BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUL 11 2018
WORKERS' COMPENSATION

KATHERINE CLARK, Claimant, vs. NESTLE PURINA PETCARE, Employer, And INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendant.	File No. 5047795 ARBITRATION DECISION Head Note Nos.: 1402.40, 1803.1, 2907

STATEMENT OF THE CASE

Katherine Clark, claimant, filed a petition for arbitration against Nestle Purina Petcare (hereinafter referred to as "Nestle") as the employer and Indemnity Insurance Company of North America as the insurance carrier. An in-person hearing occurred in Fort Dodge on June 25, 2018.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed in either file. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 17, which were all received without objection. Claimant testified on her own behalf. No other witnesses were called to testify. The case was deemed fully submitted at the conclusion of the arbitration hearing.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's permanent disability is limited to scheduled member injuries of the bilateral upper extremities or includes a neck injury requiring an award of industrial disability.

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

3. Whether claimant is entitled to an award of past medical expenses, contained in Joint Exhibit 16, related to treatment of her neck.

4. Whether claimant is entitled to an award of alternate medical care for future treatment of her neck.

5. Whether defendants are entitled to apportionment for past injuries.

6. Whether costs should be assessed against either party.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Katherine Clark began working at Nestle in July 1996 and has worked full-time for the employer through the date of the arbitration hearing. When she started with the employer, claimant worked at the meat table. She would use a crowbar to break up large chunks of frozen meat. She broke down boxes and described the job as physically demanding.

She next worked for the employer on Line 2 as a relief worker, providing breaks and filling in during other workers' absences. In this position, she operated machines and performed cleaning duties, such as operating a high pressure hose.

Ms. Clark's next position with the employer was as a Line 2 Seamer. She has worked as a Seamer most of her employment with Nestle. As a Seamer, claimant fills a machine with lids. The machine she operates seals the lids onto the ends of cans of pet food. Claimant is responsible for ensuring that the machines she is responsible for are processing 800-1,600 cans per minute.

Claimant's position is quite repetitive. She demonstrated the maneuvers she performs to load the lids into the machines. She used to do much more overhead work and sustained a shoulder injury in 2008 while in the employ of Nestle. The employer subsequently modified her work station so she does not do much overhead work at the present time.

Claimant concedes that her job does not require heavy lifting. However, it is repetitive and she works 12 days in a row before she receives two days off. She averages 48 hours of work per week.

In 2011, Ms. Clark was involved in a motor vehicle accident while traveling in Mississippi. Following that motor vehicle accident, claimant obtained some medical care and reported symptoms in her neck, shoulder, as well as intermittent numbness in her fingers. Claimant testified that her neck symptoms after the motor vehicle accident resolved prior to her work injury at Nestle. There are no medical records in evidence that document ongoing symptoms before the September 21, 2012 work injury.

In 2012, Ms. Clark developed symptoms in her arms and hands. She testified that she also developed neck symptoms. She reported that injury to the company's safety person and the company sent claimant for an evaluation with an orthopaedic surgeon, Emile C. Li, M.D. Dr. Li recommended a cervical MRI, but the company did not authorize the MRI. Claimant obtained the MRI on her own, though it did not demonstrate any spinal cord compression.

Ms. Clark sought additional care through a physician of her own choosing, Lee Hieb, M.D. Dr. Hieb diagnosed claimant with bilateral carpal tunnel syndrome and neck pain. She recommended an EMG, which claimant obtained on May 14, 2013. The EMG demonstrated bilateral carpal tunnel syndrome but no cervical radiculopathy. (Ex. 10, pp. 97-101)

Claimant testified that Dr. Hieb wanted to perform neck surgery. However, nothing in Dr. Hieb's medical records suggests that neck surgery was recommended. Dr. Hieb provided no additional treatment for her neck and claimant obtained no additional treatment for her neck after May 5, 2013. The employer accepted the bilateral carpal tunnel claims and scheduled claimant for evaluation and treatment through a different orthopaedic surgeon, Benjamin Paulson, M.D.

Dr. Paulson diagnosed claimant with bilateral carpal tunnel syndrome as well as bilateral cubital tunnel syndrome. Dr. Paulson performed carpal and cubital tunnel releases in claimant's left arm on October 8, 2013. (Ex. 5, p. 27) He performed carpal and cubital tunnel releases on claimant's right arm on December 10, 2013. (Ex. 5, p. 36) Dr. Paulson declared maximum medical improvement, released claimant from his care, and permitted her to return to work without restrictions by August 25, 2014. (Ex. 5, p. 52)

Defendants obtained an independent medical evaluation performed by Mark B. Kirkland, D.O., an orthopaedic surgeon, on April 22, 2014. (Ex. 6) Dr. Kirkland confirmed the diagnoses of carpal and cubital tunnel syndromes. He offered an opinion as to claimant's level of permanent impairment, though it is unclear how Dr. Kirkland reached his impairment ratings.

