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BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUL 16 2019
WORKERS' COMPENSATION

CHRYSTINA WILLIAMS,

Claimant,

vs.

WORLDWIDE INTEGRATED SUPPLY CHAIN SOLUTIONS,

Employer,

and

DEPOSITORS INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5064110

ARBITRATION

DECISION

Head Note Nos.: 1402.30, 2501, 2907

STATEMENT OF THE CASE

Chrystina Williams, claimant, filed a petition for arbitration against Worldwide Integrated Supply Chain Solutions, as the employer, and Depositors Insurance Company, as the insurance carrier. Claimant also filed a Second Injury Fund claim. However, the Second Injury Fund claim resolved prior to the scheduled hearing and was not heard. The undersigned heard this case on May 29, 2019, in Des Moines.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 6 and Defendants' Exhibits A through G (pages 14 through 16 of Defendants' Exhibit A were removed prior to hearing and were not offered at the time of hearing). All exhibits were received without objection.

Claimant testified on her own behalf. Defendants called Sarah Green-Kozak and Shelley Hill to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. All parties filed their post-hearing briefs on June 24, 2019, at which time the case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's injury on April 13, 2018 arose out of her employment with Worldwide Integrated Supply Chain Solutions.
2. Whether the April 13, 2018 injury caused temporary disability and claimant's entitlement to healing period benefits from May 18, 2018 through March 20, 2019.
3. Whether the April 13, 2018 injury caused permanent disability.
4. Whether the April 13, 2018 injury caused a scheduled member injury or an unscheduled injury, involving claimant's hip and/or low back.
5. The extent of claimant's entitlement to permanent partial disability benefits, if any.
6. Whether claimant is entitled to an order of payment or reimbursement of past medical expenses.
7. Whether penalty benefits should be awarded pursuant to Iowa Code section 86.13 for an unreasonable delay or denial of weekly benefits.
8. Whether claimant's costs should be assessed against defendants.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Chrystina Williams sustained a right ankle injury on April 13, 2018 while working at Worldwide Integrated Supply Chain Solutions. Near the end of her workday, Ms. Williams stood from her desk chair and took a step onto her right foot. Her right ankle popped loudly and she fell to the ground.

At trial, Ms. Williams testified that she stepped on a piece of carpet that had rolled up in her cubicle area. Defendants dispute that there was a rolled piece of carpet that caused the injury.

Ms. Williams acknowledges that she did not mention the carpet as the cause of her injury while others attended to her on the employer's premises on April 13, 2018.

Claimant testified that she did discuss the damaged carpet with a co-worker, Michelle Brailsford, who drove her to the hospital on April 13, 2018. (Claimant's testimony) Claimant testified that she specifically told Ms. Brailsford that she tripped on a piece of carpet. (Defendants' Exhibit E, page 44 (deposition transcript, p. 29)) Ms. Brailsford provided her deposition and denied that claimant mentioned rolled up or damaged carpet to her during the ride to the hospital. (Defendants' Ex. F, pp. 74-75 (depo., tr., pp. 15-17))

At trial, Ms. Williams testified that she believes she did tell someone about the rolled up carpet in her work area before the date of injury. She was unable to recall when she mentioned it. (Claimant's testimony) However, in her deposition, Ms. Williams conceded, "I never have told anybody about carpet." (Defendants' Ex. E, p. 43 (depo. tr., p. 27))

During her deposition, Ms. Williams asserted that at least a few of the other employees present when she fell saw the rolled up carpet next to her. (Defendants' Ex. E, p. 43 (depo. tr., p. 27)) One of the identified witnesses, Rondi Hanson, provided her deposition. Ms. Hanson denied seeing any lifted or damaged carpet at the accident scene. (Defendants' Ex. G, p. 98 (depo. tr., p. 16))

Another eyewitness after the fall, Sarah Green-Kozak testified at the time of trial. Ms. Green-Kozak testified that she heard claimant fall and immediately went to her assistance. Ms. Green-Kozak testified that she was not aware of any defects, did not see any defective carpet squares in claimant's work area at the time of the fall, and that she is not aware of any carpet repairs being made in claimant's cubical since April 13, 2018, despite sitting right next to the area of the fall. (Testimony of Green-Kozak)

Shelley Hill, the Human Resources Director for the employer, also testified at the time of trial. Ms. Hill testified that she was not present when claimant fell and was not made aware of the fall and injury during work hours on April 13, 2018. Instead, she learned of claimant's injury later that evening from claimant's supervisor. Ms. Hill interviewed claimant the following Monday and testified that claimant did not mention rolled up carpet as a cause of her fall or injury. Ms. Hill further testified that claimant did not want to report the injury or make a workers' compensation claim. Nevertheless, Ms. Hill completed a first report of injury and had claimant provide a handwritten statement about the incident. (Testimony of Hill)

