycare out of her home. In her capacity as a daycare provider, Petitioner cared for children ranging from 2 months to 9 years of age. Petitioner's job duties included changing diapers and giving baths, and required squatting, bending, and lifting children.

Petitioner then held a position at Drake University where she worked in a kitchen. In the kitchen, Petitioner assisted the chef by cutting meat and vegetables. The job required Petitioner to retrieve food from a basement area and then carry it upstairs for preparation.

In 2018, Petitioner returned to work as a housekeeper for Atrium at the Sheraton Hotel in West Des Moines. The position was full time. On an average day, Petitioner cleaned at least 17 rooms but sometimes it could be up to 22 rooms. In each room, Petitioner vacuumed, made beds, cleaned bathrooms, mopped floors, and emptied the trash. When Petitioner changed a bed's sheets, she had to bend and twist her body. Petitioner also had to lift the mattress off the bed to get its fitted sheet on and off. Petitioner's best guess is the mattresses – especially king size mattresses – weighed more than 30 pounds. Hr'g Tr. 23:8-20. During each shift, Petitioner also had to load and then push a cart full of cleaning materials from room to room. The job required Petitioner to be on her feet all day.

There are some questions about Petitioner's termination, as she was initially furloughed in March of 2020 due to a decrease in business caused by the COVID-19 pandemic. Brandon Danner, the general manager at the Sheraton in West Des Moines, testified at the arbitration hearing that

Petitioner was not furloughed due to her restrictions.² She returned to work for four days in July of 2020 but indicated her pain increased. Her furlough was reinstated. She never provided Atrium with any restrictions. On October 30, 2020, Atrium terminated any employee who remained on furlough.

B. Petitioner's Injury and Medical History

On June 7, 2019, Petitioner picked up towels and a replacement shower curtain in the laundry area at the Sheraton. The floor in the laundry area was wet and there were bags of dirty laundry or trash in the area. Petitioner tripped over a bag and fell forwards. She then tried to get up but her foot remained stuck in the bag. This caused her to fall again onto her back. She felt immediate pain and a coworker arrived to help her up. Petitioner alleges that her knees immediately began to swell and, upon arrival at the office of her supervisor, ice was placed on her knees and back. The Sheraton did not have any personnel available to take Petitioner to see a doctor so Petitioner's daughter came and took her to a hospital.

Petitioner reported to Concentra for treatment to her back and left leg. Richard Bratkiewicz, M.D., examined Petitioner. Upon physical examination, Dr. Bratkiewicz noted joint pain, back pain, and joint stiffness. Petitioner also displayed bilateral muscle spasms in her lumbosacral spine. Dr. Bratkiewicz diagnosed Petitioner with a strain of her lumbar paraspinal muscles. He recommended that she start ibuprofen and metaxalone. He also referred her to physical therapy three times per week for two weeks. Dr. Bratkiewicz promulgated restrictions including: lifting up to 5 pounds occasionally, bending, standing, walking, and rotating her trunk occasionally. He further indicated Petitioner could bear weight as tolerated. He also stated Petitioner could return to modified duty that same day.

² Going forward, any and all references to "Testimony" are references to testimony given at the Arbitration Hearing, unless otherwise noted.

Petitioner started physical therapy on June 2, 2019, at Concentra. She rated her pain 8 out of 10. She denied any radiation down her legs and noted the pain was to her lower back.

Petitioner stayed off work for approximately one week, and then returned to work in a light duty capacity per Dr. Bratkiewicz's restrictions. In her light duty role, Petitioner was stationed in the laundry room, folding towels and sheets.

On June 10, 2019, Dr. Bratkiewicz examined Petitioner again. Petitioner indicated that her two sessions of physical therapy helped and she had no sciatic issues. Upon physical examination, Dr. Bratkiewicz observed tenderness in the left paraspinal and right paraspinal areas. Petitioner also displayed a limited range of motion in her lumbosacral spine. Dr. Bratkiewicz again diagnosed Petitioner with a strain of her lumbar paraspinal muscles. He opined she was "approximately 25% of the way toward meeting the physical requirements of her job." (JE 1, at 10). The doctor recommended four more sessions of physical therapy and a home exercise plan. Dr. Bratkiewicz indicated that Petitioner could return to modified duty work on the same day. The doctor provided the following restrictions: lifting up to 5 pounds occasionally, pushing/pulling up to 5 pounds occasionally, and no squatting, kneeling, or climbing ladders.

Petitioner had her fourth physical therapy visit at Concentra on June 14, 2019. She complained of increased low back pain since her previous visit. She especially noted pain when she rose from the toilet. She further mentioned that her feet would swell after working. Petitioner had difficulty completing certain physical therapy activities due to her pain. The therapist also observed Petitioner with significantly reduced gait speed and an antalgic gait. The therapist opined that Petitioner was progressing slower than expected who and she also had difficulty tolerating light exercise. The therapist also noted that tracking Petitioner's progress across visits was

difficult. During her prior visit, Petitioner would complete exercises with no issues and then would suddenly begin crying in pain.

On June 18, 2019, Petitioner returned to Concentra for her fifth physical therapy visit. Petitioner told the therapist that she felt better after her last session and did not have any low back pain. She also performed her home exercise program on a daily basis. Her main complaint surrounded low back pain while folding laundry, pushing carts, and bending over.

