BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA F. PAYNE,

Claimant,

vs.

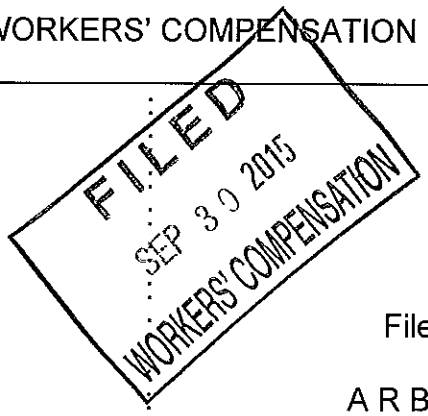
VERMEER CORPORATION,

Employer,

and

EMC RISK SERVICES,

Insurance Carrier,
Defendants.



File No. 5043497

A R B I T R A T I O N

D E C I S I O N

Head Note No.: 1100, 1800

STATEMENT OF THE CASE

Claimant, Rebecca F. Payne, has filed a petition in arbitration and seeks workers' compensation benefits from Vermeer Corporation, employer, and EMC Risk Services, insurance carrier, defendants.

Deputy Workers' Compensation Commissioner, Stan McElderry heard this matter on May 21, 2015 in Des Moines, Iowa.

ISSUES

1. Whether the claimant suffered an industrial injury arising out of and in the course of her employment on August 21, 2012;

2. The extent of disability, if any; and

3. Independent medical evaluation.

FINDINGS OF FACT

The claimant was 37 years old at the time of hearing. She is a high school graduate and has an Associate's Degree from Indian Hills Community College in Computer Systems. The claimant began her work with Vermeer in 2005. She began training as a MIG welder in December of 2011 and completed the training in January of

2011. She worked as a MIG welder until September of 2012 when she was put on a restriction of no welding.

The claimant testified that she began noticing redness of her neck and face in early March 2012. She thought it was caused by the heat from welding. However, she told Timothy Dykstra, M.D. on August 21, 2012 that the symptoms had begun "2 to 2-1/2 months ago." (Exhibit A, page 1) Regardless of when the condition began, when the condition did not improve or got worse, she went to the Vermeer Health Department in August of 2012. The claimant was eventually diagnosed with "lichenoid type dermatitis consistent with lichen planus." (Ex. 4, p. 1) Anne M. Nelson, PA-C and Ronald S. Bergman, D.O. have opined: "As far as the involvement with Vermeer and the welding table, I do not think that the exposure to excessive heat and sunlight caused the condition, but I do believe the condition was exposed by the heat and/or light." (Ex. 4, p. 1)

Sunil Bansal, M.D., performed an independent medical evaluation (IME) of the claimant on April 3, 2015. (Ex. 5) Dr. Bansal causally connects the lichenoid tissue reaction with phototriggering to the welding work at Vermeer. (Ex. 5) He opined a 9 percent body as a whole (BAW) impairment and no work involving welding (UV light) and to avoid exposure to prolonged heat and/or sunlight. (Ex. 5, pp. 9-11) However, it appears that Dr. Bansal was not aware of some other important information. On July 25, 2012 the claimant was seen at Pella Regional Health Center Emergency Department by Jeffrey Hartung, D.O., for chest pains. (Ex. F) Dr. Hartung's notes do not document any redness, rash, or swelling contrary to claimant's testimony. This is highly significant for several reasons. One is that he prescribed Naprosyn, which is a photosensitizing drug. It is not likely that a photosensitizing drug would be prescribed to an individual already showing symptoms. Claimant was off work from July 25 to August 1, 2012 and engaged in summer activities with sun exposure. Starting the first week of August she and her husband took a motorcycle trip to Sturgis, South Dakota. The first documentation of a rash was then made on August 21, 2012. (Ex. A, p. 2) On September 12, 2012 the claimant again saws Dr. Dykstra and still had a prominent rash even though she had been off welding for over three weeks. (Ex. A, p. 3)

Timothy Abrahamson, M.D., is a dermatologist. His deposition is in the record as part of Exhibit A. Dr. Abrahamson is of the opinion that given the level of protection worn by the claimant while welding, the actual established onset date, that the Naprosyn with exposure to sunlight is the precipitating factor. (Ex. A) He does believe that the work at Vermeer was a factor in aggravating the lichenoid dermatitis but that it caused no permanent impairment or need for work restrictions. (Ex. A, p. 16) J. William Holtze, M.D., opines that the work at Vermeer not only did not cause the dermatitis, but did not aggravate it. (Ex. A, pp. 13-14) The better opinions are those of Dr. Abrahamson and Dr. Holtze who were aware of the Naprosyn. It is so found. The claimant may have suffered a slight aggravation injury at Vermeer from welding that was temporary in nature, caused no lost time, and resulted in no permanency.

Claimant also seeks payment/reimbursement of the $2,995.00 IME fee of Dr. Bansal. There was a prior rating by a defendant-retained doctor of no impairment.

REASONING AND CONCLUSIONS OF LAW

The first issue is the whether there was a work injury and the extent of the claimant's entitlement to permanent partial 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. of App. P. 6.14(6).

The claimant has the burden of proving by of preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Ciha v. Quaker Oats Co., 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. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 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. Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011). 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). The finder of fact, must determine the credibility of the witnesses, weigh the evidence, and decide the facts at issue in a case. *See* Arndt v. City of LeClair, 728 N.W.2d 389, 394-95 (Iowa 2007). One factor the commissioner considers is whether an expert's opinion is based upon an incomplete medical history. Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)

No evidence in the record is convincing enough to establish that it is probable that the claimant suffered an injury at work. If she suffered an aggravation it was minor, temporary, and resulted in no permanent impairment or restrictions.

Independent Medical Examination.

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). Defendants' liability for claimant's injury need not ultimately be established before defendants are obligated to reimburse claimant for an independent medical examination.

The claimant chose to get an evaluation/examination to establish whether the injury arose out of and in the course of employment, and whether it caused permanent impairment or disability. The claimant got that exam from Dr. Bansal, who charged a fee of $2,995.00 for the ratings. The rating followed a rating of no impairment from a doctor retained by the defendants. The defendants shall pay/reimburse as appropriate the IME fee of Dr. Bansal.

ORDER

That the claimant take nothing other than the defendants shall pay/reimburse the two-thousand nine-hundred ninety-five and 00/100 dollars ($2,995.00) IME fee of Dr. Bansal.

Defendants shall receive credit for all benefits previously paid.

Costs are taxed to the defendants pursuant to 876 IAC 4.33.

Defendants shall file subsequent reports of injury as required by the agency.

Signed and filed this 30th day of September, 2015.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Richard R. Schmidt
Attorney at law
2423 Ingersoll Ave.
Des Moines, IA 50312-5233
Rick.schmidt@sbsattorneys.com

William D. Scherle
Attorney at Law
5th Floor, US Bank Bldg.
520 Walnut St.
Des Moines, IA 50309-4119
bscherle@hmrlawfirm.com

SRM/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.