

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ISABEL YANEZ,
Claimant,

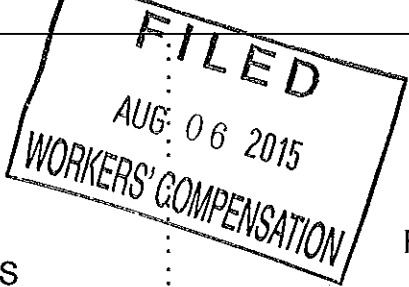
vs.

HARRAH'S COUNCIL BLUFFS
CASINO & HOTEL,
Employer,

and

CCMSI

Insurance Carrier,
Defendants.



File No. 5046976

ARBITRATION
DECISION

Head Note Nos.: 1402.20; 1402.40;
1801; 2501; 2907

STATEMENT OF THE CASE

Isabel Yanez, claimant, filed a petition in arbitration seeking worker's compensation benefits from Harrah's Council Bluffs Casino & Hotel (hereinafter referred to as "Harrah's"), as her employer, and CCMSI, as the insurance carrier. This case proceeded to an arbitration hearing on May 13, 2015 in Council Bluffs, Iowa. Claimant testified on her own behalf through an interpreter, Janeth Murillo. Ms. Yanez was the only witness called to testify live at the hearing.

Claimant offered exhibits 1 through 3. Defendants offered exhibits A through T. All exhibits were received into the evidentiary record without objection.

The parties also submitted a hearing report, which contains stipulations. The parties' stipulations are accepted and relied upon in entering this decision. No findings or conclusions will be entered with respect to the parties' stipulations and the parties are bound by those agreements.

Counsel requested the opportunity to file post-hearing briefs. That request was granted. This case was considered fully submitted to the undersigned on June 15, 2015, upon the filing of the parties' post-hearing briefs.

The parties have submitted duplicate exhibits. For example, both parties have introduced copies of the depositions of James Kalar, M.D., and Brian Conroy, M.D. Both parties have offered duplicative medical records as exhibits. All exhibits were received by the undersigned to prevent any confusion or erroneous withdrawal of exhibits at the time of hearing. However, for purposes of writing this decision I will not

attempt to reference exhibits in each of the locations where they may be located within this evidentiary record. Rather, I will simply cite to exhibits in the location within the record where I am most efficiently able to locate each exhibit. No implication, findings, or meaning is conveyed by referencing any exhibit at any specific location or by not citing to the same record contained within another exhibit number or letter.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a left knee injury as a result of the stipulated December 9, 2011 work injury.
2. Whether the alleged injuries caused a temporary disability during a period of recovery, including a claim for a running healing period.
3. Whether the alleged injuries caused a permanent disability.
4. Whether claimant is entitled to reimbursement or payment of past medical expenses.
5. Whether claimant is entitled to an award of future medical, including an alternate medical care request for surgery to be provided through Brian Conroy, M.D.
6. Whether claimant's costs should be assessed against defendants.

FINDINGS OF FACT

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

Isabel Yanez is an immigrant from El Salvador. She came to the United States approximately 25 years ago and moved to the Council Bluffs, Iowa area approximately 15 years ago. She speaks Spanish but does not speak fluent English. She worked as a housekeeper for Harrah's for approximately 14 years.

On December 8, 2011, Ms. Yanez suffered a work injury when she tripped on some sheets. As a result of that accident, she fell onto her right hip and buttock. She completed her shift and returned to work the next morning. However, she was not able to work on December 9, 2011 and the employer called an ambulance to transport claimant to the hospital.

Both the ambulance records and the emergency room records from December 9, 2011 document right hip complaints expressed by claimant. Defendants stipulate that claimant sustained a right gluteal and/or sacroiliac injury on December 8, 2011. The primary fighting issue in this case is whether claimant also sustained a left knee injury

as a result of the December 8, 2011 injury, either as a direct result or as a sequela of the right gluteal and/or sacroiliac injury.

