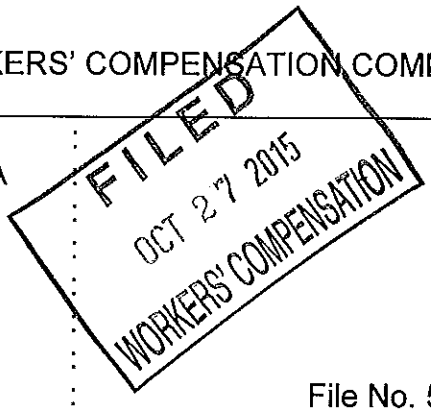
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



CHELSEA WILSON, n/k/a CHELSEA SANDERS,

Claimant,

vs.

VOLT INFORMATION SCIENCES, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE COMPANY/AIG,

Insurance Carrier,
Defendants.

File No. 5050070

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Chelsea Wilson, n/k/a Chelsea Sanders, the claimant, seeks workers' compensation benefits from defendants, Volt Information Sciences, Inc., the alleged employer, and its insurer, New Hampshire Insurance Company/AIG as a result of an alleged injury on April 10, 2013. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on September 23, 2015, but the matter was not fully submitted until the receipt of the parties' briefs and argument on September 30, 2015. Oral testimony and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Since the commencement of these proceedings, claimant married, and her current last name is Sanders. Therefore, the caption of these proceedings shall be changed to reflect that claimant, Chelsea Wilson is now known as (n/k/a) Chelsea Sanders.

The only exhibits offered and received at hearing were those jointly offered by both parties and marked numerically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Ex 1-2:4".

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. On April 10, 2013, claimant received an injury arising out of and in the course of employment with defendant employer.

2. If the injury is found to have caused permanent disability, the type of disability is an industrial disability to the body as a whole.

3. At the time of the stipulated work injury, claimant was single and entitled to two exemptions for income tax purposes.

4. Medical benefits are not in dispute at this time.

ISSUES

At hearing, the parties submitted the following issues for determination:

I. The extent of claimant's entitlement to weekly temporary total or healing period benefits and permanent disability benefits, including the weekly rate for such benefits; and,

II. The extent of claimant's entitlement to penalty benefits for an unreasonable delay or denial of weekly benefits pursuant to Iowa Code section 86.13.

FINDINGS OF FACT

In these findings, I will refer to the claimant by her first name, Chelsea, and to the defendant employer as Volt.

Volt is a temp agency which supplies workers to employers in the Knoxville, Iowa area. Chelsea worked for Volt from September 2012 until she was involuntarily terminated on April 4, 2014 by Volt for hiring an attorney to pursue her workers' compensation claim involved in this case. Chelsea's testimony at hearing as to the reasons for her discharge from Volt is uncontroverted. While at Volt, she was assigned to work at two locations. From the date of her hire until September 23, 2013 (approximately one year), she was assigned to a production laborer job at the 3M plant in Knoxville. Chelsea testified without contradiction, that her regular work hours at 3M before her work injury were 40 or more hours per week.

At the request of 3M, her assignment at that plant ended on September 23, 2013 due to her absences from work, and she was immediately re-assigned to another job at Red Rock Community Action Center, which paid the same as her 3M assignment. The record is unclear as to the nature of her duties at Red Rock, but it had to have been light-duty work since she was on work restrictions from the work injury at the time. As stated before, her assignment at Red Rock ended on April 4, 2014 when she was terminated by Volt. She remained unemployed until November 14, 2015 when she

accepted new employment as an administrative assistant with the Low Rent Housing Agency of Knoxville, Iowa. According to her supervisor, this was only a temporary job until the Agency could find a permanent occupant for the position. (Exhibit 4) Unfortunately, Chelsea did not match the qualifications that this Agency desired, and another person was hired for the permanent job. Chelsea's employment at the Agency ended on February 20, 2015. Despite several applications for other employment in the area of her residence, Chelsea has remained unemployed since leaving the Agency.

As stipulated, Chelsea suffered a low back injury on April 10, 2013 from her lifting duties at 3M. She initially lost no time from work, as Volt via 3M and later Red Rock accommodated for her physician-imposed restrictions until she was involuntarily terminated. She was initially treated by Darci Fuller, ARNP, at the Knoxville Hospital Clinic on April 29, 2013. (Ex. 8) When initial treatment with medications, physical therapy and work activity restrictions failed to improve her back symptoms, she was referred in June 2013 to Jeffrey Pederson, D.O., a specialist in physical medicine and rehabilitation (physiatrist). An MRI was ordered at this time. (Ex. 8-18)

Dr. Pederson stated the MRI did not show any stenosis from several bulging discs in Chelsea's spine, and considered the results a negative finding. Upon an assessment of low back strain, Dr. Pederson treated claimant's pain on two occasions. On September 5, 2013, he treated her complaints with different medications and additional physical therapy along with continued work activity restrictions. (Ex. 11-1:6) On October 21, 2013, the doctor reports that claimant was still not responding to treatment and performed an osteopathic manipulation. The doctor states that he asked claimant to call back after 2-3 weeks to report on her progress. His plan was to proceed with medial branch block injections, if the manipulations were not helpful and possibly radiofrequency ablation depending on the outcome of the injections. (Ex. 11-7:8) However, the doctor reports that claimant did not call back, and in a letter report dated May 9, 2014 to defense counsel, he stated he had to assume she improved. He then opined that Chelsea only suffered a soft tissue injury and suffered no permanent impairment under the AMA Guides. (Id.)

