

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA BRACKETT,

Claimant,

vs.

CDS GLOBAL, INC.,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.,

Insurance Carrier,
Defendants.

File No. 5055996

A P P E A L
D E C I S I O N

FILED
MAY 24 2019
WORKERS' COMPENSATION

Head Note Nos: 1108.50; 1402.40; 1801;
1803, 2501, 2907; 5-9999

Defendants CDS Global, Inc., employer, and its insurer, Travelers Indemnity Co. of CT., appeal from an arbitration decision filed on January 26, 2018. Claimant Teresa Brackett responds to the appeal. The case was heard on August 21, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 12, 2017.

The deputy commissioner found claimant carried her burden of proof that she sustained an injury to her left knee which arose out of and in the course of her employment with defendant-employer on January 2, 2015. The deputy commissioner found, as of the time of the arbitration hearing, claimant is not entitled to receive any temporary disability benefits for the work injury. The deputy commissioner found, because claimant is not at maximum medical improvement (MMI) for the work injury, the issue of permanent disability is not yet ripe for determination. The deputy commissioner found claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 2. The deputy commissioner found claimant is entitled to receive ongoing medical treatment at defendants' expense for the work injury. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained a work-related injury on January 2, 2015. Defendants assert the deputy commissioner erred in finding claimant is entitled

to payment by defendants for the requested past medical expenses itemized in Exhibit 2. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive ongoing medical treatment at defendants' expense for the work injury. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

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 have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on January 26, 2018, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained a work-related injury to her left knee on January 2, 2015. I affirm the deputy commissioner's finding that as of the time of the arbitration hearing, claimant is not entitled to receive any temporary disability benefits for the work injury. I affirm the deputy commissioner's finding that because claimant is not at MMI for the work injury, the issue of permanent disability is not yet ripe for determination. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 2. I affirm the deputy commissioner's finding that claimant is entitled to receive ongoing medical treatment at defendants' expense for the work injury. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues with the following additional analysis.

In reaching her decision in this case, the deputy commissioner gave greater weight to the causation opinions of primary care provider John Zittergruen, D.O. The deputy commissioner found the causation opinion of orthopedic surgeon Craig Mahoney, M.D., was not persuasive.

Defendants assert Dr. Zittergruen's causation opinions should not be given greater weight because defendants assert Dr. Zittergruen gave inconsistent opinions regarding the causation of claimant's left knee condition, first stating claimant's condition was not work-related (Exhibit B, p. 9) and then later stating the condition was work-related. (Ex. 5; Ex. 6)

On March 9, 2016, defendants' attorney forwarded correspondence to Dr. Zittergruen which stated the following, in pertinent part:

Thank you for meeting with me earlier today regarding Teresa Brackett . . .

During our conference we discussed Ms. Brackett's clinical examination which took place on January 8, 2015. Ms. Brackett presented to your clinic on that date complaining of left knee pain and swelling since Sunday. She reported that she pushed a heavy waste basket of magnets as well as shoveled heavy snow over the weekend. An x-ray taken of her left knee demonstrated the presence of left knee osteoarthritis. Ms. Brackett was advised to return to your clinic in one week if no improvement. Ms. Brackett did not return to the clinic until February 6, 2015.

On that date she reported that she had been shoveling snow out of her driveway on Sunday which had resulted in inflaming her left knee again. Your assessment of Mrs. Brackett at that time was osteoarthritis, left knee. Ms. Brackett did receive an injection to her left knee at that time.

During our conference we discussed the cause of Ms. Brackett's left knee osteoarthritis. We discussed Ms. Brackett's risk factors for the development including, but not limited to, her weight and the fact that she had previously underwent a left knee arthroscopic procedure.

My notes from our conference indicate that you stated that because of her underlying pre-existing left knee osteoarthritis, it's expected that she would have episodic flare-ups of this condition. You stated that the incident occurring on or about January 7, 2015 perhaps did result in a temporary flare-up of Ms. Brackett's left knee osteoarthritis. You further stated however that the incident did not cause her left knee osteoarthritis, nor did you consider it to have been a substantial contributing factor to materially and permanently aggravating her underlying left knee osteoarthritis.

Dr. I would ask that you please provide a written report addressing the matters which we discussed during our meeting. Specifically, your impressions as to the affect that Ms. Brackett's work activities on or about January 7, 2015 had on her underlying pre-existing left knee osteoarthritis.

(Ex. B, pp. 7-8)

On March 12, 2016, Dr. Zittergruen sent a letter to defendants' attorney which stated the following:

I did review your letter of March 9, 2016, concerning Teresa Brackett. I do feel that the work related activity during which time she pushed a heavy barrel of magnets on or about January 7, certainly may have aggravated her underlying knee osteoarthritis, but certainly did not cause it. Approximately, one month later, she did return for a cortisone injection which did give her good symptomatic relief of her knee pain. As stated in your letter, shoveling heavy snow may have certainly aggravated her knee pain as well. I do feel she will probably have some continued problems with left knee osteoarthritis over the coming years and may eventually need a knee replacement. Again, I do not think that is a work related issue . . .

(Ex. B, p. 9)

I find that while the above-quoted comments from Dr. Zittergruen do state the January 2015 incident may have aggravated claimant's left knee osteoarthritis, it does not state that any such aggravation was not substantial or permanent. Dr. Zittergruen simply did not address that particular point in his March 12, 2016, letter. Therefore, I find Dr. Zittergruen's comments quoted above do leave the door open to the possibility that claimant did sustain a permanent material aggravation of her left knee osteoarthritis as a result of the work injury. I also find where Dr. Zittergruen says, "Again, I do not think that is a work related issue" he is referring to the origin of claimant's osteoarthritis and he is not saying the work injury did not cause a permanent material aggravation of claimant's osteoarthritis.

