

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DUSANKA MUSTAFIC,	:	
	:	
Claimant,	:	File No. 5066543
	:	
vs.	:	ARBITRATION
	:	
TRINITY HEALTH CORPORATION	:	DECISION
d/b/a COVENANT MEDICAL CENTER,	:	
	:	
Employer,	:	
Self-Insured,	:	
Defendant.	:	Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Dusanka Mustafic, filed a petition in arbitration seeking workers' compensation benefits against Covenant Medical Center, a self-insured employer, for an accepted work injury date of December 25, 2015.

The case was heard on October 22, 2019, in Waterloo, Iowa. The case was considered fully submitted on November 11, 2019, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-4, Defendant's Exhibits A-E, and the testimony of the claimant. Claimant submitted an itemization of taxable costs.

ISSUE

Nature and extent of permanent partial disability.

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 stipulated claimant sustained a work related injury on or about December 25, 2015. As a result of this injury, claimant suffered both temporary and permanent disabilities. Entitlement to temporary benefits is no longer in dispute.

The permanent disability is industrial in nature and commencement date for permanent partial disability benefits is January 12, 2018. At the time of the injury, the claimant's gross earnings were \$1,109.00 per week. She was married and entitled to three exemptions. The weekly benefit rate is \$704.51.

Claimant has been paid 95.62 weeks of permanent partial disability compensation with 35 weeks paid for a prior claim and \$42,707.40 (60.62 weeks) paid in benefits for the current claim.

Prior to the hearing, the claimant paid \$100.00 as a filing fee and \$147.20 in deposition costs.

### FINDINGS OF FACT

Claimant was a 61-year-old person at the time of the hearing. She left Bosnia at the age of 35 and immigrated to the United States. Prior to her departure, she worked as an accountant but those skills were not transferable. Claimant speaks four languages including Russian, English, Serbian and Croatian. At one time she served as a translator.

She worked at a factory building printers, as a teller at Walmart, and a food server. She then undertook nursing training. She started working for defendant employer as an LPN and then as an RN after passing her examinations in February 2008. Since then, she has worked at the outpatient clinic where patients would come for small outpatient procedures.

Her work duties are articulated in Exhibit E. Her physical duties include lifting and carrying as well as pushing and pulling an average of 50-100 pounds. (Exhibit E4) She must also frequently (76-100%) bend, squat, kneel, and walk. (Ex. E4) Occasionally (26-75%) she will need to reach overhead and infrequently (0-25%) climb and sit.

The parties agree claimant sustained a work-related injury on August 3, 2009, to her left shoulder. She slipped on a wet floor and landed on her left shoulder and knee. Surgery was performed by Dr. Naylor on September 1, 2009 repairing a torn rotator cuff. Dr. Naylor also performed a subacromial decompression, distal clavicle excision, and debridement of the biceps tendon. (JE 1, page 1) On August 19, 2010, Dr. Naylor released his patient to return to work without restrictions and assigned 11 percent impairment as a result of her work injury. (JE 2, p. 1)

In 2015, claimant sustained another slip and fall injury when her foot got caught on a cord. She injured her right shoulder and left knee. Dr. Naylor performed medial and lateral meniscectomies on her left knee on March 10, 2016 and thereafter assigned a 10 percent lower extremity impairment rating on October 1, 2016. (JE 3, p. 1) It was Dr. Naylor's opinion that she reached maximum medical improvement on September 7, 2015. (JE 3, p. 1) Dr. Naylor assigned a 10 percent lower extremity impairment (4

percent body as a whole). Regarding the shoulders, Dr. Naylor assigned a 6 percent upper extremity impairment (4 percent body as a whole impairment) to each of her shoulders opining that maximum medical improvement was achieved on September 7, 2015. (JE 3, p. 1) He also noted that while it was “hard to say her underlying degenerative arthritis [was] related at this time because of her underlying cirrhosis but I can at least say at this point there has been an exacerbation of her underlying degenerative arthritis that has been treated with injection therapy at this time and is quiescent but may need treatment in the future including that of total knee arthroplasty.” (JE 3, p. 1)

Subsequent to the October 1, 2016 impairment rating, Ms. Mustafic underwent additional left shoulder surgery on April 10, 2017. (JE 4, p. 1) Dr. Naylor rendered an opinion that she reached maximum medical improvement August 7, 2017. He increased the impairment rating to 13 percent of the upper extremity (8 percent to the body as a whole). “This is not additive, but the new number for any previous impairment rating done on her left shoulder.” (JE 4, p. 1) Dr. Naylor instructed claimant to “be very careful with patient transfers and repetitive use at or above shoulder height at her discretion.” (JE 4, p. 1)

Dr. Naylor performed an injection into her left knee on June 20, 2019, which provided relief. The relief lasts for approximately three months and she was scheduled to receive another injection after the hearing.