Afeera Aabida, M.D., examined Petitioner at Concentra on June 20, 2019, for continued follow up care. Petitioner indicated she felt better, but she had pain in her right knee. She also complained of swelling in her ankles. With regard to her lower back pain, Petitioner told Dr. Aabida that she had no radiation but that her pain was constantly dull and aching. She described her pain as “mild.” (JE 1, at 17). She described her right knee pain as sharp and moderate. Upon physical examination, Dr. Aabida found a full range of motion to the right knee with some pain. Dr. Aabida also found no tenderness, muscle spasms, or range of motion issues in the low back. Dr. Aabida opined that Petitioner had a strain of her lumbar paraspinal muscle and pain in her right knee. The doctor felt that Petitioner was at about 50% of her anticipated healing. Dr. Aabida recommended physical therapy for her right knee three times per week for two weeks. Dr. Aabida allowed Petitioner to return to full work activity.

During her physical therapy on June 20, 2019, Petitioner told the therapist she had no low back pain, and could perform all of her work duties. She could perform activities of daily living independently and performed her home exercise program on a daily basis. The plan was to discharge Petitioner from therapy.

Petitioner continued her care with Concentra on June 27, 2019. She reported to Dr. Aabida that her back pain worsened but the pain in her right knee improved. Petitioner indicated physical

therapy helped alleviate her complaints. She told Dr. Aabida she had significant difficulties with the physical requirements of her job. Dr. Aabida diagnosed Petitioner with right knee pain, back pain with radiation, and a strain of the lumbar paraspinal muscles. Dr. Aabida ordered an MRI of the lumbar spine and recommended Petitioner pause her physical therapy. Dr. Aabida allowed Petitioner to return to work with no restrictions.

Petitioner had another session of physical therapy on June 27, 2019. It is unclear if this therapy occurred prior to or subsequent to her visit with Dr. Aabida. Petitioner reported feeling slight low back pain after work that day.

On July 5, 2019, Dr. Aabida at Concentra reexamined Petitioner. Petitioner reported physical therapy helped but continued to report worsening back pain. She also noted that her knee pain was better. Upon physical examination, Dr. Aabida found issues with the right knee and lumbosacral spine. Dr. Aabida opined that Petitioner had roughly 50% healing. Dr. Aabida recommended that Petitioner continue to pause physical therapy and ordered an MRI. Dr. Aabida gave Petitioner some restrictions including that she could only work 6 hours per day. Petitioner could also occasionally do the following: lift up to 10 pounds, push/pull up to 10 pounds, bend, stand, and rotate her trunk.

Petitioner had an MRI of her lumbar spine on July 10, 2019, at Alliance Healthcare Radiology. George Brown, M.D., interpreted the MRI results. The MRI showed no fractures. The L5-S1 level showed advanced internal derangement on the right that minimally contacted both the right S1 nerve root sleeves and the exiting right L5 nerve root within the neural foramina. The L3-4 level showed minimal right far lateral disc bulging with annular tearing that “very mildly” narrowed the right sided neural foramina. (JE 2, at 38). There was minimal disc bulging at L4-5.

There was mild left-greater-than-right degenerative joint disease at L2-3. L1-2 was normal. Dr. Brown concluded there were spondylitic changes, which were age indeterminate.

On July 31, 2019, Petitioner reported to the Iowa Clinic where David Boarini, M.D., examined her. Petitioner complained of back pain with radiation down her left leg. She also had left leg weakness. Dr. Boarini diagnosed Petitioner with acute midline low back pain without sciatica. Dr. Boarini then issued a letter stating that Petitioner “really mainly has axial back pain and very little leg pain.” (JE 3, at 41). Dr. Boarini observed that Petitioner walked slowly, but had no focal weakness. Dr. Boarini reviewed the MRI and opined it was “really quite unremarkable.” (JE 3, at 41). Dr. Boarini recommended physical therapy, anti-inflammatories, and muscle relaxants. He felt there was no need for surgery. Dr. Boarini allowed Petitioner to return to light duty work.

Petitioner returned to Dr. Boarini’s office on August 21, 2019. Petitioner complained of back pain to her bilateral hips. She also complained her right leg was weak. Petitioner alleged no one contacted her for physical therapy so she had not had any. (JE 3, at 45). She was eager to start physical therapy as she felt she would benefit from it. Dr. Boarini kept Petitioner on light duty.

Petitioner commenced physical therapy at Select Physical Therapy on September 27, 2019. Petitioner’s daughter, Nibras, attended the appointment in order to translate for her mother. Petitioner had low back pain with radiculopathy ongoing for four months. She indicated this pain was worse on the left than the right. The therapist observed that Petitioner ambulated slowly with decreased trunk motion. She could squat, twist, bend, lift from the floor, and stand or walk frequently but was currently allowed to sit at work every hour for a short rest break.

Petitioner had another therapy appointment with Select Physical Therapy on October 10, 2019. She reported low back pain and radicular pain into the left lower extremity. The therapist

opined that Petitioner's condition improved overall. Petitioner tolerated the therapy appointment with mild complaints of pain. She also showed a "fair perception of appropriate self-exertion levels." (JE 4, at 65).

On November 1, 2019, Petitioner attended her tenth physical therapy visit at Select Physical Therapy. She felt stiff and sore and opined that her pain increased. She continued to ambulate slowly with decreased trunk motion. The therapist reported that Petitioner had "a few good days a couple weeks ago" but she "appeared to have a setback" causing her to be hesitant with movement since. (JE 4, at 68). Petitioner could lift 20 pounds from the floor but displayed a poor technique in doing so. Petitioner demonstrated a 40% improvement in her symptoms. The therapist planned to move Petitioner to independence or discharge over the next week. The therapist told Petitioner to contact her doctor for a follow-up appointment due to the continued severity of her pain complaints. Petitioner expressed concerns about ceasing therapy.

