

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HARRIETT HALL,

Claimant,

vs.

LENNOX INDUSTRIES, INC.,

Employer,

and

INDEMNITY INS. CO. OF N. AMERICA,

Insurance Carrier,
Defendants.

FILED
AUG 02 2019
WORKERS' COMPENSATION

File No. 5060907

ARBITRATION

DECISION

Headnotes: 1402.30, 1802, 1803, 2500

STATEMENT OF THE CASE

Harriett Hall, claimant, filed a petition in arbitration seeking workers' compensation benefits from Lennox Industries, Inc. (Lennox) and its insurer, Indemnity Insurance Company of North America as a result of an injury she sustained on May 6, 2017 that arose out of and in the course of her employment. This case was heard in Des Moines, Iowa and fully submitted on February 15, 2019. The evidence in this case consists of the testimony of claimant, Randy Miller, Andi Cline, Joint Exhibits 1 - 10, Defendants' Exhibits A - I and Claimant's Exhibits 1 - 6. Claimant was given permission to submit additional evidence due to the late disclosure of medical reports by the defendants. The claimant submitted a report by David Segal, M.D., which was admitted as Exhibit 1, pages 34A, 34B and 34C. Both parties submitted briefs.

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. Defendants orally agreed to pay claimant's cost for an independent medical examination (IME). The parties are now bound by their stipulations.

ISSUES

1. Whether the injury of May 6, 2017 is a cause of temporary disability and, if so, the extent;
2. Whether the alleged injury is a cause of permanent disability and, if so;
3. The extent of claimant's disability.
4. The commencement date for any permanent benefits.
5. Whether the medical expenses in Exhibit 6 are causally related to claimant's work injury.
6. Whether the medical expenses were authorized by defendants.
7. Whether defendants are required to pay the medical expenses in Exhibit 6.
8. Whether defendants are entitled to a gross or net credit of short-term disability benefits that have been paid.
9. Assessment of costs.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Harriet Hall, claimant, was 66 years old at the time of the hearing. Claimant graduated from high school. She has no other formal education. (Transcript page 16)

Prior to claimant's work for Lennox she worked in manufacturing and was a waitress. (Tr. pp. 19 – 21; Exhibit 5, pp. 48, 49) Claimant began her employment with Lennox in 2003. Claimant was employed at Lennox at the time of the hearing. Claimant testified that she has performed many jobs at the Lennox factory.

In May 2017 claimant was operating a press at Lennox. Claimant described her health just prior to her injury as being good except for problems she had due to COPD. (Tr. p. 24)

Claimant testified that she did not have any low back pain in the year prior to her May 2017 injury. (Tr. p. 25) Claimant testified that she had headaches in the year prior to the May 2017 injury and the information claimant provided to her primary care physician was not correct. (Tr. p. 28)

On May 6, 2017 claimant was injured at Lennox. The parties have stipulated that the May 6, 2017 injury arose out of and in the course of her employment.

Claimant slipped on some oil and fell hitting her left arm and also fell on her back and head. (Tr. p. 29) Claimant was taken to the nurse's station at Lennox and reported her injury. Claimant said she reported that she hurt her left arm, right buttock. The nursing intake form assessed claimant with abrasions on the left upper arm, right buttock pain and that claimant denied headaches at that time. (JE. 5, p. 74) Claimant did not agree that she denied that she had headaches. Claimant did not go back out onto the factory floor that night. (Tr. p. 33) On May 8, 2017 claimant returned to the nurse's station at Lennox. The notes of that encounter state claimant told the nurse, "I can hardly walk. I can't stand this," and was complaining of mild headache and pain in the buttock. (Joint Exhibit 5, p. 75; Tr. p. 35) Claimant agreed she was informed on May 8, 2017 that if she went to her own physician Lennox would not pay for her care. (Tr. p. 81)

