BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
MAY 05 2016
WORKERS' COMPENSATION

LINDA HENRY,	:	File No. 5048740
Claimant,	:	
vs.	:	ARBITRATION DECISION
GRAPEVINE STAFFING, JEAN DAVENPORT, DAVENPORT KENNELS AND/OR WILLY'S LUVABULLS,	:	
Employer, Defendant.	:	Head Note Nos. 1100, 1402, 1803, 2500

STATEMENT OF THE CASE

Linda Henry, claimant, filed a petition in arbitration seeking workers' compensation benefits against Grapevine Staffing, Jean Davenport, Davenport Kennels and/or Willy's Luvabulls, for an alleged work injury of July 7, 2012.

This case was heard on February 19, 2016, in Des Moines, Iowa. The case was considered fully submitted on March 25, 2016, upon the simultaneous filing of briefs.

The record consists of joint exhibits A-Y, claimant's exhibits 1-9, and the testimony of the claimant.

ISSUES

1. Whether the claimant was an employee at the time of the alleged injury;
2. Whether claimant's injury arose out of and in the course of her employment;
3. The extent of claimant's industrial disability;
4. Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant.

STIPULATIONS

The parties agree claimant sustained an injury on July 7, 2012. They further agree that the injury was the cause of temporary disability from July 7, 2012, through February 1, 2013, and that the injury caused some permanent industrial disability.

They further agree that entitlement to permanent benefits would commence on February 2, 2013, at a benefit rate of $248.17 based on a gross weekly wage of $330.00 per week. Claimant was married and entitled to two exemptions.

FINDINGS OF FACT

Claimant was a 65 year old person at the time of hearing. Her past work experience is in janitorial services, retail, food service, and shipping and receiving.

She answered an ad that Defendant Grapevine Staffing was running for positions at See's Candy. Claimant filled out an application on July 3, 2012, and took a test. (Exhibit AA) The position required weekend work, which claimant was unwilling to do. As claimant was leaving, Kathy Achenbach, a recruiting manager for Defendant Grapevine Staffing, (herein after known as "Grapevine"), provided a lead to the claimant in the form of a business card for a kennel in Davenport, Iowa.

Luvabulls is owned by William Davenport, Jean Davenport's son. It is located on Ms. Davenport's personal property at 3059 215th Street in Thayer, Iowa. Ms. Davenport considers the kennel operation to be part of the larger farm that is run on that property. The animal welfare licenses are in the name of William Davenport. (Ex. A and B) Ms. Davenport is not identified on any application for license despite her doing the majority of the work for the kennel. (Ex. C) The tax returns are filled out in William Davenport's name. (Ex. D) The first report of injury filed was made by Jean Davenport, in her name, and the occupation is described as "Farm Aid." (Ex. E)

Ms. Davenport contacted an individual at Grapevine to see if she could gain assistance with a new litter of pups. Grapevine took her phone number and address. Ms. Davenport had worked for an earlier iteration of Grapevine when the company placed nurses.

Grapevine states that it has a specific policy that it follows when taking on new clients. It requires a job order and a signed agreement of responsibilities before it engages in staffing services. (Ex. BB, CC testimony at hearing) Ms. Achenbach testified that a written job description is required for every position that she places.

> Q. Do you require a written job description?
>
> A. A written job description for every position that we place.
>
> Q. Proceed.
>
> A. Once I get all of that from the client, then I will contact the client and -- well, first of all, I will review that information, because I have to contact the client and give them the amount of their rate they're going to pay. The reason why I have to have the information first is so I know what my rates are going to be. In order to make that rate, I have to know what the work

> comp rate's going to be, what the unemployment's going to be. All of that goes into what my final rat01:13:28 1 is to the client. That is then given to the client in a document form contract stating how much the rate's going to be. It talks about unemployment, it talks about worker comp, how to handle injuries, time sheets, payroll, invoicing, billing. It's signed by myself, and it's signed by the client before any job is ever worked on.

