

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA JANSSEN,

Claimant,

vs.

THOMAS REST HAVEN,

Employer,

and

IOWA LONG TERM CARE RISK
MGMT ASSOC. C/O CCMSI,Insurance Carrier,
Defendants.File Nos. 1655320.01
1654046.01
1650201.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.30; 1402.40;
1803; 2206; 2907

Claimant Teresa Janssen appeals from an arbitration decision filed on March 21, 2022. Defendants Thomas Rest Haven, employer, and its insurer, Iowa Long Term Care Risk Management Association C/O CCMSI, respond to the appeal. The case was heard on September 27, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 1, 2022.

In the arbitration decision, the deputy commissioner found, based on claimant's lack of credibility, her uneven presentation of her complaints, and the opinions of Chad Carlson, M.D., Joseph Chen, M.D., Thomas Dulaney, M.D., Kyle Galles, M.D. and Todd Harbach, M.D., that claimant failed to carry her burden of proof to establish that the October 5, 2017, or January 7, 2018, work injuries resulted in permanent disability. The deputy commissioner also found claimant failed to carry her burden of proof to establish that the October 13, 2018, work injury caused claimant to sustain any permanent disability.

On appeal, claimant asserts the deputy commissioner erred in finding claimant failed to prove she sustained permanent disability of her left shoulder and left hip caused by the work injuries. Claimant asserts she has not reached maximum medical improvement (MMI) for her conditions and claimant asserts she is entitled to a running award of healing period benefits. Alternatively, claimant asserts if she has reached MMI

for her conditions, she has sustained significant industrial disability, entitling her to permanent partial disability benefits.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the arbitration decision filed on March 21, 2022, is affirmed with the following additional analysis.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant was not a credible witness. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review on appeal, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

Without further analysis, I affirm the deputy commissioner's findings that claimant failed to prove she sustained injuries to her cervical spine or lumbar spine as a result of the work injuries.

With the following additional analysis, I affirm the deputy commissioner's finding that claimant failed to prove she sustained permanent injuries to her left shoulder and her left hip as a result of the work injuries.

In finding that claimant failed to prove she sustained permanent injuries to her left shoulder and left hip as a result of the work injuries, the deputy commissioner found as follows:

Claimant's course of medical treatment is complex and considerable. Her medical providers have consistently provided injections, referrals for physical therapy, and even surgery to remove a cyst in claimant's lumbar spine. The source of claimant's pain has not been determined despite multiple diagnostic and treatment injections and various subspecialty consultations.

Part of the challenge for the medical providers is, as noted by experts Dr. Wenzel, Dr. Chen, and Dr. Carlson, that claimant is a poor historian. In her psychological evaluation, she stated that she went to a psychiatrist once

and then to someone recommended by the rest home but that he told her she was fine. Her medical records indicate that it was recommended that she return to counseling, but she turned it down. The objective tests such as the EMGs and MRIs were either normal or did not align with her clinical presentation. For instance, the 2018 lumbar spine MRI did not show any neural encroachment. Claimant was in tears on June 21, 2018, during a medical visit with Dr. Harbach due to left groin pain, left buttock pain, and radiating pain into her left leg. She continued to work and continued to complain of pain in her shoulder. Yet on October 13, 2018, claimant assisted in the transfer of a patient and allegedly re-injured her shoulder. She did not seek immediate treatment but instead worked for nearly a week before reporting the injury.

One large omission is the failure of claimant to report her Tae Bo activities which Dr. Slattery noted in December 2017 could be the trigger for her neck, shoulder, back and groin pain. Dr. Harbach also opined that the Tae Bo activities could be a causative or aggravating factor. Dr. Wenzel disagreed, finding that having to support her own bodyweight was less strenuous than supporting the body weight of a resident. However, claimant was engaging in Tae Bo at least three times a week whereas lifting patients was not a regular duty of the claimant. She would assist when requested. As Dr. Chen noted, the lack of treatment for claimant from January 2018 after approximately three weeks of physical therapy until May 2018 for the shoulder casts doubt as to a causal connection between the January 2018 injury and the infraspinatus tear. During an April 3, 2018, visit to Dr. Clemmons claimant was noted to have normal strength, range of motion, and sensation in both upper and lower extremities. (JE 1:10)

Dr. Carlson and Dr. Galles would not state within a reasonable degree of medical certainty that Tae Bo activities were the cause of claimant's current symptomatology. However, neither did they attribute claimant's current symptomatology to her work incidents.

