BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JODIE CRAIG, Claimant, vs. UNITYPOINT HEALTH-DES MOINES, Employer, Self-Insured, Defendant.	File No. 5066857.01 ARBITRATION DECISION Headnotes: 1402.40, 1803

STATEMENT OF THE CASE

Claimant Jodie Craig filed a petition in arbitration seeking workers' compensation benefits from defendant UnityPoint Health-Des Moines, self-insured employer. The hearing occurred before the undersigned on June 2, 2021, via CourtCall video conference.

The parties filed a hearing report at the commencement of the arbitration hearing. In the hearing report, 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.

The evidentiary record consists of: Joint Exhibits 1 through 8, Claimant's Exhibits 1 through 7, and Defendant's Exhibits A through E. Claimant testified on her own behalf. The evidentiary record was closed at the end of the hearing, and the case was considered fully submitted upon receipt of the parties' briefs on June 18, 2021.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained any permanent disability resulting from her left hip condition.

2. The extent of claimant's industrial disability.

3. The commencement date for claimant's permanent partial disability benefits.

4. Costs.

FINDINGS OF FACT

Claimant, a registered nurse, sustained a work-related injury on December 23, 2016, when she slipped on a substance on the floor and landed on her right side. (Testimony; Joint Exhibit 1, p. 1) She initially complained of pain in her right ankle, knee, hip, arm and hand. (Testimony; JE 1, p. 1) Defendant authorized claimant to seek treatment with Jon Yankey, M.D., who diagnosed claimant with contusions of her right hip, elbow, wrist and knee and recommended continued conservative treatment. (JE 3, p. 5)

By January of 2017, claimant's pain had resolved but for the pain in her right hip. (Testimony; JE 3, p. 8) Dr. Yankey recommended physical therapy and an eventual MRI. (JE 3, pp. 8-9) When claimant's right hip pain persisted into April of 2017, Dr. Yankey referred claimant for an orthopedic evaluation. (JE 3, p. 10)

Claimant was authorized to seek treatment at DMOS, where she was initially evaluated by Matthew DeWall, M.D., in May of 2017. (JE 4) Dr. DeWall diagnosed claimant with a "right-sided gluteus minimus tear" and recommended conservative treatment and time. (JE 4, p. 14) When claimant reported continued discomfort the following month, Dr. DeWall performed a steroid injection. (JE 4, p. 18) Though the injection provided initial relief, it wore off by July of 2017. (JE 4, p. 19) As a result, Dr. DeWall recommended a consultation with his partner, Jason Sullivan, M.D., to discuss surgery. (JE 4, p. 19)

Dr. Sullivan recommended arthroscopic surgery, which he performed on November 20, 2017. (JE 4, pp. 21, 24) The surgery, an arthroscopic gluteus minimus and gluteus medius repair and iliotibial band release and bursectomy, initially provided significant improvement to claimant's pain. (JE 4, p. 28) Claimant continued to improve through the early months of 2018, and Dr. Sullivan returned claimant to full-duty work as of March 5, 2018. (JE 4, p. 31)

Claimant returned to Dr. Sullivan in May of 2018 and reported "doing ok" but experiencing "pain and achiness at the end of the day." (JE 4, p. 33) Her discomfort continued at her August 23, 2018 appointment with Dr. Sullivan, when claimant reported waxing and waning pain with a sometimes irregular gait. (JE 4, p. 35) Dr. Sullivan stated:

> [Claimant] feels better but not perfect. She still has some issues. I do not think at this point in time it is worth a repeat MRI as she would not want to undergo any intervention anyway. At this point in time, I believe she is maximally medically improved from her procedure. She is back to work without restrictions, so I would not recommend any future care at this point.