The initial medical records, including the ambulance record as well as the emergency room physician's record, contain no complaints of left knee symptoms. In fact, the emergency room physician specifically noted a normal knee exam. (Exhibit 1, page 41) After discharge from the emergency room, the employer directed Ms. Yanez to James G. Kalar, M.D., for further medical care. Dr. Kalar evaluated claimant initially on December 12, 2011.

Dr. Kalar's initial medical notes document an impression of a right gluteal contusion as a result of the December 8, 2011 fall at Harrah's. Dr. Kalar's notes make no mention of left knee symptoms or complaints by claimant. (Ex. E, p. 1) Dr. Kalar removed claimant from work due to her injury and symptoms.

Dr. Kalar evaluated claimant again on December 19, 2011. As a result of that evaluation, Dr. Kalar noted that claimant's right gluteal and sacroiliac contusion was slightly improved. He permitted claimant to return to light duty work status and claimant did return to work for Harrah's after this appointment. However, Dr. Kalar's December 19, 2011 medical note makes no reference to any complaints of left knee pain or symptoms. (Ex. E, p. 5; Claimant's testimony)

Ms. Yanez again presented to Dr. Kalar on December 27, 2011. As a result of this appointment, Dr. Kalar noted that claimant was no longer using a walker or a cane to ambulate. He did note that Ms. Yanez continued to have an antalgic gait, however. Dr. Kalar continued claimant's light duty work restrictions. Dr. Kalar recorded no symptoms or complaints related to claimant's left knee in his December 27, 2011 office note. (Ex. E, p. 7)

Claimant presented one more time to Dr. Kalar's office and was evaluated by a nurse practitioner on January 3, 2012. As of January 3, 2012, claimant reported no limitations in her work or range of motion. She no longer had any gait difficulties. The nurse case manager released claimant to return to work full duty and noted, "Patient believes that she is able to do this without a problem." (Ex. E, p. 9)

The January 3, 2012 office note makes no reference to any symptoms or complaints related to claimant's left knee. Dr. Kalar's nurse practitioner released Ms. Yanez from further care as of January 3, 2012, but told claimant to call their office if she had any further problems. (Ex. E, p. 9)

Dr. Kalar testified via deposition in this case. He testified that he would have recorded any complaints he received from Ms. Yanez relative to the left knee. (Ex. 1, pp. 8, 10-11) He confirmed that none of his medical records document left knee complaints or treatment. (Ex. 1, p. 16) Dr. Kalar also reviewed the physical therapy notes and identified no mention of left knee symptoms by claimant. (Ex. 1, pp. 15-16)

Dr. Kalar opined that claimant's right gluteal and/or sacroiliac injury was completely resolved by January 3, 2012. (Ex. 1, p. 19) This represents the last time claimant was evaluated in Dr. Kalar's office and when she was released from care and released to return to full duty work. Ms. Yanez has not sought any additional treatment for her right gluteal and/or sacroiliac contusion. She concedes that these symptoms have resolved completely. (Claimant's testimony; Ex. R, pp. 24-25) I find that claimant's right gluteal and/or sacroiliac injury and symptoms resolved by January 3, 2012 and caused no permanent injury to claimant.

With respect to the left knee condition, Dr. Kalar opines that he found no evidence or findings to support claimant's contention that she sustained a left knee injury as a result of the December 8, 2011 fall at work. (Ex. 1, pp. 15-16) Dr. Kalar also explained that he would expect a patient to report significant pain, joint effusion, and difficulty walking if the patient had a tibial plateau fracture and a radial meniscus tear similar to the conditions ultimately diagnosed for claimant. (Ex. 1, p. 16) None of those symptoms were present prior to January 3, 2012.

