BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARTHA REAVES, Claimant, vs. GENUINE PARTS COMPANY d/b/a NAPA, Employer, SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	FILED JAN 29 2019 WORKERS COMPENSATION	File No. 5059851 ARBITRATION DECISION Head Note Nos.: 1402.30, 1402.40, 2907

STATEMENT OF THE CASE

Martha Reaves, claimant, filed a petition for arbitration against Genuine Parts Company, d/b/a Napa (hereinafter referred to as "Napa") as the employer and Safety National Casualty Corporation as the insurance carrier. An in-person hearing occurred in Des Moines on October 2, 2018.

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 10, Claimant's Exhibit 101, as well as Defendants' Exhibits A through M. All exhibits were received without objection.

Claimant testified on her own behalf. Defendants called Mark Stolze 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. The parties filed post-hearing briefs on October 31, 2018, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury on August 1, 2016, which arose out of and in the course of her employment with Napa.

2. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to industrial disability benefits.

3. Whether claimant is entitled to reimbursement for an independent medical evaluation pursuant to Iowa Code section 85.39.

4. Whether costs should be assessed against any party and, if so, the extent to which costs should be assessed.

FINDINGS OF FACT

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

The parties submit a disputed factual issue about whether claimant sustained an injury on August 1, 2016, which arose out of and in the course of claimant's employment. Claimant clearly sustained an injury at Napa on August 1, 2016. She was delivering parts to a customer for the employer. While carrying boxes, she failed to observe stairs and her foot slipped off the stairs. (Transcript, pages 86-87) Ms. Reaves fell down three stairs attempting to complete the delivery.

Medical records from the day after the fall and three days after the fall clearly document that Ms. Reaves fell down stairs while making a delivery for Napa. Both of those medical records document that claimant fell onto her knee. (Joint Exhibit 10, pages 71-72; Jt. Ex. 10, p. 75) The medical record on August 2, 2016 documents complaints of an aching back with moderate reports of pain. (Jt. Ex. 10, pp. 71-72) The August 4, 2016 medical record does not record either hip or low back pain complaints. On August 4, 2016, claimant denied that she was having any pain that affected her activity level. (Jt. Ex. 10, p. 75)

Ms. Reaves testified that she fell onto her left knee. She testified that she noticed a bruise on her left thigh the day after her fall. (Tr., p. 88) She described this bruise as being located just above her left knee. (Defendants' Ex. M, p. 50) She confirmed that she did not land on her left hip or low back as a result of the fall. (Tr., p. 87; Defendants' Ex. M, p. 48) However, she speculates that she hit her left thigh on the stairs when she fell. (Tr., p. 87)

Claimant clearly sustained a work-related fall and injury on August 1, 2016 while delivering parts for Napa. However, defendants dispute whether this injury caused permanent disability. It is clear from the medical records that claimant's left knee contusion fully resolved. (Claimant's Ex. 101, p. 8) She has no permanent disability related to her left knee. (Claimant's Ex. 101, p. 10)

Claimant introduced an independent medical evaluation performed by Sunil Bansal, M.D., on August 20, 2018. (Claimant's Ex. 101) Dr. Bansal diagnosed claimant with sacroiliitis, which he causally related to the August 1, 2016 fall. Dr. Bansal also diagnosed claimant with left hip tronchanteric bursitis, which he opined was materially aggravated by the fall at work. (Claimant's Ex. 101, pp. 8-9)

Dr. Bansal explained, "the mechanism of falling is consistent with the development of sacroiliitis." (Joint Ex. 101, p. 9) Dr. Bansal also opined, "the mechanism of falling on her left side is consistent with her trochanteric bursitis." (Claimant's Ex. 101, p. 9) Dr. Bansal quoted the American Association of Orthopedic Surgeons' website, asserting, "An injury to the point of your hip (greater trochanter) can occur when you fall onto your hip, bump your hip." (Claimant's Ex. 101, p. 9)

Dr. Bansal's description of the mechanism of injury is troubling. In his subjective history, Dr. Bansal records, "While walking down three steps and carrying something in her arms, she was distracted with all of the commotion. She fell on the stairs, landing on her left side." (Claimant's Ex. 101, p. 6) Dr. Bansal's medical history is not consistent with claimant's testimony in her deposition or at the time of trial. Dr. Bansal's history is not consistent with the initial medical records after the fall, which indicated claimant fell onto her left knee.

