BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SUSAN COFFLAND,

Claimant,

vs.

WALGREENS,

Employer,

and

AMERICAN ZURICH INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5040072

REVIEW-REOPENING

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Susan Coffland, claimant, has filed a petition in review-reopening and seeks workers' compensation from Walgreens, employer, and American Zurich Insurance Company, insurance carrier, defendants.

This matter came on for hearing before deputy workers' compensation commissioner, Jon E. Heitland, on April 22, 2015 in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1 through 8; defense exhibits A, B and C; as well as the testimony of the claimant and Larry Coffland.

ISSUES

The parties presented the following issues for determination:

The extent of the claimant's entitlement to permanent partial disability benefits.

Whether there has been a change of condition caused by the work injury not contemplated at the time of the prior arbitration decision which has increased claimant's industrial disability, and if so, the extent thereof.

FINDINGS OF FACT

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

Claimant, Susan Coffland, testified she is 51 years old. She is married to Larry Coffland. They have been married nine years. They have no children living at home

with them. Her education consists of graduating from high school in 1981. She took some college courses at Hamilton Business College in 1982, but she did not graduate. She did not learn any skills there that she could use in the job market.

Claimant worked for Walgreens, originally as a sales clerk, and later as a photo specialist. She was injured on December 28, 2011, which was the last day she worked for the employer. On the date of injury, she was stacking shelves with paper plates and heard a pop in her back. The pain took her to her knees. She used ice that night but she could not get out of bed the next morning. Her doctors were Casey Boyles, M.D., who felt she likely had a herniated lumbar disc with nerve impingement. An MRI showed a disc extrusion at L5-S1. She was referred to a neurosurgeon, David Segal, M.D. Dr. Segal performed discectomy surgery on March 7, 2012, on claimant's L5-S1 vertebrae.

After the surgery, claimant still had symptoms, including no feeling and numbness in her left foot. The day before she had surgery, she still had severe back pain, continuous tingling in her leg, and pain in her toes on her left side. Claimant felt the surgery helped her back but it did not cure the tingling in her foot. Her treatment also included physical therapy, using exercise machines and water therapy, two to three times per week. She also was assigned home exercises with rubber bands. During one session claimant felt an aggravation of her pain in her groin, which extended down into her left leg and toes.

She was told in June 2012 she had been terminated, but it was effective the prior March. She then sought unemployment benefits. She was awarded benefits, but she did not collect any because she owed repayment on a prior claim. She has not been employed since working at Walgreens. She has sought employment at a trucking company, and at McDonald's.

Dr. Segal declined to rate her impairment. The employer sent her to Jeffrey Westpheling, M.D., who assigned a rating of permanent partial impairment of 10 percent of the body as a whole. He recommended permanent restrictions of lifting not more than 20 pounds, alternating positions as needed, and no frequent bending or stooping. (Exhibit 3)

She had also been evaluated by Sunil Bansal, M.D. on November 2, 2012. (Ex. 6, page14) Dr. Bansal found her to have a 13 percent permanent partial impairment of the body as a whole. He also recommended work restrictions of no lifting more than 10 pounds frequently, or 20 pounds occasionally, with no frequent bending, squatting, climbing, twisting, or kneeling, avoiding stairs and sitting, standing or walking more than 30 minutes at one time. (Ex. 5, p. 14) When claimant applied at gas stations for employment, she told them about her restrictions from Dr. Westpheling. She was never offered employment.

The prior hearing was held in February 2013, based on the above evidence. In the arbitration decision, claimant was awarded 60 percent industrial disability benefits, and she is still receiving them. At that time, she was doing relatively well. She had

numbness in her foot, which has never gone away. After the prior hearing, she feels her condition changed. Her foot did not function correctly, and had "a mind of its own". As a result she sought additional treatment. She underwent injections as part of a pain management program. The injections did not help.