At trial, claimant asserted that her left knee pain began after she was released by Dr. Kalar's office and attempted to return to full-duty work. (Claimant's testimony) In her deposition, claimant testified that she "felt that my left knee cracked" when she fell on December 8, 2011. (Ex. R, p. 11) She testified at trial that she always attributed her left knee symptoms to her fall on December 8, 2011. (Claimant's testimony) Ms. Yanez also testified in her deposition that she told her physical therapist as well as Dr. Kalar and Joshua Medical Clinic about her left knee symptoms. (Ex. R, p. 16) She also denied telling any treating medical provider that her left knee was not related to her December 8, 2011 fall, despite a specific notation to that effect by a physician's assistant at Joshua Medical Center on June 15, 2012. (Ex. R, p. 19; Ex. G, p. 1)

On February 18, 2012, approximately six weeks after being released by Dr. Kalar's office, Ms. Yanez sought an annual physical at Joshua Medical Clinic and reported she had left knee pain. (Ex. F, p. 1) She was diagnosed with osteoarthritis of the left knee and given an injection into the knee joint. (Ex. F, p. 5) Ms. Yanez submitted to a left knee MRI on May 8, 2012, which revealed a medial tibial plateau fracture as well as a radial medial meniscus tear. (Ex. F, p. 8)

Claimant's attorney referred her to an orthopaedic surgeon, Brian Conroy, M.D., for evaluation of her left knee. (Ex. 2, p. 7) Dr. Conroy evaluated Ms. Yanez one time on March 27, 2014. (Ex. 2, pp. 4-5) He diagnosed Ms. Yanez with a tibial plateau fracture and a radial medial meniscus tear and recommended claimant submit to a left total knee replacement due to her ongoing symptoms. Ms. Yanez requests an order compelling defendants to provide further care through Dr. Conroy.

Dr. Conroy testified that Ms. Yanez told him that she had bumped her left knee into her right knee when she fell at work on December 8, 2011. (Ex. 2, p. 10) No other medical record indicates such a mechanism of injury. I do not find this to be an

accurate recitation of the history of injury on December 8, 2011. I find this to be a significant flaw in Dr. Conroy's history and understanding of the mechanism of injury.

Dr. Conroy concurred with Dr. Kalar that a patient with a tibial plateau fracture and a meniscal tear will typically present with tenderness, swelling and difficulty ambulating. (Ex. 2, p. 34) However, Dr. Conroy indicates that he has no information available to document claimant's gait as of the last treatment at Dr. Kalar's office. (Ex. 2, p. 18) Yet, the last medical record from Dr. Kalar's office specifically notes that claimant has "No problems with her gait." (Ex. E, p. 9) Dr. Conroy's failure to recognize that claimant's gait difficulties or abnormality had resolved by January 3, 2012 represents a significant error in Dr. Conroy's understanding of claimant's condition.

Dr. Conroy opines that claimant's left knee condition is causally related to the December 8, 2011 work injury because that injury caused an altered gait and overloading of weight and pressure onto claimant's left leg and left knee. Dr. Conroy opines that a left total knee replacement is warranted given claimant's current symptoms. (Ex. 2, p. 60) Again, I find that claimant's gait difficulties or abnormality as a result of the December 8, 2011 right gluteal and/or sacroiliac injury resolved by January 3, 2012.

Claimant's left knee symptoms did not develop until weeks after claimant was discharged by Dr. Kalar's office with no gait abnormalities. Claimant did not report these symptoms to any medical provider until approximately six weeks after her discharge by Dr. Kalar's office. It seems difficult to believe that claimant's altered gait before January 3, 2012 caused her to develop left knee problems weeks after being released without any left knee symptoms. I find Dr. Conroy's opinions to be based upon an erroneous understanding of the mechanism of injury and an erroneous understanding of whether claimant's altered gait resolved (or did not resolve) by January 3, 2012. Therefore, I do not find Dr. Conroy's opinion and explanation to be convincing.

Rather, I find that claimant was released January 3, 2012 from Dr. Kalar's office. She had no left knee symptoms at that time and her gait difficulties had resolved. I find the opinions expressed by Dr. Kalar, as well as the contemporaneous medical records discussed in this decision and documenting treatment on and before January 3, 2012, to be most credible. Claimant has not proven that the subsequent development of left knee pain is related to the December 8, 2011 work injury.