(JE 4, p. 35) He assigned a 10 percent whole person impairment rating due to claimant's right hip complaints. (JE 4, p. 37)

Claimant testified that upon her return to full-duty work she began experiencing symptoms on her left side due to her right-sided limp. (Testimony) Dr. Sullivan confirmed this limp in a letter dated October 1, 2018, when he indicated claimant exhibited evidence of a "subtle Trendelenburg gait" at the time of her August 23, 2018 appointment. (JE 4, p. 37)

As a result, defendant authorized Dr. Sullivan to evaluate claimant's left-sided complaints. (Testimony) Claimant was seen by Dr. Sullivan on February 13, 2020, and she complained of pain in her left hip that "bothers her on a daily basis." (JE 4, p. 38) Dr. Sullivan noted her pain was "[p]ossibly related to her glute medius pathology or greater trochanteric pain syndrome as well as some early osteoarthritis." (JE 4, p. 39) He went on to state that "over time she has developed this Trendelenburg gait from her injury on the right" and "[i]n compensatory fashion this has caused, to some extent, her left hip pain." (JE 4, p. 39) Dr. Sullivan ordered an MRI. (JE 4, p. 39)

The MRI revealed "tendinosis of the gluteus medius and minimus" along with "underlying chondromalacia of the left hip joint." (JE 4, p. 42) Dr. Sullivan offered a cortisone injection, which claimant pursued, but he indicated "[n]o further follow-up is warranted at this point in time." (JE 4, p. 42)

In a letter dated February 18, 2021, Dr. Sullivan opined that claimant's "injury to her left hip was an exacerbation of an underlying condition." (JE 4, p. 45) However, he also opined that he did not recommend any restrictions for claimant's left hip and that she had no resulting permanent impairment. (JE 4, p. 45) He indicated claimant might consider additional injections for treatment of her left hip symptoms. (JE 4, p. 45)

Claimant underwent an independent medical examination (IME) with Mark Taylor, M.D., on October 14, 2019, before she saw Dr. Sullivan for her left hip complaints. In a report dated November 8, 2019, Dr. Taylor agreed with Dr. Sullivan that claimant reached maximum medical improvement (MMI) for her right hip as of August 23, 2018. He did not recommend any additional impairment above the 10 percent rating Dr. Sullivan assigned. (Cl. Ex. 2, p. 7)

Regarding the left hip, Dr. Taylor echoed Dr. Sullivan's opinion that claimant's "left hip pain has occurred as a sequela of her right-sided injuries." (Claimant's Ex. 2, p. 6)

Dr. Taylor subsequently issued a supplemental report after reviewing Dr. Sullivan's treatment of claimant's left hip. In a letter dated February 19, 2021, Dr. Taylor reaffirmed his opinion that claimant's left hip condition developed as a sequela of her right hip injury. (Cl. Ex. 4, p. 1) He opined claimant reached MMI for the left hip as of May 1, 2020, which was roughly a week after her injection. (Cl. Ex. 4, p. 2) He indicated any future injections would be "maintenance care." (JE 4, p. 2) As for permanent impairment relating to the left hip, Dr. Taylor opined as follows:

> If the left hip pain resolved and did not return after the injection, then no impairment would be assigned. If she has remained symptomatic, or if the injection only worked for a limited amount of time, then a small rating would apply due to her chronic bursitis. Turning to Table 17-33 on page 546, she has demonstrated a form of chronic bursitis. It is noted that up to 7% lower extremity impairment can be assigned due to trochanteric bursitis with an abnormal gait. Her abnormal gait resulted from her right hip injury, not from the left hip. Her injection was into the gluteus medius bursa, which is close to the trochanteric bursa. Given her overall clinical presentation specific to the left hip, I do not recommend the full 7%. Rather, I recommend 3% left lower extremity impairment. As per Table 17-3, page 527, this converts to 1% whole person impairment.
>
> (Cl. Ex. 4, p. 2)

The table referenced by Dr. Taylor does indicate a rating is appropriate for trochanteric bursitis with abnormal gait, but as correctly noted by Dr. Taylor, claimant's trochanteric bursitis and abnormal gait were on her right side—not the left side for which he assigned the rating. Dr. Taylor used this table because claimant's left hip injection was "close to the trochanteric bursa," but there is no indication in the Guides that such discretion is appropriate. In other words, it does not appear that Dr. Taylor's rating for the left hip is warranted by the Guides. As a result, I do not find it persuasive.

