

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 REVETTE SAUSER,

Claimant,

vs.

IOWA CORRECTIONAL INSTITUTION
FOR WOMEN,

Employer,

and

STATE OF IOWA,

Insurance Carrier,
Defendants.

File No. 5067518

ARBITRATION DECISION

Head Note: 1402.40

STATEMENT OF THE CASE

Claimant, Revette Sauser, filed a petition in arbitration seeking workers' compensation benefits from the Iowa Correctional Institution for Women (ICIW) and the State of Iowa, both as defendants. This matter was heard on January 13, 2022, with a final submission date of February 9, 2022.

The record in this case consists of Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 5, Defendants' Exhibits A through C, 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

1. Whether the injury resulted in a permanent disability; and if so,
2. The extent of claimant's entitlement to permanent partial disability benefits.

FINDINGS OF FACT

Claimant was 53 years old at the time of hearing. Claimant has a GED. Claimant attended classes at a community college but did not earn a degree. (Hearing Transcript p. 10)

Claimant has worked as a housecleaner, a custodian, and a convenience store owner. (Claimant's Exhibit 1, pp. 1-2) At the time of hearing, claimant was incarcerated at the ICW. (TR pp. 9-10)

Claimant was employed by Iowa Prison Industries as a team leader in the bag department. (TR pp. 17, 32) Claimant ran a bag machine that used a large roll of plastic to cut different size bags. (TR p. 32)

Claimant's prior medical history is relevant. Claimant has treated for migraine headaches beginning in 2012. (Joint Exhibit 1, p. 1; Joint Exhibit 4, p. 88)

In a March 2012 psychiatric note, claimant indicated a history of physical abuse by her former husband that included blows to the head. Claimant indicated that she felt she was "slow" due to the blows to her head. (JE 4, p. 89)

In September 2012 claimant indicated she had a headache on the right side of her head. Claimant also reported problems with photophobia and sound sensitivity. (JE 1, p. 1)

In April 2013 claimant was treated for frequent migraine headaches. (JE 1, p. 3)

In May 2013 a correctional officer contacted Health Services at the ICW indicating claimant was not "responding properly." Claimant indicated at that time she was feeling "fuzzy." (JE 1, p. 4)

In June of 2013 claimant was seen at Health Services at the ICW. Claimant indicated she felt fuzzy and dizzy for several days. Claimant also indicated she had fatigue, dizziness, and headaches at that time. (JE 1, p. 6)

Claimant testified that on April 10, 2017, she was changing a blade on the bag machine when the lid came down and hit her in the head. Claimant estimated the lid on the machine weighed between 30-35 pounds. (TR pp. 17-18)

Claimant was taken to Health Services at ICW. Claimant had a half-dollar size hematoma on her right forehead. She was prescribed Tramadol, told to ice her head and taken off work. (JE 1, p. 10)

On April 11, 2017, claimant was evaluated at Mercy Hospital Emergency Room for a head injury with vomiting and dizziness. A head CT scan was done that was normal. Claimant was assessed as having a right forehead hematoma with a mild concussion. Claimant was given a tablet of Zofran and discharged. (JE 2)

Claimant was seen on April 12, 2017, at the Department of Corrections Health Services by Steven Cook, M.D. Claimant indicated she felt better. Claimant wanted to return to work. Claimant was assessed as having a concussion with no loss of consciousness. (JE 1, pp. 19-20)

Claimant returned to the Department of Corrections Health Services on May 22, 2017, indicating difficulty with doing certain tasks. Claimant was alert and oriented times three. (JE 1, p. 22)

Claimant returned in follow up with Dr. Cook on May 26, 2017. Claimant was administered a St. Louis Mental Status Exam (SLUMS). Testing found claimant gave poor effort. A mental status exam (MSE) was also administered. Claimant scored in a "... range for neurocognitive disorder." An MRI was recommended. (JE 1, pp. 24-25)

On June 14, 2017, claimant had an MRI of the brain. The MRI showed no intracranial findings with an incidental small right frontal developmental venous anomaly (DVA). Claimant's MRI was interpreted as being normal. (JE 3, pp. 66-69; JE 1, p 33)

Claimant returned to Correctional Health Services on July 6, 2017. Claimant indicated headaches were mild and less frequent. Claimant also denied problems with concentration, focus and memory. Claimant was instructed to take ibuprofen as needed for headaches. (JE 1, p. 34)

Claimant returned to Health Services on August 18, 2017, with complaints of headaches. She was told to rest in her unit. (JE 1, p. 35)

On December 26, 2017, claimant returned to Correctional Health Services complaining of headaches for two days behind her eye. Claimant was prescribed metoprolol and Naproxen. Claimant was told to have her blood pressure checked weekly. (JE 1, pp. 40-43)

