

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRENDA MORROW,

Claimant,

vs.

CRST, INC.,

Employer,

LIBERTY MUTUAL,

Insurance Carrier,
Defendants.

File Nos. 5048458, 5048459, 5048460

FILED

JUN 2 2015

WORKERS' COMPENSATION

ARBITRATION

DECISION

Head Note Nos. 1108, 1803

STATEMENT OF THE CASE

Brenda Morrow filed three petitions for arbitration seeking workers' compensation benefits from CRST, Inc. and Liberty Mutual.

The matter came on for hearing on March 31, 2015, before Deputy Workers' Compensation Commissioner, Joseph L. Walsh, in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1 through 9; defense exhibits A through N; as well as the sworn testimony of claimant, Brenda Morrow. The parties briefed this case and the matter was fully submitted on April 20, 2015.

ISSUES AND STIPULATIONS

With regard to File No. 5048458, the parties have submitted the following issues and stipulations:

The parties have stipulated that the claimant suffered an injury which arose out of and in the course of her employment on February 14, 2013, and that the parties had an employer-employee relationship at that time. The parties have stipulated to the elements which comprise the rate of compensation and believe the correct rate to be \$323.12 per week. The parties agree affirmative defenses have been waived, medical benefits are not in dispute and there is no issue surrounding credit. The parties have also stipulated that, if any permanent partial disability benefits are owed, the appropriate commencement date is February 15, 2013, and the disability would be evaluated as an industrial disability. The disputes are as follows:

1. Whether the stipulated work injury caused any permanent partial disability.
2. If the injury did result in permanent disability, what is the nature and extent of the disability?

With regard to File No. 5048459, the parties have submitted the following issues and stipulations:

The parties have stipulated that the claimant suffered an injury which arose out of and in the course of her employment on April 10, 2013, and that the parties had an employer-employee relationship at that time. The parties have stipulated to the elements which comprise the rate of compensation and believe the correct rate to be \$331.39 per week. The parties agree affirmative defenses have been waived, medical benefits are not in dispute and there is no issue surrounding credit. The parties have also stipulated that, if any permanent partial disability benefits are owed, the appropriate commencement date is April 11, 2013, and the disability would be evaluated as an industrial disability. The disputes are as follows:

1. Whether the stipulated work injury caused any permanent partial disability.
2. If the injury did result in permanent disability, what is the nature and extent of the disability?

With regard to File No. 5048460, the parties have submitted the following issues and stipulations:

The parties have stipulated that the claimant suffered an injury which arose out of and in the course of her employment on September 12, 2013, and that the parties had an employer-employee relationship at that time. The parties have stipulated to the elements which comprise the rate of compensation and believe the correct rate to be \$335.71 per week. The parties agree affirmative defenses have been waived, medical benefits are not in dispute and there is no issue surrounding credit. The parties have also stipulated that, if any permanent partial disability benefits are owed, the appropriate commencement date is September 13, 2013, and the disability would be evaluated as an industrial disability. The disputes are as follows:

1. Whether the stipulated work injury caused any permanent partial disability.
2. If the injury did result in permanent disability, what is the nature and extent of the disability?

FINDINGS OF FACT

Brenda Morrow is a pleasant, 51-year-old resident of the State of Oregon. She is right-hand dominant. Brenda left high school in 1981 and began working. Upon leaving high school, Brenda worked at Mr. Steakhouse in Klamath Falls, Oregon, as a dishwasher and table busser earning minimum wage. She worked as a waitress in the

restaurant industry for a few years before attaining her GED in 1986 in Columbus, Georgia. (Claimant's Exhibit 9, page 59) Brenda worked as a rental clerk in Columbus, Georgia, for a business called Military Rent-All in the mid-1980's. In approximately 1988, she transferred to the Virginia Beach, Virginia, location and worked as a store manager. (Cl. Ex. 9, p. 60) She worked for another store and did some waitressing in Virginia before returning to Oregon in approximately 1993. For the next several years she held a variety of jobs, such as waitress, cook, supply clerk and bartender. (Cl. Ex. 9, pp. 60-61) She also served in the Army and Air National Guard.