Petitioner continued her therapy with Select Physical Therapy on November 8, 2019. This was her twelfth physical therapy visit. Overall, Petitioner's condition remained unchanged and she complained of increased pain and falls over the previous two weeks. Additionally, she complained that "[a]ny lifting, pushing/pulling has led to worsened symptoms." (JE 4, at 71). The therapist observed that Petitioner continued to ambulate in a slow fashion. The therapist continued to opine that Petitioner's prognosis was poor. As of the end of this visit, Petitioner was discharged from physical therapy.

On November 13, 2019, Petitioner followed up with Dr. Boarini at the Iowa Clinic. Petitioner complained of back pain with radiation down her right leg. She also complained of right buttock pain, right inner thigh muscle spasm causing a loss of bladder control, and right leg weakness. She indicated four weeks of physical therapy had provided no relief of symptoms. Dr.

Boarini opined that Petitioner had “a fairly unremarkable physical examination and MRI.” (JE 3, at 51). He noted that she improved with physical therapy and walked normally. Dr. Boarini maintained the light duty restrictions for four weeks while Petitioner finished physical therapy and work hardening. After that time, she was to return to regular duty with no restrictions.

Petitioner returned to Select Physical Therapy on December 17, 2019. She recalled completing physical therapy and indicated it provided improvement. However, she returned to work and continued to have pain lifting and pushing. The therapist observed that Petitioner was eager to get better and did not want to complain. Petitioner rated her pain 1 out of 10 at the time of the appointment and 0 out of 10 at the best. She could lift up to 10 pounds and push up to 50 pounds. Petitioner told the therapist she could perform most of the tasks of her job except for lifting a case of water from floor to waist, pushing a heavy cart, and performing sustained bending while cleaning bathtubs. Since she worked, but had pain, the therapist recommended physical therapy rather than work conditioning.

By January 20, 2020, Petitioner completed her tenth visit with Select Physical Therapy since restarting therapy in December of 2019. She reported pain of 1 out of 10 during the visit, 2 out of 10 at its best and 8 out of 10 at its worst. Petitioner was discharged from therapy due to a denial of authorization.

On March 12, 2020, Petitioner reported for an IME, arranged for by Atrium, with William R. Boulden, M.D., F.A.A.O.S., at Capital Orthopaedics & Sports Medicine. He issued a report dictating his findings on March 13, 2020. An interpreter was used during the IME. Petitioner related how the work injury allegedly occurred. Her chief complaint was low back pain which, at its worst, causes numbness and tingling in the buttocks through the thigh into the foot. Dr. Boulden indicated he could not identify a dermatomal pattern in her description of the pain. Dr. Boulden

reviewed Petitioner's medical treatment. Dr. Boulden reviewed the home exercise plan with Petitioner. Petitioner performed mild stretching exercises but did not perform stabilization exercises. As of the time of the examination, Petitioner was performing her normal work but noted problems performing her work on an everyday basis.

Petitioner told Dr. Boulden that bending, twisting, lifting, and pushing or pulling the supply cart aggravated her symptoms. By midday, her pain would begin to increase. By the end of the day, she had "a lot of pain and is worn out." (Resp'ts' Ex 5, at 25). She reported difficulty driving home. At times, she is moved from her normal job to the laundry area which is not as physically demanding. Petitioner found relief from her pain by moving around and flexing her hip and knee.

Upon physical examination, Dr. Boulden observed that Petitioner stands in a flexed position with her spine. When she extended her low back, her pain increased. Dr. Boulden reviewed lumbar spine x-rays and Petitioner's MRI. Dr. Boulden opined that Petitioner has degenerative disc disease "up and down" her lumbar spine. (Resp'ts' Ex 5, at 26). She also has facet degenerative changes. Dr. Boulden did not see herniated discs in the lumbar spine but saw disc bulging at L5-S1. There also was no impingement of the L5 nerve root. Dr. Boulden opined the findings are "all chronic in nature and are not related to the alleged injury" described by Petitioner. (Resp'ts' Ex 5, at 26). Dr. Boulden further noted there were no clinical objective findings showing pathological changes. He opined she had mechanical back pain and may have had a contusion to her back or a lumbosacral strain. Petitioner could not describe how she fell, which caused Dr. Boulden difficulty as he found no objective evidence of an injury. Dr. Boulden opined Petitioner's symptoms were subjective. While Petitioner had increased symptoms, Dr. Boulden concluded Petitioner did not materially aggravate her pre-existing back issues. Dr. Boulden recommended a better rehabilitation program to relieve Petitioner's temporary

aggravation. This program would include a strengthening-type exercise program. Dr. Boulden declined to provide any work restrictions. Upon finishing proper instruction in a stabilization program, Dr. Boulden would place Petitioner at maximum medical improvement (MMI). Dr. Boulden finished his report by declining to provide an impairment rating due to the lack of objective findings.

On April 9, 2020, Petitioner began another round of physical therapy for lower back pain. The therapist noted her pain improved with physical therapy, but “significantly worsens with work.” (JE 4, at 81). She was transferred to the laundry room due to her lower back pain and found it less taxing on her back. At the time of her appointment, she was laid off due to COVID-19 and indicated that being off work improved her back pain. Petitioner continued to display an antalgic gait with decreased time standing on her left lower extremity. The therapist concluded the evaluation by recommending that Petitioner have physical therapy three times per week for three weeks.