(Trans p. 73, ln. 10-25, p. 74, lns. 1-9)

Ms. Davenport claims that no such conversation occurred. She agreed that she did not fill out any documentation, and there was no discussion regarding the markup and costs that Grapevine would require above and beyond the hourly rate paid to any potential employee.

Once the contract is signed between the client and Grapevine, Ms. Achenbach becomes responsible for filling those positions.

> Q. What happens after that written service agreement is in place?
>
> A. Once this is signed by both parties, then I will go into a mode of trying to fill those positions. That is where we have a database of applicants. Advertising, radio, whatever I can get to get applicants in the door to see who is qualified to fill those positions. So those applicants come in, fill out an application, fill out a testing, which is some -- some clients require testing, some don't. Across the board we just have everybody do the testing to make it fair. Those applicants are then interviewed to see if they are interested in the position, see if they fit the position, what's required by the client. And then from there they're sent out to the client to go interview with them. They make the final decision usually. And then if that client says this person, yes, we want to hire them for ABC, then we contact the applicant, we offer them the position contingent on drug screen, criminal background check if required by the client, and our orientation process. And that is when the applicant says yes or no, and then they're scheduled to come back in on a scheduled date and time for orientation.

(Trans. p. 74, lns. 22-25, p. 75, ln. 1-24)

Ms. Davenport testified her expectation was that "they might know of someone that was just looking for a temporary, few-hours-a-week work." (Ex. 9, p. 46) When asked whether she realized that the staffing services were done for a fee, she testified that she did not discuss that with the Grapevine. (Ex. 9, p. 44)

> Q. So when you contacted Grapevine Staffing, what was told to you?

A. "We don't usually do that kind of work, but if we have somebody that's available that looks like they would work, we will send them your way. We'll let you know."

Q. So when you hear that or when you completed your conversation with Grapevine Staffing, what was your understanding or belief?

A. That if -- if someone stopped in there looking for a job and they weren't appropriate for the manufacturing job or the clerical job, they would send them out to me.

Q. Okay. And did that end up happening?

A. Yes, it did.

Q. And when did that happen?

A. July 3 they sent Linda Henry my way.

(Trans p. 108, lns. 22-25, p. 109, lns. 1-14)

Q: How did you first meet Linda Henry?

A: Linda called me and said she had been at Grapevine Staffing, looking for employment. They told her of what I was looking for. She called m on the phone and said she had been there and was interested in doing what I needed done.

Q. When you say they told her what you were looking for, had you talked with the Grapevine Staffing?

A. I talked to them on the phone.

Q. What was your conversation with them?

A. I told them - - I don't remember exactly when I called. It was in June, and I said in the first - - first part of July we would probably be looking for a puppy nanny.

Q. Somebody to help with the dogs then?

A. Just the puppies, just to help take care of the puppies, yes.

(Ex. 9, p. 34)

On the same day, July 3, 2012, claimant called the number on the card given to her by an employee of Grapevine Staffing.

Q. All right. And when you were finished with all of that, what happened then?

A. Well, I asked if I could use the restroom, and I went to the restroom. And when I came out, Kathy was sitting at a desk on the right-hand side, and she –

Q. Who is Kathy?

A. She's an employee of Grapevine.

Q. Okay. Grapevine, employee of Grapevine that you had talked with there?

A. Yes.

Q. Okay. Go ahead.

A. She asked me if I had a minute. And I said yes. And she said, "I think we have the perfect job for you given your background with animals." And she told me briefly kind of what the job was.

Q. Was it a job that you were interested in?

A. Yeah.

Q. All right. And did she give you information regarding not only the job, but how to contact them personally?

A. Yes. She gave me her business card and wrote on the back Miss Davenport's address and phone number.

(Trans. pp. 18-19, lns 11-25, lns 1-11)

Claimant then spoke with Ms. Davenport. The puppy nanny position had been filled. Claimant drove to the farm regardless. Once there, she indicated she would be willing to do most any job. Ms. Davenport suggested that there was other work that could be done such as cleaning, painting, scrubbing gates, picking up trash, and emptying dog food sacks.

