

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CASSIDY HUBBARD-McKINNEY,

Claimant,

vs.

NEWTON COMMUNITY SCHOOL
DISTRICT,

Employer,

and

EMCASCO INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5066276

ARBITRATION DECISION

Head Note Nos.: 1803

STATEMENT OF THE CASE

The claimant, Cassidy Hubbard-McKinney, filed a petition for arbitration and seeks workers' compensation benefits from Newton Community School District, employer, and EMCASCO Insurance Company, insurance carrier. The claimant was represented by Richard Schmidt. The defendants were represented by Brian Scieszinski.

The matter came on for hearing on May 28, 2020, before Deputy Workers' Compensation Commissioner Joe Walsh via CourtCall. The record in the case consists of Joint Exhibits 1 through 5, Claimant's Exhibit 5 and Defense Exhibits A through C. The claimant testified at hearing. Michelle Proesch was appointed the official reporter. The matter was fully submitted on June 29, 2020, after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. The nature and extent of claimant's permanent partial disability. During the course of the hearing, claimant stipulated on the record that the disability is scheduled.
2. The commencement date for permanent partial disability benefits, if any are owed.

The parties have agreed to the following stipulations. These stipulations are deemed accepted and deemed binding and enforceable at this time.

1. Claimant sustained an injury, which arose out of and in the course of her employment on February 19, 2018.
2. This injury is a cause of both temporary and permanent disability.
3. Neither temporary disability nor medical benefits are in dispute at this time.
4. Affirmative defenses have been waived.
5. All elements comprising the rate of compensation have been agreed upon. The parties contend the correct rate of compensation is \$219.22 per week.
6. There is no dispute regarding credit. Claimant was paid 4.4 weeks of permanency prior to hearing.

FINDINGS OF FACT

Claimant Cassidy Hubbard-McKinney was 46-years-old as of the date of hearing. She testified live and under oath at hearing. I find the claimant's sworn testimony was generally credible. There are some portions of her testimony which are more reliable than others. In those areas, I rely more heavily upon the objective medication documentation.

Ms. Hubbard-McKinney graduated from high school in 1992 and has taken some college courses through Des Moines Area Community College (DMACC). She was an athlete in high school and played softball in a co-ed City league thereafter. She played football as well. She testified that she was also a state champion in arm wrestling.

Ms. Hubbard-McKinney had suffered prior sports-related injuries to her left knee and left hand. She received treatment for these conditions. In deposition testimony, Ms. Hubbard-McKinney denied having a prior left hand injury. This testimony is not accurate. I find it is most likely she did not believe this prior injury affected her current condition. She testified that she was only treated conservatively and that she never had ongoing symptoms associated with these conditions. The objective evidence demonstrates she did not have surgery or medical restrictions. I find it highly unlikely that claimant had significant, chronic symptoms in her left knee prior to her work injury.

After high school, she worked in a variety of service sector jobs, mostly restaurants. She worked at Maytag for a period of time but testified that type of work was not for her. She also worked for a telemarketer for approximately three years. She began working for Newton Community School District (NCSD) in 2008. She was hired as a fill-in person in food services and eventually worked regularly and came to be in charge of produce. The employer contends Ms. Hubbard-McKinney missed a great deal of work prior to her injury.

On February 19, 2018, she slipped in a delivery area, falling on her left knee and arm. This fact is stipulated. Prior to that date, Ms. Hubbard-McKinney testified she was generally healthy. The employer contends that claimant had suffered disabilities to both her knee and hand prior to the work injury. She testified her fall was witnessed by the manager of the school cafeteria.

Ms. Hubbard-McKinney received medical treatment for her injury. Her first medical appointment was on May 15, 2018, approximately three months after the injury. She received x-rays. This medical note documented patellar pain caused by the fall in February. (Joint Exhibit 2, page 4) Paul Ruggle, M.D., released her to return to work without restrictions. She followed up with him two weeks later and was eventually referred to a specialist, Christopher Vincent, M.D. She did not complain of left hand or arm symptoms at these early visits.

Dr. Vincent evaluated claimant on August 23, 2018. He documented the injury and diagnosed chronic left knee pain. (Jt. Ex. 3, pp. 37-39) Dr. Vincent expressed concern for "symptom magnification based on the pain response which seemed out of proportion objective findings." (Jt. Ex. 3, p. 40) In any event, he ordered an MRI which showed a posterior horn medial meniscus tear. (Cl. Ex. 5, p. 4) Dr. Vincent performed arthroscopic surgery on October 18, 2018. Dr. Vincent provided some further treatment, including a pain injection and released her from care on February 28, 2019. In March 2019, he assigned a 2 percent permanent impairment rating as a result of the work injury utilizing Table 17-33 of AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Def. Ex. A, p. 1)

In March 2020, claimant was evaluated by John Kuhnlein, D.O., for an independent medical examination (IME). Dr. Kuhnlein took a history from claimant, thoroughly reviewed numerous records and examined her. Dr. Kuhnlein summarized her left knee condition as follows.

Ms. Hubbard-McKinney says that she had left knee sprain several years ago that was treated conservatively. She states that the symptoms resolved completely, and she had no ongoing problems with the left knee until the February 19, 2018, incident, when she slipped and fell directly onto the anterior knee. She relates that the incident was witnessed. Medical care was delayed for approximately three months. She attributes the initial delay to thinking that her symptoms would resolve with conservative care. She states that there was a later delay when she told her supervisor that she needed to see a physician, but this was delayed until Ms. Hubbard-McKinney threatened to go to the school board (I have no way of confirming or denying this).