By April 27, 2020, Petitioner attended her eighth visit of physical therapy at Select Physical Therapy. She reported pain of 0 out of 10 at its best and 1 out of 10 at its worst. This represented a significant improvement over her first visit on April 9, 2020. Petitioner told the therapist that she was able to take many long walks with her daughter with “very little pain.” (JE 4, at 86). She reported nervousness that her pain would return when she returned to work. Overall, Petitioner perceived her improvement as 90%. The therapist found no tenderness over much of Petitioner’s back. At the time of discharge, the therapist opined that Petitioner had a good prognosis. The therapist again noted that Petitioner had poor lifting mechanics and needed frequent cueing to maintain mechanics. The therapist recommended that Petitioner continue her home exercises and incorporate a walking program into her daily routine.

Dr. Boarini again examined Petitioner on August 24, 2020. She complained of back pain, left leg issues, bilateral leg weakness, and difficulties going from a sitting to standing position. Petitioner told Dr. Boarini she was not working at the time due to her symptoms. Dr. Boarini diagnosed Petitioner with acute midline low back pain without sciatica. Dr. Boarini recommended a physical therapy consultation and evaluation. Dr. Boarini noted the MRI “is quite unremarkable, with no change from her previous scan and certainly nothing surgical.” (JE 3, at 57). Dr. Boarini wrote, “[t]his patient has myofascial back pain, and I recommended a functional capacity evaluation to see what sort of work limitations she needs.” (JE 3, at 57-58).

On October 26, 2020, Petitioner established care at Jordan Creek Family Medicine Clinic, P.C., with Basil Hassan, M.D. Petitioner complained of anterior chest wall pain with respiration, fatigue, hypertension, and being overweight. Petitioner needed her blood pressure medication filled and complained of a “bump” on her chest that was growing for two years. She reported no trauma or injury to her chest. She reported no muscle aches or localized joint pains. Dr. Hassan instructed Petitioner to lose weight, provided a prescription for Losatran-Potassium, and referred Petitioner for an x-ray due to midsternal pain and protrusion.

Petitioner attended a functional capacity evaluation (FCE) at E3 Work Therapy Services on November 17, 2020. Kara Campbell, P.T.A., and Aaron Timm, D.P.T. performed the testing on Petitioner. The examiners opined that Petitioner’s overall effort was “equivocal” due to Petitioner “performing indistinctly during a repeated measures protocol.” (JE 6, at 98). Petitioner could lift up to 36.37 pounds from 10 inches to the waist and 37.27 pounds from 20 inches to the waist. She displayed frequent and extreme overt pain behaviors during the FCE. Her pain questionnaires were low for subjective pain reports and behaviors. The examiners found that benign testing was positive for possible over-reporting of symptoms. The examiners also

recommended medical correlation. Based upon the results, the examiners concluded that Petitioner met the material handling demands for a medium demand vocation.

At the direction of Petitioner's counsel, Petitioner reported to Mid-Iowa Independent Medical Evaluations for an Independent Medical Evaluation (IME) performed by Jeffrey A. Pederson, D.O., F.A.A.P.M.R., C.I.M.E., on December 9, 2020. Dr. Pederson issued a report based upon his examination on December 11, 2020. Dr. Pederson is a diplomate of the American Board of Physical Medicine and Rehabilitation. Petitioner related the facts of the initial work incident to Dr. Pederson. Petitioner complained of pain at 7 out of 10. Lifting anything over 15 pounds, sitting or standing for extended periods of time, and working increased Petitioner's back pain. She also complained of pain radiating to the posterior right thigh. Dr. Pederson observed that Petitioner was teary during the examination and noted that her daughter opined that Petitioner was depressed because she could not work or enjoy activities. Dr. Pederson reviewed Petitioner's medical treatment to date.

Dr. Pederson examined Petitioner and found she ambulated with a cane and a flexed forward posture at the waist. Dr. Pederson found no pain with passive rotation of the upper body as a unit. Petitioner could not touch her toes on forward flexion. Dr. Pederson observed tenderness with palpation over bilateral lumbar paraspinal muscles, sacroiliac joints, gluteal muscles, and the greater trochanter region. Dr. Pederson also noted mild tightness in the lumbar paraspinal muscles and quadratus lumborum. Dr. Pederson did not find tenderness in the thoracic paraspinal muscles. Dr. Pederson diagnosed Petitioner with right lumbar radiculopathy "likely S1 but unconfirmed," aggravation of pre-existing lumbar degenerative disc disease and facet arthropathy, bilateral knee pain, and myofascial low back pain. (Pet'r Ex. 8, at 26). Dr. Pederson opined the MRI showed degenerative changes with an annular tear and further noted this "may cause a chemical

radiculopathy.” (Pet’r Ex. 8, at 26). Dr. Pederson stated, “[i]t is reasonable the fall backwards caused or substantially aggravated the annular tear and/or disc bulging causing radicular symptoms.” (Pet’r Ex. 8, at 26). Since Petitioner had a positive Kemp test and a reduction in symptoms while flexing forward, the involvement of the lumbar facet joints after a traumatic fall should be considered. Dr. Pederson opined that Petitioner had not reached maximum medical improvement. He recommended a diagnostic workup with an electrodiagnostic test of the right lower extremity and a transforaminal epidural steroid injection at S1 or L5. He also noted that Petitioner could be a candidate for trigger point injections.

Furthermore, Dr. Pederson opined if Petitioner decided to forego further diagnostic or treatment options then Petitioner sustained a Category II lumbar impairment that equated to 8% of the whole person. This is based upon Table 15-3 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. For permanent restrictions, Dr. Pederson indicated that Petitioner should lift no more than 30 pounds from the floor to the waist. He also suggested Petitioner should avoid repetitive twisting and bending and have the ability to change positions frequently.

