BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARY NEELANS,

Claimant,

vs.

AREA EDUCATION AGENCY 2-6-7,

Employer,

and

EMC INSURANCE COMPANIES,

Insurance Carrier,
Defendants.

File Nos. 5058328, 5058329, 5058679

ARBITRATION

DECISION

Head Note No.: 1801

STATEMENT OF THE CASE

Claimant, Mary Neelans, filed three arbitration petitions alleging injuries to her body as a whole as a result of three separate incidents that occurred while working as a teacher's associate for defendant employer. Defendants, Area Education Agency 2-6-7, employer, and EMC Insurance Companies, insurer, accept all three injuries as arising out of and in the course of the claimant's employment with defendant employer.

Contested file numbers include 5058328 with an accepted injury date September 13, 2016, file number 5058329 with an accepted work injury date of September 19, 2016, and file number 5058679 with an accepted work injury date of March 23, 2017.

This case was heard on May 23, 2018 and considered fully submitted on June 13, 2018 upon the simultaneous filing of briefs.

The record consists of the testimony of the claimant, joint exhibits 1-22, and defendants' exhibit A.

ISSUES

File No. 5058329

Whether the accepted work injury of September 19, 2016 caused temporary disability during a period of recovery.

Whether the accepted work injury caused permanent disability; and if so, the extent.

File No. 5058328

Whether the accepted work injury of September 13, 2016, is the cause of permanent disability, and if so, the extent.

File No. 5058679

Whether the accepted work injury of March 23, 2017, is the cause of a permanent disability and if so, the extent.

STIPULATIONS

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.

File No. 5058329

The parties agree that the claimant sustained a work-related injury on September 19, 2016 which arose out of and in the course of her employment. While entitlement to temporary benefits cannot be stipulated, the parties agree that the claimant was off work from September 13, 2017 through March 22, 2017.

If an injury is found to be the cause of some permanent disability, the parties agree the disability is industrial in nature and that the commencement date for permanent partial disability benefits would be March 22, 2017.

At the time of the injury, the claimant's gross earnings were $429.70. She was single and entitled to two exemptions. The parties believe the weekly benefit rate to be $287.69 based on the aforementioned numbers.

Defendants waived their affirmative defenses and there are no medical benefits in dispute. No party is seeking assessment of costs.

File No. 5058328

The parties agree the claimant sustained a work-related injury on September 13, 2016 which arose out of and in the course of her employment. The claimant is not seeking any temporary disability benefits. If the injury is found to be the cause of some permanent disability, the disability is industrial in nature. The commencement date for permanent partial disability benefits is September 14, 2016.

At the time of the injury the claimant's gross earnings were $429.70 per week she was single and entitled to two exemptions. The parties believe the weekly benefit rate to be $287.69.

The defendants waive any affirmative defenses. There are no medical benefits in dispute. No benefits were paid prior to the hearing and no credit is being sought to be applied against any award. No party is seeking assessment of costs.

File No. 5058679

The parties agree the claimant sustained a work-related injury on March 23, 2017, which arose out of and in the course of her employment. The claimant is not seeking any temporary disability benefits. If the injury is found to be the cause of some permanent disability, the disability is industrial in nature. The commencement date for permanent partial disability benefits is March 24, 2017.

At the time of the injury the claimant's gross earnings were $429.70 per week, she was single and entitled to two exemptions. The parties believe the weekly benefit rate to be $287.69.

The defendants waive any affirmative defenses. There are no medical benefits in dispute. No benefits were paid prior to the hearing and no credit is being sought to be applied against any award. No party is seeking assessment of costs.

FINDINGS OF FACT

Claimant was a 50-year-old person at the time of the hearing. Her past educational history includes graduation from high school along with a year of early childhood development courses taken following high school. Her past work experience includes daycare and preschool work along with delivery work. At one point she had a commercial driver's license which is not currently active. She testified that she does not care to drive but that has nothing to do with her work injuries.

Her current employment is with the defendant employer where she works with handicapped, autistic, and disabled children. Her role is to supervise the children, which includes feeding, changing, tracking, and facilitating their development. Her position requires some physical activities such as lifting a child onto a stool, helping them off the ground, pushing wheelchairs, and assisting with bedtime activities. This year, she lifted less because of the makeup of the student population and not because of her injury. Every year presents new physical requirements based on the student population. She does not know who her students will be and what physical tasks will be required of her from year to year.

