BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRENDA HATAYAMA, Claimant, vs. SELECT SPECIALTY HOSPITAL, Employer, and LIBERTY MUTUAL FIRE INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5068839 ARBITRATION DECISION Head Note Nos.: 1100; 1800; 1801.1

STATEMENT OF THE CASE

Claimant, Brenda Hatayama, has filed a petition for arbitration seeking workers' compensation benefits against Select Specialty Hospital, employer, and Liberty Mutual Fire Insurance Company, insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the Matter of Coronavirus/COVID-19 Impact on Hearings, the hearing was held on March 15, 2021, via CourtCall. The case was considered fully submitted on April 12, 2021, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-4; Claimant's Exhibits 1-8; Defendants' Exhibits A-H, and the testimony of claimant, Teresa Kennedy, and Debbie Munson.

ISSUES

1. Whether claimant's alleged injuries from July 14, 2017, arose out of and in the course of her employment;

2. Whether claimant is entitled to temporary benefits;

3. Whether claimant is entitled to permanent benefits, and if so, how much;

4. The applicability of Iowa Code Section 85.34(2(v);

5. Whether claimant is entitled to reimbursement of medical expenses;

6. Whether claimant is entitled to future medical care;

7. Whether claimant is entitled to reimbursement of an independent medical examination pursuant to Iowa Code § 85.39; and

8. Assessment of costs.

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.

The parties stipulate the claimant was an employee at the time of the alleged injury, but dispute that the claimant sustained an injury arising out of and in the course of her employment on July 14, 2017.

The parties agree claimant's gross earnings at the time of the alleged injury were $668.52 per week. The claimant was single and entitled to two exemptions. Based on the foregoing, the weekly benefit rate is $425.26.

Defendants waive all affirmative defenses.

As for the disputed medical expenses, the parties stipulate the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and the defendants do not offer contrary evidence. Further, although causal connection of the expenses to the work injury cannot be stipulated, the listed expenses are at least causally connected to the medical condition upon which a claim of injury is based.

FINDINGS OF FACT

At the time of the hearing, claimant was a fifty-seven-year-old person. She is a high school graduate and received a certified nursing assistant certificate from Scott County Community College. (CE 5:40) Prior to her work at the defendant hospital, she worked at Rock Island Boat Works, as a revenue auditor, and at Kahl Home as a CNA. (CE 5:41-42) Claimant began working for the defendant in 2007. (CE 5:42) She began as a CNA around 2013 and transitioned to a full-time telemetry tech position. (DE B:1)

As a telemetry tech, claimant was responsible for continuously watching and ensuring appropriate and timely response to alarms. On average, claimant would watch alarms for approximately 20 patients. She would also monitor their call buttons, alarms for patients with fall risks, and answer phones. This is a sedentary position that requires

no lifting. (DE E:1) Her shift was 12-hour days with six days off. Claimant testified that from time to time she would assist with nursing approximately six times through an 8-day shift. She was wearing blue scrubs similar to those worn by the CNAs at the time of the injury. Since the injury, she wears colored scrubs assigned to the telemetry techs.

Because the alarms had to be monitored at all times, when claimant would take a break or use the restroom another employee would need to cover for her as only one telemetry person worked each shift. The job analysis conducted on September 14, 2107, indicated that the heaviest item lifted or carried is a 5-pound ream of paper. (CE 6:51)

Claimant is still employed with the defendant employer in the same position. She uses a mouse to help monitor the screens and has a different chair. She works full-time and occasionally picks up additional shifts. She has continued to receive raises and earns more today than she was at the time of injury.

During the week of July 14, 2017, claimant was working her regular telemetry position. She testified that she was helping her supervisor, Teresa Kennedy, boost and turn many heavy patients. At hearing, she did not remember the exact moment that she was hurt, but that she was working a lot of overtime and that it was the combination of lifting and reaching that resulted in her work injury. In the interrogatories, claimant answered that she was helping Ms. Kennedy boost and turn many heavy patients the whole week of her injury. (DE G)

At hearing claimant testified that patient care was prioritized by defendant employer. When she was returning from a break and saw someone who needed help, claimant did not hesitate to lend assistance. Nurses would ask her for assistance and would watch the monitors while claimant helped boost or lift.

Claimant's work environment was a desk with monitors positioned at the back of the desk. She would need to reach across the desk to push buttons. This was modified after claimant's injury so that she no longer needed to reach but could use a mouse instead.

