BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUN 01 2015
WORKERS' COMPENSATION

MERIMA GRAHOVIC, Claimant, vs. URBANDALE COMMUNITY SCHOOL DISTRICT, Employer, and EMCASCO INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 5034457, 5042871, 5042872, 5042873, 5042874, 5047154 ARBITRATION DECISION Head Note No.: 1402.30, 1402.40, 2502

STATEMENT OF THE CASE

Claimant, Merima Grahovic, filed petitions in arbitration seeking workers' compensation benefits from Urbandale Community School District (Urbandale) and EMCASCO Insurance Company, insurer, both as defendants. These cases were heard on January 14, 2015 in Des Moines, Iowa with a final submission date of April 16, 2015.

Subsequent to the taking of testimony, defendants submitted the reports of Nicholas Galioto, M.D. dated January 15, 2015 (Exhibit EE); the report of Cassidy Long, D.O. dated January 22, 2015 (Exhibit FF); the report of Teri Formanek, M.D. dated January 27, 2015 (Exhibit GG); the report of Rory Karibo, M.D. dated February 2, 2015 (Exhibit HH); the report of Joe Hawk, M.D. dated February 27, 2015 (Exhibit II); and the report of Lana Sellner, MS, CRC, dated February 26, 2015 (Exhibit JJ). These exhibits were marked, as detailed above, by the undersigned for clarity of the record.

The record in this case consists of joint exhibits 1-4, defendants' exhibits AA-JJ, and the testimony of claimant.

Serving as interpreter was Zijo Suceska.

ISSUES

For File No. 5034457 (date of injury May 13, 2009):

1. Whether the injury resulted in a permanent disability; and if so
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. Whether claimant is due reimbursement for an independent medical evaluation (IME).

For File No. 5042874 (date of injury December 19, 2011):

1. Whether the injury arose out of and in the course of employment.
2. Whether claimant's claim for benefits is barred for lack of timely notice under Iowa Code section 85.39.
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 claimant is entitled to reimbursement for an IME.

For File No. 5042871 (date of injury May 23, 2012):

1. Whether the injury arose out of and in the course of employment.
2. Whether claimant's claim for benefits is barred for lack of timely notice under Iowa Code section 85.39.
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 claimant is entitled to reimbursement for an IME.

For File No. 5042872 (date of injury July 9, 2012):

1. Whether the injury arose out of and in the course of employment.
2. Whether claimant's claim for benefits is barred for lack of timely notice under Iowa Code section 85.39.

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 claimant is entitled to reimbursement for an IME.

For File No. 5042873 (date of injury November 25, 2012):

1. Whether the injury arose out of and in the course of employment.

2. Whether claimant's claim for benefits is barred for lack of timely notice under Iowa Code section 85.39.

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 claimant is entitled to reimbursement for an IME.

For File No. 5047154 (date of injury January 28, 2014):

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

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

FINDINGS OF FACT

Claimant was 38 years old at the time of hearing. She was born in Bosnia. Claimant went up to the 8th grade. (Exhibit AA, page 5) Claimant has English speaking skills, but is not fluent in English.

Claimant immigrated to the United States in 1998. (Ex. AA, p. 5) Claimant has worked as a dish washer, a day care worker, and as a cashier/kitchen worker at a grocery store.

Claimant began working for Urbandale in 2006 as a part-time food server, dish washer, and cook. Claimant testified she worked approximately 20 hours per week. She testified the job required her to repeatedly bend and lift. Claimant had to stand during her entire work shift. (Tr. pp. 20-22)

On May 13, 2009 claimant was pulling a pan of gravy out of an oven when she felt a pain in her left wrist.

On May 14, 2009 claimant was treated by Shirley Pospisil, M.D. for left wrist pain. Claimant was given a splint to wear and told to use ice and heat. (Ex. J, p. 36)

On June 22, 2009 claimant underwent EMG and nerve conduction studies (NCS). The studies were normal for claimant's left upper extremity. (Ex. C, pp. 1-2)

Claimant was evaluated by Donna Bahls, M.D. on July 30, 2009 for left wrist and arm pain. She was assessed as having left wrist strain. She was treated with medication. (Ex. I, pp. 30-31)