Claimant was referred to Charles Mooney, M.D. and saw him on May 11, 2017. Claimant reported to Dr. Mooney she had severe headaches and back pain that was constant. (JE. 6, p. 84) Dr. Mooney ordered a CT scan for her head injury. (Tr. p. 38; JE. 6, p. 81) The results of the CT were considered normal and claimant was returned to work. (JE. 6, p. 88) Dr. Mooney noted claimant had a history of neck, back pain and migraines. (JE. 6, p. 80) On May 18, 2017 Dr. Mooney's assessment was, "Closed head trauma with normal head CT, mild to moderate headache symptoms without vestibular dysfunction." (JE. 6, p. 89) Dr. Mooney noted claimant had some increase in back pain which was related to claimant's sedentary duty at that time. (JE. 6, p. 89) On June 15, 2017 claimant was reporting symptoms of worsening headaches. Dr. Mooney's assessment was, "Symptoms of closed head trauma. Certainly I cannot explain her ongoing headache." (JE. 6, p. 91) Dr. Mooney ordered another CT. On July 13, 2017 Dr. Mooney noted the CT was essentially normal. The claimant was complaining of pain in her right hip. Dr. Mooney's assessment was,

1. Findings of right hip pain, most consistent with degenerative arthropathy.
2. Ongoing headaches after closed head trauma which appear to be fairly mild but persistent.

(JE. 6, p. 94)

Dr. Mooney placed claimant at maximum medical improvement (MMI) for her head injury on May 3, 2018. (JE. 6, p. 102)

Claimant was seen for a neurology consult on October 20, 2017 by Edward Clemmons, D.O. Dr. Clemmons' assessment and plan was:

1. Acute post-traumatic headache, not intractable
2. Traumatic injury of head, subsequent encounter
3. Subjective memory complaints

4. Post-concussion headache

Harriett Hall is a 65-year-old female who I was asked to evaluate for headaches. At this point, her headaches are most likely consistent with postconcussive type syndrome.

(JE. 6, pp. 99, 100)

Claimant testified that Dr. Mooney did not provide any treatment for her low back, right-sided buttock, or right lower extremity. (Tr. p. 39) Claimant returned to full duty at Lennox on May 18, 2017 and resumed her prior position. (Tr. pp. 77, 78) Claimant would work her full shift and some overtime. (Tr. p. 85)

Claimant testified that she was frustrated by the lack of care for her lower back and she went to her primary care physician, Teresa Brown, D.O. for pain in her low back radiating into her right leg. (Tr. p. 40) Claimant was referred to Trevor Schmitz, M.D. at Iowa Ortho and was seen on August 28, 2017. (JE. 7, p. 104) Dr. Schmitz wrote,

Onset: on 05/06/2017. Severity level is 7. It occurs persistently.
Location of pain is lower back. Pain is radiated to the right foot and right thigh. The patient describes the pain as numbness and sharp. Context: hard fall. Symptoms are aggravated by bending and walking. Symptoms are relieved by over the counter medication: naproxen sodium

(JE 7, p. 104) On September 26, 2017 Dr. Schmitz noted that if conservative measures do not work, surgery for her leg symptoms could be considered. (JE. 7, p. 111) Dr. Schmitz recommended back surgery, which was originally scheduled for January 2018 and had to be rescheduled due to other health issues and performed on July 16, 2018. (Tr. pp. 44, 45; JE. 7, p. 114) Dr. Schmitz performed a bilateral L4 – 5 and L5 – S1 decompression and took out some disk to relieve the right leg symptoms. (Ex. E, p. 9)

Dr. Schmitz acknowledged in his deposition that Dr. Mooney's records did not express, either before or after his examination of claimant, that claimant presented with right radicular symptoms. (Ex. E, p. 6) Dr. Schmitz agreed that for the six years prior to claimant's injury on May 6, 2017 she did not have low back symptoms. (Ex. E, pp. 11, 12) Dr. Schmitz stated that pain in the buttock area can be a sign of radiculopathy. (Ex. E, p. 14)

Claimant continued to perform her work at Lennox after her injury and prior to her surgery. (Ex. F, p. 38) Claimant said that she had help pushing the cart at work and pulling coils. (Ex. F, p. 40)