Later in 2013, in October and November, she had two incidents. She was walking and stepped down into a sunken hallway. Her foot did not plant correctly. She did not fall, but she caught herself. The second time she was going down her basement steps and had a similar experience. Her foot does not step flat as it should, like a twisted ankle.

After the two incidents, she sought further treatment from Dr. Boyle for her back pain on November 12, 2013. (Ex. 5, p. 3) He sent her back to Dr. Segal, to whom she reported increased pain. He recommended another surgery, a fusion procedure, but he also recommended additional injections. However, a steroid injection provided no relief. Dr. Segal recommended claimant go ahead with surgery. (Ex. 4, p. 8)

Her symptoms consist of continuous lower back pain. The pain goes into her left buttock and into her left leg, down to all of her left toes. She had the tingling in some of her toes before the October 2013 trip and the later fall, but now it affects all of her toes and goes up into her leg. She does not feel she could perform work within the restrictions she has. She hopes the surgery will improve this.

At home, she can no longer help with the yard work. She can do laundry, but her husband has to carry it. She used to be able to drive a manual transmission car, but she has had to get rid of that car. They have had to move to a ranch style home because she cannot handle stairs. They moved in March 2013. These changes have occurred since the last hearing.

Defendants conducted video surveillance. (Ex. C) The video shows claimant walking, lifting a case of bottled water, and getting into and out of a pickup truck. Claimant points out she never said she could not function on a daily basis. She takes medications for pain, and they wear off by the end of the day. The video shows claimant loading a case of water into a vehicle. She usually stays in the vehicle when she gets home until her husband comes out and carries the groceries inside.

She has four grown children. Her oldest requires special care, and he lives near her home. She spends time helping him deal with his schizophrenia. The video shows her helping her son go to a mental health appointment, get some legal papers copied, etc. The most she can walk is about 20 minutes, she then needs to sit down or lean on something.

She has no thyroid gland, which affects her weight, her skin, and her eyesight. In spite of this, her weight has not changed significantly. She weighs 188 pounds, and she is 5 foot 6 inches tall. She also has incontinence, and must wear a panty liner. This became necessary after she fell down the stairs in November 2013. She is on several medications. One is for kidney stones which developed recently. The tingling in her left

foot has existed since the injury. The feeling her left foot did not function correctly did not develop until near the time of her surgery. On a typical day, claimant rates her pain on a scale of 10 as a 4. On difficult days, a 9 or 10. There is never a day with no pain.

She nearly obtained employment at McMurrin Trucking. This would have been a bookkeeping job. She has no training in this area but she does the paperwork for her husband's over-the-road trucking work. She did not get the job because someone was hired before she could be considered. She knows the owners and felt they would accommodate her restrictions. She does not feel other trucking companies would.

On cross-examination, claimant agreed her change of condition involves her left foot. Her original December 25, 2011, injury resulted in pain and tingling into her toes, as noted by Dr. Boyle. Dr. Boyle did not really treat her, he sent her on to Dr. Segal. At that time she noted lower back pain, and tingling in her left foot, followed by surgery in March 2012. Exhibit 4, page 5, shows Dr. Segal on May 31, 2012, discharged claimant back to Dr. Boyle. She still had back pain and on and off tingling in her toes.

Her attorney sent her to Dr. Bansal. She has seen him twice. In November 2012, Dr. Bansal noted she had low back pain, radiation, and numbness in her left foot. The arbitration hearing was on February 25, 2013. Claimant complained to Dr. Boyle a month before that she had low back pain and tingling in her left foot. He recommended an EMG nerve conduction study, to address the left foot numbness. Dr. Boyle reviewed it and found a normal study. (Ex. 3, p. 3)