Ms. Davenport had not previously hired any workers and characterized these positions as temporary, seasonal, short contract work. She did ask the claimant to feed and water the dogs, feed and water the puppies that were weaned. Ms. Davenport further claimed that William Davenport was present during some of the days that claimant was working. Claimant testified that she met him either the day before or the day of her injury.

Q. What do you recall about your meeting Mr. Davenport?

A. Well, we introduced ourselves to each other after we both looked at each other and said, "Who are you?" And we introduced ourselves, and I told him who I was, why I was there. And he said, "Oh," and went up to the house for something.

Q. Did he introduce himself as, "These are my pups," or, "These are my dogs," or anything like that?

A. No.

(Trans p. 54, lns. 21-25 and 1-7)

Ms. Davenport and claimant determined the hours she was to work together:

And the two of you came to an agreement on what you would do; correct?

A. Yes.

Q. And you agreed to an hourly rate that you would be paid; correct?

A. Yes.

Q. And you agreed that you would come the next day and start at ten o'clock a.m.; correct?

A. Yes.

(Trans. p. 38, lns. 16-25)

Claimant further testified that it was Ms. Davenport who controlled and supervised the work.

Q. It was your understanding that Jean controlled the work that you were to do; correct?

A. Yes.

Q. She's the one that told you what to do?

A. Yes.

Q. She's the one that observed your work and whether you did it right?

A. Yes.

Q. You didn't feel that you had to report to anybody else?

A. Will you repeat that, please?

Q. There wasn't anybody else that you needed to report to or to ask questions about the work to be performed; correct?

A. Correct.

(Trans. p. 41, lns. 3-20) Ms. Davenport agreed essentially to the same discussion:

Q. Was there a discussion about, you know, what you're going to be doing and how much you'll be paid and any of that?

A. Yes. I told her what she would be doing and I would -- we talked about the wages, and I said I'd be paying $8 an hour. I said, "It's not a full-time job. It's just a temporary job. You can come and go when you please. You can come early. You want to go early, you can come early. You want to come at noon, you can come at noon. You can go home when you have to go home." I said, "There's just these few little things, odd jobs that need to be done, and I could use the extra help doing them."

Q. Was there kind of an agreement like maybe ten o'clock would be a good starting time after you had those conversations then?

A. Yes.

Q. Did Linda ever come later than ten o'clock or earlier than ten o'clock or leave later or earlier?

A. I can't remember the exact times or dates, but it seems like I remember one day she either left at 12:30 or noon or had something she had to do or she came at noon because she had to do something in the morning. But, yeah, it was flexible.

Q. And it didn't bother --

A. No, doesn't matter what time you come in.

Q. Did that bother you at all?

A. No.

Q. So is it essentially Linda could come and go as she needed to come and go?

A. Yes.

(Trans. p. 111, lns. 13-25, p. 112, lns. 1-23)

Ms. Davenport also provided the training:

A. She was with me quite a bit of the time.

Q. Is that because she was also doing the same work that you were doing?

A. Yeah. We were both kind of doing the same thing. She trained me.

Q. And trained, what do you mean by trained you?

A. Well, showed me what I needed to do to get the kennels hosed out the way they should be and how much dog food to feed the dogs and always to change their water and just general --

(Trans. p. 58, lns. 13-15)

On the day that claimant was injured, Ms. Davenport provided a list of work for the claimant to do.

Q. Okay. So what was the understanding or what did you discuss about that specific day?

A. I had a written list in a notebook that I told her just to make sure that everything was covered, which dogs needed food, which dogs needed water, which pens needed cleaned just to make sure she didn't happen to forget or didn't get somebody done that I wanted done. So I left her the list and told her that -- she knew that we feed and water dogs twice a day, especially in the summertime. We check them in the middle of the day to make sure they haven't dumped their water pans or need new water. So I told her if she got this done and wanted to go home and come back later, that would be fine, or if she didn't want to drive home and come back, since it was several she could just spend the day.

