BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JAN 16 2019
WORKERS' COMPENSATION

COLLEEN TRIPP, Claimant, vs. FORT MADISON COMMUNITY SCHOOL DISTRICT, Employer, and UNITED WISCONSIN INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5059573 ARBITRATION DECISION Head Note Nos.: 1402.30, 2502

STATEMENT OF THE CASE

Claimant, Colleen Tripp, filed a petition in arbitration seeking workers' compensation benefits from Fort Madison Community School District, employer (FMCSD), and United Wisconsin Insurance Company, insurer, both as defendants. This matter was heard in Des Moines, Iowa on December 5, 2018.

The record in this case consists of Joint Exhibits 1-6, Claimant's Exhibits 1-2, Defendants' Exhibits A through D, and the testimony of claimant.

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

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether claimant's claim for benefits is barred by application of Iowa Code section 85.16.

3. Whether the injury is a cause of permanent disability; and if so

4. The extent of claimant's entitlement to permanent partial disability benefits.

5. Whether there is a causal connection between the injury and the claimed medical expenses.

6. Whether claimant is due a reimbursement for an independent medical evaluation (IME).

FINDINGS OF FACT

The claimant was 56 years old at the time of hearing. Claimant worked as a special education associate. Claimant testified she worked with autistic children through the Fort Madison School District.

Claimant testified, that on January 14, 2016, she was taking a student back to a classroom when she was bitten on the middle finger of her right hand by an insect. Claimant hit the insect. Claimant said at the time the bite felt like a mosquito bite. She said the bite was painful and it burned. (Joint Exhibit 1, page 2)

Claimant testified that after the insect bite on her finger she later noticed a lump underneath her right armpit while at home. Claimant said she cleaned the area of the lump with peroxide and aspirated the lump with a needle and syringe she had at home. Claimant said white liquid came out of the aspirated lump. Claimant said she felt aching in the right arm after draining the sore.

On January 16, 2016 claimant was evaluated by Katrina Hotka-Truempler, ARNP at the Fort Madison Community Hospital emergency room. Claimant indicated she was bitten by an insect on Thursday, and by Friday or Saturday she had developed an axillary lymph node she noticed was swollen. Claimant said she began taking Zithromax she got from Mexico. Claimant was assessed as having an acute lymphangitis of the right axilla. A mammogram and ultrasound were recommended, as the right breast was potentially involved. (Jt. Ex. 2, pp. 1-3)

On January 19, 2016 claimant was seen by David Wenger-Keller, M.D. Claimant had a painful right armpit. She indicated lumps in her right armpit. Claimant tried aspirating the area with a syringe and got a small amount of white fluid. Claimant's ultrasound of the right axilla showed two enlarged lymph nodes and fluid consistent with an infection. Claimant complained of severe pain in the right arm. (Jt. Ex. 2, p. 4)

Records from this visit indicate claimant tried to aspirate the lump under her right armpit several times. Claimant did not clean the skin first. (Jt. Ex. 2, p. 9) The wound on claimant's right middle finger had completely healed by this time. (Jt. Ex. 2, p. 11)

Claimant was assessed as having an acute lymphangitis of the right axilla. Claimant's enlarged lymph nodes under the right armpit were thought to be caused by a bacterial inoculation when claimant attempted to aspirate the area at home. Claimant was assessed as having a staph or strep infection. Medication given to claimant was found to be adequate for MRSA. (Jt. Ex. 2, p. 12)

Claimant testified she believed her supervisors at work began unnecessarily disciplining her due to her workers' compensation claim. Claimant said she thought her supervisors began harassing her because she wanted to file a workers' compensation claim. Documents from claimant's personnel file following her alleged injury indicate claimant was disciplined for licking a child's glasses with her tongue, taking a muffin from a student, and kissing a student for doing a good job. (Ex. C, pp. 1-19)

Claimant testified the school board eventually voted to not renew her contract with FMCSD. (Claimant's Ex. 2, p. 7)

On November 25, 2016 claimant was evaluated by Ashley Makowski, APRN. Claimant believed the abscess under her arm needed draining. Claimant was assessed as having cellulitis of the left finger. Claimant was treated with antibiotics. Claimant had an abscess on the fifth digit of her left hand. The abscess was incised and drained. (Jt. Ex. 4)

On August 4, 2017 claimant was evaluated by Daniel Diekema, M.D. at the University of Iowa Hospitals and Clinics (UIHC). Dr. Diekema specializes in, and is a clinical professor, in infectious diseases at UIHC. Claimant complained of frequent MRSA infections. Claimant indicated that following an insect bite in her finger, she believed she developed MRSA. Since that time, claimant believed she was more susceptible to illness, had head lice, skin lesions, boils, and a left knee meniscus tear due to MRSA. Claimant believed MRSA had affected her immune system and was related to non-infectious illness that she had. Cultures were taken from claimant. Claimant was found to be negative for MRSA. Claimant was notified her cultures were negative for MRSA. (Jt. Ex. 5)

In an April 2, 2018 report, Sunil Bansal, M.D. gave his opinions of claimant's condition following an IME. Claimant told Dr. Bansal she developed a lump under her armpit following an insect bite at school. Claimant told Dr. Bansal the lump under her armpit eventually got to be the size of a baseball before she went to the emergency room. (Cl. Ex. 2, pp. 1-6)