Claimant returned to Dr. Bahls on August 24, 2009 with continued left wrist pain. She was treated with medication. (Ex. I, pp. 22-23) Claimant returned to Dr. Bahls on December 10, 2009 with continued complaints of pain. Surgery was discussed and chosen as a treatment option. (Ex. I, pp. 7-8)

On December 16, 2009 claimant underwent a DeQuervain's release on the left. Surgery was performed by Dr. Formanek. (Ex. B, p. 15; Ex. 2, p. 1)

Claimant testified at hearing she returned to work after surgery. She said her symptoms got worse after surgery due to pulling and pushing at work. (Tr. p. 24)

Claimant returned in followup with Dr. Formanek between January and May of 2010. (Ex. B, pp. 4-14) Claimant was returned to work with no restrictions by Dr. Formanek on January 22, 2010. (Ex. B, p. 10)

On June 1, 2010 Dr. Formanek found claimant was at maximum medical improvement (MMI). Claimant was returned to work with no permanent restrictions or permanent impairment. (Ex. D, p. 2)

On September 9, 2010 claimant went to Broadlawns Emergency Room with complaints of pain in the entire arm. Claimant was evaluated by Matthew Spitzenburger, D.O. Claimant was treated with medication and released. (Ex. M, pp. 595-604)

On October 14, 2010 claimant underwent EMG/NCS studies on the left upper extremity, which were normal. (Ex. M, pp. 586-587)

On December 1, 2010 claimant returned to Broadlawns with complaints of left arm and wrist pain. She was evaluated by Marcia Nelsen, M.D. Claimant was evaluated as having radial styloid tenosynovitis and wrist pain. She was recommended to have an MRI of the left wrist. (Ex. M, pp. 579-580)

On December 10, 2010 claimant underwent an MRI of the left wrist. It found no significant tenosynovitis in the tendons of the wrist and no appearance of carpal tunnel. (Ex. M, p. 578)

In an April 26, 2011 report, Jacqueline Stoken, D.O. gave her opinions of claimant's condition following an IME. Claimant complained of pain in the left wrist, finger, and hand. Dr. Stoken found claimant had a loss of range of motion in the left upper extremity. Based on the loss of range of motion, Dr. Stoken opined claimant had

a 12 percent permanent impairment based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. She recommended claimant avoid repetitive twisting and pushing on the left. (Ex. G, pp. 58-66)

On September 28, 2011 claimant was evaluated at The University of Iowa Hospitals and Clinics (UIHC) by Brian Adams, M.D. Claimant complained of left arm pain up to the elbow. Claimant indicated work aggravated her problems. She was assessed as having persistent left wrist pain and numbness. She was recommended to have EMG/NCS studies performed and to wear a wrist splint at night. (Ex. K, pp. 12-15)

On October 11, 2011 claimant had EMG/NCS performed bilaterally, which were normal. (Ex. M, pp. 499-500)

In an October 14, 2011 note Dr. Adams indicated that based on the EMG/NCS, claimant did not have carpal tunnel syndrome or any other compressed nerve problems. (Ex. K, p. 11)

On December 19, 2011 claimant was evaluated by Chase Newton, D.O. Claimant complained of thoracic back pain and left arm and shoulder pain. Claimant was assessed as having somatic dysfunction of the cervical, lumbar, and thoracic region. Claimant was returned to work. (Ex. M, pp. 490-493)

On February 27, 2012 claimant underwent a left carpal tunnel release done by Dr. Nelsen. (Ex. M, pp. 455-456)

On May 15, 2012 claimant returned in followup with Dr. Nelsen. Claimant complained of left neck and shoulder pain extending into the fingers of the left hand. Physical therapy was recommended. (Ex. M, pp. 357-358)

On May 23, 2012 claimant was seen in physical therapy. She was assessed as having a soft tissue injury and poor posture contributing to her pain. (Ex. M, pp. 354-355)

On June 12, 2012 claimant was seen by Dr. Nelsen with complaints of neck and arm pain for two months. An MRI was recommended. Claimant was treated with medication. (Ex. M, pp. 334-336)

On July 2, 2012 claimant had a cervical MRI that showed a small Tornwaldt's cyst. Claimant had mild degenerative changes. No stenosis or neuroforaminal narrowing was noted. (Ex. M, p. 329)

Claimant was evaluated by Elaina Ori-Honeycutt, D.O. on July 9, 2012 with complaints of right hip pain for the last three months. Claimant was continued on medication. (Ex. M, pp. 325-327)

On September 11, 2012 claimant was evaluated by Hugh MacMenamin, M.D. with complaints of arm pain. Cervical MRI showed no nerve root impingement.