Brenda attained her beauty license in approximately 1997 from Phagans Beauty School in Medford, Oregon. (Cl. Ex. 9, p. 59) From 1998 through 2012, she worked primarily as a hair dresser in the Klamath Falls, Oregon, area. In 2010 through 2012, Brenda received further community college training in Oregon in miscellaneous subjects. During this time she worked a couple different jobs selling insurance. Her training, however, ultimately culminated in the field of truck driving. She received a CDL after successful training at Western Pacific Truck Driving School in Portland, Oregon. She was hired by CRST, Inc., the employer in this case, in approximately January 2013.

In 2013, Brenda suffered a series of admitted work injuries which arose out of and in the course of her employment with CRST. On February 14, 2013, Brenda fell from a ladder in her cab and landed on her tailbone on the armrest of her seat which was in an upright position. She felt pain in her tailbone and lower back but she continued working. On April 10, 2013, she reported left elbow pain from the use of her arm. Then, on September 12, 2013, while riding in a shuttle van car for work activities, she was involved in a motor vehicle accident. She experienced pain primarily in her lower back from the accident.

Brenda reported all of these injuries appropriately and each was accepted as a compensable injury. She was provided medical treatment. On February 27, 2013, Brenda visited Concentra in Ontario, California. She saw Lance R. Mohr, M.D. He noted the history of injury (falling in her cab), performed x-rays and diagnosed a "coccyx sprain." (Cl. Ex. 1, p. 5) She continued working at full-duty. She was officially released without further care on March 4, 2013. (Def. Ex. C, p. 2)

She returned to Concentra in September, complaining of left elbow symptoms. "The patient complains of pain in her left elbow x on and off x 5 months. The patient states that she injured herself while she was trying to get into her bunk in the cab of her truck." (Cl. Ex. 2, p. 6) She was provided some medications and a tennis elbow strap, x-rays were taken and she was scheduled for physical therapy.

Following the September 2013 auto accident, she saw Dr. Mohr again. For this injury, he diagnosed a thoracic strain, provided work restrictions and medications and provided a referral to a chiropractor. (Cl. Ex. 2, p. 11) Ultimately, a referral to an orthopedic surgeon was recommended. (Cl. Ex. 2, p. 13) She had attempted some physical therapy as well.

On October 14, 2013, Brenda was seen by Patrick G. Hartley at the University of Iowa Healthworks. (Cl. Ex. 4) Dr. Hartley clearly understood the circumstances of Brenda's injuries. (Cl. Ex. 4, pp. 17-18) Dr. Hartley diagnosed "Chronic sacrococcygeal pain following a fall in Feb 2013. Undefined left elbow pain of gradual onset since April 2013." (Cl. Ex. 4, p. 19) He recommended referral to a physiatrist, continuing medications, and restrictions, including no driving and limited lifting with her left arm.

Just a week later, Brenda visited the emergency room at Mercy Medical Center, where she was referred to David Hart, M.D., because her pain had become significant. She was waiting to see a physiatrist in November. However, the pain became acute and severe. (Cl. Ex. 5, p. 22) Dr. Hart diagnosed lateral epicondylitis of the left elbow. He provided her with Celebrex and gave her an injection for the pain. (Cl. Ex. 5, p. 24)

At around this time, claimant was required to receive her treatment in Iowa and she was set up at a facility in Cedar Rapids, Iowa. She took a Greyhound bus from California to Iowa. Brenda testified that she had "therapy" at this facility in what she described as a hotel exercise room. She clearly considered the facilities in Cedar Rapids to be substandard and undesirable. She had roommates she did not trust or feel comfortable with. She testified her laptop was stolen. She did not want to be there. The experience was, all around, unpleasant by her description.

