BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CAMELLIA POHL,	:	
Claimant,	:	File Nos. 5057500, 5056430
vs.	:	APPEAL
CITY OF DAVENPORT,	:	DECISION
Employer, Self-Insured, Defendant.	:	Headnotes: 1402.20, 1801, 1803, 2500, 3000

Defendant City of Davenport, self-insured employer, appeals from an arbitration decision filed on January 7, 2019. Claimant Camellia Pohl responds to the appeal. The case was heard on April 24, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 4, 2018.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof in File No. 5056430 to establish that claimant sustained a compensable work-related injury to his right wrist on February 29, 2016. The deputy commissioner found claimant was not entitled to any permanent partial disability benefits for that injury.

The deputy commissioner found claimant carried his burden of proof in File No. 5057500 to establish that claimant sustained permanent disability as a result of the stipulated March 31, 2016, left finger injury. The deputy commissioner found claimant sustained 14 percent functional impairment of the left index finger. Lastly, the deputy commissioner ordered defendant to pay $20,844.67 to claimant for her medical expenses.

On appeal, defendant asserts the deputy commissioner erred in finding claimant met her burden of proof to establish a compensable work injury occurred on February 29, 2016. Defendant also asserts the deputy commissioner erred in ordering defendant to pay claimant directly for outstanding medical expenses.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a 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 section 86.24 and 17A.15, those portions of the proposed arbitration decision filed on January 7, 2019, that relate to issues properly raised on intra-agency appeal are affirmed in part and modified in part.

In File No. 5056430, I affirm the deputy commissioner's finding that claimant sustained an injury to the right upper extremity, which arose out of and in the course of her employment, on February 29, 2016.

In File No. 5057500, I affirm the deputy commissioner's finding that claimant sustained scheduled member functional disability of 14 percent of the left index finger as a result of the March 31, 2016, work injury.

In both files I affirm the deputy commissioner's finding that claimant is entitled to payment by defendant for the requested past medical expenses and medical mileage; however, I respectfully modify the deputy commissioner's allocation of that payment. I provide the following additional analysis for my decision:

Defendant challenges the causal connection of claimant's right wrist injury and the asserted traumatic injury of February 29, 2016. Defendant asserts it is undisputed that the video recording of claimant's February 29, 2016, work activities fails to show a traumatic event involving claimant's right wrist. I disagree.

The undersigned reviewed the nearly four-hour video submitted into evidence. (Exhibit K) At the 2:32:16 mark, claimant can be seen approaching a broken concrete patch or pothole. For a brief period of time thereafter, the steering wheel is seen jerking and/or shaking. At this point in the video, claimant is seen quickly pulling her right hand from the steering wheel and backwards as if it had just been jammed or injured. Claimant then looks at her hand for a moment before shaking it and placing it back on the steering wheel. Thereafter, claimant can be seen waving and/or shaking her hand as if she is experiencing pain or a cramping sensation. (See Ex. K, 3:46:14; 3:47:49; 3:49:02)

This short clip of video is in line with the original statements claimant made to Calene Woodhouse, ARNP, of Genesis at Work on the date of injury. (Joint Exhibit 1, page 1) ("She states the power steering went out on her bus and when she hit a pot hole her right wrist was jerked off the steering wheel causing severe pain ...") Given the video evidence, and the temporal statements made by claimant, I accept claimant's initial description of the injury as most accurate.

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).

In this case, whether claimant's carpal tunnel syndrome is causally related to the February 29, 2016, work injury is a fact question which is primarily in the domain of expert testimony.

There are three expert opinions in this case. Rick Garrels, M.D., the initial treating physician, opined claimant's carpal tunnel syndrome was not causally related to her work activities on February 29, 2016. (JE1, p. 25) His opinion is almost entirely based upon his review of the video recording of claimant driving her bus on the date in question. (Id.) Dr. Garrels provides, "Upon review of the video, there is no events of any type of trauma to her right forearm, wrist, or hand." (Ex. A, p. 1) As previously discussed, there is video evidence that suggests claimant sustained an injury to the right wrist or hand on February 29, 2016. For this reason, and the reasons expressed by the deputy commissioner, I do not find the causation opinions of Dr. Garrels convincing.

Teri Formanek, M.D., orthopedic surgeon retained by defendant, opined there is no documented evidence that claimant's right wrist pain or carpal tunnel syndrome have any relationship to claimant's work activities. (Ex. C, p. 5) Dr. Formanek further opined there is no documented evidence of carpal tunnel syndrome and the endoscopic carpal tunnel release procedure performed was not indicated and was not for documented evidence of carpal tunnel syndrome. (Id.) Dr. Formanek did not personally examine claimant; rather, he conducted a medical records review. (See Ex. C, p. 5) He also reviewed the video surveillance of claimant driving her bus on the date of injury. Having located video evidence suggesting claimant sustained a traumatic injury to her right hand or wrist, I do not find Dr. Formanek's causation opinions persuasive. Like the deputy commissioner, I find the causation opinions of Richard Kreiter, M.D., to be most convincing in this matter.