Ms. Kennedy testified at hearing that she worked the same shift as claimant and that if the claimant left her telemetry station, another person would need to fill in. She further testified that if a CNA or other person needed lifting assistance, a telemetry person would be the last individual asked because the monitor position needed to be staffed at all times.

She did not recall any specific instance in July 2017 in which she was aided by claimant in lifting and moving patients.

Claimant's past medical history is significant for a 1991 motor vehicle accident wherein she injured her neck. She received chiropractic treatment and wore a neck brace.

In preparation for three weeks off of work, claimant had been working 19 out of 22 days for 12-hour shifts. The work schedule shows claimant working June 1st through the 5th, followed by six days off. (DE D:1) She then worked from June 12th to the 19th and was off for six following days. She returned to work June 26th through June 30th. (DE D:1) There is not a record of the July dates, so it is possible she worked from June 26th through July 14th for 18 or 19 days in a row.

On July 31, 2017, claimant presented to Genesis with reports of pain in her shoulder blade from repetitive reaching across a counter. (JE 1:1) The pain began in the shoulder blade and moved into the right side of the neck, front shoulder, and arm. (JE 1:1)

In the history section, it was noted the claimant did not perform any direct patient care or lifting for the most part, but rather repetitively reached with the right arm due to a poor ergonomic set up at her workstation. (JE 1:1) On examination, she had mild limited cervical rotation to the left and right, tenderness to palpation on the right paracervical muscles and the UT with significant spasms and pain on exam. (JE 1:2) She exhibited significant pain behaviors. (JE 1:2)

The diagnosis was soft tissue disorder related to overuse and pressure on the right upper arm. (JE 1:2) She was taken off work for the remainder of the day and instructed to refrain from reaching or lifting more than 2 to 3 pounds with the right arm. (JE 1:2) No additional time off of work was prescribed as claimant was going on a three-week vacation. (JE 1:3)

Claimant returned for treatment on August 3, 2017. (JE 1:5) The x-rays taken previously showed degenerative changes of the lower cervical spine with mild foraminal narrowing and fusion at C2-3. (JE 2:26, 1:5) Her range of motion had improved with mild rotational limits on the left but full on the right. (JE 1:6) She was tender to palpation on the right paracervical muscles and the UT with less intense spasms and pain on examination. (JE 1:6) She had full passive range of motion, but abduction was limited in active range of motion. (JE 1:6) She had mild weakness of the right with resisted abduction of the fingers but pinch grip without pain and less prevalent triggering of the thumb. (JE 1:6) She was given an order for physical therapy and instructed to follow up within two weeks.

She returned on August 29, 2017. An MRI showed a glenohumeral ligament avulsion. (JE 2:29, 1:8) She was tender over the anterior rotator cuff tendons and range of motion remained limited to 70 degrees of abduction and flexion. (JE 1:9) Restrictions were rare use of the right arm and no sustained reaching or above chest level work with the right arm. (JE 1:9) A referral to orthopedics was given.

Rick Garrels, M.D., saw claimant on October 5, 2017, as claimant was waiting for her orthopedic appointment to be approved. (JE 1:13) During the examination she was tender over the anterior rotator cuff tendons. Range of motion remained limited to 90 degrees of abduction and flexion. She was tender in the lower cervical paraspinal

musculature. (JE 1:14) Dr. Garrels did not know what the cause was and continued claimant's work status as restricted. (JE 1:14)

Claimant was seen at the orthopedic clinic on October 23, 2017, where she was seen by Suleman Hussain, M.D. (JE 4:34) The history recorded is as follows:

> BRENDA HATAYAMA is a 54 year old female who comes in today for evaluation of her right arm. She states that she worked overtime doing a lot of repetitive work and lifting. She does mainly desk work but also helps nurses lift patients. The last few days she worked she started having right shoulder pain. Symptoms started at the end of July. Since then, she has done physical therapy. She states that physical therapy made her symptoms worse. She then had an MRI. Since the onset of symptoms, they are getting worse. They do not interfere with her activities. She experiences pain. The pain is a level 10 on a scale of 1 to 10 in terms of severity.

(JE 4:34) While the radiologist had been concerned with ligament damage, Dr. Hussain did not find a tear and the inferior glenohumeral ligament complex appeared normal. (JE 4:34) He felt that her condition was more significant for rotator cuff tendinitis as well as more profound changes consistent with cervical radiculopathy secondary to cervical degeneration and underlying history of congenital cervical fusion. (JE 4:38-39)

Dr. Hussain administered an injection and instructed claimant to follow up as needed. (JE 4:35)

On October 27, 2017, claimant was released to work on a modified basis of reaching with the right arm as tolerated. (JE 1:19) Dr. Garrels diagnosed claimant with cervical radiculitis and recommended an MRI. (JE 1:19) This was not accomplished due to the denial of the claim although claimant did not attempt to follow up with care on her own either.