Claimant characterizes Dr. Carlson as supporting the theory of causation between the work incidences and her current symptomatology. In her brief, she argues that his statement "most of her problems relate to aggravation of pre-existing pathology" refers to the October 5, 2017, and January 7, 2018, work injuries. However, he does not state this and to draw the inference as claimant does would negate the requirement of experts to give opinions based on a reasonable degree of medical certainty. Further, Dr. Carlson stated specifically that while claimant had a history of two injuries, her history and presentation were too inconsistent to assign any causality. To adopt claimant's interpretation is to ignore Dr. Carlson's overt refusal to opine on causation.

This leaves only Dr. Wenzel to support claimant's causation arguments. Dr. Wenzel ruled out claimant's neck and back pain as work related. However, he did conclude that claimant's left shoulder and left gluteus tendon tears were caused or aggravated by claimant's work.

Dr. Wenzel's opinion on the shoulder is given lower weight because of the long gap in treatment for the left shoulder between January 2018 and May 2018 other than three weeks of physical therapy as well as claimant's inconsistent reports of injury. On December 13, 2017, claimant reported left arm, left shoulder and posterior back pain but without any particular trauma or fall. Dr. Slattery suspected this was related to her boxing activity. She did not report a January 2018 injury to Dr. Galles. In fact, that came as a surprise to him. Following the January 2018 incident, claimant's primary focus was on her low back and left hip and not on the shoulder.

Dr. Wenzel also opined claimant was not at MMI for the left shoulder whereas Dr. Dulaney, who treated claimant's shoulder, found claimant to be at MMI in February 2020. On February 14, 2020, claimant's left shoulder range of motion was just shy of full and there was no pain with resisted cuff firing. On January 6, 2020, claimant was able to perform all of her exercises without pain. Months later in May 2020, claimant returned to Dr. Dulaney with complaints of increased pain in the shoulder. He filled out a social security disability form which limited her to no use of her left shoulder overhead. During her appointment with Dr. Wenzel, claimant described intermittent shoulder pain at 7 on a 10 scale which was a significant difference from her presentation in February 2020.

She has chronic tearing of the gluteus medius and minimus that occurred post her November 2018 termination. Dr. Carlson wondered if claimant had widespread degenerative disease and the MRI arthrogram showed the worsening of the labrum tear from the 2019 study.

Claimant appears to have pain that has waxed and waned for years. She has had numerous shots to diagnose or pinpoint the source of her pain but there has been no definitive answer. Claimant argues in her brief that the gluteal tear is responsible for her hip and groin pain, yet she had a gluteus medius tear in 2019 and underwent over a dozen injections but received no permanent relief. Dr. Weisheipl explained to claimant she had an atypical presentation for lumbar radiculopathy, hip pathology, pudendal neuralgia and ischial bursitis.

Because the workers' compensation claims were denied, claimant sought out her own care. Drs. Nelson, Carlson, and Galles were medical

providers she chose rather than medical providers defendants chose for her. Dr. Carlson and Dr. Galles observed claimant's uneven historical presentation as well as her uneven complaints. Dr. Wenzel and Dr. Chen also commented on claimant's lack of reliability as a patient, both historically and by her complaints.

In order to accept Dr. Wenzel's opinions, the opinions of the medical providers claimant chose would have to be ignored as they are contradictory to that of Dr. Wenzel.

Based on claimant's lack of reliability and her uneven presentation of her complaints, the opinions of Dr. Galles, Dr. Carlson, Dr. Harbach, Dr. Dulaney, and Dr. Chen, it is found that claimant has not carried her burden to prove that the October 5, 2017, or January 7, 2018, resulted in injuries that arose out of and in the course of her employment. Neither did claimant carry her burden to prove the October 13, 2018, injuries resulted in a permanent disability. While it was found that claimant did assist in the lift and transfer of a patient, she did not carry her burden to prove that the incident resulted in an injury that arose out of and in the course of employment.