In her handwritten statement, claimant stated that she "was getting up out of my chair at my desk, took first step with right leg and ankle made a loud snap noise and I fell to the ground." (Defendants' Ex. B) Claimant's written statement makes no mention of rolled up carpet as a potential cause of the injury. Rather, claimant wrote, "[t]here is nothing the employer or myself could've done to prevent this accident." (Defendants' Ex. B) Consistent with Ms. Hill's testimony, claimant's written statement indicates, "I do not want this filed as a work comp claim as I was getting ready to leave for the day." (Defendants' Ex. B)

After the injury was reported to the workers' compensation insurance carrier, the claims representative took claimant's recorded statement. The claims representative asked an open-ended question, asking claimant to "just walk me through where you were at and what happened." (Defendants' Ex. C, p. 20) Claimant explained, "I was at my desk, standing up to go to the bathroom before I left for the day, and as soon as I took a step with my right foot, my right foot popped really loud, and I fell to the floor." (Defendants' Ex. C, p. 20) Ms. Williams made no statements about damaged or rolled up carpet as a cause of her fall when asked this open-ended question.

On April 23, 2018, claimant completed and signed a workers' compensation employee statement. That statement asked, "How was injury sustained?" The statement form also notified claimant to "describe fully just how your injury was sustained." (Defendants' Ex. D, p. 31)

In response to the question on the employee statement, claimant wrote, "I stood up from my desk to go to the restroom, took my first step with my ® leg and as soon as I stepped down it cracked loud and I fell to the ground." (Defendants' Ex. D, p. 31) Again, this question was open-ended and asked for detail. Claimant was free to fully explain how the injury occurred. Yet, she made no mention of loose, rolled up, or damaged carpet as a cause of her injury.

Claimant's counsel cross-examined witnesses at trial and in depositions challenging whether the employer's witnesses asked claimant about the carpeting. Yet, claimant was given three open-ended opportunities, all close in time to the accident, to provide details of her accident. In none of those statements did claimant report any issues with the carpeting. I find it strange and troubling that claimant waited more than a month to provide details about alleged rolled up, or defective, carpeting as the cause of her injury. The first direct mention by claimant I identified in the evidentiary record of any mention of carpeting being the cause of claimant's injury occurred in claimant's Answer to Interrogatory Number 25, served on August 15, 2018.

However, the employer introduced photographs of the cubicle where claimant worked. Those photographs demonstrate no defective, rolled-up, or damaged carpet squares. (Defendants' Ex. F, pp. 83-93) Ms. Hill testified that she took those photographs on June 8, 2018, which means the employer knew by that date that a claim of defective carpeting was being made by claimant. As noted below, this information likely came from a statement recorded by claimant's personal chiropractor in late May 2018. However, Ms. Hill also testified that she had no knowledge of a claim of defective carpeting being made before that date. Ms. Hill's testimony was consistent with the testimony offered by Ms. Green-Kozak, in which both witnesses testified they were not aware of any subsequent carpet repairs being made in claimant's work area.

Claimant's statements to medical providers immediately after her injury appear very similar to her written statements and recorded statement. At the emergency room on April 13, 2018, claimant reported standing up and inverting her foot. She reported

the pop and immediate pain. She made no reference to tripping or stepping on rolled up carpet. (Joint Ex. 1, p. 1)

Claimant's personal medical provider, Eve H. Harris, PA, does not record a detailed history of claimant's injury. However, there is no reference to stepping on rolled-up carpeting in Ms. Harris' records. (Joint Ex. 2)

Ms. Williams also sought treatment with a chiropractor of her choosing, Whitney Dawson, D.C. Dr. Dawson first evaluated claimant on May 31, 2018. Dr. Dawson's note of that date provides the first reference to carpeting and records that claimant sought treatment, "after injuring herself at work on 4/13/2018. She was getting up from her desk at work and there was a loose piece of carpet. She fell forward and heard a loud snap as she fell forward followed by immediate pain in her right ankle." (Joint Ex. 3, p. 14) On June 22, 2018, claimant sought evaluation at Broadlawns. The treating physician assistant records that claimant "[w]as injured at work in April after tripping on a carpet square." (Joint Ex. 4, p. 24)

On October 29, 2018, a podiatrist, Bryan M. Trout, DPM, evaluated claimant. Dr. Trout records only being told that claimant "stood up from her desk and heard a loud snap in April." (Joint Ex. 5, p. 36) Once again, there is no mention of rolled up carpeting in Dr. Trout's record.