Dr. MacMenamin indicated he would review other medical records. (Ex. M, pp. 303-305)

Claimant had a physical with Dr. Honeycutt on September 19, 2012. Claimant complained of right and left hip pain, lower back pain and left leg pain. Claimant was treated with medication. (Ex. M, pp. 298-299)

In a November 13, 2012 report Dr. Stoken gave her opinions of claimant's condition following a second IME for claimant's May 2009 injury. Claimant complained of pain in the left wrist and hand. Dr. Stoken opined that due to loss of range of motion claimant had a 16 percent permanent impairment to the left upper extremity based on page 437 of the Guides. Dr. Stoken also opined claimant had a post-traumatic neuralgia and found claimant had a four percent permanent impairment to the body as a whole based on the neuralgia. Combined with the permanent impairment to the upper extremity this resulted in a 14 percent permanent impairment to the body as a whole. (Ex. G, pp. 41-46)

Dr. Stoken recommended claimant avoid repetitive twisting, pushing and pulling with the left arm. She limited claimant to lifting no more than ten pounds frequently. There is no mention in the November 13, 2012 IME of a work-related injury to claimant occurring in December 2011 or May of 2012. (Ex. G, pp. 41-47)

On November 25, 2012 claimant was evaluated at the emergency room at Broadlawns with complaints of lower back pain. Claimant noted a two-month history of low back pain radiating into the right leg. A lumbar spine x-ray showed no significant changes. She was assessed as having low back pain with acute radiculopathy. (Ex. M, pp. 271-274)

On December 7, 2012 an MRI of claimant's lumbar spine showed mild degenerative disc disease at the L5-S1 levels. The MRI was otherwise normal. (Ex. M, p. 263)

In a January 28, 2013 letter, Mark Karwal, M.D. indicated he reviewed claimant's deposition and medical records. He also reviewed Dr. Stoken's IME. Dr. Karwal opined claimant may have a repetitive injury to her left hand and wrist. He opined claimant had no permanent impairment to her shoulder and no diagnostic testing documenting a shoulder injury. (Ex. K, pp. 1-5)

Dr. Karwal indicated he disagreed with Dr. Stoken's opinion that claimant had a shoulder injury. He also disagreed that claimant had a post-traumatic neuralgia. Dr. Karwal found there was no objective evaluation to support the diagnosis. He also found Dr. Stoken's range of motion studies were not supported by other medical records. (Ex. K, pp. 6-7)

On February 22, 2013 claimant was seen by David Hill, D.O. at Broadlawns. Claimant complained of back pain, pain in the buttocks and leg pain. Pain had been

going on for several years. Claimant was recommended to have physical therapy. (Ex. M, pp. 238-239)

On April 1, 2013 claimant was evaluated by Amanda Lee, M.D. with complaints of right back pain, and buttock and leg pain for the last few years. Claimant was assessed as having a piriformis syndrome. She was recommended to do exercises. (Ex. M, pp. 229-230)

Claimant was evaluated by Amy Kibler, D.O. with complaints of low back pain. Claimant was continued on a home exercise program. (Ex. M, pp. 217-218)

On October 3, 2013 claimant returned to Dr. Honeycutt with multiple chronic pain complaints and right hip pain. Claimant had 20 physical therapy sessions with no improvement. She was assessed as having depression, chronic pain and gastric reflex syndrome. (Ex. M, pp. 139-140)

On December 6, 2013 claimant was seen by Timothy Rankin, M.D. with complaints of left upper extremity pain radiating into the neck. Cervical x-rays were found to be normal. (Ex. M, pp. 107-110)

On May 5, 2014 claimant was evaluated by Jon Yankey, M.D. for a recheck of back and leg pain. Claimant reported an increase in pain. Claimant was given a referral to a pain clinic. (Ex. J, p. 10)