(Arb. Dec. pp. 22-25)

Claimant asserts the deputy commissioner erred in finding Todd Harbach, M.D., did not find a causal connection in this case. In a letter dated May 24, 2018, Dr. Harbach opined the injury "certainly could have caused" the partial tear and inflammation of the gluteus tendon in her left hip. (JE 5, p. 161) However, Dr. Harbach did not opine claimant's work injuries more likely than not caused the conditions in her left hip.

Claimant contends the deputy commissioner erred in finding Chad Carlson, M.D. overtly refused to opine on causation. In his April 1, 2020, letter to defendants' counsel, Dr. Carlson wrote:

Your question, can I "within a reasonable degree of medical certainty" say that Ms. Jansen's complaints are "even possibly connected" to her work injuries two years ago, is an interesting one. Since there is almost no constraint on "even possibly connected," I would have to say "yes," but that would not be based on "medical certainty," but instead on the way your question is worded. We know that she has underlying hip anatomy that contributed to her problem. Teresa has a history of two injury events, but her workup has suffered from inconsistency of both complaint and presentation, making it extremely difficult to assign causality to anything that she did over two years ago. My opinion is that most of her problems

relate to aggravation of pre-existing pathology, but there is no way to answer the question you raise with any certainty.

(JE 13, p. 232)

Dr. Carlson has not opined the work injuries more likely than not caused her left hip condition. As noted by the deputy commissioner, claimant sought treatment on her own with Dr. Carlson. Defendants did not select Dr. Carlson as a treating physician.

Claimant asserts the deputy commissioner should have rejected Dr. Chen's opinion that claimant did not sustain a permanent impairment because his opinions are based on an incorrect legal standard, his opinions are based on an incomplete understanding of claimant's treatment following her injuries, and his opinions are inconsistent with the remainder of the medical evidence.

Dr. Chen opined, based on a reasonable degree of medical certainty, that claimant did not sustain permanent impairment of her left shoulder and left hip based on his review of claimant's medical records and his examination of claimant. (JE 19) Claimant alleges Dr. Chen provided an incorrect legal standard when he noted the incidents are quite minor and similar to common musculoskeletal ailments in middle aged adults. His opinion does not provide a legal conclusion, but rather provides his observations the incidents appeared to be minor in nature. I do not find his observations erode his opinion.

Claimant next asserts Dr. Chen's understanding that claimant did not seek medical treatment for her left shoulder between January 12, 2018, and May 2018 is "completely wrong." Claimant contends she sought ongoing treatment for her left shoulder and hip during that time. Dr. Chen's statement concerns claimant's left shoulder, not her left hip, as follows:

Ms. Janssen did not appear to have sought medical treatment from January 12, 2018 until May 2018 when she was found to have a complete left rotator cuff tear noted on MRI. I find it improbable that Ms. Janssen had an undiagnosed left rotator cuff tear from either her October 2017 incident or January 2018 incident due to the minor mechanisms documented by her treating physicians. If she had sustained a complete rotator cuff tear as a result of either of these incidents, I would have expected her to seek immediate medical treatment that would corroborate her need for analgesic or prescription medications, or supervised physical therapy.

(JE 19, p. 306)

Claimant cites to medical records that allegedly contradict Dr. Chen's opinion, (JE 1, pp. 8-15; JE 3, pp. 126-41; JE 4, pp. 145-49). Contrary to claimant's assertion,

the records do not support claimant had continuing ongoing complaints of left shoulder pain.

On January 12, 2018, claimant attended a follow up visit with David Nystrom, D.O., at St. Anthony Medical Clinic, with complaints of low back pain and pain radiating down her left leg. (JE 3, p. 126) This visit occurred after an urgent care visit with Tina Flores Schechinger, M.D., on January 8, 2018, for acute low back pain. (JE 3, p. 122) Dr. Schechinger's note from the prior visit also concerns complaints of low back pain, not left shoulder pain, noting claimant has a "[p]ast medical history significant for hypertension and left shoulder pain." (JE 3, p. 122)

When claimant returned to Dr. Nystrom on February 7, 2018, Dr. Nystrom noted claimant again complained of lumbar spine, left hip, and left lower extremity pain. (JE 3, pp. 128-30)