Dr. Hassan examined Petitioner again on January 6, 2021. She complained of low back pain after a work injury in 2019. Her back pain persisted for six days. She denied leg pain, numbness, or tingling. She told Dr. Hassan that she could feel her blood pressure go up when her pain increased. Dr. Hassan recommended that Petitioner avoid lifting more than 10 pounds and consider additional physical therapy if she was not improving. Dr. Hassan also recommended that Petitioner lose weight. He prescribed Petitioner with Tizanidine and Aspercreme with lidocaine.

On April 7, 2021, Petitioner reported to Iowa Ortho for an examination by Trevor Schmitz, M.D. She reported her pain as 5 out of 10. She complained her pain was persistent and worsening.

Laying on her bed or sitting for too long worsened her pain. Petitioner related that previous physical therapy provided some help. She complained of falling due to her low back pain. Dr. Schmitz noted Petitioner's antalgic gait and she ambulated with a cane. Physical examination of Petitioner's back showed normal alignment, a functional range of motion, and tenderness to palpation at L5-S1. Left knee range of motion examination caused pain, as well. Dr. Schmitz noted normal motor strength at the hips, knees, ankles, and feet. Dr. Schmitz recommended dietary counseling and surveillance.

Vanessa May, M.S., C.R.C., of Disability Resource Consulting Services, LLC, issued a vocational report on May 26, 2021, in response to a request from Respondents' counsel. In preparing her report, May reviewed Petitioner's job description, employment history, and medical records. May noted that Petitioner worked primarily as an unskilled laborer since arriving in the United States. Despite being an unskilled laborer, May opined that Petitioner had an excellent work history, which would provide her with some advantage in the labor market. May noted that Dr. Boulden and Dr. Schmitz opined that Petitioner retained the ability to meet the demands of medium work as defined in the Dictionary of Occupational Titles. May opined that Petitioner worked in medium work as a janitor, production helper, and child care monitor and Petitioner worked in light work as a housekeeper.

May performed a labor market survey using "mostly Light work demands, with some falling within the Dictionary of Occupational Titles Medium level, but presumably are within her restrictions based on the description given in the job posting." (Resp'ts' Ex 4, at 17). May further opined that sedentary jobs were not included in her review, but that Petitioner could perform unskilled sedentary occupations within her restrictions. In performing her labor market survey, May identified openings as a laundry worker, assembler of small products, cashier, housekeeper,

dietary aide, and kitchen helper. Within these categories, May identified a number of open positions. May opined, “[b]ased on the above findings, there are many current openings in the Des Moines, Iowa area that are commensurate with Petitioner’s work abilities as found in the Functional Capacity Evaluation.” (Resp’ts’ Ex 4, at 19). She concluded the labor market was “extremely friendly for an applicant such as Petitioner...” (Resp’ts’ Ex 4, at 19).

In response to a request from Petitioner’s counsel, Phil Davis, M.S., issued a vocational report on May 31, 2021. As a part of this report, Davis interviewed Petitioner on May 21, 2021, which was translated by Petitioner’s daughter, Nibras. Davis also reviewed Petitioner’s medical records. During her interview, Petitioner indicated she understood spoken English on a scale of 5 out of 10, her ability to speak English as a 2-3 out of 10, and her ability to speak English as 1 out of 10. She further indicated she cannot write in English. After reviewing Petitioner’s previous employment, Davis opined that Petitioner’s job required her to perform work within the medium physical demand level. This was because she needed to lift in excess of 40 pounds on an occasional basis, repetitively push and pull, squat, kneel, bend, twist, and stoop. She also was required to constantly walk throughout the course of her workday. Davis noted that a medium category job, as defined by the U.S. Department of Labor, requires 50 pounds of maximum lifting with frequent lifting or carrying of up to 25 pounds.

Based upon the restrictions of Dr. Pederson, Davis opined that Petitioner’s physical lifting abilities were within the light physical demand category. Davis further opined that Petitioner fell within the sedentary to limited aspects of a light physical demand level. The light physical demand category is defined as 20 pounds of maximum lifting with frequent lifting and carrying up to 10 pounds. It is also defined as light “if less lifting is involved but significant walking/standing is done or if done mostly sitting, but requires push/pull on arm or leg controls.” (Pet’r Ex. 10, at 32).

Davis stated further, “I would opine that the restrictions set forth by Dr. Pederson would preclude Petitioner from performing all of the essential functions of any of her past employment activities.” (Pet’r Ex. 10, at 33). He continued that Petitioner had limited transferable skills based upon her employment history. Davis concluded his report by opining that, based upon Dr. Pederson’s restrictions, Petitioner is now 100% precluded in her ability to perform any of her past employment activities without significant accommodations provided by an employer. *Id.*

Davis testified that he eventually reviewed the results of the FCE and Petitioner could return to her housekeeping position with Atrium based upon the position description. Davis indicated that Petitioner would be able to stock her cleaning cart in a lighter fashion in order to avoid heavy lifting or pushing.

Petitioner testified she continues to have low back pain on a daily basis. She claimed she cannot sit for long and cannot sleep on one side for a long time. She further testified she can no longer clean her house, cut the grass, cook, or do laundry. Her daughter testified that she and her sister help Petitioner maintain her house. Petitioner also testified she has difficulty ascending or descending stairs. Consequently, she established a new bedroom in her kitchen rather than on the second floor of her home.