On November 14, 2017, claimant returned for follow up for her right shoulder and neck symptoms. (JE 1:21) She was working again and noted shoulder pain from reaching for the phone. The rest of her workstation had been rearranged to improve the ergonomics and limit the repetitive reaching and she was happy about this. (JE 1:21)

On January 26, 2018, claimant underwent an IME with R.D. Foster, M.D., at the request of the defendants. (DE A) Dr. Foster's history recitation includes patient noticing problems at the end of September 2017 due to a period of eighteen 12-hour shifts in a row. (DE A:1) She reported lifting patients during that time. Id. Following this she began to notice problems in her right scapular area, right arm, forearm, and to some extent her thumb. (DE A:1). She believed this pain was due to overuse and that physical therapy worsened her condition. Id. At the time of the IME, she reported improvement but some weakness. (DE A:1) During the examination, she had full and pain free range of motion

in the right and left shoulder. (DE A:3) Dr. Foster opined claimant suffered from cervical radiculopathy secondary to underlying cervical degenerative disc disease and neuroforaminal stenosis. He did not find a discrete history of an injury or specific defining moment when her symptomatology developed. (DE A:3) Her radiographic report indicated chronic changes in her neck that existed prior to July 14, 2017. (DE A:3) As a result, he assigned no work restrictions or impairment rating for the July 14, 2017 injury.

On March 7, 2018, Dr. Hussain authored an opinion letter stating that he could not link claimant's pathology to a work event or injury with more than 50 percent certainty. (JE 4:39) This appeared to be primarily due to the lack of any type of lifting in claimant's job. Id.

On September 27, 2018, claimant underwent an evaluation with Dr. John Kuhnlein. (CE 2:19) He issued a report based on that examination on January 7, 2019. Id. In the report, he documents claimant's past medical history as including a neck injury in 1991 and no recent neck pain pursuant to recent medical examination. (CE 2:20) Dr. Kuhnlein noted claimant's work duties were as a telemetry monitor technician and a CNA and that claimant would perform CNA duties about every other shift. (CE 2:19) At the time of the examination, claimant was working only as a monitor technician and not performing the CNA duties. (CE 2:22-23)

Claimant's current symptoms included activity-dependent waxing and waning of neck pain localized in the right cervicothoracic area at the trapezius muscle origin as well as aching activity-dependent right shoulder pain to the point that she compensated with the left arm. (CE 2:22)

Dr. Kuhnlein concluded that there was a material change in claimant's physical condition in the days leading up to July 14, 2017, wherein she was required to work more physical duties as a CNA, and as a result the current symptomatology arose out of and in the course of her work. (CE 2:26) He was not certain whether claimant's problems stemmed from her neck or shoulder and recommended further work up to determine this. (CE 2:26) He did not assign an impairment rating as he felt that she was not at MMI. (CE 2:27) Dr Kuhnlein charged $1610.00 for the examination and $1825.00 for the report. (CE 4:37)

Claimant underwent a second evaluation with Dr. Hussain on June 10, 2019, at the request of the defendants. (JE 4:40) At the time, claimant reported a three-level discomfort which she described as dull, aching discomfort in the right shoulder, arm, neck, and hand area. (JE 4:40) She had some limitations in recreational activities, some weakness, and some pain that increases with lifting. (JE 4:40) She was using a TENS unit and working full duty with no restrictions. She related the pain back to the July 2017 injury when she helped lift patients and tore or pulled something. (JE 4:40)

Examination of the bilateral upper extremities revealed range of motion improved

from the initial evaluation in 2017. (JE 4:42) She had mild tenderness anteriorly at the shoulder capsule, paraspinal discomfort upon palpating, and her cervical range of motion was still restricted. (JE 4:42) Overall, symptoms appeared to be improved and less symptomatic compared to her October 2017 evaluation. (JE 4:42)

Orthopedically, her shoulder findings are not consistent with the injury described and are typically seen in patients that have dislocation events or high level mechanized trauma. (JE 4:42) Her imaging findings are consistent with cervical radiculitis and not an inferior glenohumeral ligament injury. (JE 4:43) She had a past trauma to her shoulder and neck region from both work and an auto accident and therefore, Dr. Hussain could not say with more than 50 percent certainty that claimant's current symptomatology was related to the work incident of July 14, 2017.