Dr. Kreiter produced two IME reports, and an addendum letter. (See Exs. 2, 3, 4) In his first report, dated February 13, 2017, Dr. Kreiter opined that the forceful twisting of claimant's right wrist and forearm caused claimant's ulnar-sided wrist pain. (Ex. 2, p. 1) Dr. Kreiter further states the basis for the median nerve contusion, or carpal tunnel condition, was based on the April 11, 2016, MR arthrogram of the wrist, which stated the median nerve was borderline prominent, and Dr. Cobb's office ultrasound which revealed an enlarged median nerve. (Id.) Dr. Kreiter also discusses claimant's positive Tinel's and Pahlen's tests on the right, as well as the fact claimant received significant improvement following a carpal tunnel injection to the right wrist. (Id.) Dr. Kreiter reasoned that the contusion to the volar wrist could have caused swelling of the median nerve. (Id.)

In his second IME report, dated August 15, 2017, Dr. Kreiter supported his prior causation opinion with an excerpt from the AMA Guide to Evaluation of Disease and Injury Causation, noting carpal tunnel syndrome could result from an acute injury with a mechanism of injury being blunt trauma from a steering wheel or dashboard. (Ex. 3, p. 1) In his final letter, dated March 24, 2018, Dr. Kreiter states:

> In regard to the causation of the carpal tunnel symptoms, I based my opinion on the history given by Ms. Pohl, the AMA Guide to Evaluation of Disease and Injury Causation, on page 610, and my physical findings.

(Ex. 4, p. 1)

While I agree Dr. Kreiter's opinions are less than definitive, it is clear Dr. Kreiter causally relates claimant's carpal tunnel condition to the February 29, 2016, work injury.

Additionally, expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. In the matter at hand, the totality of the evidence supports a causal connection between claimant's work injury and the carpal tunnel diagnosis.

First, the evidentiary record is void of any pre-existing medical records reflecting claimant complained of, or was experiencing, any issues within her right wrist and hand prior to the date of injury.

Second, there is no dispute as to claimant's actions on the date of injury. It is undisputed that the power steering went out in the bus claimant was driving. (Ex. 6, p. 1) There is video evidence indicating claimant sustained an injury to her right hand or wrist. After notifying defendant of the power steering issue, claimant was asked to take another bus. (Ex. K) In response, claimant told the employer she could not take another bus out due to the symptoms in her right wrist. (Hearing Transcript p. 17) After reporting her injury, claimant's supervisor drove her to Genesis at Work for medical treatment. (Tr. p. 21)

Third, the medical records in evidence support causation between the work injury and claimant's carpal tunnel diagnosis. Initial medical records show claimant presented with reduced grip strength. (JE1, p. 2) She complained of intermittent numbness at her follow-up appointment on March 4, 2016. (JE1, p. 5) That numbness continued despite conservative treatment. (See JE1, p. 9) Tinel's test over the right carpal tunnel median nerve was positive on examination. (JE7, p. 7) Claimant received significant relief following Dr. Cobb's carpal tunnel injection. (JE7, p. 6) Dr. Cobb subsequently diagnosed claimant with carpal tunnel syndrome on the right. (JE7, p. 8) After physically examining claimant, reviewing relevant medical records, obtaining a history of the injury in question from claimant, and analyzing the AMA Guide to Evaluation of Disease and Injury, Dr. Kreiter found a causal connection between claimant's work injury and her carpal tunnel syndrome. (See Ex. 3, p. 1; Ex. 4, p. 1)

The totality of the evidence supports a finding that claimant's right carpal tunnel diagnosis is causally related to the February 29, 2016, work injury. I affirm the deputy commissioner's finding that claimant proved by a preponderance of the evidence in File No. 5056430 that her pre-existing carpal tunnel syndrome was aggravated, accelerated, worsened, or lit up by the injury which occurred while claimant was working for defendant on February 29, 2016.

Defendant next asserts the deputy commissioner erred in ordering defendant to reimburse claimant directly for unpaid medical expenses without proof claimant made out-of-pocket payments for the same. At hearing, claimant produced medical billing statements indicating that her private insurer, Wellmark Blue Cross/Blue Shield, paid $9,883.23 towards her medical expenses. (Attachment to Hearing Report) Claimant further provided a list of outstanding medical bills, totaling $20,844.67. (Id.) Claimant asserts she has personally paid a portion of the $20,844.67, out-of-pocket. (See Hr. Tr., p. 57)

Both parties address the holdings in Krohn v. State[1], Rethamel v. Havey[2], and Midwest Ambulance Service v. Ruud[3], in their appeal briefs.

Defendant argues that under Rethamel, claimant must prove she paid medical expenses herself in order to receive reimbursement. 715 N.W.2d 263 (Iowa 2006). The Rethamel case relied upon the supreme court's prior decision in Krohn. In Krohn, the court held that a workers' compensation claimant was not entitled to be paid sums for medical and hospital expenses absent a showing that the worker personally paid the medical suppliers. 420 N.W.2d at 464-65. Neither decision specifically addressed the issue presented in this case, namely, whether the payment of insurance premiums not provided by defendant amounts to claimant personally paying for the underlying medical

[1] 420 N.W.2d 463 (Iowa 1988)
[2] 715 N.W.2d 263 (Iowa 2006)
[3] 754 N.W.2d 860 (Iowa 2008)

benefits. Fortunately for our analysis, the supreme court addressed this very issue in Ruud. 754 N.W.2d 860 (2008).