On March 24, 2014 claimant was evaluated by Kenneth Pollack, M.D. Dr. Pollack is an anesthesiologist specializing in pain management. Claimant had a work injury on January 28, 2014 when pulling a can of milk from a cooler. Claimant complained of pain in the low back radiating to the left foot. She was assessed as having a lower back strain. She was given epidural steroid injections (ESI) at the L4-5 level. (Ex. D, pp. 1-4)

On May 1, 2014 claimant was evaluated by Dr. Honeycutt with complaints of chronic back pain and depression. She was assessed as having carpal tunnel syndrome. Bilateral EMGs were recommended. (Ex. M, pp. 43-44) Bilateral EMG/NCS performed on May 14, 2014 were normal. (Ex. M, p. 40)

Claimant was terminated from her job in Urbandale in late May of 2014. (Ex. E, pp. 5, 6; Tr. p. 36)

Claimant was seen by Dr. Long and Larry Severidt, M.D. on June 24, 2014. Claimant complained of bilateral shoulder pain radiating to the head and neck. (Ex. M, pp. 47-49)

Claimant returned in followup on July 1, 2014 with both Dr. Long and Dr. Severidt. Claimant complained of continued bilateral shoulder pain, head and neck pain. She was told to do cervical and shoulder stretches. (Ex. M, pp. 13-14)

On July 22, 2014 claimant was evaluated by Anandeep Kumar, M.D. with complaints of lower back pain radiating into the leg. She was assessed as having lower back pain. Claimant was continued on lifting restrictions of no more than ten pounds. (Ex. E, pp. 10-12)

On October 6, 2014 claimant underwent a lumbar MRI. It showed a slightly improved small disc herniation at the L5-S1 levels without nerve root compression. (Ex. F, p. 1)

In an October 31, 2014 report Dr. Stoken gave her opinions of claimant's condition following a third IME. Claimant complained of continued back pain, right and left shoulder pain, left hip pain, and neck pain all aggravated by activity. (Ex. G, pp. 10-11) Claimant indicated she did not report her December of 2011 injury or her May 2012 injury to her employer. She said she did report a July of 2012 and November of 2012 injury to her employer. (Ex. G, p. 2)

Dr. Stoken opined claimant had a 14 percent permanent impairment to the left upper extremity for the left shoulder injury. She opined claimant had an 11 percent permanent impairment to the right upper extremity due to the right shoulder injury. Dr. Stoken found claimant had a 5 percent permanent impairment due to her cervical injury and a 5 percent permanent impairment to the lumbar spine. The combined value for all impairments was 22 percent permanent impairment to the body as a whole. Dr. Stoken limited claimant to lifting no more than 10 pounds, and no working above shoulder level. She opined the repetitive activities at work caused or aggravated claimant's injury to her neck occurring in May of 2012; her back occurring in July of 2012; her back and hips occurring in November of 2012; her bilateral shoulders in December of 2011; and her back occurring in January of 2014. (Ex. G, p. 15)

In a January 27, 2015 note, Dr. Long indicated she saw claimant three times in June and July of 2014. At the time claimant complained of bilateral shoulder pain, headaches and neck pain. Claimant indicated all pain stemmed from her wrist. An MRI of claimant's left wrist did not reveal any objective findings of an injury. In a followup visit claimant indicated the pain had improved or resided with stretching. (Ex. FF)

In a January 29, 2015 note, Dr. Formanek indicated he performed surgery on claimant's left upper extremity on December 16, 2009. He indicated claimant had no permanent impairment or permanent restrictions following surgery. He also indicated claimant would have no loss of range of motion following surgery. (Ex. GG)

In a February 10, 2015 letter, Dr. Karibo indicated he reviewed the October 6, 2014 MRI of claimant's lumbar spine. The MRI did not show evidence of nerve root impingement or significant disc disease that would cause disabling pain. The MRI did not show a significant facet degeneration or evidence of advanced degenerative condition. Dr. Karibo indicated nothing on the MRI would explain claimant's subjective complaints of pain. The MRI did show a small disc herniation, which would not cause disabling symptoms. (Ex. HH)

In a February 4, 2015 note, Dr. Galioto indicated that in April of 2013 he evaluated claimant for right back, buttock and leg pain ongoing for several years. Claimant did not indicate her pain was work related. He indicated claimant was assessed as having a piriformis syndrome, and it was unlikely the condition was permanent. Dr. Galioto did not give claimant any permanent restrictions. (Ex. EE)