Her past medical history is significant for a hernia repair performed on March 7, 2014. (Joint Exhibit 3:1) In a postoperative note of June 6, 2014, it was noted that claimant was doing well with no complaints. The skin staples were removed and she was cautioned to not lift any weight until about three months after her surgery. (Joint

Exhibit 1:7) On or about August 28, 2014, claimant was assisting a student when she suffered a re-injury of her abdomen. She was diagnosed with abdominal wall strain and returned to full duty. (Joint Exhibit 6:1)

On October 5, 2015 claimant was sitting when a student pushed a table against her stomach. She sought out medical treatment for aching pain located in the abdomen. (Exhibit 7) No hernia was noted. Claimant was diagnosed with contusion of the abdominal wall and discharged from care. (Exhibit 7:2) On or about February 25, 2016, claimant was attempting to deter a student away from a teacher's desk during an outburst. (Exhibit 9:1) She felt a tight, sharp pressure in the right trapezius. (Exhibit 9:1) Claimant was diagnosed as suffering from a strain in the muscles, fascia and tendons at the shoulder and upper arm level. She was directed to begin physical therapy and returned to work on restricted duty. (Joint Exhibit 9:2)

On March 11, 2016 claimant was seen for shoulder pain. (Joint Exhibit 1:12) Radiographs showed mild tendinopathy of the supraspinatus and infraspinatus tendons. (Joint Exhibit 1:12) It does not appear that claimant sought out any treatment for the shoulder pain although she may have had physical therapy. The medical records are disjointed, repetitive, and incomplete.

She was seen on August 10, 2016 for what appears to be a general physical. There was no notation of any type of hernia. (Joint Exhibit 1:14 - 16)

Claimant sustained her first accepted work injury on September 13, 2016. She was changing the undergarment of a disabled teenager when that student kneed claimant in the abdomen. Claimant testified that she felt sharp pain. She was seen at Covenant Clinic Occupational Medicine and Wellness on the same date. (Exhibit 11) The second page of Exhibit 11 is unfortunately from March 7, 2016 and not September 13, 2016, and therefore the diagnosis that David Kirkle, D.O. made that day is unknown. Based on the medical records, however, it does appear that she returned for a follow-up visit at Covenant Clinic Arrowhead where she was seen by Marcia Hillman, ARNP on September 15, 2016. (Joint Exhibit 1:17) Ms. Hillman noted tenderness left of the umbilicus along with firmness and resolving bruise. (Joint Exhibit 1:18) Ms. Hillman also diagnosed claimant with a large ventral hernia that was very prominent when claimant moved from lying to sitting. (Joint Exhibit 1:18) Ms. Hillman instructed claimant to continue with Tylenol and heat, follow the restrictions placed by the occupational health department, and that claimant would need to be referred to a general surgeon if the hernia and/or abdominal pain persisted. (Joint Exhibit 1:18)

On September 19, 2016, claimant was walking behind a student in a wheelchair when the student pushed the wheelchair back into claimant's abdomen. Claimant was seen by Dr. Kirkle. (Joint Exhibit 12) She complained of abdominal pain located in the abdomen above the umbilicus, which she described as throbbing and aching. (Joint Exhibit 12:1) Dr. Kirkle found tenderness over the lower left abdominal quadrant and over the umbilical area. No mass was present, but an upper midline incisional hernia was large and reducible. (Joint Exhibit 12:2) Dr. Kirkle diagnosed claimant with a

contusion of the abdominal wall, returned her to the restricted duty and ordered her to begin physical therapy. (Joint Exhibit 12:2)

On September 21, 2016, claimant began physical therapy ordered by Dr. Kirkle. (Joint Exhibit 3:2) Physical therapy noted that the onset dates were from two separate injuries to the same area on September 13, 2016 and September 19, 2016. (Joint Exhibit 3:3) During physical therapy, claimant was distracted and uncomfortable. She frequently picked up her phone and gave minimal effort during the exercises. (Joint Exhibit 3:4) Kelly Martin, therapist, noted that the claimant's rehab potential was good to fair secondary to her lack of motivation. (Joint Exhibit 3:5)

