BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PENNY JOHNSON, Claimant, vs. MERTZ ENGINEERING CO., Employer, and SFM INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 1652873.01 APPEAL DECISION Head Note No.: 1402.40

Defendants Mertz Engineering Co, employer, and SFM Insurance Company, insurer, appeal from an arbitration decision filed on July 17, 2020, a ruling on all parties' application for rehearing filed on August 5, 2020, and a ruling on motion for nunc pro tunc filed on August 5, 2020. Claimant Penny Johnson responds to the appeal. The hearing was held on June 15, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 1, 2020.

On January 29, 2021, 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.

In the arbitration decision, the deputy commissioner found claimant sustained a three percent permanent disability to her right arm based on the impairment rating of ZeHui Han, M.D. The deputy commissioner found claimant's permanent partial disability (PPD) benefits should commence on July 23, 2018. The deputy commissioner determined claimant was entitled to reimbursement for her independent medical examination (IME) with Robin Sassman, M.D., and costs.

Both parties filed applications for rehearing. Defendants requested that the arbitration decision be amended to specifically include the parties' stipulation that defendants shall receive credit for prior weekly benefits paid. The deputy commissioner granted defendants' application on these grounds.

In her application, claimant identified an error in the arbitration decision that she believed impacted the deputy commissioner's analysis regarding the extent of

claimant's permanent disability. The deputy commissioner agreed; instead of relying on the impairment rating of Dr. Han, the deputy commissioner granted claimant's application and adopted the impairment rating of Dr. Sassman. However, the deputy commissioner erroneously stated the impairment rating was 13 percent of the right arm instead of the 17 percent rating actually assigned by Dr. Sassman. The deputy commissioner corrected this error in the ruling on motion for nunc pro tunc.

On appeal, defendants assert the deputy commissioner erred in adopting the impairment rating assigned by Dr. Sassman.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on July 17, 2020, ruling on all parties' application for rehearing filed on August 5, 2020, and ruling on motion for nunc pro tunc filed on August 5, 2020 are modified.

As discussed, the deputy commissioner ultimately adopted Dr. Sassman's impairment rating, which was 17 percent to the right arm. The deputy commissioner found this rating to be most credible because it was based, in part, on range of motion measurements obtained using a goniometer. The deputy commissioner noted Dr. Sassman's goniometer measurements were similar to range of motion measurements obtained with a goniometer during claimant's functional capacity evaluation (FCE) in December of 2018. As such, the deputy commissioner found it likely that Dr. Han estimated claimant's range of motion.

Even assuming this to be true, however, the deputy commissioner overlooked the fact that Dr. Han's impairment rating was not based on range of motion measurements. It was based on sensory and/or motor deficits relating to carpal tunnel syndrome as directed by the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition (hereinafter "Guides"). See Guides, page 495 (setting forth three scenarios for assigning impairment for carpal tunnel syndrome following surgical decompression); Joint Exhibit 1, p. 20 (citing Tables 16-10 and 16-15). In other words, Dr. Han's impairment rating was solely for claimant's carpal tunnel syndrome.

Dr. Sassman's rating, on the other hand, included two components: a rating for claimant's carpal tunnel syndrome (5 percent) and a rating based on claimant's range of motion deficits due to tendinitis (13 percent). (JE 7, p. 12) Importantly, however, neither Dr. Han nor Jeffrey Rodgers, M.D., diagnosed claimant with tendinitis during their treatment of claimant. In fact, Dr. Rodgers specifically indicated claimant "did not exhibit signs or symptoms of tenosynovitis" during his examination of claimant. (JE 6, p. 14)

While Dr. Sassman causally related claimant's tendonitis to her work duties, Dr. Sassman's examination did not take place until May of 2020, which was more than a year and a half after she was last seen for treatment. Notably, during that gap in time, claimant returned to work with defendant-employer on a full-time basis in a different position that requires constant use of her right arm. (Hearing Transcript, pp. 28, 31, 48)

Claimant has not asked for additional medical care since being released from treatment, nor does she take prescription medication. (Hrg. Tr., pp. 38-39) Defendant-employer's representative testified at the hearing that he was unaware claimant had any ongoing hand complaints, and claimant acknowledged she has not reported any difficulties doing her job. (Hrg. Tr., pp. 39, 49)

Given that neither Dr. Han nor Dr. Rodgers diagnosed claimant with tendinitis and that claimant has returned to work without requiring any additional treatment, I am not persuaded by Dr. Sassman's opinions regarding her diagnosis of tendinitis or its causal relationship to claimant's job duties in March of 2017. I therefore find insufficient evidence to attribute the 13 percent impairment rating to claimant's stipulated work-related injury.

This leaves claimant's carpal tunnel condition, for which Dr. Sassman assigned a five percent rating, Dr. Han assigned a three percent rating, and Dr. Rodgers assigned a zero percent rating. For the reasons stated in the arbitration decision, I agree that Dr. Rodgers' zero percent rating is not convincing. Dr. Han cited the tables in the Guides on which he relied, but he did not specify how he arrived at the three percent rating. (JE 1, p. 20) Dr. Sassman was more specific, explaining claimant "falls into the second category with normal sensory and opposition strength on exam but abnormal EMG testing," meaning "she will be assigned 5% upper extremity impairment for the residual median nerve compression abnormalities on the EMG." (JE 7, p. 12) Because Dr. Sassman was more thorough in her explanation, I find Dr. Sassman's five percent rating for claimant's carpal tunnel syndrome to be most persuasive. The deputy commissioner's finding regarding claimant's permanent functional impairment is therefore modified.

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 discussed above, I am not persuaded by Dr. Sassman's opinions regarding tendinitis. I therefore conclude claimant failed to satisfy her burden to prove she sustained any permanent disability as a result of tendinitis.

However, because I found Dr. Sassman's five percent upper extremity rating to be most persuasive with respect to claimant's carpal tunnel syndrome, I conclude claimant satisfied her burden to prove she sustained a five percent permanent disability to her right arm.

In this case, the parties appropriately stipulated that the injury resulted in permanent disability to be compensated as a scheduled member injury to the right arm. (Hearing Report) Injuries to the arm are compensated on a 250-week schedule pursuant to Iowa Code §85.34(2)(m) (2016). If the injury produced something less than total impairment or disability of the affected scheduled member, benefits are paid in proportion to the percentage of loss of use of the scheduled member in relation to the assigned number of weeks. Iowa Code §85.34(2)(v). In this case, 5 percent of 250 weeks is 12.5 weeks. Therefore, I conclude that claimant has proven entitlement to 12.5 weeks of PPD benefits. Iowa Code § 85.34(2)(m), (v). The deputy commissioner's determination regarding the extent of claimant's permanent disability to her right arm is therefore modified.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 17, 2020, ruling on all parties' application for rehearing filed on August 5, 2020, and ruling on motion for nunc pro tunc filed on August 5, 2020 are modified.

Defendants shall pay claimant twelve point five (12.5) weeks of permanent partial disability benefits commencing on July 23, 2018.

All weekly benefits shall be payable at the stipulated weekly rate of three hundred fifty-one and 35/100 dollars ($351.35) 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 entitled to the stipulated credit noted in the hearing report.

Defendants shall reimburse claimant's independent medical evaluation fees totaling three thousand dollars ($3,000.00).

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant for costs of the arbitration proceeding totaling one hundred thirteen and 70/100 dollars ($113.70), and the parties shall split the cost of the appeal, including the cost of the hearing transcript.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 10th day of February, 2021.

STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Janece Valentine (via WCES)
Lee Hook (via WCES)
Tyler Smith (via WCES)