BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REGINA REED,	File No. 5041353	
Claimant,	APPEAL	
vs.	DECISION	
POLARIS INDUSTRIES, INC.,		
Self-Insured Employer,		
Defendant.	Head Note Nos.: 1402.30, 1803, 2502	

Defendant, Polaris Industries, Inc., a self-insured employer, appeals from an arbitration decision filed on September 29, 2014. Claimant, Regina Reed, cross-appeals.

The case was heard on September 11, 2013, in front of Deputy Workers' Compensation Commissioner Michelle McGovern and it was considered fully submitted on December 16, 2013. On September 12, 2014, this matter was delegated to Deputy Workers' Compensation Commissioner James F. Christenson, who then issued the arbitration decision on September 29, 2014.

In the arbitration decision, it was determined claimant sustained a permanent work-related injury on August 1, 2010, and claimant was awarded ten percent industrial disability.

On appeal, defendant asserts the deputy commissioner erred in determining claimant sustained a permanent injury and in awarding ten percent industrial disability. On cross-appeal, claimant asserts the deputy commissioner erred in awarding ten percent industrial disability because claimant asserts she is entitled to substantially more than ten percent industrial disability.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I affirm the determination of the deputy commissioner that claimant sustained a permanent work-related injury on August 1, 2010. I modify the deputy commissioner's award in that I find claimant's work injury is the cause of 20 percent industrial disability.

The record in this case consists of claimant's Exhibits 1-14, defendants' Exhibits A-N, and the testimony of claimant and claimant's husband.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The first issue to be determined is whether claimant's work injury is a cause of permanent disability.

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Claimant was injured when a crate of parts weighing approximately 170 pounds fell on her from a height of approximately 35 feet. The impact knocked claimant to the floor. The record indicates claimant continued to treat for her symptoms for the accident from the date of injury to the time of the hearing in September 2013.

Four experts have given opinions regarding the causation of claimant's current symptoms. Jason C. Hough, D.O., orthopaedic surgeon, treated claimant from August 19, 2010, through August 11, 2011. Dr. Hough opined claimant had permanent impairment of her back due to a preexisting condition and that her injury of August 1, 2010, was only a temporary aggravation of the preexisting condition. (Exhibit M)

Jerry J. Blow, M.D., physiatrist, treated claimant from November 17, 2011, through December 6, 2012. Dr. Blow also opined that any symptoms claimant currently has are the result of preexisting conditions. (Ex. 5, p. 124; Ex. 14, Depo. Tr. pp. 29-35)

Dr. Kevin D. Eckard, chiropractor, treated claimant both before and after the work injury. Dr. Eckard opined that the work injury permanently aggravated claimant's pre-existing condition. (Ex. 7)

Sunil Bansal, M.D., performed an IME of claimant on July 19, 2013. He opined claimant had preexisting conditions of her lumbar spine and her left knee which was materially aggravated by the work injury. (Ex. 6)

The record indicates claimant did see Dr. Eckard on a routine basis for chiropractic treatment before the work injury. Dr. Eckard's records indicate claimant did have prior problems with her neck, back, and knee. (Ex. 4) However, those records also indicate claimant's chiropractic treatments increased in number after the work injury. (Ex. 7)

The unrebutted testimony from claimant and her husband is that claimant led a very active life pre-injury. She engaged in CrossFit workouts that were intense. (Tr., pp. 27, 66-67) Claimant and her husband also did hiking and backpacking which involved carrying packs weighing up to 45 pounds. (Tr., pp. 25-26, 66)

After the work injury, claimant continues to exercise, but with far less intensity. The unrebutted testimony of claimant and her husband is that claimant did try to hike on one occasion after the injury, but was in pain that following day. (Tr., pp. 27-28)

Claimant and her husband's unrebutted testimony is that claimant has physical difficulties following the work injury. Claimant needs help completing household chores. She has difficulty standing and sitting for extended periods of time. She also has difficulty with sleep due to her injury. (Tr. 28, 68-70)