Petitioner testified she applied for jobs in November and December of 2020 at DeeZee, the Mailbox, and Anderson Windows. She testified that she failed a physical examination at DeeZee. Upon providing the Mailbox with her restrictions, they did not return her calls. Anderson Windows also declined to offer her employment. She did not apply for any other jobs until one week prior to the hearing when she sought assistance from a state vocational rehabilitation office. Petitioner indicated she collected unemployment. Petitioner further testified she would be willing to work in a job that complied with the restrictions of the FCE or Dr. Pederson.

On October 8, 2021, the Deputy Commissioner issued his Arbitration Decision in this matter. The Deputy found Respondents owed Petitioner healing period benefits from August 24, 2020, to November 17, 2020, and she was not eligible for permanent disability benefits. Arb. Dec. at 24. Additionally, the Deputy denied Petitioner's request for alternate medical care. *Id.* The Deputy held that Respondents shall reimburse Petitioner \$100.30 for costs incurred. *Id.* The Deputy also ordered Respondents to Reimburse Petitioner's IME pursuant to Iowa Code section 85.39. *Id.*

Petitioner timely appealed the Deputy's Arbitration Decision to the Iowa Workers' Compensation Commissioner, Heather L. Palmer. Petitioner argued the Deputy erred in finding: (1) she was not entitled to a running award of healing period benefits from August 24, 2020; and (2) she failed to prove the work injury is a cause of permanent disability.

On March 16, 2022, the Commissioner filed her Appeal Decision in this matter, affirming the entirety of the Deputy's Arbitration Decision.³ On April 5, 2022, Petitioner filed the present Petition for Judicial Review alleging: (1) the Commissioner erred as a matter of law by limiting the award of healing period benefits to the period of August 24, 2020 to November 17, 2020; and (2) the Commissioner erred as a matter of law in finding that Petitioner did not sustain a permanent/industrial disability. On August 22, 2022, Petitioner filed her brief in support of her Petition for Judicial Review.⁴ Respondents filed their Response to said Petition on September 14, 2022. No Reply Brief was filed by Petitioner. Additional facts are set forth below as necessary.

II. STANDARD OF REVIEW

³ The Commissioner's appeal decision did not make any separate/independent findings of fact or law from those stated in the Deputy's arbitration decision. Instead, the Commissioner "adopted" the Deputy's findings and conclusions set forth in the arbitration decision. Accordingly, throughout this ruling, the Court collectively refers to both decisions as the "Commissioner's" decision.

⁴ On June 23, 2022, the Court filed an Order Establishing Scheduling for Conduct of Proceedings pursuant to Iowa Rule of Civil Procedure 1.1603(2). On August 2, 2022, this Court granted a continuance and extended the deadline for the parties' briefs and response submissions.

On judicial review of an agency action, the district court functions in an appellate capacity. *Iowa Planners Network v. Iowa State Commerce Comm'n*, 373 N.W.2d 106, 108 (Iowa 1985). The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2011); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including 1) proof the action was ultra vires, 2) legally erroneous, 3) unsupported by substantial evidence in the record when that record is viewed as a whole, or 4) otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* § 17A.19(10). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002).

"Because of the widely varying standards of review, it is essential for counsel to search for and pinpoint the precise claim of error on appeal." *Jacobsen Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010) (citation and internal quotations omitted). For example, if the agency's alleged "error is one of fact, [the Court] must determine if the [agency's] findings are supported by substantial evidence." *Jacobsen Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010) (citing Iowa Code § 17A.19(10)(f)). "If the error is one of interpretation of law, [the Court] will determine whether the [agency's] interpretation is erroneous and substitute [its] judgment for that of the" agency. *Id.* (citing Iowa Code § 17A.19(10)(c)). "If, however, the claimed error lies in the [agency's] application of the law to the facts, we will disturb the [agency's] decision if it is '[b]ased

upon an irrational, illogical, or wholly unjustifiable application of law to fact.” *Id.* (quoting Iowa Code § 17A.19(10)(m)).

Furthermore, the substantial rights of a person have been prejudiced when the agency action is “[b]ased upon a determination of fact . . . that is not supported by substantial evidence in the record...” Iowa Code § 17A.19(10)(f). “Evidence is not insubstantial merely because different conclusions may be drawn from the evidence.” *Pease*, 807 N.W.2d at 845. *See also Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007) (“Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the [agency’s] decision is not supported by substantial evidence.”). “Under chapter 17A, a court’s task on judicial review is not to determine whether the evidence might support a particular factual finding; rather, it is to determine whether the evidence supports the finding made.” *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 263–64 (Iowa 2012). Furthermore, the Iowa Supreme Court has found that a “district court exceed[s] the scope of permissible judicial review of agency decisions by making findings” the agency never made. *Id.* at 264 (citation and internal quotations omitted).

Another subsection of section 17A.19(10) states that a person’s substantial rights have been prejudiced if the agency action is “[t]he product of reasoning that is so illogical as to render it wholly irrational.” Iowa Code § 17A.19(10)(i). However, “[t]he legislature’s grant of judicial power to reverse an agency decision “on this basis” did not confer upon courts wholesale authority to substitute their judgment for that of agencies whenever courts might favor a different outcome in a contested case.” *Christensen v. Snap-On Tools Corp.*, 665 N.W.2d 439, 2003 WL 1024942, at *3 (Iowa Ct. App. Mar. 12, 2003).

III. CONCLUSIONS OF LAW

A. Temporary Total Disability (TTD)/Healing Period Benefits and Permanent

Disability Benefits Generally

Iowa Code section 85.33(1) states, in relevant part, that an employer will pay an employee “for injury producing *temporary* total disability weekly compensation benefits . . . until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.” (Emphasis added). Iowa Code section 85.34(1) provides the method for awarding benefits for a *permanent* disability:

Compensation for permanent disabilities and during a healing period for permanent partial disabilities shall be payable to an employee as provided in this section...