No explanation is made for the variance between the initial medical records, claimant's testimony, and Dr. Bansal's history. Yet, it appears that Dr. Bansal's causation opinion requires that claimant sustain a fall onto or a bump of her left hip to substantiate that the fall on August 1, 2016 was a material aggravation of the left hip condition. (Claimant's Ex. 101, p. 9)

I find the initial medical records reported history, coupled with claimant's testimony that she did not fall onto her left side or hip, to be credible and accurate. Therefore, I find that claimant fell on August 1, 2016, but that she did not strike or fall onto her left hip or greater trochanter. Having reached this finding, I also find that Dr. Bansal's subjective medical history, as recorded in his independent medical evaluation report, is inaccurate.

Medical records in evidence establish that Ms. Reaves had chronic low back pain that pre-dates the August 1, 2016 fall. Ms. Reaves was involved in motor vehicle accidents prior to August 1, 2016 with complaints of low back pain. (Joint Ex. 1, p. 1) Only 19 days before her fall, Ms. Reaves sought medical treatment. On July 13, 2016, she reported bilateral hip pain that was worse on the left. She described no trauma causing the symptoms, but reported that her hip pain developed after she took a job working for Menards and was on her feet 8 hours per day. (Joint Ex. 10, p. 66, 67)

After the fall, there are some gaps in treatment for claimant's alleged injuries. No treatment occurs between August 4, 2016 and September 19, 2016. Then, on September 19, 2016, claimant reports that she has significant back and left hip pain. She denied a specific injury and "complains of mid back pain and L hip pain x 1 day." (Joint Ex. 10, p. 79)

Following the September 19, 2016 treatment, claimant does not seek medical attention for her left hip or low back again until February 13, 2017. At that appointment, she reported back pain, but also reports neck pain and a headache. She reported that her "whole body hurts," but does not specifically report left hip pain. (Joint Ex. 10, pp. 85-86)

Again, there is a gap in treatment from February 2017 until July 25, 2017. In July 2017, claimant reports hip and low back pain, but indicates that she does not have pain that needs addressed or that affects her activity level. (Jt. Ex. 10, pp. 92-93) In August 2017, claimant reports four prior motor vehicle accidents and "wonders if that may be attributing to the pain" she was experiencing in her left scapula, in her thoracic spine and in her low back and tailbone. (Jt. Ex. 10, p. 98) On August 25, 2017, claimant's personal medical provider pondered fibromyalgia as a potential differential diagnosis to explain claimant's various symptoms. (Jt. Ex. 10, p. 99)

Defendants obtained an independent medical evaluation, performed by Trevor R. Schmitz, M.D. on August 29, 2018. Dr. Schmitz is an orthopaedic, spine surgeon practicing in Des Moines at Iowa Ortho. His physical examination noted, "[n]o tenderness to palpitation over the bilateral trochanteric bursa," though he did identify pain with passive left hip range of motion. (Defendants' Ex. L, p. 36) Dr. Schmitz also identified tenderness over the left sacroiliac joint and low back pain with trunk rotation. (Defendants' Ex. L, p. 36)

Dr. Schmitz concurred with Dr. Bansal's diagnoses, indicating, "I do think she has some element of left sacroiliitis as well as left trochanteric bursitis, which is likely responsible for her leg symptoms." (Defendants' Ex. L, p. 40) He also diagnosed claimant with facet arthropathy and degenerative changes throughout her mid and lower back. (Defendants' Ex. L, p. 40)

However, when asked about causation of his diagnoses, Dr. Schmitz opined:

> I do not believe that she injured or materially aggravated her low back on the alleged August 1, 2016 work incident. She does have a chronic history of axial low back pain including receiving treatment for low back discomfort in the months and even weeks leading up to the alleged work incident in question. It does not appear as though she had a significant pain free interval prior to the alleged work incident in question. In addition, she has an essentially normal MRI of her lumbar spine for any acute findings. She does have some degenerative changes throughout her low back, which were most certainly not caused by the work incident in question.

