

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IBTISAM IBRAHIM,

Claimant,

vs.

SODEXO, INC.,

Employer,

and

XL INSURANCE AMERICA, INC.,

Insurance Carrier,
Defendants.

File No. 1641264.01

ARBITRATION DECISION

Head Note Nos.: 1800, 1803, 2500, 2700

STATEMENT OF THE CASE

Claimant, Ibtisam Ibrahim has filed a petition for arbitration seeking workers compensation benefits against Sodexho, employer, and XL Insurance America, Inc., insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on November 23, 2021, via Court Call. The case was considered fully submitted on December 23, 2021, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-9, claimant's 1-9, Defendants' Exhibits A-G, along with the testimony of claimant, Hassan Dirsuandi, and Aaron Knutson.

ISSUES

1. Whether claimant sustained complex regional pain syndrome as a result of the work injury of October 6, 2017;
2. Whether claimant has sustained a permanent disability, and if so, the extent;
3. Whether claimant is entitled to alternate care and/or future medical benefits;
4. Whether claimant is entitled to reimbursement of costs.

STIPULATIONS

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.

The parties agree the claimant has sustained a work injury as a result of a fall on October 6, 2017. They further agree the injury was a cause of some temporary disability entitlement to which is no longer in dispute.

If permanent benefits are awarded, the commencement date is July 24, 2018.

At the time of the accepted work injury, claimant's gross earnings were \$461.19 per week. She was married and entitled to five exemptions. Based on the foregoing, the appropriate rate is \$330.22 per week.

Prior to the hearing, claimant was paid temporary benefits at the rate of \$325.02. However, the appropriate rate was \$330.22 and the defendants have agreed to pay the underpayment of \$5.20 per week for 7.857 weeks.

Defendants also agreed to pay the IME fee of Dr. Stoken in the amount of \$3,200.00.

There are no outstanding medical expenses.

FINDINGS OF FACT

Claimant was a 48-year-old person at the time of the hearing. At all relevant times, she was married with three minor children. Her educational background includes a Bachelor's degree in law. (CE 2:4)

Pre injury medical history includes an October 21, 2015, diagnosis of plantar fasciitis on the left. (JE 1:1) During that medical visit, claimant identified a number of physical complaints including abdominal pain, headaches, migraines, loss of consciousness, and vertigo. (JE 1:2-3) Claimant continued to complain of heel pain in 2016 which was, by then, bilateral. (JE 1:5)

On or about October 6, 2017, claimant was descending stairs for a catering event when she rolled her right ankle and fell, striking her left knee and thigh. Claimant sought treatment via her family care provider on October 8, 2017. (JE 2:11) X-rays of the right foot taken during that visit showed no signs of acute fracture however there was soft tissue swelling around the right ankle, greater laterally, but without an acute right ankle fracture. (JE 2:13-14) Claimant was placed in an air cast. (JE 2:12-14)

On October 25, 2017, claimant was seen by Carlos Moe, D.O., at Concentra Medical Center for the October 6, 2017, injury at work. (JE 4:17) Claimant's left thigh was positive for pain and tenderness and had visible bruising. Id. Her left knee was positive for pain and tenderness. Her right ankle had decreased range of motion, significant pain, and swelling. Id. Her right foot and toes also suffered from pain, tenderness, swelling and decreased range of motion. Id. Claimant was referred for an MRI. Id. An MRI conducted on November 1, 2017, showed anterior talofibular ligament tear or rupture. (JE 3:15) There was an associated small ankle joint effusion with surrounding soft tissue edema. (JE 3:15)

Claimant returned to Dr. Moe on November 3, 2017, in follow up. (JE 4:20) She was continued on work restrictions, sent to physical therapy, and referred to podiatry. (JE 4:21) She attended seven therapy visits in October and November 2017. (JE 5:25)

On November 21, 2017, Dennis A. Kessler, DPM, examined claimant's ankle and recommend surgical repair which took place on December 20, 2017, with Dr. Kessler. (JE 8:45; 6:27) She also saw her family doctor on December 18, 2017, for a pre-operative physical (JE 1:7) In that visit, her musculoskeletal condition was described as follows: "gait and station are within normal limits....muscle strength and tone is normal." (JE 1:9)

One month post-op, Dr. Kessler recommended home massage, normal footwear as tolerated, and avoidance of uneven terrain. (JE 8:60) She was returned to work with restrictions of sitting down and no lifting over 20 pounds. (JE 8:60) During the February 27, 2018, visit, claimant reported pain at the surgery site. (JE 8:62) Dr. Kessler administered an injection and recommended massage around the surgery site. (JE 8:63)

In the April 10, 2018, follow-up, claimant reported the injection did relieve her pain. (JE 8:66) Dr. Kessler referred her to physical therapy. (JE 8:67) Unfortunately, physical therapy did not commence until June 14, 2018. (JE 8:68; JE 7:29) She attended several therapy sessions and was discharged on July 5, 2018, with 70 percent improvement in her ankle. (JE 7:41)

On July 24, 2018, Dr. Kessler found claimant at MMI with no permanent sequela. (JE 8:73; Ex F:31) At that visit, claimant reported pain of 3 on a 10 scale, occurring occasionally and improving. (JE 8:72) The pain was aggravated by sitting, walking, and standing. Id. Claimant was not working at the time due to summer break. Id.