Claimant was off work as a result of her right gluteal/sacroiliac contusion from December 10, 2011 through December 19, 2011 and seeks temporary total disability benefits for this period of time. Defendants paid claimant temporary disability benefits from December 13, 2011 through December 20, 2011. (Hearing Report)

Ms. Yanez seeks additional temporary disability benefits from May 8, 2012 through the present and a running healing period into the future. Claimant's request for healing period benefits from May 8, 2012 to the present is based upon her left knee

symptoms and condition. Claimant has not proven that her left knee condition is causally related to the December 8, 2011 work injury. Therefore, claimant has not proven that her time off work from May 8, 2012 to present is causally related to the December 8, 2011 work injury.

Similarly, Ms. Yanez has not proven she sustained any permanent disability related to the right gluteal/sacroiliac contusion. She has not proven that her claimed medical expenses for treatment of the left knee condition are causally related to the December 8, 2011 work injury. Nor has claimant proven that her need for left total knee replacement is causally related to the December 8, 2011 work injury.

CONCLUSIONS OF LAW AND REASONING

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).

Having found that Ms. Yanez failed to carry her burden of proof to establish that her left knee condition is causally related to or a sequela of her December 8, 2011 work injury, I conclude that Ms. Yanez is not entitled to either weekly benefits or medical benefits relative to the left knee injury claim.

Ms. Yanez was clearly off work for the results of the injury to her right gluteal and/or sacroiliac conditions following the December 8, 2011 work injury. She claims entitlement to temporary total disability benefits from December 10, 2011 through December 19, 2011 and then from May 8, 2012 with a running healing period to present and into the future. The primary dispute is claimant's entitlement to benefits on and after May 8, 2012. Claimant's missed work for this time period is directly related to her left knee and is not the result of her right gluteal and/or sacroiliac injury.

The hearing report indicates that defendants paid temporary total disability benefits from December 13, 2011 through December 20, 2011. Claimant has not established any entitlement beyond this date. However, the parties also state on the hearing report that, "Defendant does not dispute Claimant's entitlement to benefits from 12/10/11-12/19/11." This is a ten day period, three days of which are covered by the waiting period proscribed by Iowa Code section 85.32. Therefore, claimant is entitled to temporary total disability benefits from December 13, 2011 through December 19, 2011. She has already been paid more than she was owed for this time period. (Hearing Report)

Permanent partial disability was also noted as a disputed issue. Claimant admitted that her right gluteal and/or sacroiliac injury resolved and she introduces no evidence that she sustained a permanent disability as a result of the right gluteal and/or sacroiliac injury. Her left knee was found to be not work related. Therefore, claimant has not proven entitlement to any permanent disability benefits.

Ms. Yanez also seeks an order compelling defendants to provide future medical care and specifically an order for alternate medical care. Ms. Yanez requests an order directing that future medical care, including a recommended left knee surgery, be directed through Dr. Conroy.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

In this case, claimant has not proven by a preponderance of the evidence that her left knee condition is causally related to the December 8, 2011 work injury or that it is a sequela of that injury. Accordingly, I conclude that claimant has not established that the employer is liable for the future medical treatment on claimant's left knee.

The hearing report also indicates that defendants have paid "all medical from date of injury to release at MMI on 1/3/2012." Claimant has not proven entitlement to additional medical expenses incurred beyond January 3, 2012 because any such expenses are related to the left knee injury and not causally related to the work injury. Claimant is not entitled to any of the claimed medical expenses incurred after January 3, 2012. Therefore, claimant has already received all weekly and medical benefits to which she is due.

Claimant seeks assessment of costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Ms. Yanez did not prevail on any of the disputed issues submitted to the undersigned for resolution. Therefore, I exercise the agency's discretion and conclude that claimant's request for assessment of costs should be denied.


ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further.

The parties shall bear their own costs.

Signed and filed this 6th day of August, 2015.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.