Claimant said her co-workers would help her out with heavy tasks. (Tr. p. 45) Claimant testified the surgery helped her back and right leg condition. (Tr. p. 54; Ex. F, p. 66)

Claimant has not worked since her back surgery. Claimant was not receiving any workers' compensation for the time she has been off work due to her back surgery. (Tr. p. 46) Lennox has not paid for her medical care other than Dr. Mooney's care. (Tr. p. 54) Claimant testified that Dr. Schmitz released claimant to return to work for her back injury on December 3, 2018. Claimant was released without restrictions. (Tr. p. 88; Ex. F, p. 62) Claimant did not return to work due to a hand surgery, which is not part of this case. (Tr. p. 46) Claimant disagreed with Dr. Schmitz that the symptoms of her right side started three months after her injury. Claimant said they started the day after the injury. (Tr. pp. 46, 47)

Claimant testified that since her fall on May 6, 2017 she always has headaches; some are worse than others. (Tr. p. 49) Claimant said her headaches are more frequent and more debilitating after the May 2017 fall. (Tr. p. 50)

Claimant admitted in cross examination that she told Dr. Clemmons she did not have a history of headaches. (Tr. p. 61) Additional questioning about claimant's prior history of headaches showed,

Q. Is it possible that you told Doctor Clemmons, Doctor Brown, Doctor Fields, and Doctor Segal that you didn't have a history of headaches before May 6th, 2017?

A. It's possible. I really don't remember.

(Tr. pp. 64-65)

Claimant did not remember an MRI of her brain in September 2015 for right temporoparietal headaches. (Tr. p. 67; JE. 1, p. 9) Claimant testified in her deposition that the migraines she had before May 2017 were cluster headache throughout her head. She said the migraines she now has are on the right side of her head. (Ex. F, p. 77)

Claimant agreed that the restriction recommended by Dr. Segal of a 10-pound lifting restriction was appropriate. (Tr. p. 54) Claimant did not believe she could perform her job at Lennox with the restriction recommended by Dr. Segal. (Tr. p. 56)

Randy Miller, a supervisor at Lennox, testified. Mr. Miller supervises claimant at Lennox. He was claimant's supervisor for about two years and was claimant's supervisor up until about a week before the arbitration hearing. (Tr. p. 97) Mr. Miller testified that claimant was able to perform her job and was an above average worker. (Tr. p. 101)

Claimant's medical records show that she has had headaches for many years before the May 6, 2017 injury. In May 1994, August 1999, and March 2000, claimant complained of headaches at the McFarland Clinic. (JE. 1, pp. 1 – 3)

Claimant was seen in the Marshalltown Medical & Surgical Center on May 1, 2001 for chest pain and claimant described left-sided headaches and was diagnosed with headaches as well of 15 other conditions. (JE. 1, pp. 13, 15) In March 2006 an Iowa Clinic note reported that claimant had right-sided vascular headaches. (JE. 3, p. 17)

On March 6, 2006 claimant was seen for migraines. (JE. 4, p. 32) On April 25, 2011 claimant was complaining of back pain in the middle of her back. (JE. 1, p. 6)

Claimant was seen in October 2014 at UPH Family Medicine for headaches. (JE. 4, p. 25) Claimant had an MRI of her brain in September 2015 for right temporoparietal headaches. (JE. 1, p. 9)

On June 19, 2017 claimant was seen by Dr. Brown at UPH Family Medicine for complaints of cough. Claimant reported to Dr. Brown she had fallen at work in early May and that she was suffering from daily headaches. (JE. 4, p. 42) On June 28, 2017 claimant reported to Dr. Brown that since her fall at work in May 2017 claimant was having daily or almost daily right-sided headaches and low back pain. Dr. Brown wrote, "Absolutely denies any history of either problem prior to injury." (JE. 4, p. 45) Dr. Brown also wrote, "As far as back pain goes, states the pain is in her low back and does radiate into her right leg at times." (JE. 4, p. 45) Dr. Brown assessed claimant with headache, present insomnia and post-concussion syndrome. (JE. 4, p. 45)