On December 28, 2020, claimant was seen for a health maintenance evaluation. (Ex. 9:75) In the musculoskeletal section, claimant's gait and station were within normal limits with equal strength in both lower extremities. (JE 9:78) There was no mention of right ankle pain. However, this is the same language used by the family doctor when claimant was in for her pre-operative physical. (See e.g. JE 1:9) Claimant testified that she did not bring up her right ankle as the purpose of the visit was to run blood tests. On July 23, 2019, claimant was seen again by her family doctor for pain and numbness in

the fourth and fifth fingers of the left hand. (JE 9:80) There was no mention of the right ankle pain at this visit. (JE 9:80)

On October 15, 2021, claimant underwent an independent medical examination with Jacqueline Stoken, D.O. (CE 5:17) During this examination, claimant related that she had pain in her calf and right foot. (CE 5:22) The pain in her calf was sharp and range from 3 to 7 on a 10 scale. Id. The pain in her right foot ranged from 3 to 6 on a 10 scale. Id. For both, rest and medicine alleviated the pain and walking and standing aggravated it. Id. She reported that physical therapy gave her a moderate amount of relief and that the pain did not interfere with lifting 10 pounds or the activities of daily living. Id.

During the examination, she exhibited slight reduction in range of motion in the right ankle, mild swelling of the anterior ankle area, as well as hyperalgesia and allodynia of the right foot and ankle. Id. She ambulated with an antalgic gait. Id. Dr. Stoken diagnosed claimant with tear of the right ankle anterior talofibular, surgical repair of the tear, and chronic right ankle pain with complex regional pain syndrome. (CE 5:23) She attributed the tear, need for surgery and the chronic pain with CRPS to the October 6, 2017, injury. (CE 5:23) In regards to the diagnosis of complex regional pain syndrome, Dr. Stoken made the following statements:

2. She must report at least one symptom in three of the four categories:

Sensory: She reports hyperesthesia or allodynia;

Vasomotor: She reports temperature asymmetry and/or skin color changes and/or skin color asymmetry;

Sudomotor/Edema: She reports edema and/or sweating changes and/or sweating asymmetry.

Motor/Trophic: She reports decreased range of motion and/or motor dysfunction (weakness, tremor, dystonia) and/or trophic changes (hair, nail, skin).

3. She must display at least one sign at time of evaluation in two or more of the following categories:

Sensory: She has evidence of hyperalgesia (to pinprick) and/or allodynia to light touch and/or deep somatic pressure and/or joint movement);

Vasomotor: She does not have evidence of temperature asymmetry and/or skin color changes and/or asymmetry;

Sudomotor/Edema: She has evidence of edema and/or sweating changes and/or sweating asymmetry.

Motor/Trophic: She has evidence of decreased range of motion and/or motor dysfunction (weakness, tremor, dystonia).

(CE 5:25) Dr. Stoken did not identify which specific deficit claimant reported nor did Dr. Stoken provide specific criteria found at the time of the evaluation that corresponded

with the above diagnostic guidelines. Instead, the section of the report devoted to CRPS appears to be a recitation of the guidelines rather than the application of the guidelines to the case at hand.

Further, during the December 28, 2020, examination, claimant showed no signs of edema or varicosities and digits and nails were normal without clubbing or cyanosis. (JE 9:78) She had some discoloration concerns in her face but not of her right ankle or lower extremities. (JE 9:81) In a November 2, 2021, report, Dr. Kessler opined via a checklist letter that he had not seen claimant since July 2018, and that at that time she did not have signs of CRPS and that if she did have signs of CRPS as stated by Dr. Stoken, Dr. Kessler would not causally relate any current CRPS diagnosis to the 2017 work injury due to the significant passage of time. (DE F:33)

Due to Dr. Stoken's lack of specificity about which of the elements of CRPS claimant reported or displayed during the examination along with the normal signs of skin tone, lack of swelling or edema, and normal ranges of motion during the December 28, 2020, and July 23, 2021, visits to claimant's family care doctor, it is found claimant did not suffer from CRPS as a result of the work injury.

Dr. Stoken agreed that claimant reached maximum medical improvement on July 24, 2018. (CE 5:24)

Dr. Stoken opined that as a result of the work injury claimant has a permanent partial impairment of 7 percent to the lower extremity. Id. Further, Dr. Stoken recommended claimant's work restrictions include avoiding prolonged walking or standing. (CE 5:26) Dr. Stoken's bill included \$800.00 for the examination and \$2,400.00 for the report. (CE 7:41)

Currently, the pain is sharp and the surgical site is sensitive to touch. Enjoying time with her family is affected due to pain from standing or walking for long periods of time. She is scared to navigate stairs due to a fear of falling due to lack of support, strength or pain in the foot.

