

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA PAYNE,

Claimant,

vs.

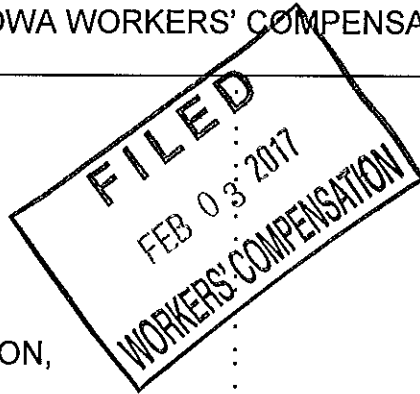
VERMEER CORPORATION,

Employer,

and

EMC RISK SERVICES,

Insurance Carrier,
Defendants.



File No. 5053635

ARBITRATION
DECISION

Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Rebecca Payne, has filed a petition in arbitration and seeks worker's compensation benefits from Vermeer Corporation, employer, defendant.

Deputy Workers' Compensation Commissioner, Stan McElderry, heard this matter in Des Moines, Iowa.

ISSUES

The parties have submitted the following issues for determination:

1. Whether the claimant suffered an injury arising out of and in the course of employment on or about May 8, 2014; and
2. Medical benefits.

The issues of temporary benefits, permanency, and credits were deferred.

FINDINGS OF FACT

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

The claimant was 39 years old at the time of hearing. She has been employed by defendant employer Vermeer for over 11-1/2 years. She is a high school graduate and has an Associate Degree from Indian Hills Community College in Computer Systems. The claimant began her work with Vermeer in 2005. She began training as a MIG welder in December of 2011 and completed the training in January of 2011. She worked as a MIG welder until September of 2012 when she was put on a restriction of no welding. Her current position is assembly where she has been for about a year and a half.

On or about May 8, 2014 the claimant was working in assembly when she was tightening a hub with a very large (6 foot long) torque wrench when the wrench broke and released. She felt an immediate pop in both shoulders, right worse than the left, which she immediately reported to her employer. She was seen in the Vermeer Medical Department and sent to the Pella Hospital for x-rays. An MRI performed on May 8, 2014 was negative. (Exhibit A, page 1) On June 11, 2014 the claimant was reporting to Katie Nichols, R.N., no pain at rest, and some (3-4 pain out of 10) when she lifts her right arm above shoulder level. (Ex. A, p. 5) She was returned to full duty work with no restrictions Ex. A, p. 5) She was examined the same day by Matthew Doty, M.D., who reported that the claimant was essentially pain free and all tests were negative. (Ex. A, p. 6) Claimant was seen on September 10, 2014 by Vermeer Medical, and she denied any pain or problems. (Ex. A, pp. 7-8) There is no record of any further treatment until February of 2015.

On February 11, 2015 the claimant reported an increase in right shoulder pain after pulling a piece of tape off the floor at work. Some pain on palpation was noted on February 16, 2015. (Ex. A, p. 9) On March 19, 2015 medical records refer to a pop in the right shoulder without pain from pulling tape the day before. (Ex. 1, p. 7) In her deposition taken on July 18, 2016 she testified that pulling the tape hurt her right shoulder "Extraordinarily." (Deposition, p. 11)

Dr. Doty referred the claimant for an orthopaedic opinion. On March 24, 2015 the claimant saw Steven A. Aviles, M.D., with Iowa Ortho. (Ex. A, p. 11) Dr. Aviles diagnosed shoulder bursitis. (Id.) A shoulder arthrogram was performed on April 7, 2015 with normal results. (Ex. A, p. 14) She was again released to full duty work without restrictions. This was confirmed on June 23, 2015. (Ex. A, p. 18)

On August 5, 2015 the claimant applied for short-term disability (STD). The doctor (Todd Treimer, D.O.) for the STD said that the shoulder was not work related. (Ex. A, p. 3) On October 13, 2015 the claimant told Dr. Aviles that the February 2015 incident had not caused her shoulder problems and the claimant was released to full duty work without restrictions. (Ex. A, pp. 19-21) There is no record of any further treatment until April 29, 2016. On that date she reported pain of the right upper extremity of about two weeks with no precipitating incident. (Ex. 1, p. 12)

The claimant went on her own to Brian M. Crites, M.D. (Ex. 4) Dr. Crites found and repaired a right shoulder anterior labral tear on July 12, 2016. Dr. Crites has

opined on August 12, 2016 that the May 8, 2014 work incident was a substantial, causal or aggravating factor in the subsequent labral repair being necessary. (Ex. 5, p. 1) He strengthened the basis of that opinion on September 19, 2016. (Ex. 4, pp. 10-11)

On August 22, 2016 Dr. Aviles outlined why he disagreed with the August 14, 2016 causation opinion of Dr. Crites. (Ex. A, pp. 22-23) His opinions are critical of the claimant and Dr. Crites. One quote: "She later came under the care of Dr. Crites, who, despite a negative MRI, suggested exploratory surgery. At the time of surgery, he claimed to have found a small anterior labral tear at the 4 o'clock region." (Ex. A, p. 22) Dr. Crites suggested the exploratory surgery because of clicking of the shoulder on examination. (Ex. 4) And the "he claimed" quote implies Dr. Crites was lying, or that the experienced surgeon was wrong and repaired something that was not there. The undersigned is unable and unwilling to reach that conclusion. Dr. Aviles seems to have been trying very hard to discredit everyone but himself. In the end I find it is his opinions which are discredited. It is found that the claimant had a right shoulder anterior labral tear caused by the work accident of May 8, 2014 which waxed and waned until surgically repaired.

On the date of injury the claimant had gross weekly earnings of \$840.00, was single, and entitled to four exemptions. As such, his weekly benefit rate is \$559.58. The claimant also seeks payment/reimbursement of medical bills as detailed in Exhibit 6.

REASONING AND CONCLUSIONS OF LAW

The first issue is the right upper extremity claimed injury.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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 personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

The claimant has the burden of establishing an injury arising out of and in the course of employment. It was found above that she met that burden. The claimed health conditions around the right upper extremity arose out of and in the course of employment.

Medical

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 1975).

This decision causally connects the right upper extremity injury to work and the medical treatment (Ex. 6) as necessary and reasonable for the diagnosis and treatment of the injury. Defendants are responsible for those expenses as detailed in Exhibit 6.

ORDER

Therefore it is ordered:

That the defendants pay/reimburse as appropriate the medical expenses as detailed above.

Costs are taxed to the defendants pursuant to 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 3rd day of February, 2017.



STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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SRM/sam

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.