With respect to the neck, Dr. Kirkland noted that claimant had full and pain-free range of motion in her cervical spine. Dr. Kirkland offered no diagnoses relative to the neck and reported no complaints of symptoms in or originating from the neck. (Ex. 6, p. 55)

Five months after Dr. Kirkland's evaluation, on September 1, 2014, claimant was involved in another motor vehicle accident. Following this accident, she reported neck pain. (Ex. 17, pp. 159-160) However, there is no evidence of ongoing neck symptoms or treatment after the September 1, 2014 motor vehicle accident.

On April 6, 2015, Ms. Clark provided a deposition in this contested case proceeding. In that deposition, claimant testified that her neck was better after Dr. Paulson performed her bilateral carpal and cubital tunnel releases. As of April 6, 2015,

claimant confirmed that she was not claiming any problems with her neck as a result of her work with Nestle. (Ex. 11, p. 107)

Eight months later, Ms. Clark submitted to an independent medical evaluation of her choosing with Sunil Bansal, M.D. Dr. Bansal is an occupational medicine physician. Dr. Bansal diagnosed claimant with injuries to her neck as well as the carpal and cubital tunnel injuries in both arms.

Dr. Bansal obviously reviewed the evaluation performed by Dr. Kirkland. Dr. Bansal refers to the portions of Dr. Kirkland's report and opinions that deal with permanent impairment of the arms. However, Dr. Bansal makes no reference to Dr. Kirkland's physical examination findings of full and pain-free range of motion of the neck. No explanation is provided by Dr. Bansal how or why claimant's neck was pain free in April 2014 when she was evaluated by Dr. Kirkland but possessed neck symptoms in December 2015 when Dr. Bansal evaluated claimant.

Similarly, there is no mention in Dr. Bansal's report of the September 1, 2014 motor vehicle accident or resulting neck symptoms. It does not appear that Dr. Bansal was aware of this intervening motor vehicle accident. He certainly offers no explanation of the effects, if any, of the intervening motor vehicle accident.

Interestingly, Dr. Bansal's report does not mention any symptoms at the base of claimant's neck. At trial, claimant testified that she has had symptoms in her neck ongoing since the September 2012 injury date. It is interesting and troubling that no neck symptoms were specifically recorded by Dr. Bansal that would corroborate claimant's testimony of symptoms at the base of her neck at the time of trial.

Defendants obtained an evaluation performed by Scott B. Neff, D.O. on January 30, 2018. Dr. Neff had claimant complete a patient symptom drawing. (Ex. 9, p. 92) Claimant did not indicate any symptoms in her neck, directly contradicting her hearing testimony about symptoms in the base of her neck. In this evidentiary record, I cannot rectify the lack of symptoms at the base of the neck during the evaluations by Dr. Kirkland, Dr. Bansal, and Dr. Neff with the claimant's testimony at hearing.

Unlike Dr. Bansal, Dr. Neff makes specific reference to the September 1, 2014 motor vehicle accident. (Ex. 9, p. 84) It appears that Dr. Neff also had access to Dr. Kirkland's report. However, Dr. Neff also fails to take note or reference the lack of neck symptoms noted by Dr. Kirkland.

Dr. Neff ultimately opines that claimant's neck issues are degenerative in nature and not causally related to, or aggravated by, her work activities at Nestle. Dr. Neff also appears to suggest that perhaps claimant's bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome are not work related. The employer, however, admits those injuries and that an injury occurred. It is specifically found that claimant sustained bilateral hand and arm injuries resulting in bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome and operative intervention for those conditions.