Q. She'd be paid or compensated for the whole day?

A. Yes.

Q. Again, she had the freedom to kind of come and go as she needed?

A. Yes.

(Trans. p. 119, lns. 1-25)

Claimant was issued a check from Jean L. Davenport's checking account on August 4, 2012. The memo section stated "labor." (Ex. 6, p. 24) Ms. Davenport testified that the check was for hours worked—approximately 42 hours at $8.00 per hour. There was a separate account for the farm, but the account had no money and thus the wage payment to the claimant was made out of Ms. Davenport's personal account. Ms. Davenport conflated the farm and kennel on more than one occasion. She testified that she had the authority to write checks out of the account and on behalf of her son.

Claimant did not fill out a weekly timesheet from Grapevine, but rather reported to Ms. Davenport.

Claimant called Ms. Davenport to inform her of the injury. Ms. Davenport followed up with claimant a few days later and instructed her to get care. Specifically, she told claimant "I said I had farm insurance that should cover her, not to worry about it." (Ex. 9, p. 42)

Ms. Davenport did not report the injury to Grapevine.

In responses to the Requests for Admissions, Defendants Davenport and Luvabulls asserted that claimant was not an employee but rather "The Employer contacted a temporary staffing agency and the Claimant voluntarily came to the Employer's property." (Ex. 7, p. 25) Defendants Davenport and Luvabulls also affirmatively answered that the employer and insurance carrier had proper notice of the claimant's injury. (Ex. 7, p. 25)

Claimant testified that she believed she had been hired by Grapevine Staffing.

Q. Okay. So what led you to believe that Grapevine Staffing hired you or employed you?

A. Well, had they not hired or employed me, I would never have been working at the kennels. I did not know this woman, and she did not know me.

(Trans p. 36, lns. 20-25)

Ms. Davenport testified that she did not believe she had entered into an agreement with Grapevine, but rather the agreement was between Grapevine and the employee:

Now, you just answered a question that you thought Grapevine had reached an agreement with you to send out an employee; right?

A. Right.

Q. What did you give Grapevine in return for doing that?

A. I didn't give them anything. I thought probably that the employee they sent out had paid a fee with them. I didn't know how they worked. I had no idea how they worked. But she didn't tell me, and I just kind of assumed, which is the wrong thing to do, I guess.

Q. So if I understand you correctly, you thought the employee would cover whatever expense there may be for Grapevine's services? Is that what you're saying?

A. What I said was I thought there was probably an application fee which would cover that.

Q. Okay. But you didn't think when you called Grapevine that you were entering into any sort of agreement where you or Willy's Luvabulls would be responsible for paying any fee for them sending you a potential employee?

A. Nothing was mentioned about that.

Q. What do you know about a temporary agency or staffing company?

A. They send people to the employers that need help. That's about all I know.

(Trans. p. 126, lns. 3-25, p. 127, lns. 1-7)

Claimant underwent total hip replacement of her left hip on July 12, 2012. (Ex. 4, p. 19) She was discharged on July 25, 2012. (Ex. 5, p. 22) She had two follow up appointments with Brian Crites, M.D.: one on August 6, 2012, and another on November 28, 2012. By November 8, 2012, Dr. Crites observed claimant walking with a cane and complaining of some soreness in the left hip. X-rays confirmed stable components.

Her past medical history was significant for low back and left leg complaints in 2007 through 2009. She was placed on Lyrica and Celebrex and then switched from Celebrex to Mobic.

Post-surgery, she complained of chronic pain to Jerry Lehr, D.O., and x-rays of the right knee showed bone on bone articulation due to degenerative changes. She

complained of ongoing hip pain in 2014 when she saw an orthopaedic surgeon regarding her knee issues.