Claimant returned to Dr. Cook on January 8, 2018, indicating daily right-sided headaches. Claimant denied nausea, vomiting or any neurological issues, but reported blurry vision. Claimant was treated with medication. (JE 1, p. 44)

On April 6, 2018, claimant was evaluated by Rachel McFarland, R.N., with complaints of headaches and nausea. Claimant was being stalked by another inmate. Headaches seemed secondary to the stalking. Claimant was given a dose of promethazine. (JE 1, p. 50)

On May 21, 2018, claimant had a physical exam. Claimant complained of headaches three times a week. Claimant said headaches were caused by bright lights and computer usage. Claimant was given topiramate for headaches. (JE 1, p. 56)

On September 21, 2018, claimant returned to Correctional Health Services complaining of difficulty counting patterns since her 2017 injury. Claimant denied problems with speech, memory, dizziness, headaches and nausea. Claimant had no difficulty with daily ADLs, with work or confusion. (JE 1, p. 60)

On September 20, 2018, claimant took a second SLUMS exam and scored 27 points out of approximately 30 points. Scoring fell in the normal level. (Defendants' Exhibit A)

In a June 30, 2019, report, Joseph Chen, M.D., gave his opinion of claimant's condition following a records review. Dr. Chen opined that claimant reached maximum medical improvement (MMI) as of June 1, 2017. He opined claimant had no permanent

restrictions and had no ratable permanent impairment under the AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition). (Ex. C)

On October 19, 2021, claimant was evaluated at the University of Iowa Hospitals and Clinics (UIHC) by Erin Shriver, M.D. Claimant was evaluated for ptosis or drooping of both upper eyelids. Claimant indicated it had been a problem for several years but had worsened over the past year. Claimant indicated a relative had similar physical issues. Claimant indicated drooping eyelids before the 2017 injury, but believed her injury caused her eyes to droop more. (JE 3, pp. 76-81)

Surgery was discussed as a treatment option. Dr. Shriver recommended brain imaging prior to surgery. (JE 3, pp. 80-84)

In a December 13, 2021 report, Robin Sassman, M.D., gave her opinion of claimant's condition following an IME. Dr. Sassman did not evaluate claimant in person but spoke to claimant by phone. Claimant indicated she had continuing headaches. Claimant indicated photosensitivity with headaches. Claimant indicated problems with memory. Claimant said she had trouble with job tasks since her injury. Claimant indicated she became easily frustrated. (Ex. 3, pp. 18-19) Claimant indicated she had headaches before, but had never had migraines prior to the 2017 injury. (Ex. 3, pp. 13, 19)

Dr. Sassman assessed claimant as having a concussion with continued headaches and a right forehead sensitivity after trauma. She recommended claimant undergo neuropsychological testing due to claimant's complaints of memory issues and to determine a medication regimen. (Ex. 3, pp. 21-22)

Dr. Sassman found claimant had a 3 percent permanent impairment to the body as a whole based on claimant's mental status and integrative function using Tables 13-5 and 13-6 of the Guides. She found claimant had a 2 percent permanent impairment for emotional and behavioral disturbances. She also found claimant had an additional 3 percent permanent impairment for headaches. She found claimant had a 1 percent permanent impairment for the persistent elevated area on claimant's right forehead. The combined value of all permanent impairments resulted in a 7 percent permanent impairment to the body as a whole. Dr. Sassman restricted claimant to limited working in bright lights. (Ex. 3, pp. 21-22)

Claimant testified that after the injury she had difficulty with numbers and ran thousands of bags on her bag job that were not needed. (TR p. 33) She said that after the error, she was transferred to work in embroidery. She said she was unable to thread the sewing machine needle due to issues with memory. (TR pp. 34-36) Claimant was moved to a job scanning documents but had to quit that job due to headaches from the scanner. (TR p. 37) Claimant said at the time of hearing she was working in housekeeping and was able to do that job. (TR p. 40) Claimant said that in the bag job she earned 96 cents per hour. In the housekeeping job she earned 38 cents per hour. (TR p. 40)

Claimant testified she had a huge bump on her forehead from the injury. (TR pp. 26-27) She said that she has drooping eyelids that make it difficult to see. (TR p. 26) Claimant said she has confusion and difficulty with getting words out. (TR p. 25)

CONCLUSION OF LAW

The first issue to be determined is whether the April 10, 2017, date of injury resulted in a permanent disability.

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. 6.904(3).

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 had an injury when a cover on a plastic cutting machine fell on her head. Claimant contends that since the injury she has confusion and difficulty with speaking. Claimant contends she also has drooping eyelids caused by the April 10, 2017 injury. Claimant testified she has memory issues since the injury.