Claimant's husband testified that claimant had been told that the ankle injury would take a long time to fully heal. He also confirmed her testimony regarding pain and the limitations of pain in regards to walking and activities with the family.

She is working approximately 36-38 hours per week for the defendant employer. As part of the union bargaining agreement, this position is considered a full-time position. She is working the cashier position at a convenience store located on campus which is the position she was working at the time of her injury. Her duties do not require much movement or walking but when she comes home after a day of work, she is in a lot of pain and her foot is swelling.

Hassan Dirsuandi, claimant's husband, testified at hearing that claimant regularly complains of pain at home and that household tasks affect claimant adversely as compared to prior to the injury.

Aaron Knutson, claimant's supervisor, testified at hearing that claimant works her pre-injury job with no restrictions or modifications. He explained her hours are based on what the company requires. Her hourly work is not reduced due to the injury. As far as he knows, claimant continues to work the same position she was in prior to the injury without any changes in her schedule or tasks.

Claimant believes that she needs additional medical care and worries about the future of her injured foot.

CONCLUSIONS OF LAW

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. 6.904(3).

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).

As stated in the findings of fact, claimant did not carry her burden to prove that she suffers from CRPS or that any CRPS is associated with the October 2017 work injury. It is agreed that she did suffer a right ankle ligament tear from the October 2017 work injury, but the parties dispute whether she sustained any permanent disability.

Defendants rely upon the opinions of Dr. Kessler who discharged claimant to full duty with no restrictions and no impairment. However, at the time of the discharge, claimant was still experiencing pain that was aggravated by use. Further, at the time of the discharge, claimant was not working due to being on summer break. Claimant had only reached 70 percent improvement at that time as recorded in the physical therapy notes. She testified that she had increased pain from standing for long periods of time at work as a cashier and that the pain limited her activities. While her supervisor observed claimant doing her job without restrictions or accommodations, he was not able to answer affirmatively that she was pain free. It is credible that claimant had a different presentation including increased pain and an antalgic gait with Dr. Stoken during a work period as opposed to the summer when claimant was on break.

While the yearly physical appointments did not record any signs or symptoms of pain or discomfort, claimant's testimony that she was at the annual appointment for blood tests was credible. Further, the same language regarding claimant's musculoskeletal condition was used during both the pre-operative physical in 2017 when claimant was preparing for surgical repair of her right ankle and then again in 2020 and 2021. Claimant's right ankle was not "normal" in 2017 during the pre-operative physical and thus it would be improper to rely on the annual physical examination summaries for guidance on the condition of claimant's ankle. Therefore, the content of the primary care physician reports is not conclusive as to claimant's pain level and range of motion in the right ankle. In fact, those records are given lower weight as it relates to claimant's musculoskeletal condition.

In regards to her pain and discomfort, Dr. Stoken's opinions are more reliable as they are consistent with claimant's credible testimony and claimant's condition as recorded by Dr. Kessler at the time of her discharge in July of 2018.

Therefore, Dr. Stoken's opinion regarding claimant's dysfunction is adopted.

Since this case involves disability to a scheduled member the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, controls.

[W]hen determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs 'a' through 'u', or paragraph 'v' when determining functional disability and not loss of earning capacity.

Iowa Code § 85.34(2)(x) (2019).

It is found claimant sustained a 7 percent impairment to the right lower extremity as a result of her accepted work injury of October 6, 2017.

At the hearing, claimant made a claim for alternate medical care. The elements of an alternate medical care claim have not been met. There is no request for care that has been declined. Claimant argues that the request for alternate care was made, both in the past and currently, but do not point to specific requests made. The claimant has not carried her burden as it relates to the claim for alternate medical care.

Claimant is entitled to ongoing medical care at the expense of the defendants but that care shall be directed by the defendants until such time as the facts support otherwise.

Claimant also requests an assessment of costs. Rule 876 IAC 4.33 allows for the assessment costs at the discretion of the deputy. Given that claimant has prevailed in this matter, the assessment of costs against defendant employer and insurer are appropriate in the amount of \$100.00 for the filing fee.

ORDER

THEREFORE, it is ordered:

That defendants employer and insurer are to pay unto claimant ten point five (10.5) weeks of permanent partial disability benefits at the rate of three hundred thirty and 22/100 dollars (\$330.22) per week from July 24, 2018.

That defendants are to pay the 85.39 examination as previously agreed.

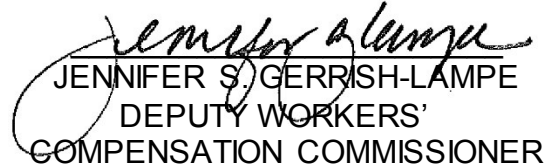
That defendants employer and insurer shall pay accrued weekly benefits in a lump sum.

That defendants employer and insurer shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That claimant is entitled to future medical care for the right ankle injury.

That defendants employer and insurer shall pay the costs of this matter pursuant to rule 876 IAC 4.33 in the amount of one hundred and no/100 dollars (\$100.00).

Signed and filed this 18th day of February, 2022.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

John Stoltze (via WCES)

Aaron Oliver (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.