During a follow up visit on March 6, 2018, for her left lower extremity and back, Dr. Nystrom noted claimant had attended two weeks of physical therapy for her current condition and for "her ongoing left neck and shoulder work comp injuries." (JE 3, p. 131) The remainder of the note addresses lumbar spine, hip, and left lower extremity issues and a referral to a neurologist; the note does not address any left shoulder complaints. (JE 3, pp. 131-33)

On April 3, 2018, claimant attended an appointment with Edward Clemmons, D.O., a neurologist, with complaints of left hip pain and numbness in the left lower extremity, and results of nerve conduction studies. (JE 1, pp. 8-12) The note does not reference any left shoulder problems.

Claimant returned to Dr. Nystrom on April 23, 2018, complaining of "rib pain on the posterior left side causing chest pain, worse with moving and breathing," and reporting the pain was "stabbing." (JE 3, p. 134) The record does not mention left shoulder pain or symptoms. (JE 3, pp. 134-35)

On May 1, 2018, claimant attended an appointment with Christopher Hanson, CRNA, for pain treatment with a chief complaint of "a sharp, stabbing pain in [her] left side, down [her] leg." (JE 3, p. 136-37) The record does not reference left shoulder pain or symptoms. (JE 3, pp. 136-39)

On May 2, 2018, claimant attended an urgent care visit with James McQueen, D.O. (JE 1, p. 14) Dr. McQueen documented claimant reported she injured her left shoulder in October 2017, reinjured the shoulder in January, and "after the second injury she had about 3 weeks of physical therapy, but continues to have difficulty with shoulder pain, particularly in areas of range of motion and with trying to lift any object greater than 2 pounds away from her body." (JE 1, p. 14) As a result of his exam, Dr.

McQueen ordered a left shoulder MRI, which demonstrated a full thickness tear of the infraspinatus tendon. (JE 1, p. 16)

The above records cited by claimant do not support her contention she complained of ongoing left shoulder pain symptoms between January 12, 2018, and May 1, 2018.

Claimant challenges Dr. Chen's assessment of her injuries to her left hip. Claimant asserts Dr. Chen noted the diagnostic studies were inconclusive in identifying the source of claimant's hip pain, which claimant asserts is not true. Claimant following the injections and assessments of Dr. Carlson and Christopher Nelson, D.O. identified the source of her symptoms, a "left gluteus medius tendon" tear on April 22, 2021, and on June 23, 2021.

Dr. Carlson's April 22, 2021, note provides claimant's chronic left hip and thigh pain is multifactorial, she never received consistent relief from steroid injections into the joint, and her "gluteal tearing may be contributing to her lack of response to other measures." (JE 12, p. 228) Contrary to claimant's assertion, Dr. Carlson did not find the source of her symptoms was the tear. He found her tearing may be contributing to her lack of response to treatment.

The June 23, 2021, note from Dr. Nelson provides claimant has a tear of the left gluteus medius and minimum muscles and a "[m]ostly asymptomatic left hip labral tear," with left hip pain. (JE 8, p. 190) In his short note, Dr. Nelson documented the following:

We discussed the progression and prognosis of Teresa's left hip labral tear, as well as current and future treatment options. I reviewed the radiographic findings with Teresa in the clinic today. We have jointly decided to proceed with physical therapy for rehabilitation. . . . I plan to see her back as needed depending on how physical therapy goes to discuss possible surgery.

(JE 8, p. 190)

The note does not discuss the source of claimant's left hip symptoms.

The record evidence supports Dr. Chen's finding that claimant did not experience substantial relief following diagnostic hip injections which could be resolved with arthroscopic hip surgery. (JE 19, pp. 306-07)

As discussed at length by the deputy commissioner, the record evidence supports Dr. Chen's finding claimant did not sustain permanent impairment of her left shoulder or her left hip caused by the work injuries.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 21, 2022, is affirmed with the above-stated additional analysis.

Claimant shall take nothing in these cases.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the cost of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 26th day of August, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jason Neifert (via WCES)

Stephen Spencer (via WCES)

Christopher Spencer (via WCES)