BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JAN 24 2018
WORKERS' COMPENSATION

STACY COLE, Claimant, vs. JOHN DEERE WATERLOO WORKS, Employer, Self-Insured, Defendant.	File No. 5062516 ARBITRATION DECISION Head Note No.: 1402.30

STATEMENT OF THE CASE

Claimant, Stacy Cole, filed a petition in arbitration seeking workers' compensation benefits from John Deere Waterloo Works (Deere), self-insured employer as defendant. This matter was heard in Waterloo, Iowa, on October 23, 2017, with the final submission date of November 22, 2017.

The record in this case consists of Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 6, Defendants Exhibits A through K, and the testimony of claimant and Jay Beck.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Did claimant sustain an injury that arose out of and in the course of employment.

2. Whether the injury resulted in a temporary disability.

3. Whether the injury resulted in a permanent disability; and if so,

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

5. Whether there is a causal connection between the injury and the claimed medical expenses.

FINDINGS OF FACT

Claimant was 47 years old at the time of hearing. Claimant graduated from high school. Claimant has a certificate in data entry from a community college. (Exhibit 3, page 3)

Claimant did data entry for the Department of Child Services in Tennessee. She worked as a receptionist for a Head Start Program. Claimant also worked as an administrative assistant for the Boys and Girls Club in Waterloo, Iowa. (Ex. 3, p. 4)

Claimant began with Deere in October 2008. Claimant began at Deere assembling molds for casting. In 2014, claimant began driving a fork truck.

Claimant's medical history is relevant. Claimant testified that in 2012 she was in a car accident. Claimant was off work for a brief period of time following the accident due to injuries to the neck and back.

Claimant testified she drove a fork truck for 8-12 hours a day. She said she used her right hand to operate controls operating the fork truck. Claimant said she used her left hand to steer the fork truck.

Claimant testified she was driving the fork truck in April of 2015 when her left shoulder began to bother her and she felt a pop in the shoulder. Claimant testified she reported the injury to her supervisor. She said her supervisor told her to keep working. Claimant finished her shift.

Claimant pled a date of injury of April 16, 2015. It does not appear that date of injury was amended. While the petition suggests a cumulative injury, the record indicates claimant's shoulder injury was a traumatic injury ("Well, that particular day, I was just doing my job as normal, and I felt a pop in my shoulder." (Transcript page 21-22) Claimant's post hearing brief suggests claimant's date of injury was on April 15, 2015. (Claimant's post-hearing brief, page 2)

On April 15, 2015, claimant was evaluated by Carla Springer, M.D. Claimant had a two-week history of left shoulder and elbow pain. Claimant indicated the pain was worse when driving the fork truck. Claimant had similar problems one week prior. Claimant was assessed as having left shoulder and elbow pain. Claimant was treated with medication. In a April 15, 2015 note, Dr. Springer indicated claimant was off work until she could be evaluated by an orthopaedic doctor. (Jt. Ex. 1, pp. 1-9)

On April 24, 2015, claimant was evaluated by Gregory Hill, M.D., for left shoulder pain. Claimant had no specific injury. Claimant was assessed as having an AC joint impingement. Claimant was given a cortisone injection. (Jt. Ex. 2, pp. 1-2)

On May 11, 2015, claimant underwent an MRI of the left shoulder. The MRI showed a severe synovitis of the AC joint and a moderate bursitis in the subdeltoid

area. It also showed a small incomplete partial-thickness tear of the supraspinatus. (Jt. Ex. 3, pp. 1-2)

On May 13, 2015, claimant was seen by Dr. Hill in follow up. Left shoulder surgery was discussed and chosen as a treatment option. (Jt. Ex. 2, pp. 6-7)

On June 23, 2015, claimant underwent left shoulder surgery consisting of a rotator cuff repair. (Jt. Ex. 4, pp. 1-2)

On June 27, 2015, claimant was seen at Allen Memorial Emergency department with complaints of left shoulder pain. Claimant was assessed as having post-operative pain with drug-induced nausea. Claimant was treated with medication and discharged. (Jt. Ex. 3, p. 4)

On October 9, 2015, claimant tripped on a step at her mother's home. Claimant testified she put her arms out to catch her fall. After her fall, claimant had return of left shoulder pain.

On November 23, 2015, claimant returned in follow up with Dr. Hill with complaints of left shoulder pain after a fall at her mother's home. Claimant was given a cortisone injection in the left shoulder. (Jt. Ex. 2, pp. 14-15)

Claimant returned to Dr. Hill on January 8, 2016. Claimant had continued left shoulder pain. An MRI was recommended to further evaluate the left shoulder. (Jt. Ex. 2, pp. 16-18)

On March 29, 2016, claimant underwent a second left shoulder injury which was a revision of the rotator cuff repair. Surgery was performed by Dr. Hill. (Jt. Ex. 4, pp. 3-4)

Claimant saw Dr. Hill for follow up care from April 2016 through September 2016. On September 19, 2016, claimant was returned to work without any restrictions as of November 21, 2016. (Jt. Ex. 2, pp. 22-32)

In an October 13, 2016 letter, Jonathon Fields, M.D., indicated he had reviewed specifications for the fork truck driven by claimant. Dr. Fields opined that activities as a fork truck driver were not a contributing factor to the development of claimant's left-sided rotator cuff surgery. He also opined that driving the fork truck did not materially aggravate any pre-existing rotator cuff problems claimant may have had. (Ex. A)