Two experts have opined regarding whether or not claimant has a permanent impairment from the April 10, 2017 injury. Because claimant is incarcerated at the ICW, neither expert was able to physically examine claimant in person.

Dr. Chen performed a records review. He opined claimant had no permanent impairment. (Ex. C)

Dr. Sassman spoke with claimant by phone and reviewed claimant's records. Dr. Sassman opined claimant had a permanent impairment. Dr. Sassman's opinions regarding permanent impairment are problematic for several reasons. First, there is no indication in Dr. Sassman's report that she had access to any of claimant's medical history prior to the April 2017 date of injury. Medical records indicate that claimant contended her husband battered her before incarceration causing claimant to be "slow." On numerous occasions claimant was assessed as having migraine headaches in 2012 and 2013. (JE 1, pp. 1, 3, 4, 6; JE 4, pp. 88-89) Dr. Sassman's report notes "... I asked Ms. Saucer if she had any prior headaches. She states she never had any migraines, and she did not have headaches on the right side of her head. If she did have a headache, she would take aspirin, and this would resolve her symptoms." (JE 3, p. 13) The history claimant gave Dr. Sassman is not true when compared with her medical records from 2012 and 2013.

Second, records from September of 2018 indicate claimant denied problems with speech, memory, vertigo, dizziness, headaches, vision or nausea. (JE 1, p. 60) At the time of her IME with Dr. Sassman, claimant indicated difficulty with memory and focus, but no word-finding issues. (Ex. 3, p. 19) Dr. Sassman offered no rationale or analysis why claimant did not have issues with memory, dizziness, headaches, vision or nausea in September 2018, yet had a number of those problems at the time of the IME.

Third, claimant was given a SLUMS test in September of 2018. That test indicated claimant had a normal assessment. There is no analysis or rationale given as to why claimant had a normal SLUMS test in September of 2018, and yet had impaired cognitive function during the time of her IME in 2021.

Dr. Sassman determined claimant had a CDR score of 0.5 under Tables 13-5 and 13-6 of the Guides and fell into a Class I for impairment of the whole person. There is no indication what criteria Dr. Sassman used to make that finding using Table 13-5. Section 13.3d of the Guides regarding criteria for evaluating mental status and cognitive impairment indicates "mental status tests are used to screen and follow-up individuals, frequently with repeated testing. They usually cover measures of orientation, attention, immediate recall, calculations, abstraction, construction, information and recall." Section 13.3d goes on to state, "The criteria for evaluating mental status and cognitive impairment are based on the amount of interference with the ability to perform activities of daily living. This information can be obtained from someone who has close and continual contact with the individual and can be documented using any of numerous ADL indices that determine changes in activities of daily living." (Guides at page 319)

As noted, the only mental status test claimant was recently given was a SLUMS test administered in September of 2018. That testing indicated claimant scored normal. There are no other mental status tests used to evaluate claimant's cognitive function. There is no indication in the record that information was obtained from any other person other than the claimant documenting claimant's difficulty with ADLs.

It does not appear Dr. Sassman had access to any of claimant's medical records prior to the 2017 injury. Dr. Sassman was unaware that claimant had numerous reports

of migraine headaches prior to the 2017 date of injury. She was unaware that claimant self-reported problems with cognitive function due to alleged battering by her ex-husband. Medical records from September 2018 indicated claimant had no difficulty with memory, dizziness, headaches, vision or nausea. It is unclear what factors Dr. Sassman used to make a determination that claimant fell into the Class I for rating impairment related to mental status under Table 13-6 of the Guides. Given these problems, it is found that Dr. Sassman's opinion regarding permanent impairment are not convincing.

Claimant carries the burden of proving she sustained a permanent impairment from her 2017 injury. Dr. Chen found that claimant had no permanent impairment. Dr. Sassman's opinions regarding permanent impairment are found not convincing. Given this record, it is found that claimant has failed to carry her burden of proof she sustained a permanent impairment from the April 10, 2017, date of injury.

As claimant failed to carry her burden of proof she sustained a permanent impairment from the April 10, 2017, date of injury, the issue regarding the extent of claimant's entitlement to permanent partial disability benefits is moot.

ORDER

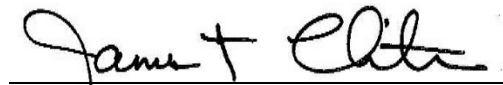
Therefore it is ordered:

That claimant shall take nothing in the way of benefits from this proceeding.

That both parties shall pay their own costs.

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

Signed and filed this 4th day of April, 2022.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Chandler Surrency (via WCES)

Robin Maxon (via WCES)

Meredith Cooney (via WCES)

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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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.