On February 22, 2017, Dr. Zittergruen sent a letter to claimant's attorney in which he stated the following:

Teresa Brackett was seen for a follow-up on her left knee injury on February 16, 2017. She had been trying to put off further cortisone injections in the left knee and had been trying to manage her knee pain with ice and Ibuprofen. She was frequently taking 4 ibuprofen 2 to 3 times a day for pain relief. She stated to me that day that the knee pain had gotten progressively worse and she was requesting another knee injection and wanted to discuss future treatments for her left knee.

Prior to January 2015, Ms. Brackett had never complained of left knee pain or seen me for evaluation of knee pain. Prior to January 2015, I had never indicated to Ms. Brackett that she would ever need medical treatment for her left knee.

I do feel that the work activities that Ms. Brackett was performing from October 2014 through January 2015 certainly aggravated and accelerated progression of osteoarthritis in her left knee. When she was seen on January 8, 2015, her symptoms were certainly consistent with that.

As far as future medical treatment, I do feel Ms. Brackett should undergo an MRI to assess the degree of her knee problem. I did take another routine x-ray of her knee on February 16 when she was seen and I could definitely see there had been progression of her arthritic changes, especially in the medial joint space and the patellofemoral joint space. Again, I do feel that the work activities performed by Ms. Brackett from October through January hastened the need for future medical treatment of her left knee.

As a result of the work-related injury, I do feel Ms. Brackett has work restrictions, which include no repetitive bending at the knee and no pushing or pulling greater than 10 pounds. I also feel that she should not go up and down steps, as that certainly aggravates her underlying condition. As far as any permanent impairment of the left knee, I feel she will need further evaluation with an MRI, so that can be better addressed. If you have further questions, please feel free to contact me.

(Ex. 5)

On April 13, 2017, Dr. Zittergruen sent another letter to claimant's attorney which stated the following:

I do believe Teresa suffered a significant injury to her knee in the work-related incidence [sic] of October of 2014 to January of 2015. It is my opinion that this most likely is a permanent impairment injury, but I cannot verify that until we get an MRI for further evaluation of the knee injury. If you have further questions for me, please feel free to contact me.

(Ex. 6)

I find Dr. Zittergruen's causation opinions stated in his February 22, 2017, and his April 13, 2017, letters do not conflict with the causation opinions stated in his March 12, 2016, letter. I therefore, find Dr. Zittergruen's causation opinions are logical and consistent with the rest of the evidence in the record of this case.

Craig Mahoney, M.D., orthopedic surgeon, performed an IME of claimant on May 19, 2017, at the request of defendants. In his June 2, 2017, IME report, Dr. Mahoney stated the following, in pertinent part:

Regarding causation with her current situation, it is my opinion based on review of the records, radiographic review, and physical exam findings that this patient had arthritis prior to the events described above. I believe they were a temporary exacerbation of a pre-existing condition and ultimately based on the findings outlined above, I believe this patient would ultimately have developed clinically significant arthritis at some point in time in her life regardless of work-related activity.

(Ex. A, p. 5)

On June 29, 2017, Dr. Mahoney sent defendants' attorney a supplemental report in which he stated the following, in pertinent part:

I quote in your note to me "given that the work incident occurred over 2 years ago and resulted in only a temporary exacerbation, can I correctly assume that Ms. Brackett's current reported left knee symptoms, need for further medical care and permanent disability, if any, is [sic] not causally related to the January 7, 2015 work incident?"

In answering this question, I reviewed my notes from my interaction with the patient based on my June 2nd evaluation. As stated previously, I do feel this patient had preexisting arthritis and in all likelihood the patient did have an exacerbation of this previous condition, which I believe ultimately would have developed at some point in time in her life regardless of the work-related activity. Therefore, I agree with your statement and I do not believe any permanent disability is causally related to the January 7, 2015 work incident. I believe the patient is having exacerbation of preexisting arthritis, which in all likelihood would have happened anyway.

(Ex. A, p. 6)

Dr. Mahoney's causation opinions entirely ignore the fact that claimant did not have symptoms leading up to the work injury, but since the work injury she has continued to have symptoms without interruption. I therefore affirm the deputy commissioner's finding that Dr. Zittergruen's opinions carry greater weight in this case than Dr. Mahoney's opinions. Dr. Zittergruen's opinions are well-reasoned and consistent with the evidence as a whole. I therefore affirm the deputy commissioner's finding that claimant has shown by a preponderance of the evidence that her left knee injury arose out of and in the course of her employment. I also affirm the deputy commissioner's finding that as a result of the work injury, claimant requires additional medical treatment as recommended by Dr. Zittergruen.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 26, 2018, is affirmed in its entirety.

All weekly benefits shall be paid at the stipulated rate of eight hundred fifty and 77/100 dollars (\$850.77).

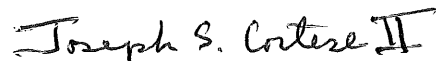
Pursuant to Iowa Code 85.27, defendants shall pay the past requested medical expenses itemized in Exhibit 2.

Pursuant to Iowa Code 85.27, defendants shall provide claimant with all reasonable and necessary medical treatment for the work injury by providers of defendants' choice pursuant to the recommendations of Dr. Zittergruen.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants shall pay the costs 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 24th day of May, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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