A couple weeks after the prior hearing, Dr. Boyle arranged for claimant's first injection, which occurred about a month after the hearing, in March 2013. Claimant sought treatment from Dr. Boyle for a urinary tract infection. He also mentioned the need for weight loss, and incontinence. (Ex. A, pp. 8-11) It was not until the fall at home in November 2013 she returned to Dr. Boyle with complaints of back problems. That incident happened when claimant was carrying a laundry basket to the basement down some stairs. The stairs are carpeted, and she fell. On November 12, 2013, she saw Dr. Boyle, and told him she fell that morning. He noted she was worse now than when she was at baseline. (Ex. 5) She underwent an MRI, and was then seen by Dr. Segal. She asked for a second opinion, and it was arranged and occurred with Chad Abernathey, M.D., on May 7, 2014. He had her walk, he looked at her MRI, and told her to lose some weight. He was "not a nice person," according to claimant.

Dr. Abernathey viewed the surveillance video of claimant. He did not feel claimant was a surgical candidate. He did not feel the surgery recommended by Dr. Segal would help, and he did not think claimant suffered from recurrent left lumbar radiculopathy with leg weakness and left foot drop. (Ex. A, pp. 16-17) He recommended additional conservative care.

Dr. Segal reviewed Dr. Abernathey's findings, and disagreed. He also viewed the surveillance video, and did not think it showed any contradiction with claimant's reported symptoms. Claimant had always indicated she was able to do everyday activities but with pain, and that her foot drop was intermittent. He again stated claimant

did require surgery. (Ex. 4, pp. 11-12) He again concluded claimant's ongoing symptoms were caused by her disc degeneration at L5-S1. (Ex. 4, p. 15)

The conservative care recommended by Dr. Abernathey consisted of seeing Sergio Mendoza, M.D., at the University of Iowa Hospitals and Clinics. She saw him in July 2014. In his office, he also recommended the fusion surgery. However, he did not causally relate her current condition to her work injury. He felt her current symptoms were more likely due to the intervening falls as well as claimant's natural degenerative disc condition. (Ex. A, p. 27)

Claimant was again seen by Dr. Bansal and in a report dated March 18, 2015, he noted her entire left foot was now numb, with radiation up to the ankle. She reported pain ranging from 4 to 9 out of 10. He found her symptoms causally related to her work injury as well as her most recent fall down the stairs in October 2013. (Ex. 6, p. 27) He also recommended surgical decompression. (Ex. 6, p. 28) He reiterated his prior rating of impairment and recommended work restrictions of not lifting more than 10 pounds frequently or 15 pounds occasionally, no frequent bending, squatting, climbing, or twisting, and avoiding stairs, sitting, standing or walking more than 30 minutes at a time. (Id.)

The insurer then denied authorization for the surgery. As a result, she is not able to return to Dr. Boyle or Dr. Segal. Claimant has brought this action to obtain the surgery recommended for her. Since seeing Dr. Abernathey and Dr. Mendoza, her symptoms have not improved.

On re-direct examination, claimant asserted she had the trip and later the fall at home because her foot was not functioning correctly. Claimant did not seek treatment for eight months because her anesthesiologist's bill from her original surgery had still not been paid by the insurer, and she did not want to incur more unpaid medical bills.

Larry Coffland also testified. He is claimant's husband. They have no children together. His occupation is driving a truck, and claimant helps with his logs. He drives to Chicago and back daily, but he is home every night. Since claimant's prior hearing, he has noticed claimant now has more of a limp than when it first happened. She does not sleep with him because she has to sleep in a recliner. She does not do yard work as before. He helps carry the laundry up and down from the basement. They do grocery shopping together.

He has viewed the video surveillance. He states claimant takes her pain pills and muscle relaxers in the morning, and she does better then. In the afternoon, she has more of a limp and more foot drop, and she is more tired and has trouble getting around. When claimant is walking through the store on the video, her foot drop is noticeable and she is leaning on the cart.

CONCLUSIONS OF LAW

The issue in this case is whether there has been a change of condition caused by the work injury not contemplated at the time of the prior arbitration decision which has increased claimant's industrial disability, and if so, the extent thereof.