She has no official restrictions and is not currently under the care of any health professional for her work-related injuries. She earns more today than she did at the time of her initial injury in 2009 and in 2015. Her work attendance has been good, she has received positive performance reviews, and she has missed no time from work due to her work injuries

She is still employed by defendant employer. Some of the tasks she performs are carried out differently due to her injury. She uses her right arm more than her left, will ask for help from time to time with heavier patients. She cannot squat or kneel and thus positioning patients can be challenging due to the need to lift, turn, and pose the patients. Sometimes she cannot avoid the overhead work which results in pain alleviated only by rest.

She testified at hearing that it was unlikely she would be able to pass the physical for her current position.

#### 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 Rule of Appellate Procedure 6.14(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).

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).

Defendant argues that the claimant has sustained only a mild permanent disability. She has returned to work with no restrictions. She receives no regular medical care nor does she take any prescription medication for issues related to her work injury. She continues to receive pay increases since her injury and has missed no work due to a work related injury or illness.

Claimant argues that her work is accommodated on an unofficial basis and that she would not be competitive in the labor market should she lose her current position. Her co-workers will help her from time to time. She cannot squat or kneel and must limit her overhead work, which was recommended by Dr. Naylor.

Claimant is a motivated worker. As pointed out by defendant, claimant has missed no work as a result of her work related injury. Even during the periods of time in which she was receiving treatment, she still went to work. When she immigrated to the United States, she learned the language, enrolled in post-secondary education and obtained a nursing license. Claimant is a hard worker.

For her first right shoulder injury, Dr. Naylor assigned an 11 percent impairment or 7 percent body as a whole impairment. For the second injury, he assigned a 10 percent lower extremity impairment (4 percent whole body) and a 4 percent whole body impairment for the bilateral shoulders. He added another 8 percent whole body impairment due the left shoulder injury and subsequent surgery for a total of 16 percent impairment.

Iowa Code section 85.34(7) is known as the successive-disability statute. Iowa Code section 85.34(7)(a) makes defendants responsible for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. Iowa Code section 85.34(7)(b) governs how successive injuries are to be assessed and what credits should be given to the employer for past payments of weekly benefits.

Under 85.34(7)(b)(1), when a subsequent work injury occurs while working for the same employer and the subsequent injury is compensated under the same subsection of Iowa Code section 85.34(2), then this agency is to determine the combined disability that is caused by both injuries. The employer's liability for the combined disability shall be considered satisfied to the extent of the percentage of disability for which the employee was previously compensated.

In this case, claimant had a prior work injury on August 3, 2009, for a left shoulder injury, with the same defendant employer. She was assessed an 11 percent upper extremity impairment and was paid 35 weeks of compensation. Claimant then sustained a work related injury to her bilateral shoulders and knee on December 25, 2015, with an undisputed combined impairment rating from Dr. Naylor of 16 percent.

Therefore, the successive disabilities provisions contained in Iowa Code section 85.34(7) must be applied.

Claimant has no loss of earnings as a result of her disabilities but she has had to modify the way in which she performs the regular duties of her position. She needs help from time to time. She tries to avoid overhead reaching but on occasion must engage in those motions in order to perform her work. She uses a stool instead of squatting or kneeling.

Based on her age, her motivation to return to work, her education and her experience along with the ratings of Dr. Naylor and claimant's credible testimony about her self-accommodations at work, it is found that claimant has sustained a 25 percent disability. Should claimant's work conditions change, her disability may be higher and the claimant is free to file for a review-reopening.

#### ORDER

THEREFORE, it is ordered:

That defendant is to pay unto claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the rate of seven hundred four and 51/100 dollars (\$704.51) per week from January 12, 2018.

That defendant shall pay accrued weekly benefits in a lump sum.

That defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

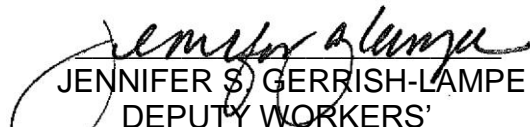
Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 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 percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That defendant is to be given credit for benefits previously paid as stipulated by the parties.

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

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 10<sup>th</sup> day of February, 2020.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

David Stamp (via WCES)

Lee Pomeroy Hook (via WCES)

**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.