Claimant underwent an IME on February 17, 2015, with Jacqueline M. Stoken, D.O. (Ex. 1) She reported to Dr. Stoken that she was injured when she was jumped by a Great Dane at Defendant Willy's Luvabulls work place. (Ex. 1, p. 1) She reported her pain between 3 on a 10 scale to 6-7 on a 10 scale. (Ex. 1, p. 4) The pain is described as "aching, tender, exhausting, and miserable" and that the pain is exacerbated by "Walking, standing, and sitting after about 20 minutes." (Ex. 1, p. 4)

The physical examination revealed that she had good muscle strength but reduced range of motion:

> Reflexes in the lower extremities are 2+/4 and symmetrical. Muscle tone and bulk are within normal limits. Muscle strength is 5+/5, except for the left hip abduction which is 3/5. Left hip extension is 4-/5....
>
> Left hip flexion is 60°, extension is 0°, internal rotation is 45°, external rotation is 35°, abduction is 30°, and adduction is 30°. She is tender over the left hip at the site of the surgery. There is a well-healed scar along the lateral aspect of her leg. She ambulates with antalgic gait with a cane in her right hand. She states that she has fallen, but at this time with the cane she is more stable.

(Ex. 1, pp. 4-5)

Currently, claimant testified that she has difficulty walking long distances, geode hunting, vacuuming and working around her house. She does not believe she could do any of the jobs she was previously employed to perform. During her examination with Dr. Stoken, she reported slightly more function:

> She states that she can normally dress, tie her shoes and button her shirt, and drive.
>
> She [sic] it is minimally difficult to sleep normally, groom, get up and down from a chair or bed, and lift and carry up to 10 lbs.
>
> She states it is moderately difficult to go up and down stairs, do food prep, cook, eat, walk, sit and stand for normal periods of time, reach above her head or across her body, engage in recreational activity, and squat down to pick up an item.
>
> She states that she is unable to run and jog.

(Ex. 1, p. 5)

Dr. Stoken concluded claimant had a 30 percent whole person impairment rating:

> Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Chapter 17, table 17-33, page 546, 42 points is considered Poor Results. She is allowed 75% Lower Extremity Impairment or 30% Whole Person Impairment with hip replacement with Poor Results.
>
> 7. Reasonable permanent work restrictions would include avoid prolonged walking and standing and walking on uneven ground. She must use a cane in ambulation to maintain stability and prevent falls and further injury.

(Ex. 1, p. 6) Dr. Stoken further noted:

> She states that the Flexeril and naproxen help her mildly. The Lyrica for her spinal stenosis helps her moderately and hydrocodone gives her near complete relief. She states that the pain interferes mildly to moderately with her relationships and sleep.
>
> The pain interferes moderately with her activity, mood, walking ability, enjoyment of life, concentration, and appetite.

(Ex. 1, p. 4)

Dr. Stoken billed for $2400.00. (Ex. 2, p. 17)

Claimant has incurred $20,829.06 in medical bills. (Ex. 11)

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. 6.14(6).

Jean Davenport and Willy's Luvabulls argue that Ms. Davenport had no ownership interest in kennel business. She was not on the licensing documents and William Davenport claimed the business on his tax returns. Regardless of what the Davenports reported to the government and various agencies regarding Jean Davenport's involvement, it is clear that she was in charge of the hiring and firing of workers as well as the payment of their wages. She trained claimant, provided work for the claimant to perform, and paid the claimant.

She testified she had the authority to write checks on the account of the kennel and even knew the financial situation of the kennel intimately enough to judge whether the kennel account had enough funds to cover claimant's wages. Since it did not, Ms. Davenport paid the kennel out of her own account.

William Davenport may have been present, but he was unaware of claimant's status as a hired worker even after she had worked for a few days at his purported kennel. Ms. Davenport's claim that she has no interest in the business other than to assist the son in taking care of puppies was not credible.

Ms. Davenport was the person who contacted the temporary employment agency. She left the card with the company. It was Ms. Davenport who answered the phone call placed by the claimant, and it was Ms. Davenport who hired the claimant, set the claimant's hours, found the work, and wrote the check. The son was not present for any of these conversations.