On November 16, 2017 Dr. Mooney completed a "check box" form. Dr. Mooney agreed claimant complained of right hip pain to him on July 10, 2017, and at that time he diagnosed claimant with degenerative arthroplasty of the right hip. (Ex. B, p. 19) Dr. Mooney attributed this condition as personal and not related to a work injury. Dr. Mooney agreed that claimant's left arm, buttocks and back have resolved without permanent impairment. (Ex. B, p. 20)

On January 11, 2018 Dr. Schmitz wrote to claimant's attorney concerning the causation of claimant's low back issues. Dr. Schmitz stated that given the fact that claimant did not have any significant issues just prior to her May 6, 2017 fall, he found there was a causal relationship to claimant's low back symptoms and the fall at work. (Ex. 2, p. 44)

On May 3, 2018 Dr. Mooney opined claimant had reached maximum medical improvement. Dr. Mooney did not believe claimant's current headaches were related to her May 6, 2017 injury and released her to full duty. (JE. 6, pp. 102, 103)

On June 26, 2018, Dr. Mooney responded from a request of the defendants to answer questions about claimant's conditions. Dr. Mooney stated that claimant's injury of May 6, 2017 would not be considered a material aggravator of claimant's chronic degenerative conditions. Dr. Mooney did not believe the care provided by Dr. Schmitz was causally related to a work injury. (Ex. A, p. 23) Dr. Mooney stated claimant did not

have a permanent impairment in her back due to her headaches as a result of her work fall. (Ex. B, p. 23)

On July 19, 2018 Dr. Schmitz wrote to defendants' attorney concerning causation of claimant's low back symptoms. Dr. Schmitz stated that when he wrote the January 11, 2018 letter he was under the impression that claimant had radicular leg problems immediately after the fall. Dr. Schmitz stated that given the fact that claimant's radicular symptoms occurred approximately three months after her fall, Dr. Schmitz could not say within a reasonable degree of medical certainty that the fall was causally related to her back symptoms. (Ex. C, p. 26)

On July 16, 2018 claimant had her lower back surgery. The postoperative diagnosis was,

1. Bilateral subarticular stenosis, L4-5 and L5-S1 with left-sided foraminal stenosis, L5-S1.
2. Herniated nucleus pulposus, bilateral paracentral L4-5 as well as right L5-S1.
3. Severe back bilateral leg pain and weakness in a classic radicular leg fashion.

(JE. 7, p. 119) On September 26, 2018 claimant reported to Dr. Schmitz her leg pain was better and she was having increasing back pain since the start of physical therapy. (JE. 7, p. 126)

On October 26, 2018 Jonathan Fields, M.D. issued an independent medical examination (IME) report. (Ex. A, pp. 1 – 16) Dr. Fields wrote,

When I asked her about migraine headaches, Ms. Hall adamantly denied having a migraine in over 30 years. When prompted about recent hospitalizations for headaches dating back to the year 2000/2001, she says she has no recollection of such events. She does state that she fell at home and hit her head at one point, but she does not remember when. When I asked her about being evaluated by neurologists and receiving an MR of her brain, she said she does not remember anything like this and states, 'wow.'

(Ex. A, p. 11) Dr. Fields' diagnosis of claimant's conditions was,

In my medical opinion, Ms. Hall has a chronic migraine condition, which has been documented in the medical records since before 1994. She also has a chronic degenerative condition of her low back involving severe stenosis and calcifications of disks. The medical records document a history of back pain going back to 1978. She also had a left upper

extremity superficial laceration and contusion which has completely resolved.