On November 1, 2013, Sunny Kim, M.D., evaluated Brenda. He understood an accurate history of her injuries and her ongoing symptoms. He diagnosed left lateral elbow pain most likely due to anconeus muscle strain and chronic coccydynia for the tailbone. He stated that her mid back/back pain had resolved. (Cl. Ex. 6, p. 26)

On November 9, 2013, Douglas T. Sedlacek performed a ganglion block after diagnosing "trauma to the coccyx with symptomatic coccydynia." (Cl. Ex. 7, p. 36) He performed a successful ganglion impar block. She returned on December 2, and the procedure was repeated, this time, with a sacrococcygeal ligament injection. (Cl. Ex. 7, p. 38) She returned to Dr. Sedlacek on December 18, 2013, still reporting symptoms in her tailbone. She was, admittedly, not in excruciating pain, however, she continued to rate her pain as a 2 out of 10. Dr. Sedlacek released her without restrictions. (Cl. Ex. 7, p. 41)

On December 9, 2013, Dr. Kim performed a procedure on Brenda's left elbow, described as percutaneous needle tenotomy, left triceps tendon. Dr. Kim saw Brenda in follow up two days before Christmas. He made the following note:

. . . She states that her elbow is still tender to the touch and with movement. She says that she tries not to use it at all. She reports that she was stuffing envelopes for work and that was very painful for her. Despite the residual sensitivity, she reports dramatic reduction in elbow pain and resolution of the deep pain in her elbow which felt like it was radiating into the joint. She states recovering quite quickly from the procedure, feeling pretty good after 1 week without complication. She has

been under additional stress due to demands from her living arrangement. She is eager and motivated to RTW.

(Cl. Ex. 6, p. 32)

After this she underwent some therapy. On January 7, 2014, Dr. Kim placed Brenda at maximum medical improvement for all of her conditions and released her to work without restrictions.

On February 24, 2014, Brenda resigned from her position with CRST. Her attorney wrote to the employer and indicated that she "cannot do the work because of these work injuries." (Cl. Ex. 1, p. 1) This was not accurate. Brenda quit on February 8, 2014, and told CRST she was dissatisfied with pay, which she was. She testified that she immediately returned to truck driving for another employer making significantly more money. She has worked a few different truck driving jobs since leaving CRST. None of the reasons for leaving any of these jobs has to do with her work injuries.

Brenda has had two independent medical evaluations. The first was with Charles Mooney, M.D. (Def. Ex. B) Dr. Mooney wrote a thoughtful and thorough evaluation report. He understood each of Brenda's injuries and her claims and reviewed all of the relevant medical records. Dr. Mooney opined that none of Brenda's work injuries resulted in any permanent impairment or restrictions. They were, at most, temporary aggravations.

Sunil Bansal, M.D., evaluated Brenda on January 26, 2015, for a claimant's independent medical evaluation under section 85.39. (Cl. Ex. 8) He also had a detailed, correct history of the injuries and Brenda's symptoms. He made the following diagnoses: (1) chronic coccyx pain, (2) left elbow epicondylitis, and (3) lumbar myofascial pain syndrome. He concluded that each of Brenda's injuries were causally connected to these conditions and assigned permanency for each.

Brenda has had no treatment from any providers since being released by Dr. Kim in January 2014. She did have a Department of Transportation physical in February 2014, and another in September 2014. (Def. Ex. F) She did list her injuries on the form. (Def. Ex. F, p. 2) She did not indicate that any of these conditions would inhibit her ability to drive commercially. Upon cross-examination, Brenda conceded that she was honest in the Department of Transportation physicals.

Brenda testified she has a constant ache and burning sensation in her tailbone. The pain becomes more intense after sitting for extended periods of time. She has often described her pain as a 2/10 on the 10 point scale. It is sometimes worse, particularly with prolonged sitting. She has occasional low back pain across her entire low back which is not constant. She has constant left elbow pain which increases with her activities. These conditions have affected Brenda's daily activities. In particular, Brenda is very active. She exercises. These conditions have affected the manner in which she exercises and her other activities, like bike riding and running. She can no

longer exercise the same way as she did before. (Def. Ex. A, Morrow Dep., pp. 62-64)

I find that Brenda is credible in all respects. Brenda has not exaggerated her conditions or symptoms. She has refused to fill in details where it may have helped her case to do so. Her presentation at hearing was forthright and honest. Her hearing testimony was consistent with her deposition testimony and her hearsay statements to medical providers.

