BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KARI DIANE BOUNMA,		
Claimant,	FILED	File Nos. 5063329, 5063330
vs.	JUL 25 2018	ARBITRATION
POLK COUNTY, IOWA,	WORKERS COMPENSATION	DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1402.30, 1803.1

STATEMENT OF THE CASE

Claimant, Kari Bounma, filed petitions seeking workers' compensation benefits from Polk County, Iowa (Polk County), self-insured employer. This matter was heard in Des Moines, Iowa on June 7, 2018.

The record in this case consists of Joint Exhibits 1-7, Claimant's Exhibits 1-7, Defendant's Exhibits A-I, and the testimony of claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

For File No. 5063329 (date of injury July 22, 2016):

Whether the injury resulted in a permanent disability; and if so,

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

For File No. 5063330 (date of injury November 9, 2016):

Whether claimant sustained an injury that arose out of and in the course of employment on November 8, 2011;

Whether the injury results in a temporary disability.

On the hearing report the parties indicated claimant's entitlement to reimbursement for an independent medical evaluation (IME) was an issue in dispute. In an email dated June 18, 2018, defendant's counsel indicated defendant had agreed to pay for claimant's IME. As a result, claimant's entitlement to reimbursement for an IME is not an issue in dispute in these files.

FINDINGS OF FACT

Claimant is a universal cashier with the Polk County Treasurer's Office. This job involves working with the public concerning property taxes, vehicle registration, and vehicle titling. Claimant testified in deposition that her job requires her to work at four different work stations. Claimant said she was working at a front window, working with the public, when she was involved in both injuries.

Claimant testified that prior to July 22, 2016, she had no problems with her left or right knees.

Claimant testified that, on July 22, 2016, she was sitting at her workstation typing. Claimant swiveled her chair to greet a customer. She said as she stepped up from her chair, she felt popping and catching in her left knee.

On June 25, 2016, claimant was evaluated by Mary Shook, M.D. Claimant injured her left knee while turning in a chair to talk to a customer. Claimant was assessed as having a sprained knee. She was recommended to have physical therapy. (Joint Exhibit 1, pages 4-5)

Claimant testified she went to approximately 35 physical therapy visits from August 2016 through October 2016. (Jt. Ex. 6)

Claimant was evaluated by Valerie Stratton, D.O., on August 3, 2016. Claimant had continued left knee symptoms. Claimant was using a crutch. An MRI was recommended. (Jt. Ex. 1, pp. 10-13)

An MRI performed on August 10, 2016 was negative for ligament or meniscus tears. (Jt. Ex. 3, p. 88)

Claimant returned in follow up to Dr. Shook on August 24, 2016. Claimant was assessed as having a sprained left knee. Physical therapy was continued. (Jt. Ex. 1, pp. 24-27)

Claimant continued to treat with Dr. Shook from September 2016 through November 2016. Claimant was recommended to continue physical therapy through this period of time. On November 1, 2016, claimant was returned to her regular duties. (Jt. Ex. 1, pp. 30-57)

Claimant testified that, on November 8, 2016, she was processing a tax submission. Claimant turned to get out of her chair. She said as she stood up, she felt pain in the right knee.

On November 9, 2016, claimant was seen by Dr. Shook for right knee pain beginning when claimant stood up from her chair at work. Claimant was assessed as having a right knee sprain. Dr. Shook did not believe claimant's right knee injury was a work related incident. (Jt. Ex. 1, pp. 60-63)

On November 10, 2016, claimant was seen by Erin Swenka, D.O., for right knee pain. Claimant was assessed as having a sprain or potential patellofemoral syndrome. (Jt. Ex. 5, pp. 104-105)

Claimant was evaluated by Dr. Swenka on November 16, 2016, for right knee pain. She was evaluated with right and left knee pain. An MRI of the right knee was recommended. (Jt. Ex. 5, p. 108)

In a November 17, 2016 note, Dr. Swenka requested that claimant be restricted to mostly sedentary duties. (Jt. Ex. 5, p. 114)

Claimant began physical therapy with the right knee on November 28, 2016 and continued physical therapy for the right knee until January 2017. (Jt. Ex. 5, p. 116)

Claimant returned to Dr. Swenka on December 14, 2016, with complaints of bilateral knee pain. Claimant had no improvement in symptoms. She was referred to an orthopedist. (Jt. Ex. 5, pp. 118-119)

On December 29, 2016, claimant was evaluated by Jared Carter, PA-C, and Steven Aviles, M.D. Claimant was kept on modified work duty. (Jt. Ex. 4, pp. 92-95)

On January 13, 2017, Dr. Shook discharged claimant from care. Claimant was found by Dr. Shook to be at maximum medical improvement (MMI). (Jt. Ex. 1, pp. 78-81, 83)

Claimant was evaluated by David Brown, M.D., on February 9, 2017. Dr. Brown indicated claimant's knee would only improve with continuing home exercises. He also counseled claimant on weight loss. Dr. Brown recommended against surgery. (Jt. Ex. 7)