(Ex. A, p. 14) Dr. Fields said that claimant's fall on May 6, 2017 may have caused a temporary exacerbation of her back condition that he expected would last up to six weeks and that the claimant had no permanent injury due to her fall. Dr. Fields also opined that claimant's migraines were not related to her fall. (Ex. A, p. 14) Dr. Fields agreed with Dr. Mooney that claimant was at MMI for her head injury on May 3, 2018 and at MMI for her back on June 16, 2017. (Ex. A, p. 15)

On November 2, 2018 Dr. Fields wrote a letter to defendants. Dr. Fields stated that in his IME he had written that the claimant first reported radiating pain three months after her injury. He was referred to Dr. Brown's notes that show claimant reported radiating right back pain about seven and one half weeks after her fall. Dr. Fields stated that he did not believe claimant's fall on May 6, 2017 was causally related to her radiating back pain. (Ex. A, pp. 17, 18)

Claimant was in the hospital on October 20, 2018 due to blurred vision in both eyes with a one-week history of progressively worsening headaches. (JE. 9, pp. 134, 137) On October 20, 2018 David Friedgood, D.O. performed a neurological consult. Dr. Friedgood noted claimant's MRI was normal. (JE. 9, p. 134) Dr. Friedgood's impression was,

1. Chronic posttraumatic right hemicranial pain. The pattern of her headaches suggests a right occipital neuralgia.
2. Transient visual loss in both eyes. The exact etiology of her visual loss is unclear. Her vision is now back to normal. Perhaps the headaches contributed to the visual problem.
3. Normal neurologic examination. She recently had a normal MRI brain scan.

(JE. 9, p. 135) Dr. Friedgood recommended a right occipital nerve block and a referral to an ophthalmologist. (JE. 9, p. 135)

On August 10, 2018, Dr. Clemmons responded in "check box" manner to a letter from defendants. Dr. Clemmons agreed that when he saw claimant in October 2017 she told him she had no prior history of headache before May 2017. Dr. Clemmons agreed that he would have expected claimant's headaches to resolve within 6 – 12 months after her fall and that he was unable to state with a reasonable degree of medical certainty that claimant's headaches are related to her fall at work. (Ex. D, p. 31)

On October 30, 2018 David Segal, M.D. performed an IME. (Ex. 1, pp. 1 – 30) Claimant told Dr. Segal that prior to her fall on May 6, 2017 she had not had a

headache in 30 years. (Ex. 1, p. 15) Dr. Segal's overall summary of claimant's conditions was:

Ms. Hall had a work-related injury on May 6, 2017. She slipped on oil at her place of work, falling on her back and her head. This incident was well documented and reported. Due to that injury, she sustained a concussion with post-concussive symptomatology as well as a lumbar injury with radiculopathy, for which she needed to undergo surgery. The lumbar injuries are the primary injuries that are causing impairment and disability at this time.

(Ex. 1, p. 17) Dr. Segal commented on a number of the medical reports by other providers. Dr. Segal said it was important to note that Dr. Mooney did not report severe lumbar radicular symptomatology that Dr. Schmitz had documented. (Ex. 1, p. 18) Dr. Segal commented that Dr. Schmitz's reports rely upon the reports of Dr. Mooney, which he thought were incomplete and that claimant's symptoms would have occurred some significant time before she was referred to Dr. Schmitz. (Ex. 1, pp. 19, 20) Dr. Segal criticized Dr. Mooney's evaluation of claimant's condition and Dr. Mooney's review of the medical records as being inaccurate. (Ex. 1, pp. 20 – 24)

Dr. Segal's diagnosis of claimant's conditions was,

Low back diagnoses:

- 1) Right much greater than left L5 radiculopathies.
- 2) Permanent aggravation of preexisting degenerative spine disease.
- 3) Unstable anterolisthesis L5-S1.
- 4) Lumbar spinal stenosis.
- 5) Lumbar disc bulging and herniation.
- 6) Bilateral multilevel facet arthropathy.
- 7) Bilateral sacroillitis.
- 8) Status post surgery with persistent symptomatology, potentially post-laminectomy syndrome.