1. Healing period. If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or *until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.*

(Emphasis added).

As a general rule, “temporary total disability compensation benefits and healing-period benefits refer to the same condition.” *Clark v. Vicorp Rest., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005). The purpose of TTD benefits is to “partially reimburse the employee for loss of earnings” during a period of recovery from the condition. *Id.* at 604-05. The difference between TTD benefits and healing period benefits:

involves permanent partial disability. If permanent partial disability results, the payments made prior to payment for permanency are healing period benefits. Healing period benefits accrue from the first day following the injury or the

occurrence of injury. When an injury does not result in a permanent disability, the payments made are called “temporary total disability benefits.”

Id. at 604 (internal citation omitted). Furthermore, the Iowa Supreme Court has provided an illustration of the difference between awards for temporary and permanent disability:

Normally, an industrial injury gives rise to a period of healing accompanied by loss of wages. During this period of time, temporary benefits are payable to the injured worker. Generally, these benefits attempt to replace lost wages (and provide medical and hospitalization care) consistent with the broad purpose of workers' compensation: to award compensation (apart from medical benefits), not for the injury itself, but the disability produced by a physical injury. In Iowa, these benefits are spelled out in Iowa Code sections 85.33, 85.34, and 85.37. These temporary benefits include temporary total disability benefits and healing-period benefits... Nevertheless, an award for healing-period benefits or total temporary disability benefits are only temporary benefits and do not depend on a finding of a permanent impairment.

The period of healing is then followed by recovery or stabilization of the condition and probably resumption of work. Any disability that remains after stabilization of the condition gives rise to either a permanent partial or a permanent total award. In other words, maximum physical recovery marks the end of the temporary disability benefits, and at that point, any permanent disability benefits can be considered.

Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (internal citations and quotation marks omitted). “Stabilization of the employee’s condition is the event that allows a physician to make the determination that a particular medical condition is permanent.” *Dunlap v. Action Warehouse*, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012) (internal citations and quotation marks omitted).

B. Whether Petitioner is Owed a Running Award of TTD Benefits

Petitioner appeals the Commissioner’s decision to not award her a running award of healing period benefits from August 24, 2020 to the present and ongoing. The Commissioner found that Petitioner was medically capable of returning to work on November 17, 2020. Petitioner argues she was unable to return to work, and the Commissioner’s finding to the contrary was unsupported by substantial evidence.

Petitioner argues Dr. Pederson's opinion issued on December 11, 2020, recommending additional treatment and diagnostics, means Petitioner remained in a healing period and was medically unable to return to similar employment. On December 11, 2020, Dr. Pederson opined that Petitioner should not lift more than 30 pounds floor to waist, should avoid repetitive twisting and bending, and should have the ability to change positions frequently. However, several medical opinions were offered in this case. The Commissioner found Dr. Boarini, Dr. Boulden, and Dr. Schmitz's opinions to be more persuasive than Dr. Pederson's as it was unclear whether Dr. Pederson reviewed Petitioner's MRI before he issued a permanent impairment rating. Based on her finding that Dr. Pederson's opinion was less credible than the other doctors who issued opinions on Petitioner's condition, the Commissioner found Petitioner was medically capable of returning to work and denied Petitioner's request for a running award of healing period benefits.

First, Petitioner cites *Waldinger Corp. v. Mettler*, to support her contention that after a claimant reaches MMI, if he or she is rendered temporarily disabled from work, a new healing period may begin under Iowa Code section 85.34(1). *See* 817 N.W.2d 1, 8 (Iowa 2012). However, *Waldinger* described a very limited circumstance. The Iowa Supreme Court held, "When, after achieving MMI, a claimant is rendered temporarily disabled from work, as [Claimant] was, *as a consequence of surgical treatment provided under section 85.27 for a work-related injury*, a new healing period begins under section 85.34(1)." *Id.* (emphasis added). The Court further noted, "[W]e affirm in this case the commissioner's interpretation of section 85.34(1) allowing an award of healing period benefits for a new period of disability beginning after the claimant reached MMI *under the circumstances presented here.*" *Id.* at 10 (emphasis added). Petitioner was not provided with surgical treatment. Thus, *Waldinger* is not applicable in the present case.

Next, the stipulated start date for the healing period benefits is August 24, 2020. On that date, Petitioner was seen by Dr. Boarini, and he recommended an FCE. The FCE was done on November 17, 2020. The FCE concluded Petitioner met the material handling requirements for a medium demand vocation. “Medium” is defined as “[e]xerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work.” Dictionary of Occupational Titles, Appendix C, <https://www.dol.gov/agencies/oalj/public/dot/references/dotappc> (last visited Jan. 19, 2023). Additionally, Dr. Pederson’s opinion indicated Petitioner was capable of working within a 30-pound limit, which is consistent with the parameters suggested by the FCE. Further, Davis testified that Petitioner could do her regular work duties within the limits identified by the FCE and Dr. Pederson.

The Court concludes there is substantial evidence in the record supporting the Commissioner’s finding that Petitioner was medically capable of returning to work and should not be awarded running healing period benefits. Based on the preceding discussion, the Court finds Petitioner’s argument that she was not medically capable of returning to substantially similar employment as of November 17, 2020, unpersuasive. The Court agrees with the Commissioner’s conclusions that Petitioner was not owed a running award of healing period benefits. Her interpretation of the law is not erroneous and her decision is supported by substantial evidence in the record and based on a logical interpretation of the law applied to the facts.