Claimant saw Dr. Aviles on February 15, 2017, for evaluation of the right knee. Claimant was assessed as having a right patellofemoral syndrome. Dr. Aviles indicated he had no more treatment options for claimant. He returned claimant to work without restrictions. (Jt. Ex. 4, pp. 100-101)

In a May 3, 2017 letter, Dr. Shook indicated claimant's left knee injury was work related. She opined that claimant had the ability to flex her left knee 110 degrees. She

opined that this indicated there was no permanent impairment under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. She found that claimant did not require further medical care. (Jt. Ex. 1, pp. 84-85)

In an April 8, 2018 report, Charles Mooney, M.D., gave his opinions of claimant's condition following an IME. Claimant complained of pain in both the left and right knees. Claimant was assessed as having evidence of a bilateral patellofemoral syndrome, obesity and deconditioning. Dr. Mooney opined claimant had a pre-existing condition and that the incidents of July 2016 and November 2016 were insufficient to have caused a specific condition to either knee, or materially aggravated claimant's bilateral knee problems. (Ex. E, pp. 5-11)

Dr. Mooney found that claimant's bilateral patellofemoral syndrome was caused by factors other than work. He did not believe claimant had a specific injury, and therefore could not opine on claimant's date of MMI. He opined that claimant had no work related permanent impairment. He did not believe claimant required further medical treatment. (Ex. E, pp. 11-13)

In a May 8, 2018 report, Robin Sassman, M.D., gave her opinions of claimant's condition following an IME. Claimant had bilateral knee pain. Claimant said she limped. Claimant noted popping in both knees. Claimant had pain with standing, walking, and going up and down stairs. Dr. Sassman opined claimant's left and right knee conditions were materially aggravated by the incidents occurring on July 22, 2016 and November 9, 2016, as claimant denied any prior knee condition. Dr. Sassman recommended claimant have an MRI of the right knee. She found claimant was at MMI, as of November 9, 2017 for the right knee, and July 22, 2017 for the left knee. Dr. Sassman found claimant had a ten percent permanent impairment to the left lower extremity. She found claimant had no ratable impairment for the right knee. Dr. Sassman limited claimant to standing, walking, and sitting occasionally. (Claimant's Ex. 1)

Claimant testified she had difficulty with her left knee pain. She said she has difficulty putting weight on her right knee. She said she has difficulty walking up stairs. She said she has limitations with doing housework and taking care of her children due to her knees.

At the time of hearing, claimant had the same job as she did before both injuries. She said her employer does not offer accommodations. Claimant said she is able to perform the work duties of her job as a universal cashier.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained a right knee injury that arose out of and in the course of employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the 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 Elec. 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).

At issue in this case is whether claimant's injury to her right knee arose out of and in the course of employment. The question in this case is whether claimant's right knee injury was somehow aggravated by her work with Polk County.

In Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000), the Iowa Supreme Court addressed a worker who fell from a ladder at work due to alcohol withdrawal:

> Generally injuries resulting from risks personal to the claimant are not compensable. Courts have, however, recognized an exception to this rule where "the employment contributes to the risk or aggravates the injury" . . . .
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> . . . .
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> . . . Our assessment of the law from other jurisdictions finds support from Larson in his treatise on workers' compensation law, who concludes that the general rule requires that the employment must contribute to the *hazard* of the fall. Koehler, 608 N.W.2d 4-5. (emphasis added)(citations omitted)

In Albertsen v. Benco Manufacturing, No. 08-0746, filed February 4, 2009 (Iowa Ct. App.) Unpublished, 764 N.W.2d 783 (Table), the workers' compensation commissioner applied the Koehler decision in addressing a case where a worker went to the restroom and may have passed out or blacked out, falling and hitting her head on a concrete wall. The evidence was conflicting whether the worker passed out or was hit on the back of the head by the restroom door. The Court noted that idiopathic falls, falls due to personal conditions, onto level surfaces, are generally not compensable.

In AARP v. Whitacre, No. 12-1519, filed May 15, 2013, (Iowa Ct. App.), Unpublished, 834 N.W.2d 870 (Table), the Iowa Court of Appeals affirmed the commissioner's findings that an office layout aggravated the effects of a claimant's fall. The Court noted that because the fall occurred in a small office, causing claimant to hit the corner of a desk and then the wall, the office layout aggravated the effects of the claimant's fall.

As the Iowa Court of Appeals noted in Benco, the treatise Larson's Workers' Compensation Laws, also recognizes that injuries from personal risks or internal weaknesses are generally not compensable unless the employment contributes to the risk or aggravates the injury. Larson's at 9-1.

There is no question claimant was injured "in the course of" her employment. The dispute is whether claimant's injury "arose out" of her employment.

Claimant testified she was rising from her chair at work when she sustained her right knee injury. There is little evidence claimant's work station or her work area contributed to her risk of injury or contributed to an aggravation of her underlying condition. There is no evidence of an actual risk from the work environment that caused claimant's right knee injury. As claimant has failed to prove there was an actual risk

from the work environment, claimant's right knee injury did not arise out of her employment.

As claimant failed to carry her burden of proof she sustained a right knee injury that arose out of and in the course of employment, all other issues regarding the right knee are moot.