Post-Concussive Syndrome

Closed-head injury diagnoses:

- 1) Post-concussive syndrome
- 2) Post-concussive headaches

- 3) Occipital neuralgia
- 4) Photophobia and blurry vision with headaches
- 5) Dizziness and loss of balance
- 6) Short-term memory problems
- 7) Word-finding difficulty
- 8) Cognitive problems (difficulty with calculations/concentration)
- 9) Personality changes

(Ex. 1, p. 25)

Dr. Segal stated that claimant's need for her back surgery was causally related to her work injury of May 6, 2017. Dr. Segal found claimant at MMI as of January 16, 2018 and May 6, 2018 for the post-concussive syndrome. (Ex. 1, p. 27) Dr. Segal provided a whole body rating of 28 percent for the lumbar injury and 7 percent for the post-concussive syndrome. (Ex. 1, pp. 27, 28) Dr. Segal provided the following restrictions,

Restrictions for Lumbar Spine condition:

- Sitting: 60 minutes consecutive, limited to 4 hours in an 8-hour workday
- Standing, static: 10-15 minutes consecutive, limited to 4 hours in an 8-hour workday
- Walking: 30 minutes consecutive, limited to 4 hours in an 8-hour workday
- Driving: 60 minutes, then get out and stand/walk 5-15 minutes, then can drive again
- Bending, repetitive: Never
- Lifting 0-5 pounds: Occasionally
- Lifting >5 pounds: Never
- Front carry: 0-5 pounds: Occasionally
- Front carry >5 pounds: Never
- Pushing/Pulling up to 10 pounds of force: Occasionally

- Pushing/Pulling >10 pounds of force: Never
- Squatting/Stooping/Crawling/Kneeling: Rarely
- Ladders: Never

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Restriction for Post-concussive Syndrome:

- Operating computer: To tolerance – unable to operate when having a migraine
- Multiple-step tasks: To tolerance – unable to do when having a migraine

(Ex. 1, p. 28)

On November 19, 2018 Dr. Clemmons evaluated claimant for her headaches. Dr. Clemmons wrote:

Harriett Hall is a 66-year-old female who I have previously evaluated for headaches. At that time, her headaches were likely post-concussive, post-traumatic in nature and Dr. Friedgood, who saw her recently during her admission to Mercy, reiterated that he felt that a chronic posttraumatic piece of this exists, although there was concern for possible right occipital neuralgia, and she has not been established with a pain clinic for possible occipital nerve block, which I do not perform in my clinic.

(JE. 10, p. 149)

Claimant was seen by Maemie Miller, PA-C on November 2, 2018 as a follow up to her hospital visit of October 18, 2018. (JE. 4, p. 70) Miller's assessment was "Acute nonintractable headache and Changes in vision (Right eye)." (JE. 4, p. 72)

Dr. Schmitz was deposed on November 14, 2018. (Ex. E) Dr. Schmitz testified that claimant reported buttock pain on May, 6, 2017; however he said,

- A. A lot of things can cause buttock pain. Sacroiliitis can cause buttock pain. Muscles can cause buttock pain. Piriformis syndrome can cause buttock pain.

There's a multitude of symptoms that can cause buttock pain, and I would actually put nerve root pinching as relatively low on my initial

differential diagnosis for an isolated buttock pain.

(Ex. E, depo. p. 16) Dr. Schmitz agreed that if claimant had radiating pain sooner than three months, as he had believed, that fact would make it more likely that it was related to her fall at work. (Ex. E, depo. p. 19) Based upon a hypothetical question by claimant's counsel about a 64-year old female who fell on concrete who immediately upon falling has buttock pain and within a few weeks develops radiating pain, Dr. Schmitz agreed that the fall would be a substantial and contributing factor in bringing out the low back symptoms and radicular symptoms. (Ex. E, depo. pp. 20, 21) Dr. Schmitz acknowledged that Dr. Mooney did not put in any of his records about claimant's radiating back pain even after Dr. Schmitz had assessed claimant with this condition. (Ex., E, depo. p. 23) Dr. Schmitz was asked if he would change his opinion that claimant's back and radiating leg pain was not causally related to her May 2017 fall if it was reported after seven and one half weeks rather than three months. Dr. Schmitz did not change his opinion and was not able to opine within a reasonable degree of medical certainty that the May 2017 fall was causally related to her back and leg symptoms. (Ex. E, depo. p. 29)