Following the injury, claimant takes prescription pain medication and muscle relaxants on a continuing basis, which she did not take prior to the injury (Tr. 28, 39-40)

Claimant used to work 12-14 hours a day. At the time of hearing claimant could only work 10 hours a day due to pain and fatigue. (Tr. 34)

Pre-injury, claimant engaged in intense exercise on a regular basis. She went backpacking and hiking. She worked 12-14 hours a day. After the injury, claimant still exercises, but her exercise is far less intense. She is unable to backpack or hike. She has difficulty sleeping due to pain. She now takes prescription medication for pain. She has difficulty sitting or standing for extended periods of time. Claimant works 2-4 hours less per day since her injury. In short, the record clearly indicates claimant has limitations and is restricted following her injury in ways she was not restricted pre-injury. As the opinions of Dr. Bansal and Dr. Eckard are more consistent with the record, it is found that their opinions regarding causation of claimant's current symptoms are more convincing than the opinions of Drs. Hough and Blow. Given this record, claimant has carried her burden of proof that her work injury is a cause of her current symptoms.

The next issue to be determined is whether claimant's injury resulted in a permanent disability.

Dr. Bansal opined claimant has permanent impairment. Dr. Hough also indicates claimant has permanent impairment, although Dr. Hough attributes that impairment to claimant's pre-existing condition. Claimant has pain that limits her three years after the date of injury. Claimant takes prescription pain medication on an ongoing basis which she did not take prior to the work injury. Given this record, claimant has carried her burden of proof that she has permanent impairment resulting from the August 1, 2010, work incident.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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.

Claimant was 43 years old at the time of the hearing. She graduated from high school. She has worked at Polaris since 1994.

Dr. Bansal found claimant had a seven percent impairment of the body as a whole for her back resulting from the work injury. Dr. Bansal also found claimant had a seven percent permanent impairment of the left lower extremity resulting from the work injury. (Ex. 6, p. 144) No other expert has opined regarding the extent of claimant's permanent impairment, other than Drs. Hough and Blow who said no permanent impairment can be attributed to claimant's work injury. (Ex. 5, p. 124; Ex. M, p. 39) Because I find Dr. Bansal's opinion regarding causation to be more convincing, I also find his opinion regarding permanent impairment to be more convincing. For this reason, I find claimant has a seven percent permanent impairment of her body as a whole for her back, and a seven percent permanent impairment of her left lower extremity, which ratings combine for a total impairment rating of ten percent of the body as whole resulting from the work injury of August 1, 2010.

Dr. Bansal recommended permanent restrictions for claimant's injury of no lifting greater than 20 pounds, no frequent bending or twisting, no use of ladders and multiple stairs, and avoid walking for more than 45 minutes at a time secondary to left knee pathology. (Ex. 6, pp. 145-146) Dr. Bansal's opinion regarding permanent restrictions is further evidence that claimant has sustained industrial disability.

Claimant has returned to work with no restrictions. Claimant testified she earned more at the time of the arbitration hearing than she did at the time of injury. She said her current earnings have not changed since the work injury. However, the unrebutted testimony of claimant is that she works 2-4 hours less per day because of her injury. Her unrebutted testimony is that she would have difficulty returning to prior jobs at Polaris due to her physical limitations created by the August 1, 2010, injury.

When all relevant factors are considered, it is found that claimant has a 20 percent loss of earning capacity or industrial disability, which entitles her to 100 weeks of permanent partial disability benefits.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of September 29, 2014, is MODIFIED as follows:

Defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the stipulated rate of six hundred ninety-nine dollars and 42/100 ($699.42) per week commencing on August 15, 2010.

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on accrued weekly benefits awarded herein pursuant to Iowa Code section 85.30.

Defendant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Defendant shall file reports with this agency on the payment of this award pursuant to rule 876 IAC 3.1.

Signed and filed this 28th day of September, 2015.

Joseph S. Cortese II

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WORKERS' COMPENSATION
COMMISSIONER

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