(Defendants' Ex. L, p. 40)

On September 19, 2018, Dr. Schmitz provided a supplemental report after he had a chance to review the report authored by Dr. Bansal. Dr. Schmitz responded that claimant's presenting symptoms after the fall were not "drastically different than what she was seen for prior to the injury in question." (Defendants' Ex. L, p. 41) He also noted his disagreement with Dr. Bansal's work restrictions, noting that there "is no objective basis for [Dr. Bansal's] restrictions" given the "essentially normal spine imaging." (Defendants' Ex. L, p. 41) Instead, Dr. Schmitz opined that claimant "has a stable back and hip and could certainly do anything and everything she wanted to do in

life. I do not think that she warrants any restrictions with regards to her alleged low back, hip, or leg condition." (Defendants' Ex. L, p. 41)

As I consider the competing medical opinion in this record, I find the opinions of Dr. Schmitz to be more consistent with the underlying facts and most credible on the issue of causation. Dr. Bansal's understanding of the fall appears to be flawed. He provides no explanation of the symptoms reported by claimant even 19 days before this fall. Additionally, Dr. Bansal imposed permanent work restrictions that would preclude claimant from returning to work at Napa. Yet, claimant continued working at Napa for a few months after the August 1, 2016 injury date without medical restriction. (Testimony of Mark Stoltze) In this sense, Dr. Bansal's permanent work restrictions appear to be contradicted by claimant's actual performance of job duties after August 1, 2016.

I find the opinions of Dr. Schmitz to be more consistent with the other evidence I found credible in this record. I find Dr. Schmitz's opinions to be more credible and convincing in this record. Therefore, I find that claimant has failed to prove by a preponderance of the evidence that she sustained a permanent disability to either her low back or her left hip as a result of the fall on August 1, 2016. I similarly find that claimant has not proven that her low back or left hip conditions were materially aggravated by the August 1, 2016 fall at work.

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).

In this case, I found that claimant proved she sustained a work injury on August 1, 2016. Specifically, I found that Ms. Reaves sustained a left knee injury. However, the left knee injury resolved prior to hearing and did not cause any permanent disability. Ms. Reaves also alleged injury to her low back and left hip.

Having found that Ms. Reaves did not carry her burden of proof to establish the low back or left hip injuries were causally related to, or materially aggravated by, the August 1, 2016 fall, I conclude that Ms. Reaves has not carried her burden of proof to establish that she sustained low back or left hip injuries that arose out of and in the course of her employment with Napa. I further conclude that claimant failed to carry her burden of proof to establish a permanent disability to her left knee, left hip, or low back as a result of the August 1, 2016 fall at work. Having reached these findings and conclusions, I ultimately conclude that Ms. Reaves has not proven entitlement to an award of any permanent disability benefits.

Claimant also seeks award of reimbursement of her independent medical evaluation, performed by Dr. Bansal. 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). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

In this case, I found that Dr. Bansal performed his independent medical evaluation before defendants obtained an evaluation of permanent impairment from Dr.

Schmitz. I identified no other permanent impairment ratings in this record and certainly none performed by a physician retained by defendants. Therefore, I conclude that claimant failed to establish entitlement to reimbursement of her independent medical evaluation charges. Iowa Code section 85.39; Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015).

Finally, claimant seeks an award of costs. Costs are awarded at the discretion of this agency. Iowa Code section 86.40. In this case, claimant failed to establish entitlement to any additional award of benefits. I conclude that it would not be appropriate to assess claimant's costs against defendants under these circumstances.

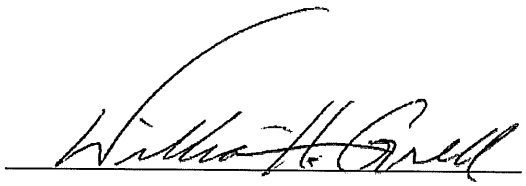
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall nothing.

All parties shall pay their own costs.

Signed and filed this 29th day of January, 2019.



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WHG/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.