In November 2016, claimant began driving school to get her commercial driver's license (CDL). (Ex. J) Claimant drove a truck for several days before dropping out of school due to a tennis elbow. (Ex. J)

On November 21, 2016, claimant was evaluated by Dr. Springer for golfer's elbow. Claimant was referred to physical therapy and treated with medication. (Ex. 1, pp. 17-23)

In a May 1, 2017 report, Farid Manshadi, M.D., gave his impressions of claimant's condition following an independent medical evaluation (IME). Dr. Manshadi opined that driving the fork truck at Deere materially aggravated claimant's left shoulder condition until it required surgery. He found claimant had a 17 percent permanent impairment to the left upper extremity. He also opined claimant was at maximum medical improvement (MMI) as of April 4, 2017. (Ex. 1)

Claimant began employment at a retail store, Ross Dress for Less, in July 2017. Claimant works full time at Ross and earns $11.50 per hour. At Ross, claimant works the cash register, does paper work, and checks inventory. (Ex. K)

In an August 23, 2017 report, Robert L. Broghammer, M.D., gave his opinions of claimant's condition following an IME. Dr. Broghammer opined that claimant's left shoulder condition was not related to work. He based this opinion on a review of claimant's medical records including degenerative changes in claimant's shoulder without evidence of an acute injury. He also noted the act of operating a fork truck did not cause the injury to the claimant. (Ex. C, pp. 47-48)

Claimant testified she still has loss of strength and range of motion in the left arm. She said she ices her shoulder after work. She said she can still drive, but does not drive with her right arm. Claimant takes over-the-counter medication daily for her shoulder pain.

Claimant said given her limitations on the left shoulder, she does not believe she could return to work driving a fork truck for Deere.

CONCLUSIONS OF LAW

The first issue to be determined is whether or not claimant had an injury that arose out of and in the course of employment.

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).

Claimant contends she injured her left shoulder while driving a fork truck while working at Deere. Claimant testified that, in April of 2015, while driving the truck, she felt a pop in her left shoulder.

Claimant pled a date of injury of April 16, 2015. It does not appear that date of injury was amended. While the petition suggests a cumulative injury, the record indicates claimant's shoulder injury was a traumatic injury ("Well, that particular day, I was just doing my job as normal, and I felt a pop in my shoulder" (Transcript page 21-22)) Claimant's post hearing brief suggests claimant's date of injury was on April 15, 2015. (Claimant's post-hearing brief, page 2)

On April 15, 2015, claimant was evaluated by Dr. Springer. Claimant indicated a two-week history of shoulder and elbow pain. Claimant was taken off work at that time. (Jt. Ex. 1, p. 1)

On April 24, 2015, claimant was evaluated by Dr. Hill for left shoulder pain. There was no specific injury. Claimant was given a cortisone shot at that time. (Jt. Ex. 2, pp. 1-2)

Three experts have opined regarding the causal connection between claimant's work driving a fork truck and her left shoulder problems.

Dr. Fields performed a job review of the fork truck job. He opined the job as a fork truck driver was not a contributing factor to the development of claimant's rotator cuff injury. (Ex. A)

Dr. Broghammer saw claimant on one occasion for an IME. Dr. Broghammer also opined that claimant's left shoulder condition was not related to her work as a fork driver at Deere. Dr. Broghammer indicated that claimant's medical records showed degenerative changes in the AC joint. He noted there was no evidence of an acute injury. In brief, Dr. Broghammer believed claimant's work at Deere was not the cause of her left shoulder problems, in part, it is claimant's description of the injury suggesting an acute injury, while the medical records showed no evidence of an acute injury. (Ex. C)

Dr. Manshadi opined he believed claimant's work activities while working at Deere materially aggravated her left shoulder condition. (Ex. 1, p. 4) However, Dr. Manshadi's opinion regarding causation suggest an injury at work caused by a cumulative trauma. Claimant's description of her work injury, describing a pop in her shoulder, indicates a traumatic injury. Because claimant sustained a traumatic injury and Dr. Manshadi's causation opinion was based on cumulative trauma analysis, Dr. Manshadi's causation opinions are found not convincing.

Claimant testified that in April of 2015 she had an injury to her left shoulder when she felt her shoulder pop and felt immediate pain. Claimant pled a date of injury of April 16, 2015. The pled date of injury is contradicted by the record and by claimant's post-hearing brief. Medical records from April 15, 2015 indicate claimant had two weeks of shoulder pain prior to the injury. (Jt. Ex. 1, p. 1) Medical records from Dr. Hill indicate shoulder pain with no specific injury. (Jt. Ex. 2, pp. 1-2) Both Dr. Fields and Dr. Broghammer opine claimant did not sustain a work-related injury to the left shoulder and that claimant's left shoulder problems are due to degenerative causes. Dr. Manshadi's opinions regarding causation are found not convincing. Given this record, claimant has failed to carry her burden of proof she sustained an injury that arose out of and in the course of her employment with Deere.

Claimant has failed to carry her burden of proof and that her injury arose out of and in the course of employment. All other issues are moot.

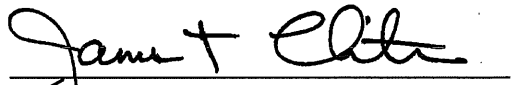
ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 24th day of January, 2018.



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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.