

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HEATHER LUKEHART,

Claimant,

vs.

JOHNSTON COMMUNITY SCHOOL
DISTRICT,

Employer,
Self-Insured,
Defendant.

FILED

MAY 10 2019

WORKERS COMPENSATION

File Nos. 5059483, 5059484

ARBITRATION

DECISION

Head Note Nos.: 1402.30. 1802, 1803

STATEMENT OF THE CASE

Heather Lukehart, claimant, filed a petition in arbitration seeking workers' compensation benefits from Johnson Community School District (JCSD) self-insured, as a result of injuries sustained on October 28, 2016 and April 6, 2017 that allegedly arose out of and in the course of her employment. This case was heard in Des Moines, Iowa and fully submitted on December 17, 2018. The evidence in this case consists of the testimony of claimant, Claimant's Exhibits 1 - 7, Joint Exhibits 1 - 11, Defendants' Exhibits A - N. Both parties submitted briefs.

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.

ISSUES

For File No. 5059484 (Date of Injury, October 28, 2016):

1. Whether claimant sustained an injury on October 28, 2016, which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of permanent disability and, if so;
3. Whether the alleged disability is a scheduled member disability or an unscheduled disability;
4. The extent of claimant's disability.

5. The commencement date for any permanent disability benefits.
6. Whether claimant is entitled to payment and reimbursement of medical expenses.
7. Whether claimant is entitled to ongoing medical care.
8. Whether claimant is entitled to reimbursement of an independent medical examination.
9. Assessment of costs.

For File No. 5059483 (Date of Injury, April 6, 2017):

1. Whether claimant sustained an injury on April 6, 2017, which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;
3. Whether the alleged injury is a cause of permanent disability and, if so;
4. Whether the alleged disability is a scheduled member disability or an unscheduled disability.
5. The extent of claimant's disability.
6. The commencement date for any permanent disability benefits.
7. Whether claimant is entitled to payment and reimbursement of medical expenses.
8. Whether claimant is entitled to ongoing medical care.
9. Whether claimant is entitled to reimbursement of an independent medical examination.
10. Assessment of costs.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Heather Lukehart, claimant, was 40-years old at the time of the hearing. Claimant graduated from high school and attended a community college for 18 months, but did not complete her computer network course of studies. (Transcript page 11) Claimant has no additional formal education since community college. Claimant's vocational

history included waiting tables, accounts payable clerk, office work collections and reception in medical clinics. (Exhibit C, pages 15, 16)

Claimant began working for the JCSD in 2013 as a substitute associate. In October 2016, claimant began working in the JCSD as a teacher associate. (Ex. C, p. 16; Tr. p. 18) Claimant's work as a teacher associate was to work with children with severe and profound disabilities. (Tr. p. 19) Claimant was assigned to work with one student who had a behavioral defiance disorder.

Claimant testified that on July 5, 2016 she injured her foot while on vacation. (Tr. p. 69) Claimant was driving a go-cart and had to slam on the breaks. Claimant said she had a soft tissue strain on her right foot and wore a "boot" for about eight weeks. (Tr. pp. 21, 71) Claimant testified that prior to that incident she did not have any issues with her right foot. (Tr. p. 21) Claimant went to a physician after she returned from vacation for foot pain. She was prescribed physical therapy which claimant thought was helping.

Claimant went to a walk-in clinic on September 16, 2016 due to foot pain. (Tr. p. 72; JE. 4, p. 1)

Claimant went to Linda Bratkiewicz, DPM, on September 29, 2016 for pain and swelling of her foot. (Tr. p. 73)

On October 28, 2016, claimant was at JCSD and her student was having an escalation. The student was going to a cool-off area and was trying to shut a door. Claimant said that under the law the door had to remain open when the student was in the area. Claimant put her foot in the door way, with her heel of her foot on the floor and toes pointed upward against the door, when the student attempted to close the door and claimant hurt her foot. (Tr. pp. 22, 67) Claimant reported her injury on November 3, 2016. (Tr. p. 68) Claimant had an appointment with a podiatrist scheduled for the next week and decided to wait to see that doctor for the October 28, 2016 injury. (Tr. pp. 23, 68)

Claimant saw Dr. Bratkiewicz, on September 29, 2016 who reviewed x-rays. There was no evidence of any fractures to the anterior lateral aspect of the calcaneus or the cuboid. (JE, 1, p. 10) Claimant received an injection and order for physical therapy. (JE. 1, p. 11) Dr. Bratkiewicz saw claimant on November 3, 2016 after the October 26, 2016 incident at school when claimant reported right foot pain. Dr. Bratkiewicz noted claimant reported pain from trying to stop a door being shut by a student. Dr. Bratkiewicz noted a, "Closed nondisplaced fracture of the body of the talus, unspecified laterality, initial encounter." (JE. 1, p. 14) Claimant was provided a cam boot.