The initial fighting factual issue is how claimant's injury occurred. As noted previously, I found claimant's failure to mention rolled up carpeting before more than a month passed after the injury troubling. Claimant was given three open-ended opportunities shortly after her injury to report the rolled up carpeting as the cause. She did not do so.

Perhaps even more troubling to me is the claimant's statement in her deposition that she had not reported the problem with the carpet prior to the date of injury and then testified, without any specifics, at trial that she believed she had reported the carpeting as an issue to the employer prior to the date of injury. Also troubling is claimant's assertion that she reported the carpeting as an issue to a co-worker on the way to the hospital. Yet, that co-worker denied such a conversation occurred.

Claimant identified no specific reason for her co-workers to provide false testimony. She did not establish that the co-workers had inaccurate memories or difficulties recalling the events. Claimant's co-workers provided testimony that is consistent with each other and with the initial medical records.

On the other hand, claimant's version of events appears to have modified and facts seem to have been added to the story more than a month after the injury occurred. Initially, claimant wrote in a hand-written statement that there was nothing the employer could have done to prevent the injury. Yet, she testified at trial that she provided notice of the defective carpeting at some undefined time before the injury date.

Ultimately, I find the testimony of Michelle Brailsford, Rondi Hanson, Sarah Green-Kozak and Shelley Hill to be consistent with the claimant's initial statements, the initial medical records and history. I find the testimony of these witnesses to be more credible than that offered by claimant. I specifically find that claimant failed to prove by a preponderance of the evidence that she tripped or stepped upon rolled up carpeting or that the carpeting at her workstation was the cause of her fall.

I find that claimant failed to prove any work condition or that her work environment was the direct cause, or aggravating factor, in claimant's right ankle injury or fall. I specifically find that the cause of claimant's right ankle injury was idiopathic in nature. In other words, there was nothing about the working environment or conditions of claimant's employment that was proven to have caused or aggravated her injuries on April 13, 2018. I find that it was mere coincidence that claimant's right ankle injury occurred while at work, but was not proven to be a consequence of her work activities.

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); 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 workers' compensation statute is not a general health insurance policy that extends to all injuries that happen to occur while on the job. Miedema, 551 N.W.2d at 312. Rather, an employee must "prove by a preponderance of the evidence that a causal connection exists between the conditions of his [or her] employment and the injury." Miedema, 551 N.W.2d at 311. "In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of his [or her] employment." Id.

Generally, injuries that result from risks personal to the employee are not compensable. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000). However, if the work environment creates an increased risk, the injury legally arises out of the employment. Bluml v. Dee Jay's, Inc., 920 N.W.2d 82 (Iowa 2018). In this case, I specifically found that the work environment neither increased the risk of injury nor aggravated claimant's injury. I conclude under these circumstances that the increased-risk rule is not applicable.

In the alternative, claimant argues this is an unexplained fall and that the actual risk rule should apply. See Lakeside Casino v. Blue, 743 N.W.2d 169, 177 (Iowa 2007). I do not concur because claimant's fall was explained. Unfortunately it was explained in multiple ways. I found that the work environment was not a contributing factor in claimant's injury. Therefore, I conclude the actual risk doctrine does not apply or make this claim compensable. Having found that claimant failed to prove her ankle injury was caused by or aggravated by any activity or condition related to her employment, I conclude that claimant failed to prove by a preponderance of the evidence that her injury arose out of her employment with Worldwide Integrated Supply Chain Solutions. Therefore, I conclude that claimant failed to prove entitlement to an award of any weekly benefits or medical expenses.

Ms. Williams also seeks an award of penalty benefits. Pursuant to Iowa Code section 86.13, penalty benefits should be awarded when there is an unreasonable delay or denial of benefits. Having determined that claimant failed to prove entitlement to weekly benefits, I conclude that defendants had a reasonable basis for denial of benefits and that penalty benefits should not be assessed. Iowa Code section 86.13.

Having reached these conclusions, all other disputed issues are rendered moot.

Finally, claimant seeks assessment of her costs related to this action. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Having concluded

that claimant failed to establish entitlement to worker's compensation benefits in this contested case proceeding, I conclude that it is not appropriate to assess her costs against defendants.

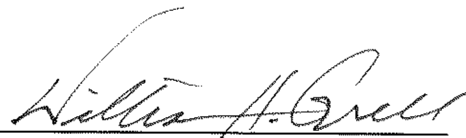
ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing.

All parties shall bear their own costs.

Signed and filed this 16th day of July, 2019.



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WHG/sam

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.