BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MELANDY CLEMONS, Claimant, vs. MENARD, INC., Employer, and PRAETORIAN INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5054641 ARBITRATION DECISION Head Note Nos.: 1801, 1803, 2200, 2500

FILED
JUL 24 2017
WORKERS' COMPENSATION

STATEMENT OF THE CASE

Melandy Clemons, claimant, filed a petition in arbitration seeking workers' compensation benefits from Menard, Inc. and its insurer, Praetorian Insurance Company, as a result of an injury she allegedly sustained on October 13, 2013 that allegedly arose out of and in the course of her employment. This case was heard in Des Moines, Iowa and fully submitted on February 13, 2017. The evidence in this case consists of the testimony of claimant, her husband Timothy Clemons, and claimant's exhibits 1 through 12 and 14, 15 and defendants exhibits A through Q. Defendants withdrew Exhibit B pages 5 and 6. Defendant was provided time to submit additional exhibits due to late disclosed exhibits from the claimant. Exhibits R, S and T were admitted into the record after the hearing. Both parties submitted post hearing briefs.

The parties filed hearing reports at the commencement of the arbitration hearing. On the hearing reports, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether the injury on October 13, 2013 injury is a cause of permanent disability and, if so;

2. Whether the alleged disability is a scheduled member disability or an unscheduled disability.

3. The extent of claimant's disability.

4. The commencement date for permanent partial disability.

5. Whether claimant is entitled to medical expenses.

6. Whether claimant is entitled to future medical care.

7. The allocation of the credit the defendants have for payments between temporary total/healing period and permanent partial disability benefits.

8. Whether claimant is entitled to future temporary total/healing period benefits.

9. Assessment of costs.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Melandy Clemons, claimant was 55 years old at the time of the hearing. (I will refer to claimant as Melandy and Menard, Inc. as Menard). Melandy did not graduate from high school. She did obtain a GED in 1983. (Transcript, page 35) Melandy testified that school was difficult for her and that she was and is hard of hearing in her right ear. (Tr. p. 36) Melandy starting working in restaurants as a teenager and continued working in various restaurant's until her employment at Menard, other than working a couple of days in a mail room for FDR. (See. Ex. K, p. 2) Melandy testified that she could not return to her prior jobs due to her injury at Menard that limited her ability to stand, walk, or lift.

Melandy started working for Menard on April 17, 2008 and worked a number of jobs with Menard. She worked in the paint department and in the grocery department. Part of her work required work on ladders to move stock. (Tr. p. 50)

Melandy said that when she was working at Menard her bunion began to hurt on her left foot due to the walking she did at Menard. (Tr. p. 53) She went to Steven Meinhold, D.P.M., to have her bunion removed on March 27, 2013. (Tr. p. 53)

Claimant eventually returned to full time work at Mendard. In August 2013 claimant went on vacation with her husband in Colorado. Claimant testified she was able to walk and climb at various vacation sites and ride a motorcycle without any problems or pain in her foot. (Tr. p. 58)

Claimant saw Dr. Meinhold in September 2013. Melandy did not remember complaining to Dr. Meinhold about foot pain or what the neuritis Dr. Meinhold wrote in his records referred too. (Tr. p. 59) Dr. Meinhold prescribed gabapentin and Vicodin.

Claimant remembers taking the gabapentin but did not think she took the Vicodin. (Tr. p. 60)

On October 13, 2013, claimant said she was moving a 5-gallon can of paint from a cart and it fell and hit her left foot. (Tr. pp. 62, 63) Claimant reported this injury to a co-worker and claimant was taken to the hospital by a person from the human resources department. (Tr. p. 64) Claimant was returned to work full duty after the October 12, 2013 injury to her left foot. Claimant said she had a lot of pain and burning in her foot. (Tr. p. 68)

Claimant returned to Dr. Meinhold for treatment for her left foot and his services were paid by the workers' compensation carrier. (Tr. p. 96) Claimant said Dr. Meinhold performed surgery on her left foot to remove a nerve in the spring of 2014. (Tr. p. 70) Claimant was referred to Tyrus Soars, M.D., a pain specialist.