Dr. Bansal assessed claimant as having MRSA. He opined claimant had a 10 percent permanent impairment to the right upper extremity as a result of the infection. (Cl. Ex. 2, p. 8)

In a November 5, 2018 note Dr. Wegner-Keller indicated he had treated claimant frequently since 2016. Dr. Wegner-Keller noted claimant had become infected with MRSA following an insect bite. He indicated claimant had done poorly since being

released from her job. He assessed claimant as not having any active MRSA infection. He diagnosed claimant as being a MRSA carrier. He also assessed claimant as having PTSD and severe anxiety and depression. Claimant complained of pain every day aggravated with activity. Dr. Wegner-Keller opined claimant's disabling condition was mental and emotional. He opined claimant was totally disabled. (Cl. Ex. 1)

In a September 14, 2018 report Jeffrey Sartin, M.D. gave his opinion of claimant's condition following a records review. Dr. Sartin specializes in infectious diseases. Claimant had tested positive for MRSA in June of 2017. Claimant had been found negative for MRSA in August of 2017. Dr. Sartin noted, based on his experience, half of all skin and soft tissue infections (SSTI) do not have a specific injury. Dr. Sartin was unable to find any evidence the insect bite caused claimant's infection. He noted MRSA should not result in long-term disability. (Jt. Ex. 6)

Claimant testified she still believes she has MRSA, despite testing from the UIHC indicating she is negative for the infection. Claimant testified she believes she has a kidney infection due to MRSA. She said MRSA affects her muscles and joints. She believes she has short-term memory problems due to MRSA. Claimant testified she believes the MRSA caused a meniscus tear in her knee. Claimant testified she routinely gets boils on her ears and neck, and attributes this problem to her MRSA infection.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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).

Dr. Bansal opined claimant's insect bite to her right finger led to cellulitis, which ultimately caused claimant's infection with MRSA. (Cl. Ex. 2, pp. 1-8) Dr. Bansal evaluated claimant once for an IME. There is no indication in the record Dr. Bansal specializes in infectious diseases.

Dr. Bansal's opinion regarding causation is problematic for several reasons. First, Dr. Bansal did not test claimant for MRSA. Second, the record suggests Dr. Bansal did not have access to Dr. Diekema's records indicating claimant tested negative for MRSA. (Jt. Ex. 5) Finally, it also does not appear Dr. Bansal had access to records suggesting claimant may have caused the MRSA infection herself when she attempted to aspirate the sore under her armpit. (Jt. Ex. 2, pp. 9, 12) Because of these discrepancies, and because it appears Dr. Bansal bases his opinion on causation on an incomplete record, his opinions regarding causation are found not convincing.

Dr. Diekema evaluated claimant on one occasion. Dr. Diekema specializes in infectious diseases. Testing he conducted at the UIHC in August of 2017 indicates claimant did not have a MRSA infection. (Jt. Ex. 5)

Dr. Sartin performed a records review. Dr. Sartin specializes in infectious diseases. Dr. Sartin opined he was unable to find a causal link between claimant's insect bite and a MRSA infection. Dr. Sartin noted half of all soft tissue infections do not appear to have a specific injury. He also indicated MRSA should not lead to a permanent disability. (Jt. Ex. 6)

Dr. Diekema found claimant tested negative for MRSA. Dr. Sartin opined he could not find a causal link between claimant's insect bite and a MRSA infection. Treatment records suggest claimant may have infected herself when she tried to aspirate the sore under her arm. Dr. Bansal's opinions regarding causation are found

not convincing. Given this record, claimant has failed to carry her burden of proof her injury arose out of and in the course of employment.

As claimant has failed to carry her burden of proof her injury arose out of and in the course of employment, all other issues, except for reimbursement of the IME, are moot.

The final aspect to be determined is whether claimant is due reimbursement for Dr. Bansal's IME.

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 an April 2, 2018 report, Dr. Bansal, the employee-retained physician, gave his opinions of claimant's permanent impairment. (Cl. Ex. 2, pp. 1-8) In a September 14, 2018 report, Dr. Sartin, the employer-retained physician, gave his opinions of claimant's permanent impairment. (Jt. Ex. 6) Based on the chronology of the IME exams, claimant has failed to carry her burden of proof she is due reimbursement for the exam by Dr. Bansal.

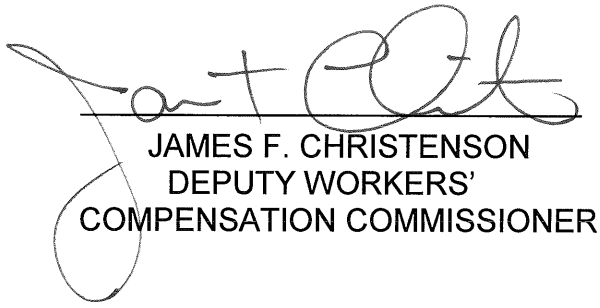
ORDER

Therefore, it is ordered:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

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



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

James P. Hoffman
Attorney at Law
PO Box 1087
Keokuk, IA 52632
jamesphoffman@aol.com

Laura J. Ostrander
Attorney at Law
PO Box 40785
Lansing, MI 48901-7985
Laura.ostrander@accidentfund.com

JFC/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.