BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KATHALEEN BROWN, Claimant, vs. CAMANCHE COMMUNITY SCHOOL, DISTRICT, Employer, and UNITED HEARTLAND, Insurance Carrier, Defendants.	File No.: 5034722 R E M A N D D E C I S I O N Head Note Nos. 1402.40, 1803

STATEMENT OF THE CASE

This case is before this division on remand from the Iowa District Court for Polk County following a Ruling on Petition for Judicial Review dated June 4, 2019.

In a January 30, 2017 arbitration decision, the presiding deputy commissioner determined claimant, Kathaleen Brown, did not satisfy her burden to prove she sustained a heart condition or other ailments as a result of steroid usage for her work-related pulmonary injury. However, the presiding deputy commissioner found claimant sustained an 85 percent industrial disability due to her work-related pulmonary injury.

Both parties appealed the January 30, 2017 arbitration decision. Per a delegation from the Workers' Compensation Commissioner, the undersigned issued an intra-agency appeal decision on October 11, 2018. I affirmed the deputy commissioner's finding that claimant did not satisfy her burden to prove she sustained a work-related heart condition, but I reduced the deputy commissioner's award of industrial disability from 85 percent to 45 percent.

A petition for judicial review was then filed by claimant. In its Ruling on Petition for Judicial Review, the District Court determined the agency erred by failing to consider the opinions of Robert Shapiro, M.D., when analyzing whether claimant sustained a

work-related heart condition: "The court finds error with the agency's failure to consider the opinions of Dr. Shapiro and remands to the agency for consideration of said opinions." (Ruling on Petition for Judicial Review, p. 7) The District Court did not address any of claimant's other arguments in its Ruling.

On July 15, 2019, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

ISSUES

1. Does consideration of the opinions of Dr. Shapiro change the agency's determination that claimant failed to prove she sustained a heart condition as a result of steroid usage for her work-related pulmonary injury.

FINDINGS OF FACT

As noted in the January 30, 2017 arbitration decision, claimant presented to the emergency room at Mary Greeley Medical Center on November 2, 2015 with chest pain. (Claimant's Exhibit 15, p. 5) The emergency room physicians recommended a cardiac workup. (Cl. Ex. 15, p. 7) As a result, claimant consulted with a cardiologist, Jason Rasmussen, M.D., who recommended a coronary angiography. (Cl. Ex. 15, pp. 11, 13) That angiography was performed on November 4, 2015, by Dr. Shapiro. In his operative notes, Dr. Shapiro noted claimant had a history of "environmental lung disease which has been aggressively treated and for which she is notably on chronic steroids who presented to the hospital with symptoms of unstable angina." (Cl. Ex. 15, p. 21) Under the "DIAGNOSTIC IMPRESSIONS" section of his notes, Dr. Shapiro noted, in relevant part, as follows:

> 1. Severe CAD of the mid RCA with an irregular ulcerated plaque which was the likely culprit of the patient's acute coronary syndrome . . . .
> . . .
> 3. Mild to moderate diffuse CAD and fragile coronary arteries due to chronic steroid use as described above.

(Cl. Ex. 15, p. 23) Dr. Shapiro indicated he discussed the case with Dr. Rasmussen, and Dr. Rasmussen would "decide on other aggressive treatment of residual CAD." (Cl. Ex. 15, p. 24)

It appears this operative note is the only "opinion" or medical note from Dr. Shapiro in the evidentiary record.

The District Court's Ruling refers to Claimant's Exhibit 15, page 14 as an example of "Dr. Shapiro creat[ing] a plan for [claimant] to taper her steroid use related to her treatment in his care." (Ruling, pp. 6-7) Respectfully, however, while the record contained on page 14 of Claimant's Exhibit 15 does refer to a plan to taper claimant's steroids, this progress note was drafted by Karen Carlson, M.D.—not Dr. Shapiro. (Cl. Ex. 15, p. 14) Presumably, the taper referenced by Dr. Carlson came as a result of a discussion between Dr. Shapiro and Dr. Rasmussen.

It is not clear from Dr. Shapiro's operative note whether Dr. Shapiro reviewed claimant's medical records prior to performing the angiography, and if so, which records he reviewed, or whether he relied simply on a history provided by claimant. Further, while Dr. Shapiro indicated as a "diagnostic impression" that claimant's CAD was due to her steroid use, it does not appear from the evidentiary record that he was ever asked to formalize his causation opinions within a reasonable degree of medical certainty.

Dr. Rasmussen, on the other hand, was asked to "state within a reasonable degree of medical certainty, i.e., greater than 50%, that Ms. Brown's use of long-term oral steroids, is a substantial contributing factor of her coronary artery disease." (Cl. Ex. 23, p. 1) He was unable to do so, stating, "Uncertain – cannot give an honest estimate." (Cl. Ex. 23, p. 1)

CONCLUSIONS OF LAW

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).

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

As discussed above, it is simply not clear from the record whether Dr. Shapiro reviewed any of claimant's medical records prior to performing the angiography or offering the "diagnostic impression" that claimant's CAD was due to her steroid use. More importantly, Dr. Shapiro's "diagnostic impression" was just that—an impression; he was never asked to state his causation opinions within a reasonable degree of medical certainty. For these reasons, I do not find the statements made by Dr. Shapiro in the medical records to be persuasive or probative.

Notably, it was not until her petition for judicial review that claimant began to rely on Dr. Shapiro. For example, in the "Causation" section of the table of "pertinent facts" in claimant's post-hearing brief filed on November 2, 2016, Dr. Shapiro is not listed as having given an expert opinion. (Cl. Post-Hearing Brief, pp. 12-14) Then, in claimant's intra-agency appeal brief filed on June 8, 2017, claimant asserts that besides Allison Testroet, D.O., and Joel Kline, M.D., "[t]he only other physician to give an opinion in this matter is Dr. Rasmussen." (Cl. Appeal Brief, p. 20) Dr. Shapiro is likewise not mentioned in claimant's argument that she proved her heart condition was attributable to her steroid use. (See Cl. App. Brief, pp. 19-21) The absence of any reliance on Dr. Shapiro in any of her briefs before the agency is illustrative of the negligible weight claimant herself gave to Dr. Shapiro.

As directed, I considered the statements made by Dr. Shapiro, but I did not find these statements to be persuasive or probative. I find the opinion of Dr. Rasmussen, who was asked to formalize his opinion within a reasonable degree of medical certainty, to be more persuasive. In other words, consideration of Dr. Shapiro's statements and opinions does not change any of the findings, conclusions, or analysis on the issue of

whether claimant satisfied her burden to prove a work-related heart condition. Claimant failed to carry her burden to prove that her heart condition is related to her work injury.

ORDER

THEREFORE, it is ordered:

Defendant shall pay claimant two hundred twenty-five (225) weeks of permanent partial disability benefits, commencing on May 27, 2012, at the rate of five hundred fifteen and 06/100 dollars ($515.06) per week.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants are to be given credit against permanent partial disability benefits for payments previously made beginning on March 27, 2012.

The parties shall split the costs of the appeal, including the hearing transcript.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 7th day of August, 2019

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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