Claimant testified after the defendants stopped providing medical care she obtained care from Robert Greenhagen, DPM, and Griffith Evans, M.D., DABPM, (Diplomate of the American Board of Pain Medicine). Melandy used her husband's health insurance. (Tr. p. 79)

Claimant said she was told she had CRPS. (Tr. p. 81) After she received two steroid blocks, Melandy said that Dr. Evans recommended a spinal cord stimulator. (Tr. p. 82) Melandy was scheduled to have the trial of the spinal cord stimulator shortly after the arbitration hearing. (Tr. p. 83)

Claimant testified that as a result of a car accident she had back surgery. Melandy denied that she had radiating pain down her legs at that time even though the medical records say that she did. (Tr. p. 81) Melandy was working her regular hours at Menard after her injury, although for a month or so before the hearing she reduced her hours to about six hours a day due to pain. (Tr. p. 84) She has been performing the same job duties that she had before her injury. (Tr. pp. 96, 97)

Melandy admitted that during her deposition she testified that she could do housework and that she could go back to the type of work she formerly performed. (Tr. p. 99) She testified at the hearing that her condition has changed and she does not believe she could do her prior work in restaurants. (Tr. pp. 100,101) Melandy admitted that Dr. Meinhold, Dr. Soares, and Dr. Greenhagen never told claimant not to work. (Tr. pp. 101 – 103; Ex. A, p. 15)

Melandy said when she saw Dr. Meinhold in November of 2013 she told Dr. Meinhold that her foot hurt a little after she dropped a can of paint on it. (Tr. p. 120) Claimant had another can of paint fall on her left foot around February 2015. (Tr. p. 122: Ex. 2F, p. 2)

Timothy Clemons, Melandy's husband testified at the hearing. Mr. Clemons verified that Melandy went on vacation in September 2013 and was able to walk, ride

and visit various sites, which required significant walking and climbing. (Tr. p. 136, 137) Mr. Clemons testified quit sincerely about his desire to have his wife's medical condition improved. He was also very concerned about his wife's health.

On March 7, 2013, Melandy was seen by Dr. Meinhold for a blister and a bunion. (Ex. H, p. 1) On March 27, 2013, Dr. Meinhold performed an operation on her left bunion, a double osteotomy of the 1st metatarsal and proximal phalanx of the left foot. (Ex. H, p. 7) On April 8, 2013, Melandy returned to Dr. Meinhold and told him that she had been working all week and felt she might have reinjured her foot. (Ex. H, p. 8) Dr. Meinhold's diagnosis was, "[S]tatus post op bunion correction left." (Ex. H, p. 9) On April 24, 2013, Melandy told Dr. Meinhold that someone stepped on her foot at work and she may have reinjured it. (Ex. H, p. 10) Dr. Meinhold noted moderate edema left foot. (Ex. H, p. 11)

Melandy was admitted to the Emergency Department of Mercy Hospital on October 13, 2013 for an evaluation of pain on her left foot after she had a 5 gallon bucket of paint fall on her foot. (Exhibit 1A p. 1; Ex. G, p. 1) The note of that visit states that claimant was currently taking gabapentin. The diagnosis was foot contusion and claimant was instructed that she could return to work on October 14, 2013. (Ex. 1A, p, 2) On May 8, 2014, Melandy reported that she stubbed her toe a couple of days ago and had burning running up her foot. Dr. Meinhold noted the bunion area was doing well and a new contusion of the dorsal aspect of the left foot without deformity. (Ex. H, pp. 12, 13) On July 15, 2013, Melandy returned for a follow up visit with Dr. Meinhold. He reported that Melandy stubbed her left 2nd toe at work. (Ex. H, p. 14) Dr. Meinhold's assessments were, contusion, other acquired hammer toe and pain in limb. (Ex. H, p. 15) It is not clear if this is a second stubbed toe or a follow-up from the May 8, 2013 incident.

On September 30, 2013, Melandy saw Dr. Meinhold as her left foot was causing lots of discomfort at the end of the day. (Ex. H, p. 16) Dr. Meinhold's examination revealed in part:

> NEUROLOGIC: Patellar and ankle reflexes are equal and normal bilaterally, some neuritis on dorsal aspect of left foot from midtarsal joint distally. Intermediate dorsal cutaneus [sic] nerve. Tinels sign is present. . . MUSCULOSKELETAL: Left: On palpation, pain is noted on the dorsal surface of the midfoot. Bunion area has healed without complications. Good ROM first MPJ. Point tenderness at dorsal midtarsal second cuneiform area left.