In Ruud, the employee sustained an injury and was unable to return to work. She continued on her employer's group health insurance, after she left employment, though COBRA. She personally paid the required premiums in full. The employer was ultimately found responsible for Ruud's injury and the commissioner at the time ruled the employer was to pay Ruud directly for the medical expenses paid by Ruud's health insurer on Ruud's behalf. The supreme court, in addressing the commissioner's ruling, noted:

> . . . [The] amounts paid by private insurance are attributable to the plaintiff as if she made those payments herself. The commissioner reasoned that other health insurance plans may have subrogation rights against an insured who received benefits under workers' compensation [for an injury the private insurer had previously paid medical expenses for]. In order to avoid a situation where [the] [private] health insurance company [seeks] reimbursement from the claimant for [medical] expenses that the employer has not paid, the commissioner held that the employer must pay to the claimant an amount equal to the medical benefits that were covered by the [private] insurer.

(754 N.W.2d at 868)

The supreme court further explained

> We note that under Iowa Code section 85.38(2), an employer who wholly or partially provides insurance under a group plan is entitled to a credit not simply of the premiums paid, but of the full amount of benefits paid by the group plan for injuries covered by workers' compensation. In light of this statutory provision, the reverse should also be true, namely, that an employee who pays group health insurance premiums has, in effect, paid for medical expenses covered by the group plan.

(Id.)

The supreme court's decision is controlling in this case.

Pursuant to Iowa Code section 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Generally, a claimant is not entitled to reimbursement for medical bills unless they can show that the medical expenses were paid from claimant's funds. See Caylor v. Employers Mut. Cas. Co., 337 N.W.2d 890 (Iowa Ct. App. 1983). Otherwise, a claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment for payments made by the private insurer. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution.") See also, Carl A. Nelson & Co. v. Sloan, (Iowa App. 2015) 873 N.W.2d 552 (Iowa App. 2015) (Table) 2015 WL 7574232 15-0323. Claimant has the burden of proving that the fees charged for such services are reasonable. Anderson v. High Rise Construction Specialists, Inc., File No. 850096 (App. July 31, 1990).

In this case, the majority of past medical expenses were unpaid as of the date of hearing. Those medical expenses which have been paid by claimant's insurance carrier shall be reimbursed directly to the claimant as the Iowa Supreme Court has mandated. See Ruud (754 N.W.2d 860 (Iowa 2008)); See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (2015) ("We find the supreme court's ruling definitive with regard to whom an employer should pay medical expenses that have previously been paid by health insurance coverage to which the employer did not contribute."). Defendants shall pay the remaining unpaid medical expenses directly to the providers. See Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (2015) (affirming agency decision that held employer was to pay unpaid medical expenses directly to medical provider, and reimburse claimant, directly, for medical expenses paid by claimant's private health insurance).

As such, I modify the deputy commissioner's finding regarding past medical expenses and hold the defendant shall pay $9,883.23 to claimant. I further hold defendant shall pay any remaining outstanding medical expenses directly to the providers.

Claimant requests an order reopening to the evidentiary record to submit evidence of out-of-pocket medical expenses paid by claimant. Such an order is unnecessary. It is assumed the parties acknowledge and honor the holdings of this decision. The parties are expected to communicate effectively in workers' compensation proceedings; such a requirement does not cease once an evidentiary hearing has occurred. In the event claimant has made additional out-of-pocket payments against her outstanding medical expenses, since April 24, 2018, defendant is to reimburse claimant directly for those payments, provided claimant is able to provide proof of payment. Defendant is to pay the provider directly for any other outstanding unpaid medical expenses.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 7, 2019, is affirmed in part and reversed in part.

File No. 5056430 – Date of Injury: February 29, 2016:

Claimant shall receive no permanent partial disability benefits.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of nine hundred and no/100 dollars ($900.00).

File No. 5057500 – Date of Injury: March 31, 2016:

Defendant shall pay claimant four point nine (4.9) weeks of permanent partial disability benefits at the weekly rate of two hundred seven and 37/100 dollars ($207.37) commencing April 1, 2016.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of nine hundred and no/100 dollars ($900.00).

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).

For Both Files:

Defendant shall pay temporary total/healing period benefit from October 10, 2016, through February 8, 2017 at the weekly rate of one hundred three and 43/100 dollars ($103.43).

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).

Defendants shall pay medical expenses as outlined in the decision above. Defendants shall pay those medical expenses which are unpaid, directly to the providers. Those medical expenses which have been paid by claimant's private insurance carrier shall be reimbursed directly to claimant.

Defendant shall pay medical mileage in the amount of two hundred forty-seven and 99/100 dollars ($247.99).

Pursuant to rule 876 IAC 4.33, defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 18th day of March, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

M. Leanne Tyler Via WCES

Peter J. Thill Via WCES