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Rather, claimant's condition must have worsened or deteriorated in a manner not contemplated at the time of the initial award or settlement before an award on review-reopening is appropriate. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957). A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978).

Since the prior arbitration decision, claimant has experienced ongoing problems and pain with her left foot. She experienced numbness in her left foot and toes before the arbitration hearing, but also continued to experience those symptoms after the hearing. Exhibits 1 through 6 chronicle claimant's ongoing left foot problems. (Ex. 2, pp. 1-2; Ex. 3, p. 8; Ex. 4, p. 1; Ex. 5) Claimant testified her foot weakness led to 2 incidents of tripping and falling, in October 2013, and November 2013.

The surgery recommended by Dr. Segal in February 2014 contemplated a fusion at the L5-S1 level. (Ex. 4, pp. 4-5) Dr. Bansal has recommended surgery also. Dr. Segal and Dr. Bansal causally connect her current symptoms and the need for surgery to the work injury or the subsequent sequela incidents. Dr. Abernathey and Dr. Mendoza do not. Dr. Segal responded to this with a detailed explanation of why he recommended surgery. (Ex. 4, pp. 11-13)

Claimant asserts she has experienced a change of condition in that her left foot condition of numbness has never been resolved, and has been aggravated by the two falling incidents since the last hearing. Claimant argues the two trip and fall incidents constitute sequela of the original injury, in that her numb foot caused her to trip. Those sequela and the resulting increase in pain and impairment are the basis of this petition in review-reopening.

Defendants point out claimant's physical condition has not changed since the arbitration hearing. Claimant's work restrictions have not significantly changed. Dr. Bansal has not increased her rating of impairment.

However, claimant credibly testified her left foot condition has worsened since the prior decision. She has suffered two tripping or falling incidents as a result. This condition has not been addressed by medical treatment.

Dr. Segal and Dr. Bansal's conclusions claimant's current left foot condition is causally related to her original work injury, and to the later trip and fall incidents, will be given greater weight. Claimant's numbness of her left foot predictably made it harder for her to walk and to negotiate steps, as she cannot feel whether her foot is properly placed or not. Even without those incidents in the record, clearly claimant's left foot condition that existed at the time of the prior hearing was caused by the work injury, but has not been treated, and that alone would compel a conclusion defendants are responsible for the treatment of that condition, including surgery. But those incidents have now aggravated the left foot condition, providing an additional causal connection basis for both any increased disability and further medical treatment.

It is concluded both incidents are sequelae of the original injury. It is further concluded claimant's current left foot condition is causally connected both to the original work injury and to the two sequela incidents, and that claimant's current need for surgery for her left foot condition is necessitated by the original work injury. Defendants will be responsible for the costs of medical treatment for her left foot condition, including surgery.

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.

It is further concluded claimant has, as a result of her work injury and later sequela injuries, an increase in her disability caused by the work injury. The record establishes claimant has suffered an increase in her pain, as well as a further decrease in her ability to walk, stand, climb stairs, etc., all of which further limit the type of jobs for which she might reasonably apply. Even though her work restrictions have only

changed slightly, her credible testimony shows the worsening of her condition has made her disability worse, although not to a great degree. It is very possible once the surgery is performed, claimant's disability may decrease, or it may increase, but this decision can only evaluate her industrial disability at the time of the review-reopening hearing. Claimant has carried her burden to show a change of condition, and an increase in her disability since the prior hearing.

It is concluded claimant has an increase of disability since the prior arbitration decision of an additional ten percent industrial disability.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay unto the claimant fifty (50) weeks of permanent partial disability benefits at the rate of two hundred six and 27/100 dollars ($206.27) per week from June 11, 2012.

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 benefits previously paid.

Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

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 14th day of August, 2015.

Jon E. Heitland

JON E. HEITLAND
DEPUTY WORKERS'
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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.