In an undated note, Dr. Hawk indicated he evaluated claimant on November 14, 2014 and reviewed her medical records. He opined claimant had a repetitive injury to her left upper extremity and lumbar spine. He was unable to relate any other complaints to her work. Claimant's EMG studies showed no impingement. Claimant's diagnostic imaging of her spine showed no evidence of an injury or abnormality that would explain her symptoms. Claimant would be able to work full time given her restrictions. (Ex. II)

In a February 26, 2015 report Lana Sellner, MS, CRC gave her opinions of claimant's vocational opportunities. Taking into consideration restrictions from Drs. Little, Yankey and Stoken, claimant could work in the sedentary to selectively chosen light physical demand level. She opined claimant could find work in the Des Moines area and identified approximately 13 jobs where claimant could apply. She found claimant could return to work even given the restrictions imposed by Drs. Little, Yankey and Stoken. (Ex. JJ)

Claimant testified she cannot bend or stoop. She said she could not stand for long periods of time.

Claimant testified she does not believe she could work at any job. She has not applied for any job since leaving Urbandale. Claimant has not looked for jobs in the newspaper. She testified she has not made any attempts to return to work. (Tr. 40, 63-64)

CONCLUSIONS OF LAW

The first issue to be determined is if claimant sustained an injury that arose out of and in the course of employment on December 19, 2011; May 23, 2012; July 9, 2012; or November 25, 2012.

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 sustained injuries arising out of and in the course of employment on December 19, 2011; May 23, 2012; July 9, 2012; and November 25, 2012.

Claimant had a number of EMG and NCSs performed on her upper extremities. Every study performed on claimant was normal. (Ex. N, pp. 40, 498-500)

In June of 2012 and July of 2012 claimant had cervical x-rays. These x-rays were normal. (Ex. M, pp. 329, 334-336) A July 2, 2012 cervical MRI showed a small cyst and mild degenerative changes, but was otherwise normal. (Ex. M, p. 329) A December 7, 2012 MRI of the lumbar spine showed mild degenerative changes at the L5-S1 level, but was otherwise normal. (Ex. M, p. 263) A December 6, 2013 x-ray of the cervical spine showed minimal irregularity of the vertebra, but was otherwise normal. (Ex. M, p. 105-110) On October 6, 2014 MRI of the lumbar spine showed a mild disc herniation at the L5-S1 levels with no nerve root compression. (Ex. F, p. 1)

Dr. Galioto evaluated claimant on April 1, 2013 for back, buttock and leg pain. At that time claimant indicated pain for several years. Claimant did not indicate her pain was work related. (Ex. EE)

Dr. Long saw claimant three times in June and July of 2014 for bilateral shoulder and neck pain. An MRI of claimant's neck did not show any objective evidence of injury. Claimant also indicated improvement in pain in followup exams. (Ex. FF)

Dr. Karibo reviewed claimant's October of 2014 MRI of the lumbar spine. He indicated there was nothing in the MRI that explained claimant's subjective complaints. (Ex. HH)

In an undated note Dr. Hawk noted there is nothing in the diagnostic imaging of claimant's spine that would explain her symptoms. (Ex. II)

In a November 13, 2012 report Dr. Stoken gave her opinions of claimant's condition following an IME. Dr. Stoken is a physician retained by claimant for an IME. There is nothing in that report indicating claimant had a work-related injury on December 19, 2011; May 23, 2012; or July 9, 2012. (Ex. G, pp. 41-47)

Claimant received medical treatment for back, leg, and hip complaints from December of 2011 through the end of 2013. There is nothing in any of the medical records during this period of time indicating a work-related injury on December 19, 2011; May 23, 2012; July 9, 2012; or November 25, 2012. (Ex. M, pp. 271-274, 325, 354-355; 490)

The record also indicates claimant did not report a work-related injury to her employer for dates of injury of December 19, 2011; May 23, 2012; July 9, 2012; or November 25, 2012. (Ex. G, p. 2; Ex. EE, p. 1; Tr. 32-33, 64-65)

Diagnostic testing indicates claimant has a normal cervical spine. MRI of claimant's lumbar spine appears otherwise normal. Four of claimant's treating physicians opine the diagnostic testing of claimant's spine does not support claimant's subjective complaints. In November of 2012 IME report from claimant's own physician does not indicate work-related injuries occurring December 19, 2011; May 23, 2012; or July 9, 2012. The record also indicates claimant did not report a work-related injury to her supervisor on December 19, 2011; May 23, 2012; July 9, 2012; or November 25, 2012. 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 employment on December 19, 2011 (File No. 5042874); May 23, 2012 (File No. 5042871); July 9, 2012 (File No. 5042872) or November 25, 2012 (File No. 5042873).