Claimant returned to Dr. Kirkle for follow-up on September 27, 2016. Her symptoms were unchanged, although her pain appeared to be greater. Dr. Kirkle kept the restrictions in place and directed the claimant to continue with physical therapy. (Joint Exhibit 12:20)

On October 3, 2015 claimant followed up with Dr. Kirkle. He continued claimant on restrictions and noted that this injury was work related. (Joint Exhibit 12:24)

On October 5, 2016, claimant returned to Dr. Kirkle. (Joint Exhibit 12:27) She reported no improvement in her condition. The therapist felt that they had nothing to offer the claimant. (Joint Exhibit 14:5) Dr. Kirkle returned claimant to full duty and discharged her from his care. He did not recommend any restrictions. Claimant still complained of dull aches and sharp pain with activity. (Joint Exhibit 12:20)

> Dr. Kirkle wrote an addendum to the previous notes, which stated as follows:
>
> Mary had a prior umbilical hernia according to her HX and had been having some discomfort before her injury. Her initial injury was the left flank and on exam i [sic] noted she had a large upper diastasis recti or umbilical hernia recurrent that was non tender [sic]. On subsequent lower abdominal injury a few days later after I changed her work restrictions she said she was now having pain to that area although the exam was unchanged and injury was to the lower abdominal area. At this time my opinion is that the diastasis recti or hernia was preexistent and may have had an exacerbation of her discomfort but doubt aggravation. If Dr. wait [sic] feels other wise [sic] with out [sic] any doubt I will bow to his expertise.

(Joint Exhibit 3:8)

Claimant returned to Ms. Hillman on October 19, 2016. Ms. Hillman noted that claimant's abdomen was soft, distended, and tender. (Joint Exhibit 1:19) Claimant had a bulge to the left of the umbilical hernia site. Id.

Claimant was seen by Gerald Wait, M.D. on October 24, 2016. Dr. Wait determined the claimant had a recurrent ventral hernia. (Joint Exhibit 1:20) Dr. Wait ordered a CT scan, but his first impression was that the recurrent hernia would need to be repaired. (Joint Exhibit 1:21)

On October 28, 2016, Dr. Wait issued a medical note following a conversation that he had with Dr. Kirkle regarding the claimant.

> At that time he informed me that it appeared on past examinations that the patient had had a prior umbilical hernia and was having some discomfort before her initial injury where she apparently was kneed in the side. Based on this information and the fact that the patient does have a very large hernia that has been previously repaired with a biosynthetic mesh there is a good possibility that the patient could have had a breakdown of the repair and during the course of her injury suffered some pain in this particular area, but that in [sic] of itself may not have been the cause for her particular problem in regards to the hernia. If that is the case, then if she did have a hernia before her injury, then there would be no way that her hernia could have been caused by her injury.
>
> In addition, the patient is noted to have a fairly large hernia and if her injury was so acute, I would not expect her to have such a large hernia at this time, particularly when it does not appear to be that symptomatic.

(Joint Exhibit 12:31)

On November 7, 2016, Ms. Hillman completed FMLA papers for claimant. (Joint Exhibit 1:23) FMLA appeared to be necessitated by the claimant's mother's unexpected death and the new guardianship over claimant's mentally disabled brother. These new stressors along with the old ones such as her young son dying in an accident two years ago led the claimant to request time off. (Joint Exhibit 1:22)

On January 19, 2017, claimant presented for recheck of her lower abdominal hernia. She had previously declined to undergo the CT scan recommended by Dr. Wait. (Joint Exhibit 1:24) The evidence of the ventral hernia was still present and claimant agreed to do a CT scan. (Joint Exhibit 1:25) The CT showed a 5.2 x 4.1 cm fat-containing periumbilical hernia. (Joint Exhibit 1:31)

Ms. Hillman filled out new FMLA papers on or about January 25, 2017. These papers were specifically for the repair of the claimant's hernia. (Joint Exhibit 21:9 – 11) On February 13, 2017, Ms. Hillman also issued a medical note indicating that the claimant should be excused from work until she had surgery on February 14, 2017. (Joint Exhibit 21:2) Dr. Wait returned claimant to work on March 22, 2017 with a 20-pound weight restriction. (Joint Exhibit 21:3)

On March 23, 2017, claimant sustained her third injury when a student hugged her from behind while claimant was seated at a table. Her abdomen was bumped up against the edge of the table. Claimant testified she experienced immediate pain at her surgical site. She also apparently was elbowed in the stomach on April 17, 2017. She saw Dr. Wait on April 21, 2017 and the test results showed no recurrent hernia.