Dr. Bratkiewicz reviewed a November 23, 2016 MRI of claimant's foot. Dr. Bratkiewicz's plan was, "Today we discussed the painful tarsal coalition calcaneal navicular right foot. She would be a candidate for resection of the calcaneonavicular coalition. I have referred her to Dr. Temple for presurgical consultation." (JE. 1, p. 19) MRI revealed; the condition was tarsal coalition calcaneonavicular. (Tr. pp. 24, 76)

Claimant saw Eric Barp, DPM, as he specializes in the tarsal condition. On March 30, 2017 Dr. Barp's assessment was:

Assessment

1. Tarsal coalition

Patient reports improvement from physical therapy but states that her second cortisone injection did not seem to help her as much as the first one.

Discussed with patient that since the first cortisone injection did alleviate her pain, surgery is always an option when she has the time and she is unable to walk comfortably and participate in regular activities without pain. She would be a candidate for another cortisone injection as well if she would like to pursue conservative options.

(JE. 1, p. 24) On April 27, 2017, Dr. Barp recommended claimant have a Medrol dose pack. (JE. 1, p. 36) Dr. Barp took claimant off work at that time. (JE. 1, p. 37)

Claimant also reported to Dr. Barp that she had flare-ups of pain just from walking. (Tr. p. 78) On March 30, 2017, Dr. Barp informed claimant that he could perform surgery to relieve her foot pain. (Tr. p. 78) Claimant testified that she was unaware that Dr. Barp had scheduled foot surgery for April 29, 2017.

Claimant had another incident with a student on April 6, 2017. The student was in escalation and trying to close the door in the cool-off room. Claimant used her hip rather than a foot to stop the door from being closed this time. Claimant testified regarding the incident:

So Katie Mangan, that's the special ed teacher, was in there, told me, Heather, you need to stop him from slamming the door. And I said, I'm not putting my foot in there gain, and she said put your hip into it. And then she left the classroom and I was trying to keep the door open.

He was behind the door like this way with his feet against the wall with his back on the door, and he just kept shutting it into me over and over again and at the same time he's slamming his head into the back of the glass on the door.

So, I'm reaching my hand behind the door like this putting my hand there so his head wasn't hitting the glass. At the same time I'm stuck with my feet out in front of me wedged, and then I asked for help and two associates stepped in to help me with that.

(Tr. p. 28) Claimant said that this incident caused a severe strain of her right foot. (Tr. p. 29) Claimant reported this incident and was sent by JCSD to a clinic where she was told

to use ice on her foot. (Tr. p. 29; JE. 5, p. 1) Sara Glover PA-C, assessed claimant with, "Chronic right foot pain due to tarsal coalition." (JE 5, p. 7) Claimant returned to work and after a few days could not walk on her right foot. (Tr. p.30) Claimant returned to clinic and was told she should see her podiatrist Dr. Barp. (Tr. p. 30) Claimant was given crutches to use on April 14, 2017. (Tr. pp. 32, 90; JE 5, p. 8)

Claimant went to the emergency department on April 16, 2017 foot pain. (JE. 7, p. 1)

Claimant tried to see Dr. Barp on April 27, 2017 but was not able to as he was not workers' compensation authorized by JCSD. (Tr. p. 30) Claimant testified that Dr. Barp told her to stay off work for two weeks until the workers' compensation matter was resolved. Claimant has not worked at JCSD since April 27, 2017, other than for two days. (Tr. pp. 31, 96)

On May 16, 2017, Dr. Barp responded to a series of questions that defendant's counsel prepared. Dr. Barp stated that claimant's tarsal condition was congenital and claimant's work at JCSD did not cause this condition. He also agreed that the incident at school on April 6, 2017 did not materially or substantially aggravate/accelerate her right foot condition. (Ex, A, p. 2)

Claimant saw Dr. Taylor on May 4, 2017 for her right foot pain and right shoulder. Dr. Taylor's assessment was:

Assessment/Plan

1. History of Acute foot pain, right.
2. Ehlers-Danlos disease.
3. Tarsal coalition

Acute on chronic right foot pain; she has the chronic pain for the past few months from the tarsal coalition but then she had horrible incident of the foot being hit repeatedly by one of the students she helps to care for.