As claimant has failed to carry her burden of proof she sustained an injury that arose out of and in the course of employment for December 19, 2011; May 23, 2012; July 9, 2012; and November 25, 2012, all other issues, except for the reimbursement of IMEs, are considered moot.

The next issue to be determined is if claimant's injuries of May 13, 2009 and January 28, 2014 resulted in a permanent disability.

Regarding claimant's May 13, 2009 injury to her left upper extremity, claimant had two surgeries to her left upper extremity. Dr. Formanek performed claimant's first surgery in December of 2009. He treated claimant for approximately six months. In June of 2010 Dr. Formanek found claimant was at MMI. He found claimant had no permanent impairment. (Ex. B, p. 2) Dr. Formanek reiterated that opinion in January of 2015. (Ex. GG)

Claimant had EMG/NCS on June 22, 2009; October 14, 2010; October 11, 2011; and May 14, 2014. Every single study has been evaluated as normal. (Ex. C, pp. 1-2; Ex. M, pp. 40, 499-500, 586-587) Claimant has also had an MRI of the left wrist in December of 2010, which is also normal. (Ex. M, pp. 579-580)

Dr. Stoken evaluated claimant on three occasions for various IMEs. She opined claimant has permanent impairment to the left upper extremity and left shoulder due to the May of 2009 injury. (Ex. G, pp. 1-16, 41-47, 58-66)

Dr. Formanek actively treated claimant for six months. He performed surgery on claimant's left upper extremity. He opined claimant has no permanent impairment. Five diagnostic tests, taken both before and after surgery, indicated claimant has no neuropathy in her left upper extremity. Dr. Stoken saw claimant three times for IMEs. Because Dr. Formanek has more experience with claimant's medical presentation, because he performed surgery on claimant, and because his opinions are supported by the numerous diagnostic testing in this case, it is found the opinions of Dr. Formanek regarding permanent impairment are more convincing than those of Dr. Stoken. Given this record, claimant has failed to carry her burden of proof she sustained a permanent impairment regarding her May of 2009 injury. As claimant has failed to carry her burden of proof she sustained a permanent impairment regarding her May of 2009 injury, all other issues are found moot regarding File No. 5034457, except claimant's entitlement to reimbursement for an IME.

Regarding claimant's injury of January 28, 2014, three experts have opined if the injury resulted in a permanent disability.

Dr. Karibo reviewed claimant's October of 2014 MRI of the lumbar spine. He indicated the MRI did not show evidence of nerve root compression or stenosis. He opined there was nothing on the MRI that would explain claimant's subjective complaints of pain. He also indicated the MRI showed no evidence of an acute injury to claimant's back. He indicated that while the MRI did show a small disc herniation, that herniation would not cause a disability to claimant's back. (Ex. HH)

Dr. Hawk evaluated claimant in November of 2014. This was done after Dr. Stoken's October of 2014 IME. Dr. Hawk also reviewed claimant's medical records. He indicated claimant's MRI showed no evidence that would explain her symptoms.

Based on objective testing, he believed claimant did not need any permanent restrictions. (Ex. II)

Dr. Stoken opined repetitive trauma caused or aggravated claimant's low back injury occurring in January of 2014. (Ex. G, p. 15) Dr. Stoken's opinions are based on a finding that claimant had a cumulative injury. This differs from Dr. Pollack's records indicating claimant suffered an acute injury when lifting milk from a cooler. (Ex. D, pp. 1-4)