William Davenport did not refute Ms. Davenport's right to hire or fire. He did not disavow her payment of labor on behalf of the kennel services. Ms. Davenport held herself out as the owner and operator of the defendant kennel or, at the very least, the hiring manager of the kennel that goes by the name of Willy's Luvabulls. Hall v. Crow, supra, 240 Iowa 81, 90, 34 N.W.2d 195, 200; Union Mut. Life Ins. Co. v. Wilkinson, 13 Wall, 222, 80 U.S. 222, 20 L. Ed. 617; 2 C.J.S. Agency 1339, 1340; 2 Am. Jur., Agency, § 101, p. 82; Restatement of the Law, Agency, § 160.

The motion to dismiss Jean Davenport from the petition is denied. She is an appropriate party despite what papers Mr. Davenport has filed and despite whatever stories he may be holding forth to other governmental agencies.

The next issue is whether one of the defendants, or none of them, was the employer of the claimant. According to the statute, an employee is "a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer . . . ." Iowa Code § 85.61(11). Factual disputes are resolved in favor of finding employment status. See Daggett v. Nebraska-Eastern Exp., Inc., 107 N.W.2d 102, 105 (Iowa 1961).

In Nelson v. Cities Serv. Oil Co., 146 N.W.2d 261, 265 (Iowa 1966), the Iowa Supreme Court pointed to the following five factors in determining whether an employee/employer relationship existed. The test is as follows:

> (1) the right of selection, or to employ at will, (2) responsibility for payment of wages by the employer, (3) the right to discharge or terminate the relationship, (4) the right to control the work, and (5) the identity of the employer as the authority in charge of the work or for whose benefit it is performed.

Id.

Davenport defendants urge a finding that claimant is an independent contractor.

When the issue is an individual's status as an employee versus an **independent contractor**, the Nelson court has set forth an eight factor test. *Id*

> (1) the existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price; (2) **independent** nature of his business or of his distinct calling; (3) his employment of assistants, with the right to supervise their activities; (4) his obligation to furnish necessary tools, supplies, and materials; (5) his right to control the progress of the work, except as to final results; (6) the time for which the workman is employed; (7) the method of payment, whether by time or by job; (8) whether the work is part of the regular business of the employer.

Id. at 264-65.

The Nelson court also suggests looking at the intent of the parties.

Ms. Achenbach testified that there was no employment contract between either herself and Defendants Davenports or claimant. Claimant testified she believed that Defendant Grapevine Staffing was her employer and that Jean Davenport was her manager. Ms. Davenport's testimony is less clear. She agreed that there was no contract between herself and Grapevine Staffing. She believed that the employment contract ran between Grapevine and the worker, but she acknowledged that Grapevine did no training, did not pay any wages, and generally had no further contact with Defendant Davenports until after the first telephone call placed by Ms. Davenport. Further, Defendant Davenports believed that the injury was their responsibility. They filed the first report of injury and they, via Jean Davenport, encouraged the claimant to seek medical care and promised medical coverage.

More important than intent is "the right to control the physical conduct of the person giving service." *Id.* While the claimant's position did allow for flexibility in hours and the manner in which the job was performed, Jean Davenport laid out a specific list of tasks claimant was to undertake. All of the tools such as the dog food, the water, the cleaning implements were all supplied by Ms. Davenport. She directed, controlled and supervised the work despite not being present on the day of the injury. She trained the claimant and paid the claimant by the hour. The work performed for Ms. Davenport was the regular business of the kennel—the care, feeding, and cleaning of the dogs.

While claimant did do some work unsupervised and was employed for only temporary work, this did not turn her into an independent contractor. A seasonal employee is still an employee.

Parson v. Procter & Gamble Mfg. Co., 514 NW 2d 891 (1994) is one of the seminal cases in Iowa on the issue of who the appropriate employer is in a case involving a placement agency. The court applied the five factor test:

> (1) the right to selection, or to employ at will;
>
> (2) responsibility for the payment of wages by the **employer**;

(3) the right to discharge or terminate the relationship;

(4) the right to control the work; and

(5) is the party sought to be held as the **employer** the responsible authority in charge of the work or for whose benefit the work is performed.