Interestingly, Dr. Neff agrees with Dr. Bansal's physical examination findings relative to claimant's neck, right elbow, left elbow, right wrist, and left wrist. However, Dr. Neff disagrees with the impairment ratings offered by Dr. Bansal. Dr. Neff noted "[t]he 'gold standard' for attribution of nerve function is an EMG study." (Ex. 9, p. 89) Dr. Neff opines, "It is not appropriate to attribute impairment based on subjective symptoms without appropriate physical diagnosis confirmation.... Consequently, without up to date EMG and nerve conduction velocity studies, I cannot attribute impairment." (Ex. 9, p. 89)

Defendants obtained a repeat EMG study after Dr. Neff's evaluation and provided him those results. (Ex. 10, pp. 102-105) Having seen the repeat EMG results, Dr. Neff opined that claimant "has a 5% impairment to the right upper extremity and a zero impairment to the left arm." (Ex. 9, p. 94)

Review of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, suggests that Dr. Neff's impairment rating is most consistent with those standards. Dr. Kirkland does not reference or attempt to demonstrate how he reached his permanent impairment under the AMA Guides. Dr. Bansal utilizes Tables 16-10, 16-11, and 16-15 to reach his impairment rating. However, there are specific requirements for assignment of impairment for carpal tunnel syndrome.

Dr. Bansal assigns impairment equivalent to four percent of claimant's right upper extremity for the right carpal tunnel and an additional three percent of the left upper extremity as a result of the left carpal tunnel. However, the AMA Guides provides that carpal tunnel syndrome should only be rated under Tables 6-10, 16-11 and 16-15 if claimant demonstrates positive clinical findings as well as electrical conduction delays demonstrated via an EMG. AMA Guides, p. 495.

In this instance, Dr. Bansal did not have post-operative EMG testing to corroborate his award of permanent impairment. In fact, the post-operative EMG testing done at Dr. Neff's recommendation was negative for compression neuropathies in claimant's left hand and arm. I find that Dr. Bansal's method of rating impairment due to carpal tunnel syndrome did not conform to and utilize the most specific method of rating impairment under the AMA Guides. This leaves me with a lack of confidence in his impairment rating as a whole.

Dr. Neff also points out some inconsistencies, or non-physiologic responses, in claimant's grip strength testing, two-point discrimination testing, and elbow flexion test. Ultimately, I find the opinions of Dr. Neff pertaining to impairment to be the most credible and consistent with the protocols established in the AMA Guides, Fifth Edition. Therefore, I accept Dr. Neff's opinions and find that claimant sustained a five percent permanent impairment of the right arm as a result of carpal tunnel syndrome. I find that claimant failed to prove any permanent impairment resulting from the right cubital tunnel, left cubital tunnel, or left carpal tunnel syndromes. I further find that claimant failed to prove that any neck symptoms are causally related to, or materially aggravated by, her employment at Nestle.

Given claimant's ability to return to work full-duty and full-time for an extended period of time since her surgeries, I find that the impairment rating offered by Dr. Neff adequately and appropriately encompasses the level of permanent functional loss sustained by claimant as a result of the September 21, 2012 work injury.

CONCLUSIONS OF LAW

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).

In this instance, I found that claimant did not prove her neck symptoms are casually related to, or materially aggravated by, her work at Nestle. Therefore, I conclude that claimant has not established entitlement to weekly benefits or medical benefits for her alleged neck injury. Claimant's request for award of past medical expenses and alternate medical care are, therefore, denied.

Claimant did sustain bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. She seeks award of permanent disability for those injuries.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). 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). 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).

A wrist injury is an injury to the arm, not the hand. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008).

Having found the permanent impairment ratings offered by Dr. Neff to be most convincing and having found Dr. Neff's impairment rating to be accurate as to the level of permanent functional loss claimant sustained as a result of her work injuries at Nestle, I conclude that claimant has proven entitlement to a five percent permanent impairment of the right arm.

Having found that claimant sustained a five percent loss of function in her right arm as a result of the September 21, 2012 work injury, I must determine claimant's entitlement to permanent partial disability benefits. The Iowa legislature has established a 250-week schedule for arm injuries. Iowa Code section 85.34(2)(m). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of her arm. Iowa Code section 85.34(2)(v). Five percent of 250 weeks equals 12.5 weeks. Claimant is, therefore, entitled to an award of 12.5 weeks of permanent partial disability benefits against the employer. Iowa Code section 85.34(2)(m), (v).

Given that I have awarded only permanent disability to claimant's right arm, I conclude that defendants have not established any prior injury to the right arm or proven entitlement to apportionment.

Finally, claimant seeks assessment of her costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that defendants have prevailed on the principal disputed issues, I conclude that claimant's request for assessment of her costs should be denied.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant twelve point five (12.5) weeks of permanent partial disability benefits at the rate of seven hundred eighteen and 58/100 dollars ($718.58) per week and commencing on August 26, 2014.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) 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 (2) percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall be entitled to a credit in the amount stipulated on the hearing report against this award.

All parties shall bear their own costs.

Signed and filed this 11th day of July, 2018.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/sam

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.