He opined the claimant reached maximum medical improvement on December 28, 2017 from any injuries arising out of the July 14, 2017 incident. He assigned no restrictions and would not provide any impairment. (JE 4:43)

He further wrote that she did need additional evaluation and treatment of her cervical symptoms, but that her condition is more consistent with a progression of natural cervical disease that was potentially initiated or caused by some sort of event that occurred prior to July 14, 2017. (JE 4:43)

In a letter dated January 3, 2020 and authorized by the attorneys for the defendants, Dr. Garrels signed off on an opinion the claimant had been working as a telemetry technician, a sedentary work position, and that claimant did not perform direct patient care. Further, he affirmed that claimant reported that the history of the pain stemmed from repetitive reaching at her workstation and not due to lifting patients. (JE 1:24-25) As a result, Dr. Garrels could not state with a probable degree of medical certainty the claimant's employment caused or materially aggravated a pre-existing condition. (JE 1:25)

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. 6.904(3).

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" refer 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).

The crux of the dispute is whether the injury arose out of and in the course of employment. Claimant has the burden of proving, by a preponderance of the evidence, that her injury arose out of and in the course of her employment with defendant. Iowa Code § 85.3(1) (1999). See also 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). The words "arising out of" refer to the "causal relationship between the employment and the injury." Id. The words "in the course of" refer to the time, place and circumstances of the injury. McClure v. Union et al., Counties, 188 N.W.2d 283, 287 (Iowa 1971).

An injury occurs in the course of employment when the employee was where she was directed to be and in the process of performing, about to perform or engaging in acts incidental to her required job duties. See, e.g., Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996). An injury arises out of the employment only if it is a "rational consequence of the hazard connected with the employment." Fernandez, 528 N.W.2d at 128 (quoting Burt v. John Deere Waterloo Tractor Works, 247 Iowa 691, 700, 73 N.W.2d 732, 737 (1955)). In assessing this factor the Iowa Supreme Court has approved the actual risk doctrine.[2] Under that doctrine the "arising out of" element is satisfied if "the nature of the employment exposes the employee to the risk of such an injury." Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990).

In this case, claimant relies on the medical opinion of Dr. Kuhnlein to prove the causation portion of her claim. Dr. Kuhnlein's opinion rests on his belief that claimant engaged in the lifting of patients. "During that timeframe," he writes, "she worked much of the time as a CNA, and so performed typical CNA duties that would be far more physical than her usual work duties, particularly in an intensive care setting."

The record does not support this conclusion. October 23, 2017, appears to be the first account of a complaint of pain due to "a lot of repetitive work and lifting." (JE 4:34) Previously, during the initial patient visit, claimant described her work as not involving much lifting. In her testimony at hearing, claimant stated that she would assist in lifting on the way back from a break or if requested by a nurse. Her primary job was telemetry tech and this position required constant monitoring. If claimant was not at her desk, someone else would need to cover for her. While she may have helped lift from time to time, the evidence did not support a finding that claimant was working much of her time as a CNA and performing typical CNA duties. She was a telemetry tech, and her primary concern came from overuse of her right arm which involved reaching in front of her to touch the monitors that were positioned at the back of her desk.

Because Dr. Kuhnlein's opinion is based on an inaccurate assessment of claimant's work duties, it is not afforded greater weight.

The other experts in this case are primarily retained by the defendants including Dr. Garrels, Dr. Hussain and Dr. Foster. Based on a reasonable degree of medical certainty, they are unable to opine that claimant's current symptomatology is related to the overuse of her right arm. Dr. Hussain suggests that claimant's shoulder pain stems from a traumatic insult that began during her car accident and then progressively worsened.

No doctor, not even Dr. Kuhnlein, concluded that the reaching and overuse of the right arm has led to claimant's current problems. Dr. Kuhnlein rests his opinion on the conclusion that claimant was engaged in typical CNA duties which the record does not reflect.

The claimant does have ongoing issues pertaining to her neck, shoulder, and right upper extremity; however, there is not sufficient evidence in the record to conclude that the overuse of the right arm caused by a non-ergonomic workstation is the cause of those symptoms.

Based on this finding, it is determined that claimant has not carried her burden to prove that her current problems are related to her work.

The remainder of the issues are moot.

ORDER

THEREFORE IT IS ORDERED

That claimant shall take nothing.

The parties are responsible for their own costs with the cost of the transcript shared equally between claimant and defendants.

Signed and filed this 6th day of August, 2021.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joanie Grife (via WCES)

Paul Powers (via WCES)

Lori Scardina Utsinger

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.