Dr. Karibo indicated claimant's lumbar MRI showed no evidence that claimant has a disabling condition in her lower back. (Ex. HH) Dr. Hawk evaluated claimant after Dr. Stoken's October 2014 IME. He opined there is nothing in the lumbar MRI that would explain claimant's symptoms. He found that based on objective testing, claimant did not require permanent restrictions. (Ex. II) The opinions of Dr. Karibo and Dr. Hawk are bolstered by numerous medical records indicating that, despite claimant's numerous complaints, there is nothing objectively wrong with claimant [normal EMG/NCS studies on June 22, 2009; October 14, 2010; October 11, 2011; and May 14, 2014 (Ex. C, pp. 1-2; Ex. M, pp. 40, 499-500, 586-587); normal x-rays and MRI studies of the cervical spine. (Ex. M, pp. 107-110, 303-305, 329)]. See also Exhibit G, page 10; Exhibit K, pages 1-7, 11; Exhibit M, pages 263, 490-493; Exhibit EE; Exhibit FF; Exhibit GG. Given the above detailed records, it is found Dr. Stoken's opinions regarding permanent impairment are found not convincing.

Dr. Karibo and Dr. Hawk opine there is nothing in the objective testing that would explain claimant's subjective complaints. Dr. Stoken's opinion regarding permanent impairment is found not convincing. Numerous medical records, detailed above, indicate that despite claimant's numerous complaints, there is nothing objectively wrong with claimant. Given this record, it is found claimant has failed to carry her burden of proof that her January 28, 2014 injury resulted in a permanent disability.

As claimant has failed to carry her burden of proof her January 28, 2014 injury resulted in a permanent disability, all other issues related to File No. 5047154 are moot.

The final issue to be determined is whether claimant is due reimbursement for an IME performed by Dr. Stoken. Claimant indicates in her brief she is only seeking reimbursement for Dr. Stoken's April 26, 2011 and November 13, 2012 IMEs, as the third IME visit with Dr. Stoken has been reimbursed. (Claimant's post-hearing brief, p. 7)

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

In a June 1, 2010 report Dr. Formanek, the employer-retained physician, found claimant had no permanent impairment or permanent restrictions. (Ex. B, p. 2) Given this record, claimant is due reimbursement for Dr. Stoken's first IME of April 26, 2011 regarding the left upper extremity injury of May of 2009. (Ex. G, p. 58)

On November 13, 2012 Dr. Stoken issued a second IME. (Ex. G, p. 41) This IME was also in regards to claimant's May of 2009 injury.

In Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 861 (Iowa 2009) the Iowa Supreme Court held that a claimant is entitled to reimbursement for only one IME.

As claimant has already been reimbursed for the first IME from Dr. Stoken regarding claimant's May of 2009 injury to the left upper extremity, claimant is not due reimbursement for a second IME for the same date of injury.

ORDER

THEREFORE IT IS ORDERED:

Regarding File No. 5034457 (date of injury May 13, 2009):

That claimant shall take nothing from this file in the way of any temporary or permanent benefits.

That defendants shall pay for the IME from Dr. Stoken dated April 26, 2011.

For File No. 5042874 (date of injury December 19, 2011):

That claimant shall take nothing from this file.

For File No. 5042871 (date of injury May 23, 2012):

That claimant shall take nothing from this file.

For File No. 5042872 (date of injury July 9, 2012):

That claimant shall take nothing from this file.

For File No. 5042873 (date of injury November 25, 2012):

That claimant shall take nothing from this file.

For File No. 5047154 (date of injury January 28, 2014):

That claimant shall take nothing in the way of any additional temporary or permanent disability benefits.

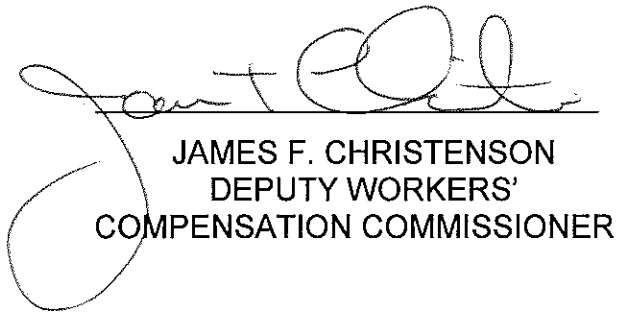
Regarding File No. 5034457 (date of injury May 13, 2009) and File No. 5047154 (date of injury January 28, 2014):

That defendants shall file subsequent reports of injury as required under rule 876 IAC 3.1(2).

Regarding all file numbers:

That both parties shall pay their own costs.

Signed and filed this 1st day of June, 2015.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
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JFC/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.