Although Chelsea testified she continued to have chronic low back pain after her last visit with Dr. Pederson, she sought no further treatment from Dr. Pederson or from any other physician in 2013 or 2014. She admits to not contacting him after the October 21, 2013 manipulations. She testified that she wanted to see if her back would get better on its own.

At the request of her attorney, Chelsea was evaluated by Jacqueline Stoken, D.O., another physiatrist, on December 18, 2014. Chelsea complained of continuous low back pain since her work injury in 2013. Dr. Stoken opines that claimant's current back symptoms are related to the April 10, 2013 work injury and she suffered a 5 percent permanent partial impairment to the whole person under the AMA Guides from that injury. Dr. Stoken recommended permanent work restrictions of no frequent lifting over 25 pounds and to avoid repetitive bending, lifting and twisting. (Ex. 13-3:5)

Chelsea returned to Dr. Pederson on July 1, 2015 complaining of continued midline low back pain at the 7/10 pain level, the same level of pain she had at the first visit with Dr. Pederson. (Ex. 11-1, 10) She also reported she was 14 weeks pregnant. His diagnosis of low back pain was unchanged, but stated that further treatment options were limited because of her pregnancy. He then recommended Chelsea take Tylenol, and he prescribed Lidocaine patches for the back. She was to return after giving birth to her baby for more treatment options. (Ex. 11-11:12)

In response to an inquiry by defense counsel as to the causation of any permanent impairment, permanent restrictions and continued need for treatment to the work injury, Dr. Pederson states that he continues to believe a trial of medial branch blocks would be the next treatment option, but Chelsea's pregnancy prevents this. He stated that her pregnancy could also be a cause of her current back pain. The doctor then opines as follows:

> Given her lack of improvement with conservative measures, the length of time since the work incident was reported, and the inability to predict a positive outcome to further interventional treatments, it is my opinion that she has reached maximal medical improvement in regards to her current work injury case. Permanent impairments are not present at this time. The only restriction I would place on her would be to limit lumbar extension activities. I do not see a need for lifting restrictions at this point.

(Ex. 11-14)

Defendants point to one medical record to challenge Chelsea's assertion that she has had constant pain since the work injury. On July 30, 2014, Chelsea had an IUD removed by Joseph Coleman, M.D. In the notes of the nursing intake for that procedure, it was noted as follows: "Musculoskeletal: Denies: Back pain, Joint pain, Joint swelling. Limited range of motion, Muscle aches, Muscle weakness, Stiffness, Other"
(Ex. 12-4)

Apparently, Drs. Pederson and Stoken agree that claimant has achieved MMI from her work injury. Dr. Stoken did not specify when that happened. Dr. Pederson states that it occurred when she did not respond after being asked to do so after three weeks, which would have been sometime in November 2013.

The fighting issue in this case is the causation for her current complaints. Dr. Stoken supports claimant's assertions that they are due to the original injury. Dr. Pederson states that although current treatment options are still available after claimant gives birth to her child, she has reached MMI for the work injury and she has no permanent impairment. However, he is a bit confusing in that he goes on to impose a restriction against lumbar extension activities. He did not address the cause of that restriction. However, he did suggest another cause such as her pregnancy.

I find that claimant achieved maximum medical improvement in November 2013. Chelsea had no believable explanation for not responding to Dr. Pederson. I agree with defendants that if she indeed had the significant continuing pain that she claims during the rest of 2013 and 2014, she would have either returned to Dr. Pederson or sought treatment from her family physician. The office note of Dr. Coleman clearly conflicts with the claims of significant continuous pain from the injury. Dr. Pederson presented a plausible alternate cause, her pregnancy.

I also find that claimant suffered no permanent impairment or permanent disability from her work injury of April 10, 2013. If, indeed, she currently has chronic back pain, she has failed to show it is work related. Claimant admitted that she would have remained at Volt had she not been fired.

Clamant suffered no loss of work due to her work injury and reached maximum medical improvement before she was fired from Volt on April 4, 2014.

CONCLUSIONS OF LAW

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).

A treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404.408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

In this case, the claimant failed to carry her burden to show by a preponderance of the evidence that she suffered a permanent impairment or permanent disability. She also failed to show that she suffered any loss of work due to the work injury. Consequently, she is not entitled to weekly benefits for temporary total, temporary partial healing period or permanent partial disability pursuant to Iowa Code sections 85.33 or 85.34.

Claimant also sought penalty benefits pursuant to Iowa Code section 86.13 for an unreasonable denial or delay in paying weekly benefits. However, I have held that she is not entitled to such benefits. Consequently, she is also not entitled to penalty benefits.

Claimant's termination may have generated a cause of action for retaliatory discharge on the basis of pursuing a workers' compensation claim. Springer v. Weeks and Leo, Inc., 429 N.W.2d 558 (Iowa 1988). However, this agency is not the proper forum for a wrongful discharge lawsuit.

ORDER

1. Claimant shall take nothing from this proceeding.

2. Claimant shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33.

Signed and filed this 27th day of October, 2015.

LARRY WALSHIRE
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.