If the history Ms. Hubbard-McKinney presents is accurate, it is more likely than not that the left knee medial meniscus tear was directly and causally related to February 19, 2008, [sic] injury. The mechanism of injury would be consistent, and the force transmission through the knee as the knee impacted the ground would be sufficient to cause a medial meniscus tear.

It is more likely than not that the chondromalacia and degenerative changes predated the injury, as it is unlikely that such degenerative changes would have developed even in the seven months after the injury between the date of injury and the September 11, 2018, MRI scan. It is unknown if the small ossific fragment noted in the lateral view would be related to this injury. It was not mentioned in the September 11, 2018, MRI scan. If the history Ms. Hubbard-McKinney presents is accurate, she had no left knee pain before the incident and she did after the incident, as documented in the currently available medical record. As a result, if the history is accurate then the February 19, 2018 incident served to “light up” and materially aggravate the previously asymptomatic osteoarthritis in the left knee and make it symptomatic, which would make such “lighting up” of the osteoarthritis and aggravation related to the February 2018, work incident.

(Cl. Ex. 5, p. 14-15) Dr. Kuhnlein also evaluated other parts of claimant’s body including her left hand. He had an incorrect history of her prior condition when rendering his opinions.

Dr. Vincent authored a rebuttal report which criticized Dr. Kuhnlein’s report. (Def. Ex. A) He opined that Ms. Hubbard-McKinney’s history of intermittent treatment evidenced that she had serious ongoing chronic pain in her left knee prior to the work injury.

Based upon my review of the entire file, I find that claimant has failed to meet her burden of proof that her stipulated work injury is a cause of any disability in her left hand, thumb or arm. There are simply too many inconsistencies which are not explained in the record. I further find that claimant did aggravate or light-up her preexisting left knee condition. Dr. Kuhnlein’s rating is the best, most accurate rating in the record.

CONCLUSIONS OF LAW

The primary question submitted is the nature and extent of claimant’s permanent disability suffered as a result of her stipulated February 19, 2018, work injury.

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. 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).

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the 66-year-old case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Thus, when the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921).

In all cases of permanent partial disability described in paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity, the extent of loss or percentage permanent impairment shall be determined solely by utilizing the guides of the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss of percentage or permanent impairment pursuant to paragraphs "a" through "t", or paragraph "u" when determining functional impairment and not loss of earning capacity.

Iowa Code section 85.34(2)(y) (2019). In other words, the law, as written, is not concerned with an injured worker's actual functional loss as determined by the evidence, but rather the impairment rating as assigned by the adopted version of The AMA Guides. The only function of the agency is to determine which impairment rating is most accurate.

As an initial matter, I find that the claimant has failed to meet her burden of proof that her left hand, thumb or arm are connected to her February 19, 2018, work injury. She did not report this condition in her early medical records. She failed to disclose her prior, sports-related hand injury in her deposition testimony. While I have found her testimony at hearing generally credible, her specific testimony at deposition on this point was not accurate. Therefore, I cannot find in this record, that she has met her burden of proof that her work injury resulted in any functional impairment in her left hand, arm, or thumb.

With regard to her left leg injury, there is no question that claimant suffered such an injury and that the injury resulted in a torn meniscus which resulted in surgery and at least some permanent functional impairment. These are stipulated facts which are supported by all of the medical evidence. The only real question is whether the stipulated injury also aggravated her underlying, preexisting degenerative condition.

Under the law, the agency is empowered to choose between the ratings of the expert medical opinions. Dr. Vincent assigned a 2 percent left lower extremity rating for the meniscus tear. Dr. Kuhnlein agreed with the rating, however, he also assigned an additional 7 percent for the aggravation of her underlying degenerative condition. This accounts for the difference in the ratings.

Based upon the record before the agency, I find it highly unlikely or improbable that claimant was suffering from significant, chronic left knee symptoms prior to the stipulated February 19, 2018, work injury. To be sure, she undoubtedly had some episodes of prior insignificant treatment which are reflected in the record. She was never provided aggressive treatment or surgery. She never had permanent restrictions. There is no evidence she had chronic or ongoing, disabling pain. For these reasons, I find that Dr. Kuhnlein has assigned the most dependable, accurate rating of impairment in the record.

The claimant's disability is calculated to the right leg under Iowa Code section 85.34(2)(p) (2019). I conclude that claimant is entitled to 9 percent of 220 weeks, or 19.8 weeks of benefits at the stipulated rate. The appropriate commencement date for benefits is February 28, 2019. Defendants are entitled to a credit for the 4.4 weeks of permanency previously paid.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay the claimant nineteen and eight-tenths (19.8) weeks of permanent partial disability benefits at the rate of two hundred and nineteen and 28/100 (\$219.22) per week from February 28, 2019.

Defendants shall pay accrued weekly benefits in a lump sum.


Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for the four and four-tenths (4.4) weeks previously paid.

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

Costs are taxed to defendants.

Signed and filed this 2nd day of February, 2021.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Richard Schmidt (via WCES)

David Scieszinski (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.