

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RITA R. MELBY,

Claimant,

vs.

CONAGRA FOODS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5064273.01

ARBITRATION

DECISION

Headnotes: 1402.40, 2907

Claimant Rita R. Melby filed a petition in arbitration seeking workers' compensation benefits from defendant, Conagra Foods, Inc., self-insured employer. The hearing occurred before the undersigned on November 20, 2020, via CourtCall video conference.

The parties filed a hearing report at the commencement of the arbitration hearing. In 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 evidentiary record consists of: Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 3, and Defendants' Exhibits A through E. Claimant testified on her own behalf. The evidentiary record was closed at the end of the hearing, and the case was considered fully submitted upon receipt of the parties' briefs on December 21, 2020.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's permanent disability.
2. Costs.

FINDINGS OF FACT

The parties agree claimant sustained work-related carpal tunnel and cubital tunnel injuries to her bilateral hands/arms on August 12, 2016. The sole dispute regarding claimant's work-related injuries is the extent of her permanent disability.

Claimant underwent two separate surgeries for her injuries. On March 13, 2017, claimant's treating physician John McCarthy, M.D., performed a bilateral carpal tunnel release and a right ulnar nerve decompression. (Joint Exhibit 4, p. 64) Roughly three months later, on June 30, 2017, Dr. McCarthy performed a left ulnar nerve compression. (JE 6, p. 71)

Claimant was involved in a motor vehicle accident between the two surgeries in April of 2017. (See JE 4) Because she had some “palm pain” after the incident, Dr. McCarthy obtained an x-ray of her left wrist. (See Hearing Transcript, p. 21; JE 3, p. 22) The x-ray did not show a fracture, and Dr. McCarthy told claimant she just had some swelling and bruising. (See JE 3, p. 22; Tr., p. 22) Notably, defendants’ expert, Ian Crabb, M.D., opined that the car accident “did not influence the need for [claimant] to proceed with her left ulnar nerve surgery at the elbow.” (JE 8, p. 99)

Unfortunately, as oft-noted by Dr. McCarthy in his notes between late-2017 and mid-2019, claimant continued to “struggle” with ongoing symptoms in her arms and hands. (JE 3, pp. 34-61) Even after injections, medication, and “common sense and time,” claimant reported “significant soreness and limitations.” As indicated by Dr. McCarthy in his last treatment record on July 26, 2019, “She just struggles.” (JE 3, p. 59)

In a letter dated August 6, 2019, Dr. McCarthy opined claimant, “has a 4% permanent partial impairment to her right hand secondary to her carpal tunnel” and “a 6% permanent partial impairment to her right wrist and hand secondary to her right cubital tunnel.” (JE 3, p. 63) Dr. McCarthy also assigned “a 4% permanent partial impairment for her left carpal tunnel and a 6% permanent partial impairment to her left cubital tunnel.” (JE 3, p. 63) Dr. McCarthy failed to cite which table or page in the American Medical Association’s Guides to the Evaluation of Permanent Impairment (hereinafter “Guides”) he relied upon when assigning claimant’s impairment.

Dr. Crabb, defendants’ expert, also offered an impairment rating in his report. Dr. Crabb assigned a “3% of combined impairment to the right upper extremity (carpal tunnel release and ulnar nerve decompression) and 4% of combined impairment to the left upper extremity (carpal tunnel release and ulnar nerve transposition).” (JE 8, p. 100) Importantly, however, defendants’ counsel asked Dr. Crabb to utilize the Sixth Edition of the Guides, and like Dr. McCarthy, Dr. Crabb failed to indicate which table or page he utilized when arriving at his ratings.

Claimant was also evaluated for purposes of an independent medical examination (IME) by Sunil Bansal, M.D. For claimant’s right upper extremity, Dr. Bansal assigned a three percent impairment for sensory deficits related to her carpal tunnel syndrome and a five percent impairment for her cubital tunnel syndrome (combined eight percent). (Claimant’s Ex. 1, pp. 11-12) For the left upper extremity, Dr. Bansal assigned a five percent impairment for sensory deficits relating to claimant’s carpal tunnel syndrome and a six percent impairment for the cubital tunnel syndrome (combined 11 percent). (Cl. Ex. 1, pp. 11-12) Dr. Bansal’s combined impairment ratings for both arms equaled 18 percent upper extremity impairment or 11 percent whole person impairment. (Cl. Ex. 1, p. 13)

Notably, Dr. Bansal utilized the Fifth Edition of the Guides and cited the tables on which he relied. (Cl. Ex. 1, p. 11)

Because only Dr. Bansal offered an explanation as to which methodology he used in calculating claimant’s impairment, I find Dr. Bansal’s impairment ratings to be most persuasive.

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).

As discussed, both Dr. McCarthy and Dr. Crabb failed to explain how they calculated their ratings. Further, Dr. Crabb utilized the Sixth Edition of the Guides. The Division of Workers' Compensation has adopted the Fifth Edition of the Guides. 876 IAC 2.4. Because Dr. Crabb's used the Sixth Edition of the Guides and failed to cite which table or method he used, I am not persuaded by his ratings. Dr. McCarthy likewise failed to explain how he calculated claimant's impairment. Only Dr. Bansal cited the methodology he used to arrive at his impairment ratings. For these reasons, I found his impairment ratings most convincing. I therefore conclude claimant sustained an 8 percent right upper extremity impairment and an 11 percent left upper extremity impairment.

Claimant's injuries to her bilateral upper extremities entitle her to benefits under Iowa Code section 85.34(2)(s). Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983). In this case, therefore, claimant's combined impairment ratings amount to an 11 percent whole person impairment, which entitles her to 55 weeks of permanent partial disability benefits.

Claimant also seeks an assessment of costs as set forth in Claimant's Exhibit 3. Claimant seeks her \$100.00 filing fee and \$600.00 for a medical report from Dr. McCarthy. Claimant originally sought expenses relating to her IME, but defendants at hearing indicated they responsible for payment of the IME. (Tr., p. 5)

Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

Claimant was generally successful in her claim. As such, I find a taxation of costs is appropriate in this case. Claimant is entitled to reimbursement for her filing fee and the expenses relating to Dr. McCarthy's report pursuant to 876 IAC 4.33(6) and (7).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant fifty-five (55) weeks of permanent partial disability benefits commencing on the stipulated date of May 15, 2018, at the stipulated rate of eight hundred and fifty dollars and 62/100 (\$850.62) per week.

Defendants 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)


Defendants shall be entitled to the stipulated credits against this award.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant's costs for her filing fee in the amount of seven hundred and 00/100 dollars (\$700.00).

Defendants shall reimburse claimant for her IME as agreed upon at hearing.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 22nd day of February, 2021.



STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jordan Glaser (via WCES)

Lindsey E. Mills (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.