Claimant testified that she has no lasting effects from her stomach injuries. At most, she suffered lingering effects after the March 2017 injury for approximately a month or two. She testified that the injury does not impact the way she works today or her home life. Her major concern is that her stomach could be reinjured, and she does work with caution, but, other than being careful, there are no lasting effects from any of the work injuries.

She currently works 35 hours per week. Claimant earns more today than she did at the time of her injuries based upon annual raises from the employer.

CONCLUSIONS OF LAW

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 alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Claimant did sustain three work-related injuries to her abdomen. She testified unequivocally that the injuries have had no lasting effects and that they have not limited or changed her physical activities in any way. There are no medical records to indicate the claimant has a permanent disability arising out of her work injuries. There are no restrictions issued by any care provider nor are there any impairment ratings. Based on the lack of medical evidence and relying on the claimant's own statements, it is found the claimant has not sustained any permanent disability arising out of any of the three work injuries.

The sole issue that remains is whether claimant is entitled to temporary benefits from February 13, 2017, through March 22, 2017. Claimant was off work during this period of time due to a hernia repair surgery which took place on February 14, 2017. Claimant was returned to work by Dr. Wait on March 22, 2017, with a 20-pound restriction. Defendants argue that no medical expert connected the March 19, 2016 incident to claimant's need for a hernia repair. Claimant maintains that the contemporaneous medical records support her claim.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

The parties agree claimant sustained an injury on September 19, 2016. Claimant was seen by Dr. Kirkle who diagnosed claimant with a contusion of the abdominal wall. She was placed on restrictions and ordered to attend physical therapy. Physical therapy was not a success for the claimant. She was distracted and the therapists believed her effort was low. She was discharged from therapy on October 5, 2016. Dr. Kirkle also returned claimant to full-duty work without restrictions. Claimant was still reporting dull aches and sharp pain with activity.

During an October 3, 2016, visit with Dr. Kirkle, he noted that claimant's injury was "work-related." (Joint Exhibit 12:24) However, in a later note, he wrote that the hernia was pre-existing and that the injury "may have had an exacerbation of her discomfort but doubt aggravation." (Joint Exhibit 3:8)

Dr. Wait believed claimant had suffered a recurrent ventral hernia and that,

> there is a good possibility that the patient could have had a breakdown of the repair and during the course of her injury suffered some pain in this particular area, but that in and of itself may have [sic] not have been the cause for her particular problem in regards to the hernia. If that is the case, then if she did have a hernia before her injury, then there would be no way that her hernia could have been caused by her injury.

(Joint Exhibit 12:31)

Claimant did have a hernia previously. She had a reoccurrence of pain and discomfort and a need for hernia repair. This hernia repair came about because of the symptoms which both Dr. Kirkle and Dr. Wait believe were related to the injury. It is not necessary under Iowa law for the claimant's original hernia to have been caused by a work injury in order for the claimant to be entitled to benefits arising out of an aggravation or exacerbation. Neither must the injury be considered the sole cause of claimant's aggravation or exacerbation. The injury need only be a substantial factor. Dr. Wait said there is a good possibility that the injury caused symptoms. Dr. Kirkle ascribed her treatment to a "work injury." These medical opinions along with the historical account of how the injury occurred as well as the symptoms that followed are sufficient to support a finding that claimant sustained an aggravation or exacerbation of her pre-existing hernia on September 19, 2016. That aggravation resulted in the need for hernia repair surgery.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Therefore, claimant is entitled to temporary benefits from February 13, 2017, through March 22, 2017.

ORDER

THEREFORE, it is ordered:

File No. 5058329:

That defendants are to pay unto claimant temporary total benefits from February 13, 2017, through March 22, 2017, at the rate of two hundred eighty-seven and 69/100 dollars ($287.69) per week.

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

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018)

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

That each party shall pay their own costs.

File No. 5058328:

Claimant shall take nothing.

That each party shall pay their own costs.

File No. 5058679:

Claimant shall take nothing.

That each party shall pay their own costs.

Signed and filed this 30th day of August, 2018.

JENNIFER S. GERRISH-LAMPE
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.