(Ex. H, p. 17) Dr. Meinhold prescribed gabapentin and Vicodin. His diagnosis was "DJD [Degenerative Joint Disease] midtarsal joint, healing osteotomy in good position first ray." (Ex. H, p. 17)

On November 8, 2013, Melandy saw Dr. Meinhold. He wrote, "Patient here today because she dropped a bucket of paint on her left foot at work. She is having a

little pain. She went to the ER on 10-13-13 the day this happened." (Ex. 2A, p. 1: Ex. H, p. 18) Dr. Meinhold's assessment was contusion, neuropathy, mononeuritis of leg not otherwise specified and pain in limb. (Ex. 2A, p. 2; Ex; H, 19) On December 24, 2013, Dr. Meinhold discussed conservative and surgical options for claimant's neuroma. (Ex. 2C, p. 2) On January 20, 2014, Dr. Meinhold recommended referral to physical therapy. (Ex. 2D, p. 2) On March 3, 2014, Dr. Meinhold noted claimant had another incident at work that happen about 4 weeks ago. (Ex. 2, F, p. 2) Dr. Meinhold assessed acute pain due to trauma, neuropathy, mononeuritis of leg not otherwise specified. (Ex. 2F, p. 2) Dr. Meinhold recommended either neurolysis or excision of the intermediate dorsal cutaneous nerve in the left foot. (Ex. 2F, p. 2)

On March 14, 2014, Dr. Meinhold filled out a FMLA form. Dr. Meinhold wrote that Melandy's condition commenced approximately November 8, 2013. (Ex. 2H, p. 2)

On March 26, 2014, Dr. Meinhold responded to a letter from the workers' compensation third party administrator, Gallagher Bassett. Dr. Meinhold wrote that Melandy should perform sedentary work and limit to 6 hours. (Ex. 2K, p. 1) The defendants approved surgery for Melandy on April 18, 2014. (Ex. 2M, p. 1)

On April 30, 2014, Dr. Meinhold performed a "Neurolysis with excision of a portal of the interomedial dorsal cutaneous nerve of the left foot." (Ex. 2P, p. 1; Ex. 4A, p. 1) His postoperative diagnosis was, "Neurapraxia and interomedia dorsal cutaneous nerve of the left foot." (Ex. 2P, p. 1; Ex. 4A, p. 1)

On June 24, 2014, Dr. Meinhold returned claimant to work a 4-hour day with limited standing, walking and lifting. Claimant was to do no squatting or climbing. (Ex. 2CC, p. 2) On July 17, 2014, Melandy told Dr. Meinhold that somebody stepped on her foot at work. (Ex. 2DD, p. 1) He noted she was still having forefoot pain on her left foot after 4 hours at work and that she continues to improve with time. (Ex. 2DD, p. 2)

On September 5, 2014, claimant was seen at Occupational Health for an injury to her left foot that occurred on September 4, 2014. Claimant reported a quart can of paint fell on the left foot when she removed it from the shaker. She was diagnoses with "Left foot/first toe contusion." (Ex. 1C, p. 1; Ex. A, p. 10) She was returned to work with restrictions. The restrictions were removed on September 8, 2014. (Ex. 1D, p. 1) On September 15, 2014, Melandy returned to Occupational Health and was complaining of extreme pain in her left foot. LeAnne Vitito, APRN impression was, "Contusion to left foot/great toe, worsening of pain, ongoing history of injury dating back to October 2013 with work related injury consisting of a contusion to the left foot at that time as well." (Ex. 1E, p. 1) APRN Vitito recommended a referral to a foot specialist and provided significant restrictions. (Ex. 1E, p. 1)

On September 12, 2014, Melandy reported to Dr. Meinhold she dropped a bucket of paint on her left foot and went to the emergency room. Dr. Meinhold noted:

> New injury to left foot. Dropped paint can on foot at work. Was seen at ER and had unremarkable xrays. To follow with her primary work doctor. No new deformity noted. Continued pain on dorsal aspect of left foot. Pain to percussion of lateral dorsal cutaneus nerve with some radiating pain into the second digit. Trophic changes in integument with hemosiderin deposits on dorsal surface of left foot. She is starting to have extensor substitution of lesser digits. Moderated neuroma pain in third interspace but I am unsure if this is compensatory in nature or a true neuroma at this time. No edema in forfoot. Foot is not appreciably cooler than the rest of the leg. Incision is well healed with no evidence of adhesions. Possible early CRPS trophic changes.