On November 16, 2018 Dr. Mooney wrote defendants' attorney after reviewing Dr. Segal's IME. (Ex. B, pp. 24, 25) Dr. Mooney noted that he could not explain claimant's presentation to Dr. Schmitz and that claimant did not make complaints of back pain to him. Dr. Mooney wrote that he provided appropriate treatment and allowed claimant to provide information about any symptom. He did not change any of his prior opinions. (Ex. B, p. 25)

On December 6, 2018 Dr. Schmitz wrote that the claimant's surgery was beneficial as to claimant's radiating leg pain. He provided a ten percent impairment rating and did not impose any restriction due to her back. (Ex. C, p. 28) On December 17, 2018 Dr. Segal wrote a letter to claimant's attorney in response to Dr. Mooney's November 16, 2018 letter. (Ex. 1, pp. 34A - 34C) Dr. Segal stated that he did not question Dr. Mooney's professional integrity, but did believe there were inconsistencies in the record that lead him to differing conclusions than Dr. Mooney and Dr. Schmitz. (Ex. 1, p. 34B) Dr. Segal wrote,

Ms. Hall, in her history that she gave to me, told me that she had the back pain with radiation down her leg from the time of the injury onward, which is consistent with the 5/06/17 work injury causing her injury, diagnosis, need for treatment, and ongoing impairment. This conclusion is supported by and consistent with the medical records (other than Dr. Mooney's).

(Ex. 1, p. 34C)

Claimant submitted medical billing in the amount of \$39,342.63 that included payments made by the workers' compensation carrier private insurance, Medicare,

Medicare adjustments and out-of-pocket expenses. (Ex. 6, p. 53) Claimant has also requested costs in the amount of \$1,023.57. (Attachment to Hearing Report)

Claimant's testimony and statements to medical provider about when she experienced radicular symptoms is not consistent. Claimant's statement to some medical providers about not having headaches or migraines before her fall in May 2017 is clearly wrong. I do not find the claimant to be credible concerning her medical history.

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); Dunlavy 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).

Claimant is a poor historian of her medical conditions. Her denial of a history of migraines to medical providers is the primary example. Claimant said that she had radiating back pain within days of the injury, but a number of medical records do not reflect this as a fact. While I do not believe claimant was deliberately prevaricating, claimant's poor recall does call into question claimant's testimony and medical reports that rely upon her statements concerning the timeframe of her reporting some of her symptoms.

Dr. Segal stated in his December 17, 2018 report he relied upon the history that claimant provided. It is clear from the IME he performed he also thoroughly reviewed the medical records of the claimant. I do not find Dr. Segal's conclusions regarding causation convincing due to his reliance of claimant's history and the weight of the opinions of Dr. Schmitz and Dr. Clemmons.

I find the opinions of Dr. Schmitz and Dr. Clemmons to be the most convincing. Dr. Schmitz maintained that even considering that claimant reported her radicular symptoms to Dr. Brown about seven and one half weeks from her fall, he could not state within a reasonable degree of medical probability that the fall caused her low back and radicular symptoms. Dr. Schmitz treated claimant and performed surgery. He was more familiar with claimant condition than Dr. Segal. Similarly, I find Dr. Clemmons opinion convincing concerning claimant's head injury and migraines. I do not give Dr. Mooney's opinions any significant weight primarily due to the fact he did not record or follow up on claimant's radicular symptoms after Dr. Schmitz reported them.


The claimant has failed to meet her burden of proof that she had anything other than a temporary aggravation to her back and head after her fall on May 6, 2017. Claimant has not proven entitlement to any additional temporary or permanent benefits.

ORDER

The claimant takes nothing further.

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

Signed and filed this 2nd day of August, 2019.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.