C. Whether Petitioner Sustained a Permanent/Industrial Disability

Petitioner argues the Commissioner's finding that Petitioner's work injury did not cause permanent disability is clearly erroneous and unsupported by substantial evidence. A claimant has the burden of proving that the injury is a proximate cause of the disability on which the claim is based. *See Ayers v. D & N Fence Co., Inc.*, 731 N.W.2d 11, 17 (Iowa 2007) (citing *Meyer*, 710 N.W.2d at 220 n.2). A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. *See Id.* (internal citation omitted).

On July 10, 2019, after several rounds of physical therapy, Petitioner had an MRI. Dr. Boarini examined Petitioner and reviewed the MRI. He opined that Petitioner's MRI results and his physical examination of Petitioner were unremarkable. He reiterated this opinion in November of 2019. He recommended that Petitioner complete another round of physical therapy. When she began physical therapy in December of 2019, she reported pain of 0 to 1 out of 10. Dr. Boarini eventually recommended a FCE. This was performed in November of 2019. The FCE concluded that Petitioner met material handling demands for a medium demand vocation.

Dr. Schmitz also examined Petitioner. He noted her complaints, but provided no opinion as to whether they resulted in a permanent impairment. He recommended that Petitioner have dietary counseling and surveillance.

Dr. Boulden found that Petitioner had degenerative disc disease up and down her spine. He opined the MRI of July 10, 2019 was "over read," and it failed to show actual nerve impingement. (Resp'ts' Ex. 5 at 24). This was chronic in nature and Dr. Boulden found no objective evidence of injury upon reviewing the MRI. Dr. Boulden opined Petitioner had chronic issues with her spine and her increased subjective complaints were not evidence of a material aggravation of these

issues. Based upon his examination of Petitioner and review of the records, Dr. Boulden declined to provide a permanent impairment rating.

Dr. Pederson recommended additional treatment and diagnostics. He opined that Petitioner's fall caused or aggravated Petitioner's annular tear and/or disc bulging which caused radicular symptoms. Dr. Pederson is the first and only doctor to provide permanent restrictions and an impairment rating if Petitioner did not choose to undergo additional treatment. As it was "unclear from his report whether Dr. Pederson reviewed the actual MRI or just the report," the Commissioner concluded the Petitioner failed to meet her burden to prove she suffered a permanent disability. Arb. Dec. at 21.

Petitioner argues the Commissioner erred by accepting the causation and permanency opinion of Dr. Boulden over those of Dr. Pederson as Dr. Pederson's opinions were in many ways unrebutted. However, "[g]enerally, the commissioner may accept or reject expert testimony entirely or in part." *Poula v. Siouxland Wall & Ceiling, Inc.*, 516 N.W.2d 910, 911 (Iowa Ct. App. 1994) (citing *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa Ct. App. 1991)). Additionally, "[t]he commissioner may not arbitrarily or totally reject the testimony, but must weigh the evidence and assess the credibility of the witness." *Id.* (citing *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 509 (Iowa 1973)). Furthermore, Iowa courts "are reluctant to allow the commissioner totally to reject expert testimony which is the only medical evidence presented." *Id.* at 911-12 (citing *Leffler v. Wilson and Co.*, 320 N.W.2d 634, 635 (Iowa Ct. App. 1982); *Langford v. Kellar Excavating & Grading, Inc.*, 191 N.W.2d 667, 668 (Iowa 1971)).

The record, when viewed as a whole, has substantial evidence to support the Commissioner's finding that Petitioner did not sustain a permanent injury that arose out of and in the course of her employment with Atrium. Specifically, the extensive medical records and

opinions of Dr. Boarini, Dr. Boulden, and Dr. Schmitz suggest Petitioner did not suffer a permanent injury. Although Petitioner contends Dr. Pederson's opinion is unrefuted, that is simply not the case. The medical opinions in this case conflict with one another as evidenced by Dr. Boarini, Dr. Boulden, and Dr. Schmitz's lack of permanent impairment rating and Dr. Pederson's conclusion that Petitioner suffered a permanent injury if she chose to forego additional treatment. The Commissioner considered all the evidence in the record and rejected Dr. Pederson's opinion, as permitted by Iowa law. *See Poula*, 516 N.W.2d at 911 (internal citation omitted). The Commissioner clearly weighed the evidence and assessed the credibility of Dr. Pederson and found it lacking in comparison to the other opinions offered in the case. *See id.* (internal citation omitted). Additionally, as there were multiple medical opinions given to Petitioner throughout her treatment, the Court cannot find that the Commissioner rejected the only expert opinion offered. *See id.* at 911-12 (internal citation omitted). Thus, the Court agrees with the Commissioner's conclusion that Petitioner did not meet her burden to prove she suffered a permanent injury. Furthermore, the Court concludes the Commissioner did not err in her application of the law to the facts in her decision that Petitioner did not suffer a permanent disability pursuant to Iowa Code section 85.34(1). Accordingly, the Petition for Judicial Review is denied on this ground.

D. RULING AND DISPOSITION

For all the foregoing reasons, the Court concludes the Commissioner did not err by limiting the award of healing period benefits. Furthermore, the Commissioner did not err by finding Petitioner did not sustain a permanent disability. Accordingly, Petitioner's Petition for Judicial Review is **DENIED**. Costs are taxed to Petitioner.



State of Iowa Courts

Case Number
CVCV063416

Case Title
RAWDA MOHAMED V ATRIUM HOLDING CO AND
GALLAGHER BASSETT
Type: ORDER FOR JUDGMENT

So Ordered

A handwritten signature in cursive script, reading "Robert B. Hanson", is written over a horizontal line.

Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-01-28 11:25:40