(Ex. 2HH, p. 2) Claimant received a TENS unit on September 23, 2014. (Ex. 2II, p. 2) On April 2, 2015, Dr. Meinhold wrote Melandy's attorney concerning his treatment. He last saw Melandy on December 10, 2014. He noted Melandy was still experiencing pain from several injuries she suffered at work. Dr. Meinhold said that he has recommended referral to a pain management physician and a neurologist. (Ex. 2LL, p. 1) On June 14, 2016, Dr. Meinhold responded to defendants' attorney. Dr. Meinhold did not believe claimant was at maximum medical improvement. (Ex. 2NN, p. 1)

On November 12, 2014, Michael Morrison, M.D., performed an independent medical examination (IME). Dr. Morrison noted that examination of her left foot was difficult because of significant hypersensitivity to touch. Dr. Morrison's impression was:

> IMPRESSION:
>
> 1. Contusion left foot by history.
>
> 2. Status post neurolysis and excision dorsal cutaneous nerve left midfoot (April 30, 2014, Dr. Meinhold).

(Ex. 5A, p. 2; Ex. B, p. 2) Based on the lack of object testing Dr. Morrison was not able to diagnose reflex sympathetic dystrophy and did not recommend referral to a pain management anesthesiologist concerning a sympathetic nerve block. (Ex. 5A, p, 2) On December 13, 2016, Dr. Morrison responded to a request from defendants. Dr. Morrison noted that on September 30, 2013 Melandy was diagnosed with neuritis on the dorsum of her foot and was prescribed gabapentin, Vicodin and Voltaren Gel. He opined that the September 13, 2013 injury was a temporary aggravation to her preexisting symptomatic condition. (Ex. R, p. 1)

On February 2, 2015, Tyrus Soares, M.D., examined claimant for left foot pain and pain management. Dr. Soares noted, "She denies having foot pain prior to the accident. She notes that the surgical procedure was helpful overall." (Ex. 6A, p. 1) Dr. Soares diagnosis was left foot pain and he suspected Melandy's pain is primarily neuropathic. (Ex. 6A, p. 3) Dr. Soares prescribed medication. Melandy had an

adverse reaction and went the emergency room due to one of the medications. (Ex. 6C, p. 1) On August 17, 2015, Dr. Soares wrote:

> I discussed with patient she does not appear to be tolerating medication management given her side effects and has failed more conservative therapy. I have recommended SCS therapy. I discussed rrisk/benefits [sic] of the SCS device inlucding [sic] the evaluation process involving both neuropsych eval and trial of stimulation. If successful, would proceed with permanent implant thereafter. She would like to consider this alternative and I will provide her an educational DVD. Will refill her current regimen and will refer her for neuropsych evaluation for consideration of SCS therapy for neuropathic foot pain.

(Ex. 6E, p. 2) On December 15, 2015, Dr. Soares noted that the defendants would not authorize the SCS (spinal cord stimulator) and recommended cognitive behavioral therapy. (Ex. 6F, p. 2)

On October 28, 2015, claimant contacted Kanesville Therapy LLC due to depression caused by her pain. (Ex. 7A, p. 7) Carolyn Andersen-Burgher M.S., LMHC, LMHP, LIMHP, diagnosis was Major Depressive Disorder. (Ex. 7B, p. 7) On February 16, 2016, Ms. Andersen-Burgher wrote Melandy's attorney. She incorrectly wrote that Melandy fractured her foot in October 2013. Ms. Andersen-Burgher provided a professional opinion that Melandy was in extreme physical and emotional pain and that Melandy's quality of life and ability to function has been significantly diminished since her foot injury. (Ex. 7H, p. 2)

Dr. Greenhagen started treating Melandy's left foot on June 27, 2016 and prescribed a CAM walker. (Ex, 8B, p. 2) On August 22, 2016, Dr. Greenhagen responded to questions for Melandy's counsel concerning the October 13, 2013 injury. His diagnosis of Melandy was radiculopathy and claimant had not reached MMI. He wrote that he believed the injury caused the issue and deferred to Dr. Evans as to that issue. When asked if the work injury substantially aggravated or lighted up a preexisting condition Dr. Greenhagen wrote, "At a minimum the injury did cause an aggravation." (Ex. 8C, p. 2) On September 19, 2016, Dr. Greenhagen responded affirmatively to another question from Melandy's attorney the relevant portions of the letter is:

> This missive is regarding your patient and my client Ms. Melandy Clemons. You noted in prior correspondence that this injury caused an aggravation of any pre-existing conditions she may have had. For clarification can you please confirm whether you feel that the work injury of 10/13/13 at Menard, Inc. is either the cause of Ms. Clemon's current condition for which you treated her or a material, substantial aggravation of any pre-existing condition she may have suffered?
>
> ✓ Yes ____ No

(Ex. 8D, p. 1)

On February 15, 2016, Joel Cotton, M.D., wrote defendants' counsel after reviewing Melandy's relevant medical records, up to December 7, 2015. Dr. Cotton agreed with Dr. Morrison's November 12, 2014 examination of Melandy's left foot which found a contusion by history and status post neurolysis and excision of the dorsal cutaneous nerve of the left mid foot. Dr. Cotton noted there were no objective physical findings of reflex sympathetic dystrophy or any type of complex regional pain syndrome. Dr. Cotton stated, "It does appear the incident of October 13, 2013, either caused or substantially contributed to the patient's persistent foot pain when examined by Dr. Morrison." (Ex. 9A, p. 1; Ex. E, p.1) He did not expect any permanent restrictions and did not feel a spinal cord stimulator would be beneficial. Dr. Cotton's diagnosis was contusion of the left foot and partial sensory loss in the distribution of the nerve excision and that Melandy was at MMI on November 12, 2014. He agreed that a 7.5 permanent impairment rating was appropriate. (Ex. 9A, p. 2; Ex. E, p. 2)

On October 20, 2016, Dr. Cotton revised his February 15, 2016 opinion. Based upon the September 30, 2013 records from Dr. Meinhold, Dr. Cotton stated the work incident of October 13, 2013 only caused a temporary aggravation and no permanent injury. (Ex. E, p. 3) On December 8, 2016, Dr. Cotton stated that he did not agree with Dr. Evan's concerning whether Melandy had complex regional pain syndrome. He did not think she would benefit from a spinal cord stimulator and that the October 13, 2013 injury may have caused a temporary aggravation of left foot pain and numbness, but did not cause any permanent aggravation, exacerbation, or lighting up of Melandy's pre-existing foot condition. (Ex. S, p. 1)

On June 3, 2016, Bruce Gutnik, M.D., performed a psychiatric examination of the Melandy. His diagnosis was:

DIAGNOSTIC IMPRESSION:

1. Somatic Symptom Disorder with Predominate Pain (F45.1)

2. Major Depressive Disorder, Recurrent, Moderate (F33.1)

3. Other Substance Abuse Disorder in Sustained Remission, by report (F19.10)

(Ex. C, p. 12) Dr. Gutnik stated that claimant's work injury did not cause or exacerbate her mental conditions. Dr. Gutnik psychiatric opinion was that a spinal cord stimulator would likely not be successful. (Ex. C, p. 14)

On July 1, 2016, Bernadette Hughes, M.D., performed an EMG. Dr. Hughes' impression was:

IMPRESSION:

There is electrophysiologic evidence for a chronic, inactive, distal peroneal mononeuropathy to only the extensor digitorum brevis muscle. The absence of the superficial peroneal sensory responses bilaterally could be a normal variant. There is no electrophysiologic evidence for an underlying left side lumbosacral radiculopathy.

(Ex. 12A, p. 1)

Dr. Evans saw Melandy on July 5, 2016. His diagnosis was chronic pain syndrome and Complex Regional Pain Syndrome. (Ex. 10A, p. 5) He noted the left foot was cool to touch and allodynia over the dorsum of her left foot. Dr. Evans recommended a series of lumbar sympathetic blocks and aggressive physical therapy. He stated that if those treatments did not help a trial of a spinal cord stimulator or dorsal; root ganglion stimulation could be performed. (Ex. 10A, p. 5) On August 12, 2016, Dr. Evans reported Melandy had some relief with the left lumbar sympathetic block and recommended a second block. (Ex. 10B, p. 3) On September 12, 2016, Dr. Evans noted that the second block did not provide significant relief. (Ex. 8E, p. 2; Ex 10C, p. 3)

