

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LINDA MARIE MERKES,

Claimant,

vs.

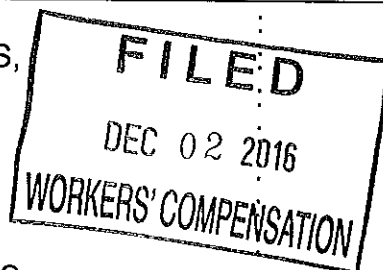
EXIDE TECHNOLOGIES,

Employer,

and

AMERICAN ZURICH INSURANCE CO.,

Insurance Carrier,
Defendants.



File Nos. 5052050, 5052051

ARBITRATION

DECISION

Head Note No.: 2500

STATEMENT OF THE CASE

Linda Merkes filed two petitions for arbitration seeking medical benefits from Exide Technologies and American Zurich Insurance Company.

The matter came on for hearing on January 14, 2016, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Cedar Rapids, Iowa. The record in the case consists of claimant's exhibits 1 through 18 (6, 7, 12, 14, withdrawn); defense exhibits A through I; as well the sworn testimony of claimant, Linda Merkes. Marla Happel was appointed court reporter. The parties argued this case and the matter was fully submitted on the date of hearing.

ISSUES AND STIPULATIONS

For both files, the fighting issues revolve exclusively around payment of medical expenses. The parties agree that the claimant suffered an injury to her low back on May 15, 2014, which arose out of and in the course of her employment. The parties agree the claimant suffered another injury to her low back on November 13, 2014. The parties stipulate that these injuries caused a period of temporary disability during a period of recovery. The claimant has not made a claim for permanent disability. The claimant contends she is entitled to the medical expenses outlined in claimant's exhibits 15 and 16. The defendants dispute these bills exclusively on the basis of medical causation.

FINDINGS OF FACT

Linda Merkes is a 53 year old woman from Manchester, Iowa. She was married to Daryl Merkes in August 2014. As a result of that marriage, she took the name Merkes. Prior to August 2014, her legal name was Linda Kremer. She has two adult children.

Ms. Merkes was employed by Exide Technologies (hereafter, "Exide"). It is a stipulated fact of the case that she suffered two injuries which arose out of and in the course of her employment. The first injury occurred May 15, 2014. The second occurred November 13, 2014. Both of these injuries were to the low back.

Ms. Merkes had a significant history of low back difficulties prior to these work injuries. She had a work injury to her low back for a different employer in March 1999. She tripped and fell while bartending, carrying drinks. (Defendants' Exhibit A) She had another work injury to her low back for another employer in 2009. A vehicle nearly backed into her and she felt low back pain while scrambling out of the way. (Def. Exs. C, D and F) She received fairly significant treatment for both of these instances. She apparently healed up in both cases. There is no evidence in this file that claimant was under active medical care for her low back in May 2015.

On May 15, 2015, Ms. Merkes suffered an injury which arose out of and in the course of employment. She slipped and fell from a work cleaning machine. She sought treatment with Regional Medical Center and Regional Family Health. (Cl. Ex. 3, pp. 1-6) About a week later, she saw Nate Brady, M.D., at Mercy Medical Center. (Cl. Ex. 4) Dr. Brady found her condition was work-related. (Cl. Ex. 4) After some follow up she was seen by Chad Abernathey, M.D., who opined the following in August 2014.

Ms. Linda Kremer clinically presents with chronic lumbosacral strain with a recent exacerbation. I do not recommend an aggressive neurosurgical stance due to a paucity of clinical and radiographic findings. I favor further conservative treatment in this setting. Her neural elements are well decompressed on her MRI studies and her neurological function is intact.

(Cl. Ex. 5, p. 3)

The November 13, 2014, work injury occurred when she was startled in the "smoke shack." A co-worker banged on the building, startling her and causing her to jump and twist with a sudden onset of pain into her leg. Again, it is stipulated that this accident occurred. She returned Regional Family Health where the incident was documented and a plan of conservative treatment was adopted.

She continued with pain management treatment through Regional Medical Center Iowa Anesthesia from December 2014 through April 2015. (Cl. Ex. 8, pp. 1-20) Claimant testified this treatment helped. She also saw a chiropractor throughout this

period. In May 2015, the defendants undertook surveillance of Ms. Merkes wherein she was observed, walking, sitting and eating. (Cl. Ex. 13)

CONCLUSIONS OF LAW

All of the issues in this case revolve around claimant's entitlement to medical benefits under section 85.27.

The primary issue is whether the admitted 2014 work injuries are a legal cause of the claimant's medical bills outlined in claimant's exhibits 15 and 16. The defendants dispute entitlement to these bills on the basis of medical causation.

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).

There are competing expert medical opinions in this file. W. Keith Barnhill, CRNA, ARNP, opined that the denied treatment is causally connected. (Cl. Ex. 8, pp. 21-22) This is bolstered generally by the opinion of Farid Manshadi, M.D. (Cl. Ex. 9) Lloyd John Luke, M.D., disputed these opinions in a written letter, which was later bolstered in his deposition testimony. (Cl. Ex. 11)

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

I find that the opinions of Mr. Barnhill and Dr. Manshadi carry greater weight. The bills outlined in Claimant's Exhibit 15 and 16 are causally connected to her work injuries and are owed by defendants. I reviewed all of the surveillance evidence supplied by the defendants. While this evidence does show the claimant is able to do things she suggested to medical providers that she was unable to do, it is not compelling to the issues before me. I am not deciding the claimant's extent of disability, as the claimant is not seeking permanency benefits. The only issue before me is whether the claimant's medical treatment is causally connected to her work injury. Stated another way, the fact that she may have exaggerated to some extent, the extent of her symptoms, does not change the fact that she did need treatment as a result of the injury. Dr. Manshadi and Mr. Barnhill have provided the most convincing opinions on medical causation.


ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay the medical expenses, including medical mileage, outlined in claimant's exhibits 15 and 16.

Costs are taxed to defendant.

Signed and filed this 2nd day of December, 2016.


JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JLW/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.