Uncertain if she will heal faster or slower given the Ehlers Danlos-It's bit uncertain on this – but don't [sic] expect significant delayed healing due to this.

had a very long discussion w pt and her husband here today. I agree that she probably does need a higher level of pain control than the tramadol she has been on, esp by the end of day when the pain is intolerable and not allowing her to sleep. But we need to be very careful that this does not lead to "chronic" narcotic use. That is not the goal and needs to be avoided.

(JE. 1, p. 39) Dr. Taylor noted that claimant reported a sudden twinge in her right shoulder while walking out of a store. (JE. 1, p. 40) Dr. Taylor assessed biceps tendonitis that was a result of claimant using crutches. (JE. 1, p. 41) Dr. Taylor prescribed a knee scooter for claimant on June 19, 2017. (JE. 1, p. 43)

Claimant went to Bryan Trout, DPM, on June 28, 2017 for treatment of her right foot. Dr. Trout's assessment was;

Other acquired deformities of right foot.

Transient synovitis, right ankle and foot.

Talocalcaneal and calcaneonavicular condition of the RIGHT foot.

(JE. 9, p. 7) Dr. Trout and claimant decided to try conservative treatment and he ordered physical therapy and injection. (Tr. p. 33; JE. 9, p. 7) On July 28, 2017, claimant and Dr. Trout decided to proceed with surgery. (JE. 9, p. 14) On August 25, 2017, Dr. Trout performed surgery on claimant's right foot. The postoperative diagnosis was:

POSTOPERATIVE DIAGNOSES:

1. Calcaneonavicular coalition, right foot.
2. Talocalcaneal coalition, right foot.

(JE 10, p. 1) On December 21, 2017, claimant was provided restrictions by Dr. Trout of sedentary duty only. (JE. 9, p. 31) Dr. Trout said that he had exhausted nearly all forms of treatment and recommended a custom orthotic. (JE. 9, p. 41) Claimant was still being treated by Dr. Trout at the time of the hearing.

Claimant received a work excuse from Dr. Trout that lasted until December 21, 2017. The JCSD sent a letter to claimant inquiring whether claimant was going to return to work. (Ex. 5, p. 1) A clinic note in Dr. Trout's records of January 2, 2018 stated claimant instructed Dr. Trout not to provide JCSD any forms concerning her restrictions. (JE. 9, p. 23)

On December 5, 2017, Dr. Trout responded to a series of questions from defendant's counsel. Dr. Trout agreed that claimant's right foot condition was a congenital condition involving an abnormal connection between bones in the foot. (Ex. B, p. 4) Dr. Trout agreed that claimant's work at JCSD did not cause this condition. Dr. Trout also agreed that the October 28, 2016 and April 6, 2017 incidents at JCSD did not materially or substantially aggravated/accelerated her right foot condition. (Ex. B. p. 5)

Claimant testified that in the summer of 2017 she was in a parking lot using her crutches when she felt a burning snap in her right shoulder and asked her husband to bring the car to her as she could not use her crutches. (Tr. p. 38)

Claimant saw Mark Fish, D.O., for her shoulder on June 19, 2017. Claimant said she was prescribed physical therapy and injections. Dr. Fish arranged an MRI. (JE. 8, p. 3) On July 10, 2017, Dr. Fish's impression was right impingement of the right shoulder. (JE. 8, p. 4) Dr. Fish wrote:

Plan:

MRI findings of the right shoulder were reviewed with her. This demonstrated a Type II acromion which certainly can cause impingement with crutch use. There was some undercutting of the superior labrum on MR arthrogram, but no clear SLAP tear was identified. Rotator cuff is intact. At this point, I would recommend starting with conservative treatment first including a corticosteroid injection in conjunction with a course of physical therapy. If this does not give her much improvement, we could certainly consider an arthroscopy.

(JE. 8, p. 5) After Dr. Fish stopped taking claimant's insurance she saw Kyle Galles, M.D., for treatment of her right shoulder on April 6, 2018. Dr. Galles told claimant there was nothing surgically he could do for her. (JE. 9, p. 37)

Claimant then went to Wesley Smidt, M.D., for right shoulder treatment. Dr. Smidt eventually performed arthroscopic surgery on her right shoulder on August 15, 2018. (Tr. pp. 41, 42) The postoperative diagnosis was, "Right shoulder impingement with acromioclavicular arthrosis." (JE. 11, p. 1) Claimant testified that she was doing well until three weeks before the hearing when she developed pain. She was going to have the shoulder evaluated. (Tr. p. 43)

