BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHEILA AMBROSE,

Claimant,

vs.

MENARD, INC.,

Employer,

and

PRAETORIAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5051721

ARBITRATION DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Sheila Ambrose, has filed a petition in arbitration and seeks workers' compensation benefits from, Menard, Inc., employer, and Praetorian Insurance Company, insurance carrier, defendants.

Deputy workers' compensation commissioner, Stan McElderry, heard this matter in Cedar Rapids, Iowa.

ISSUES

The parties have submitted the following issues for determination:

1. The extent of permanent industrial loss from an injury arising out of and in the course of employment on or about March 24, 2013, if any;

2. Commencement date; and

3. Medical expenses.

FINDINGS OF FACT

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

The claimant was 45 years old at the time of hearing. She is a high school graduate and recently received a nursing assistant certification. Her work history consists of mostly clerical and unskilled office/desk type jobs. She was a scheduler for

a medical provider for example. She went to work at Menards in February of 2013 as a delivery coordinator. In that position she set up deliveries, made sure loads for deliveries were correctly pulled and contained all the merchandise that needed to be delivered.

On March 24, 2013, the claimant slipped and fell on the ice at the Menards' parking lot in Cedar Falls upon her arrival at work. The parties stipulated that the incident arose out of and in the course of employment. The main fighting issue is whether the injury caused any permanent impairment or loss of earning capacity.

The claimant reported the fall nearly immediately. She however did not seek any medical treatment for about 12 days (April 5, 2016). (Exhibit 1, page 1) She reported a fall on ice with landing on her buttocks and left side, catching herself with her hand. (Id.) Primary problems reported were left hand, neck, and back pain. She returned to the clinic on April 15, 2013; May 9, 2013; June 3, 2013; June 25, 2013; and lastly on August 12, 2013. (Ex. 1, pp. 3-15) One of the treating medical professionals at the clinic was David Kirkle, D.O. An MRI was conducted on August 7, 2013. (Ex. 4) It showed nothing remarkable. The claimant saw Dr. Kirkle on August 12, 2013 for the MRI results. (Ex. 1, pp. 11-12) Dr. Kirkle released the claimant to full duty with no restrictions and zero percent impairment. (Ex. 1, p. 12) Part of the reason for the release was that the claimant had gone 1-1/2 months without pain medication or therapy. But she had received physical therapy during this time. (Ex. 2, pp. 9-11)

Although released without restrictions, the claimant testified that she was not able to perform all of her job duties upon return to work, and had co-workers help her. The claimant requested a reduction in hours to working every other weekend. The testimony regarding the reduction in hours request as being for pain was not entirely credible. The claimant began working full time for the CBE Group on June 17, 2013. The request for the reduction in hours was made on June 17, 2013. (Ex. N) She was discharged September 6, 2014 for refusing to comply with a supervisor's directive. She was discharged by CBE about a month later. She took a part-time position at a care center in October of 2014 doing light housekeeping.

The claimant was seen by R. L. Broghammer, M.D., on June 15, 2015 for an independent medical evaluation (IME). Dr. Broghammer opined that the claimant had suffered a temporary aggravation to a pre-existing chronic degenerative problem. (Ex. A) He also opined zero percent impairment and no need for restrictions. (Ex. A, pp. 6-7) As pointed out in claimant's brief, what exact medical records Dr. Broghammer reviewed is unknown in this record. However, he did conduct a physical examination of the claimant and his opinions based on that evaluation are in the record and include "Her physical examination today is benign without any significant findings." (Ex. A, p. 6)

The claimant was seen at her counsel's request by Farid Manshadi, M.D., on August 18, 2015 for an IME. (Ex. 8) Dr. Manshadi causally connected the ongoing neck, back and left shoulder complaints to the March 24, 2013 fall. Although he at least once references the wrong date of injury. (Ex. 8, p. 3) He opined a permanent impairment rating of 8 percent of the upper extremity for the left shoulder, 5 percent

body as a whole (BAW) for the neck, and 5 percent BAW for the SI joint dysfunction. (Ex. 8, p. 4) He also opined permanent restrictions of avoiding repetitious flexion, extension, or rotation of the neck, avoid repetitious left shoulder reaching or overhead activities, no lifting of more than 5-10 pounds with left extremity, lift no more than 20 pounds with both hands, and to avoid repetitious bending, stooping or twisting at the waist. (Ex. 8, p. 4)

The opinions of treating physician Kirkle and defense IME Dr. Broghammer are given more weight in total than Dr. Manshadi. All 3 reports have weaknesses. But Drs. Kirkle and Broghammer's opinions more closely mirror the medical history and the actual incident than the opinions of Dr. Manshadi. Although waiting 12 days for medical treatment does not mean in itself that the incident was relatively minor and caused no permanent impairment, but it is telling. The claimant suffered an injury arising out of and in the course of employment on March 24, 2013 as stipulated. However the injury caused no permanent impairment or loss of earning capacity. The claimant reached maximum medical improvement (MMI) effective August 12, 2013.

On the date of injury the claimant was single, entitled to 1 exemption, and had gross earnings of $507.52 per week. As such, her weekly benefit rate is $327.85. The commencement date for permanent partial disability is August 12, 2013.

The claimant also seeks payment/reimbursement of medical bills. Those expenses are detailed in Exhibits 11 and 12. The medical bills listed in Exhibit 12 are all from 2015 and after the claimant had returned to baseline. They are not the responsibility of the defendants. The transportation (mileage) costs in Exhibit 11 totaling $256.30 occurring on or before August 12, 2013 are for the work injury of March 24, 2013 and are the defendants' responsibility. So is the IME mileage of $61.60 also listed in Exhibit 11.

REASONING AND CONCLUSIONS OF LAW

The first issue is permanent disability.

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).

It was found above that the claimant has failed to meet her burden of proof that the work injury is causally connected to any permanent disability. The injury was found to be temporary and to have resolved effective August 12, 2013 without permanent impairment or loss of earning capacity.

Medical.

The next issue is the claimant's entitlement to medical expenses set forth in claimant's Exhibit 24.

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 16, 1975).

Evidence in administrative proceedings is governed by section 17A.14. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence. The rules of evidence followed in the courts are not controlling. Findings are to be based upon the kind of evidence on which reasonably prudent persons customarily rely in the conduct of serious affairs. Health care is a serious affair.

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally

mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File No. 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

The medical expenses claimed are in Exhibits 11 and 12. Those in Exhibit 12 all postdate August 12, 2013 and are not the defendants' responsibility. The transportation (mileage) costs in Exhibit 11 totaling $256.30 occurring on or before August 12, 2013 are for the work injury of March 24, 2013 and are the defendants' responsibility. So is the IME mileage of $61.60 also listed in Exhibit 11. Total allowable medical transportation costs are $317.90.

ORDER

THEREFORE IT IS ORDERED:

That the defendants shall pay/reimburse medical and IME transportation costs totaling three hundred seventeen and 90/100 dollars ($317.90).

Defendants shall receive credit for all benefits previously paid.

Costs are taxed to the defendants pursuant to rule 876 IAC 4.33.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Signed and filed this 15th day of July, 2016.

STAN MCELDERRY
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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SRM/srs

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.