CONCLUSIONS OF LAW

The issues in all three file numbers are exactly the same. It is stipulated that Brenda suffered three work injuries. Brenda alleges that each stipulated injury resulted in a permanent condition which entitles her to industrial disability benefits. The defendants contend that none of these injuries resulted in any permanent impairment. These shall be addressed in order.

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).

FILE NO. 5048458: COCCYX INJURY

I find that Brenda has suffered chronic coccyx pain, or coccydinia, as a result of the stipulated February 14, 2013, work injury. I find Dr. Bansal's report most credible and most closely aligned with Brenda's actual condition. (Cl. Ex. 8, p. 53) Dr. Mooney agreed that the claimant has "coccydinia". He opined "there is no evidence of impact on her activities of daily living, including her employment, . . ." (Def. Ex. B, p. 9) In other words, he agreed that Brenda has a permanent condition in her coccyx but he

believed the pain is not significant enough to warrant a formal impairment rating. Both opinions essentially agree that Brenda has suffered damage to her coccyx. Dr. Mooney felt that the damage was not serious enough to be rated.

Since I have found causal connection, the next issue with regard to the coccyx injury is the extent of disability.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in *Diederich v. Tri-City R. Co.*, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181 (Iowa 1980); *Olson v. Goodyear Service Stores*, 255 Iowa 1112, 125 N.W.2d 251 (1963); *Barton v. Nevada Poultry Co.*, 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Brenda has suffered a minimal loss of earning capacity as a result of her work injury. Her condition is bothersome and frustrating, however, it is not debilitating. The defendants presented evidence that claimant continues to work in the trucking industry as an over-the-road driver. Her post-injury work history is somewhat confusing, however, she now makes significantly more money than she did at the time of injury. She still drives a truck. She has no restrictions. She is able to work significant hours in spite of the discomfort. Her physicals required to keep her Commercial Drivers' License prove her condition does not prevent her from driving a truck. This is a fact Brenda admitted at hearing. She has never actually contended otherwise.

While her disability is not severe, it does affect her ability to earn wages in the competitive job market. Brenda's condition is "chronic coccyx pain." (Cl. Ex. 8, p. 53) She meets the criteria for "a DRE Category II impairment. She has guarding, loss of range of motion and continued pain." (Cl. Ex. 8, p. 55) It is significant enough to impact her hobbies and activities of daily living. While Brenda has continued to work, she testified and told medical providers that driving more than an hour increases the pain in her tailbone. It is a dull, burning pain. Brenda has found ways to cope and manage the pain, including using a donut to relieve the pressure. It is not difficult to conclude that this type of condition has some impact on the ability to earn wages in the competitive

job market for a 51-year-old truck driver.

I find that Brenda has suffered a ten (10) percent loss of earning capacity as a result of her February 14, 2013, work injury. This entitles her to 50 weeks of benefits, commencing, by agreement of the parties, on February 15, 2013.

FILE NO. 5048459: LEFT ELBOW INJURY

I find, by a preponderance of evidence, that Brenda has demonstrated a connection between her April 10, 2013, work injury and the condition of epicondylitis in her left elbow. Her own expert, Dr. Bansal, opined that she suffered a repetitive trauma work injury to her left elbow. (Cl. Ex. 8, p. 53) Dr. Mooney questioned whether the mechanism of injury (in the April 2013 incident) could have caused her left elbow condition. "Certainly the imaging does not support a specific injury to the elbow due to a traumatic event but does support that she had evidence of both a joint effusion and tendinitis." (Def. Ex. B, p. 9) Dr. Mooney's opinion does create some doubt. He provided a logical, thoughtful analysis. I find, however, that Brenda was not having difficulty with her left (non-dominant) arm until her work activities, including climbing in and out of the truck (and the bunk) and repetitively picking up the Qualcomm computer system, substantially contributed to her condition of epicondylitis of her left elbow. This is based upon Brenda's credible sworn testimony, the expert opinion of Dr. Bansal, and the corroborating medical reports of Dr. Kim.