At the time of the hearing, claimant was working a part-time, three to four hours per week, at a spa doing front desk scheduling. Claimant was doing the work when she was working at JCSD as well. (Tr. p. 43, 45) Claimant was receiving long-term disability through the JCSD at the time of the hearing. (Tr. p. 66)

Claimant testified that since her injury in April 2017 she has stopped doing most household chores like cooking, laundry, and yard work. (Tr. p. 46)

Claimant said she was offered a transfer to the human resources department at JCSD, but she did not accept as she could not drive. (Tr. p. 48) Claimant was terminated from JCSD. Claimant said that the JCSD terminated her as she could not return to work with restrictions. (Tr. p. 48) At the time of the hearing claimant was receiving long-term disability payments. Claimant testified that the medical bills in Exhibit 3 were related to treatment of her injuries she attributed to her work. (Tr. p. 51)

Claimant testified that she could not return to her position as a teacher associate due to the physical demands of the job. Claimant testified that she could perform a number of office positions she had performed in the past. (Tr. p. 58 – 60)

On July 14, 2016, claimant was seen by Joseph Yankey, D.O., at an urgent care clinic for right foot pain. An x-ray did not show an acute process. She was prescribed hydrocodone and a cam boot. (JE, p. 1, p. 4) On July 21, 2014, Christina Taylor, M.D., examined claimant. Her assessment was sprain of right foot. (JE. 1, p. 7)

Sunil Bansal, M.D., performed an independent medical examination (IME) on July 30, 2018. (Ex. 1) Dr. Bansal's assessment of claimant's conditions was,

RIGHT ANKLE/FOOT:

Aggravation of Talocalcaneal and calcaneonavicular coalition of the right foot.

Status post resection of right foot calcaneal navicular coalition and subtalar joint arthrodesis.

RIGHT SHOULDER:

Right shoulder impingement syndrome.

(Ex. 1, pp 18, 19) Dr. Bansal stated that claimant aggravated her pre-existing right foot tarsal coalition with three acute injuries. He said that while the foot was first aggravated by the go cart incident it was further aggravated by the October 28, 2016 and April 6, 2017 incidents at JCSD. (Ex. 1, p. 10) Dr. Bansal stated that claimant's foot condition was clinically quiescent until aggravated by the three injuries. (Ex. 1, p. 19) Dr. Bansal opined that claimant's shoulder condition was a result of using crutches. (Ex. 1, p. 19) Dr. Bansal provide an 11 percent lower extremity rating for the claimant foot injury and a 2 percent whole body impairment rating for the right shoulder. (Ex. 1, pp. 20, 21)

CONCLUSIONS OF LAW

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" referred 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 Electric 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); Dunlavy 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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

The two podiatrists that treated claimant have opined that the condition in her right foot was not caused by or accelerated by the work incidents of October 28, 2016 and April 6, 2016. Dr. Bansal opined that the three incidents of July 5, 2015, October 28, 2016 and April 6, 2017 lighted up her tarsal condition.

Claimant has credibly testified about significant limitation caused by her right foot condition. Claimant's shoulder condition is the sequela of her foot condition.

However, claimant has not proven by a preponderance of the evidence that her right foot condition arose out of and in the course of her employment at JCSD. The two experts in podiatry, Dr. Barp and Dr. Trout, do not attribute claimant's condition to the incidents of October 28, 2016 and April 6, 2017. Given their significant expertise I find these opinions most convincing.

Claimant has not proven that she is entitled to any weekly indemnity benefits, temporary or permanent benefits, in this case.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

While claimant has not proven any injury that allows her indemnity benefits, claimant has shown that she had a nondisplaced fracture due to the October 28, 2016 incident at JCSD. Defendant is responsible for the medical treatment by Dr. Bratkiewicz and the MRI for this injury. No expert has opined that the nondisplaced fracture has caused any permanent or temporary impairment.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

Dr. Barp opined that claimant had no work injury and would have no permanent impairment on May 16, 2017. Dr. Bansal's IME was subsequent to this opinion. Defendant is responsible for cost of the IME report by Dr. Bansal of \$3,572.00.

ORDER

THEREFORE, IT IS ORDERED:

For File No. 5059483 and 5059484:

The claimant shall take no indemnity benefits.

Defendant shall pay the cost of Dr. Bansal's IME of three thousand five hundred seventy-two and no/100 dollars (\$3,572.00).


No award of other costs is made.

For File 5059484:

Defendant shall pay the medical costs as set forth in the decision.

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

Signed and filed this 10th day of May, 2019.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/kjw

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.