The next issue to be determined is whether or not claimant sustained a permanent disability regarding her left knee injury.

Claimant sustained an accepted left knee injury on July 22, 2016. Nearly two years after the injury, claimant continues to have problems with her pain and loss of range of motion in the left knee. Claimant credibly testified at hearing that she continues to have left knee problems. She says she has difficulty climbing stairs, squatting, and standing for an extended period of time due to her left knee.

Dr. Sassman evaluated claimant on April 23, 2018. Her exam found that claimant had a loss of extension in the left lower extremity and loss of flexion. (Cl. Ex. 1, pp. 8-9) Based on this exam, Dr. Sassman found that claimant had a permanent impairment. (Cl. Ex. 1, pp. 8-9)

Dr. Shook treated claimant for an extended period of time. Dr. Shook last evaluated claimant in January 2017. (Jt. Ex. 1, p. 83) In that evaluation, Dr. Shook found that claimant had 105 degrees of flexion. (Jt. Ex. 1, p. 83) In a May 2017 letter, Dr. Shook opined that claimant had no permanent impairment. This was based upon a finding that claimant had flexion of 110 degrees. (Jt. Ex. 1, p. 85)

Dr. Mooney opined that claimant had no permanent impairment. This opinion is based, in part, on his opinion that claimant does not have a left knee injury arising out of and in the course of employment. Defendant has already accepted claimant's left knee as being work related. Dr. Mooney's opinion is also based in part, on a finding that claimant had a 95 degree flexion and full range of extension. Based on this, Dr. Mooney found claimant had no permanent impairment. Dr. Mooney does not offer any values for claimant's extension numbers. Table 17-10 of the Guides, page 537, indicates that flexion of less than 110 degrees results in a 10 percent permanent impairment to the lower extremity. Dr. Mooney's report indicates no value for claimant's extension. His opinion, that claimant has 95 degrees of flexion and has no permanent impairment, is incongruent when given Table 17-10 of the Guides, which indicates that 95 degrees of flexion would result in a 10 percent permanent impairment to the lower extremity. Given these discrepancies, Dr. Mooney's opinion regarding permanent impairment is found unconvincing.

Dr. Sassman evaluated claimant in April of 2018. Dr. Shook last evaluated claimant in January 2017, approximately one and one-half years before the time of hearing. Dr. Shook's evaluation found that claimant had 105 degrees of flexion in

January 2017. (Jt. Ex. 1, p. 81) Under the Guides, at Table 17-10, this value suggests that claimant would have a permanent impairment. Dr. Sassman's opinions regarding permanent impairment are more detailed than those of Dr. Shook. Dr. Sassman's opinions regarding permanent impairment are more detailed. They are made approximately two months prior to the time of hearing, and are a more accurate picture of claimant's condition at the time of hearing. According to Dr. Shook's measurements of claimant's flexion in the left leg, claimant should be found to have a permanent impairment under the Guides. Claimant's credible testimony is that she continues to have left knee problems approximately two years after the date of injury. Given this record, claimant has carried her burden of proof she sustained a permanent impairment regarding her left knee injury.

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

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

Dr. Sassman found that claimant had a 10 percent permanent impairment to the left lower extremity, based in large part on findings under Table 17-10 of the Guides. Dr. Sassman's opinions regarding permanent impairment are found more convincing than those of Dr. Mooney and Dr. Shook. Claimant is due 22 weeks of permanent partial disability benefits. (220 weeks x 10 percent)

ORDER

THEREFORE, IT IS ORDERED:

For File No. 5063330 (date of injury November 9, 2016):

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

For File No. 5063329 (date of injury July 22, 2016):

That defendant shall pay claimant twenty-two (22) weeks of permanent partial disability benefits at the rate of six hundred eighty-six and 92/100 dollars ($686.92) per week commencing on July 23, 2017.

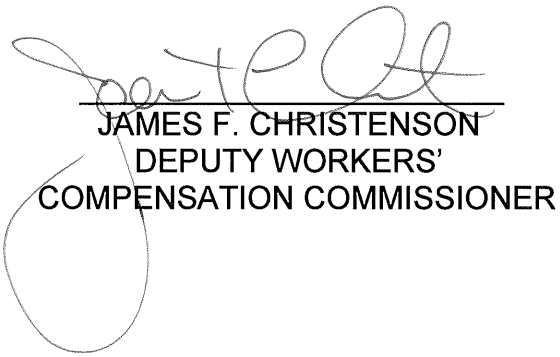
That defendant shall pay accrued weekly benefits in lump sum.

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

That defendant shall pay costs.

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

Signed and filed this 25th day of July, 2018.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Matthew M. Sahag
Attorney at Law
301 E. Walnut St., Ste. 1
Des Moines, IA 50309
matthew@dickeycampbell.com

Ralph E. Marasco, Jr.
Meghan Gavin
Julie Bussanmas
Attorneys at Law
Assistant County Attorney
111 Court Ave., Rm. 340
Des Moines, IA 50309
ralph.marasco@polkcountyiowa.gov
meghan.gavin@polkcountyiowa.gov
julie.bussanmas@polkcountyiowa.gov

JFC/srs

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.