On November 10, 2016, Dr. Evans wrote a letter to Melandy's counsel. Dr. Evans stated that the onset of her pain was when a 5 gallon can of paint fell on her left foot. (Ex.10G, p. 1) He diagnosed her with complex regional pain syndrome type 1 of the left foot. He noted that claimant could work for about 4-6 hours and provided a rating of 11 percent. He opined that Melandy was a good candidate for a trial of spinal cord stimulator of the dorsal root ganglion. It was his opinion that the workplace injury of October 13, 2013 is the primary cause of her current pain syndrome in her left foot. (Ex. 10G, pp. 1, 2)

On November 11, 2016, Dr. Evans agreed he recommended the spinal cord stimulator because of the October 13, 2013 work injury. (Ex. 10E, p. 1)

On October 10, 2016, Dean Wampler, M.D., performed an IME. Dr. Wampler stated that based upon the claimant's history, including the fact that she was complaining of nerve pain two weeks before her October 13, 2013 injury that he did not believe the incident on October 13, 2013 was anything more than a very minor temporary aggravation of her pre-existing foot pain. (Ex. D, p. 13) Dr. Wampler found claimant at MMI as of November 8, 2013. (Ex. D, p. 13) On December 7, 2016, Dr. Wampler sent a letter after receiving additional medical reports from Dr. Evans. He confirmed his opinions in his October IME report and stated that Melandy's condition was not caused by her work injury of October 13, 2013. (Ex. T, pp. 1, 2)

On October 24, 2016, a Function Capacity Evaluation (FCE) was issued. The FCE was not considered valid due to perceived inconsistent effort. The FCE concluded

Melandy could perform lifting activities that were at least at the light to medium category. (Ex. F, p. 1)

Melandy has requested payment of certain medical bills. (Ex. 15, pp. 1 – 37) The summary lists Total Charges of $8,604.88, Write Off of $295.97, Insurance of $1,196.84, Ins. ADJ. of $582.10 and Amount Due of $6,529.97. (Ex. 15, p. 2) Melandy incurred charges from Dr. Meinhold on November 8, 2013 $130.00, $56.00 and $35.00. Personal insurance and GB [Gallagher Basset?] have made payments. (Ex. P, p. 2) As this is the date that Melandy was found to be at MMI, I award these medical costs and defendants shall reimburse the personal insurance and any out of pocket expenses for this visit.

RATIONAL AND CONCLUSIONS OF LAW

The first issue to decide is whether claimant has proven that the work incident of October 13, 2013 has caused a permanent impairment.

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).

There is conflicting medical evidence about causation in this case. Melandy has not met her burden of proof to show that the October 13, 2013 incident with the five gallon container of paint caused her permanent injury. The critical evidence is the September 30, 2013 visit that claimant had with Dr. Meinhold. At this visit, neuropathy was identified and gabapentin and Vicodin was prescribed. Dr. Evans and Dr. Greenhagen do not discuss in any satisfactory way about the manifestation of symptoms on September 30, 2013. There evaluations and conclusion presume that claimant's neuropathic pain started with the October 13, 2013 incident. I find the reports of Dr. Wampler, Dr. Cotton and Dr. Morrison to be more convincing. As such, Melandy takes no additional indemnity benefits.

While I have found that Melandy has not proven that her work incident of October 13, 2013 did not cause a permanent injury or impairment, I do not doubt that she has significant pain in her left foot and it has greatly affected her life. She has a complex medical problem that she wants to be addressed. Based upon the convincing medical evidence she has not met her burden of proof.

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).

I did find that defendants are responsible to pay the medical expenses of the November 8, 2013 examination by Dr. Meinhold. These are related to the temporary aggravation of Melandy's left foot condition.

Claimant has requested costs of the $100.00 filing fee, deposition costs of $167.20 and medical records costs of 25.00. Some cost can be awarded pursuant to 876 IAC 4.33. Using my discretion I award the filing fee and deposition cost. Defendants shall reimburse Melandy $267.20. I do not award the medical records fees.

As I have found that claimant has not met her burden of proof on permanent impairment all other issues identified by the parties are moot and will not be ruled upon.

ORDER

THEREFORE, IT IS ORDERED:

Claimant, Melandy Clemons, shall take no indemnity benefits in this case.

Defendants, Menard and Praetorian Insurance Company, shall pay the medical expenses as set forth in the decision.

Defendants, Menard and Praetorian Insurance Company, shall pay cost of two hundred sixty-seven 20/100 dollars ($267.20).

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

Signed and filed this 24th day of July, 2017.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/kjw

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.