Since this disability is limited to the left arm, the scheduled method of evaluation is used to assess her disability. In making an assessment of the loss of use of a scheduled member, the evaluation is not limited to the use of a standardized guide such as the AMA Guides to the Evaluation of Permanent Impairment. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). Notwithstanding suggestions to the contrary in the AMA Guides, this agency has a long history of recognizing that the actual loss of use which is to be compensated is the loss of use of the body member in the activities of daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions, and other pertinent factors may all be considered when determining scheduled disability. Bergmann v. Mercy Medical Center, File Nos. 5018613 & 5018614, (App. March 14, 2008); Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Community Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Bieghler v. Seneca Corporation, File No. 979887 (Arb. February 8, 1994); Ryland v. Rose's Wood Products, File No. 937842 (Arb. January 13, 1994); Smith v. Winnebago Industries, File No. 824666 (Arb. April 2, 1991).

I find that the rating of Dr. Bansal best describes the extent of Brenda's functional disability in her left arm. Dr. Bansal found a ten (10) percent functional loss which equates to 25 weeks of benefits, commencing, by agreement of the parties, on April 11,

2013.

FILE NO. 5048460: LOW BACK PAIN

I find that Brenda has failed to prove by a preponderance of evidence that her stipulated work-related auto accident on September 12, 2013, was a cause of any additional permanent impairment or disability in her low back. Dr. Bansal opined that Brenda suffers from lumbar myofascial pain syndrome, characterized by trigger points. (Cl. Ex. 8, p. 54) Based upon a reading of the entire record, the claimant has failed to meet her burden of proof that the accident resulted in any additional permanent condition. On November 1, 2013, Dr. Kim documented the following. "She also c/o mid back pain on left side that is the result of a MVA while passenger in company vehicle. This has improved with chiropractic treatments." (Cl. Ex. 6, p. 25) When developing her treatment plan, he added that "she states her mid back/back pain is now resolved so nothing more to do for that previous complaint. (Cl. Ex. 6, p. 26)

Brenda did testify that she has some ongoing back pain which is intermittent across her entire low back. I do not find enough evidence in the record to determine that back pain is (a) causally related to the motor vehicle accident, or (b) permanent. The burden of proof is on the claimant and she has failed to meet her burden with regard to File No. 5048460.

ORDER

THEREFORE IT IS ORDERED:

FILE NO. 5048458: TAILBONE/LOW BACK

Defendants shall pay the claimant fifty (50) weeks of permanent partial disability benefits at the rate of three hundred twenty-three and 12/100 (\$323.12) per week commencing on February 15, 2013.

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.

FILE NO. 5048459: LEFT ARM

Defendants shall pay the claimant twenty-five (25) weeks of permanent partial disability benefits at the rate of three hundred thirty-one and 39/100 (\$331.39) per week commencing on April 11, 2013.

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.

FOR FILE NO. 5048460: LOW BACK PAIN

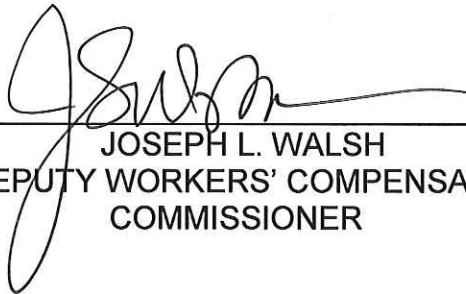
Claimant takes nothing.

FOR ALL FILES:

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 June, 2015.



JOSEPH L. WALSH
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.