

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BONNIE WILLIAMS,

Claimant,

vs.

MENARDS,

Employer,

and

PRAETORIAN INSURANCE CO.,

Insurance Carrier,
Defendant.

File No. 5043831

FILED

AUG 25 2015

WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note No.: 1402.40

Claimant Bonnie Williams appeals from an arbitration decision filed on September 19, 2014. The case was heard on July 9, 2014, and it was considered fully submitted on July 30, 2014, in front of the deputy workers' compensation commissioner.

The deputy commissioner determined that claimant failed to carry her burden of proof to establish that the work-related hernia she sustained on April 4, 2012, is the cause of permanent disability.

Claimant asserts on appeal that the deputy commissioner erred in determining that claimant did not sustain permanent disability as a result of the work injury. Defendants assert that the findings of the deputy commissioner should be affirmed.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on September 19, 2014, that relate to issues properly raised on intra-agency appeal with the following additional analysis:

I agree with the deputy commissioner's determination to give the greatest weight to the opinions of Paul Grossmann, M.D., and Charles Mooney, M.D., over the opinions of Robin Sassman, M.D.

Both Dr. Grossman and Dr. Mooney determined that claimant's work-related hernia and the subsequent hernia surgery are not the cause of claimant's ongoing symptoms of abdominal bloating, abdominal pain, rash, diarrhea, or other abdominal symptoms. Dr. Grossman's opinion in this regard is included in a letter drafted by defendants' attorney, which Dr. Grossman signed and dated on May 12, 2014. (Exhibit A, p. 1) Dr. Mooney's opinion in this regard is contained in his IME report dated June 20, 2014. (Ex. B, p. 8) Dr. Mooney further clarified this particular point with the following comment in his report:

It is my opinion that Ms. Williams demonstrates significant non-injury related gastrointestinal symptoms and perhaps a systemic problem with allergic urticaria. This should be further evaluated by both a gastroenterologist and an allergist. It is my opinion that this is not related to her hernia repair or injury.

(Ex. B, p. 7-8)

I find that Dr. Sassman's opinion that claimant's abdominal symptoms are related to her work injury is not supported by the greater weight of the evidence in this case, particularly the results of diagnostic testing which consisted of a CT scan, a HIDA scan and an upper GI with small bowel follow through exam (Ex. 2, pp. 15 and 18), all of which were negative, which supports the finding that claimant's ongoing abdominal symptoms are not caused by her work-related hernia condition.

Dr. Mooney did give claimant an impairment rating of three percent of the whole person for nerve pain related to the hernia repair itself, which is separate from claimant's abdominal pain related to her non-work-related abdominal condition. (Ex. B, p.7) However, I find that this minimal functional impairment resulting from claimant's nerve pain is not disabling in the least and is of no consequence, particularly when compared to claimant's abdominal condition, which I find is not related to the work injury.

Dr. Grossman and Dr. Mooney also agree that claimant has no permanent work restrictions related to her hernia condition. (Ex. 2, p. 11, Ex. B, p. 7) While Dr. Sassman did recommend work restrictions for claimant, she recommended those restrictions for claimant's abdominal condition which I find not to be related to claimant's work injury. (Ex. 7, pp. 5-6)

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa

1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

I affirm the deputy commissioner's finding that claimant failed to prove she sustained any industrial disability as a result of the work injury of April 4, 2012, for the following reasons:

1. Dr. Grossman and Dr. Mooney determined that claimant has no permanent restrictions resulting from her work-related hernia condition;
2. If claimant does have any restrictions upon her ability to work, it is because of her non-work-related abdominal condition;
3. Claimant has no other elements of industrial disability, such as loss of earning capacity, which is evidenced by the fact that she was earning \$11.65 per hour at the time of the arbitration hearing working at Kohl's more hours per week as compared to her pre-injury earnings of \$9.20 per hour, an increase of \$2.45 per hour, which is an increase of slightly less than 27 percent over her pre-injury earnings.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of September 19, 2014, is AFFIRMED in all respects.

Claimant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 25th day of August, 2015.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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