Henderson v. Jennie Edmundson Hospital, 178 N.W.2d 429, 431 (Iowa 1970).

Employing this test, it is the Davenport defendants that are the employers of the claimant. Jean had the right to select and employ the claimant. Grapevine referred the claimant to the Davenports but made no hiring decisions, performed no interview, nor tested for claimant's suitability for the position of puppy nanny. In fact, claimant ultimately was not hired as a puppy nanny but a general worker for the kennel who cleaned, fed, and cared for the dogs. Ms. Davenport had the right to discharge or terminate the relationship. She needed no approval by the placement agency. Grapevine staffing had no right to control the work and received no benefit from the work performed by the claimant. All the work performed by the claimant was for the benefit of the kennel.

Therefore it is determined that claimant was an employee of Jean Davenport acting on behalf of Willy's Luvabulls and Davenport Kennels.

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 sustained a hip fracture as a result of her work for Defendant Davenports. As a result of the hip fracture, claimant underwent a total hip replacement. At hearing, claimant testified to ongoing pain and discomfort that has affected her ability to work, perform household duties, and enjoy her leisure activities.

Dr. Stoken, the only medical expert in evidence, determined claimant sustained a 30 percent whole person impairment as a result of the hip fracture. Restrictions include avoiding prolonged walking, standing, walking on uneven ground and the requirement of the use of a cane while walking. Claimant has a valid driver's license and some medical training as a CNA along with a high school diploma.

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.

She testified that she would not be capable of doing the work she had in the past including janitorial work, retail, food service, and shipping and receiving. There are no limitations on claimant's lifting ability nor her ability to sit for long periods of time. Claimant has not attempted to look for work since her injury and did not speak to any desire for further employment.

Based on the foregoing it is determined claimant has sustained a 65 percent industrial disability as a result of her hip fracture.

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).

Accordingly, Defendant Davenports are responsible for the medical costs of the claimant in the amount of $20,829.06.

ORDER

THEREFORE, it is ordered:

That Jean Davenport & Davenport Kennels aka Willy's Luvabulls are to pay unto claimant three hundred twenty-five (325) weeks of permanent partial disability benefits at the rate of two hundred forty-eight and 17/100 dollars ($248.17) per week from February 2, 2013.

That Jean Davenport & Davenport Kennels aka Willy's Luvabulls are to pay unto claimant healing period benefits at the rate of two hundred forty-eight and 17/100 dollars ($248.17) per week from July 7, 2012, through February 1, 2013.

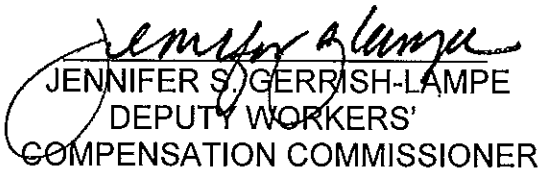
That Jean Davenport & Davenport Kennels aka Willy's Luvabulls shall pay accrued weekly benefits in a lump sum.

That Jean Davenport & Davenport Kennels aka Willy's Luvabulls shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That Jean Davenport and Davenport Kennels shall pay claimant's medical expenses in the amount of twenty thousand eight hundred twenty-nine and 06/100 dollars ($20,829.06) and any interest and/or fees those bills have accrued.

That Jean Davenport & Davenport Kennels aka Willy's Luvabulls shall pay the costs of this matter pursuant to rule 876 IAC 4.33 including the transcript of the hearing.

Signed and filed this 5th day of May, 2016.



JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

David Lawyer
Attorney at Law
4090 Westown Pkwy., Ste. E
West Des Moines, IA 50266
dmlawyer@me.com

Shane C. Michael
Attorney at Law
701 East Court
Des Moines, IA 50309
michaellawfirm@gmail.com

Paul E. Larson
Tyler C. Block
Attorneys at Law
17021 Lakeside Hills Plaza, Ste. 202
Omaha, NE 68130
paul@lkwfirm.com
tyler@lkwfirm.com

JGL/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.