That being said, both Dr. Sullivan and Dr. Taylor indicated claimant's left hip complaints are an exacerbation of an underlying condition resulting from claimant's work-related right hip injury. There is no contrary evidence. I therefore find claimant's ongoing hip complaints are work-related, but I find insufficient evidence that claimant sustained any permanent disability as a result of her left hip complaints.

With respect to the extent of claimant's permanent disability resulting from her right hip, claimant testified she has problems bending, twisting, and squatting that make certain tasks difficult. (Testimony) She also testified she would not be able to perform specific nursing positions, such as a scrub nurse on the floor. (Testimony) Importantly, however, claimant has been working in her pre-injury nursing job without restrictions since March of 2018, when she was released to full-duty work by Dr. Sullivan after surgery. (Testimony; JE 4, p. 31) More specifically, claimant is working the same shifts and the same number of hours as before her work-related injury, and her hourly rate has actually increased. (Testimony) Claimant indicated she has no intention to retire and wants to keep working. (Testimony)

While I find claimant's testimony credible that she has difficulty with a limited number of tasks in her position, she has been performing the physical requirements of her job without restrictions for more than three years. Although she may not be able to return to a scrub nurse position, the last time she held this position was in the late-1980s. (Testimony) Despite her injury, claimant continues to be physically capable of performing the job she has held for more than 30 years—and she is earning more now than on the date of injury. As a result, I find claimant did not sustain any loss of earning

capacity beyond the 10 percent whole body rating assigned by Dr. Sullivan and Dr. Taylor.

Per Dr. Sullivan and Dr. Taylor, claimant reached MMI for her right hip as of August 23, 2018

CONCLUSIONS OF LAW

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).

In this case, relying on the opinions of both Dr. Sullivan and Dr. Taylor, I found claimant's left hip complaints to be work related. With respect to permanent disability, however, I found Dr. Sullivan's opinion to be more persuasive than Dr. Taylor's, meaning I found insufficient evidence that claimant sustained any permanent disability as a result of her left hip complaints. I therefore conclude claimant failed to carry her burden to prove she sustained any permanent disability as a result of her left hip complaints.

However, claimant sustained a stipulated work-related injury to her right hip, which is an injury to the body as a whole. Because 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 Ry. Co. of Iowa, 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 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 shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code § 85.34.

After consideration of all the relevant factors, I found claimant sustained a 10 percent industrial disability. This entitles claimant to 50 weeks of permanent partial disability (PPD) benefits.

The Iowa Supreme Court has specifically noted that permanent partial disability benefits commence whenever the first factor of Iowa Code section 85.34(1) is met. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016). In other words, once a claimant achieves one of the factors outlined in Iowa Code section 85.34(1), permanent disability benefits should commence.

The factors are whether (1) "the employee has returned to work," (2) "it is medically indicated that significant improvement from the injury is not anticipated" (MMI), or (3) "the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury." Iowa Code § 85.34(1).

In this case, claimant returned to work after her surgery on March 5, 2018. At this point, she had not yet been placed at MMI by any physicians. Thus, claimant's return to work was the first factor of Iowa Code section 85.34(1) to be achieved in this case. I therefore conclude claimant's healing period terminated on March 5, 2018 and her entitlement to PPD benefits commenced on March 6, 2018.

Claimant also seeks reimbursement for her filing fee. (Cl. Ex. 7) Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Claimant was successful in portions of her claim. As such, I find a taxation of costs is appropriate in this case. I tax defendant the costs of claimant's filing fee in the amount of $100.00. 876 IAC 4.33 (7).

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant ten (10) weeks of permanent partial disability benefits commencing on March 6, 2018, at the rate of nine hundred twenty-three and 13/100 dollars ($923.13) per week.

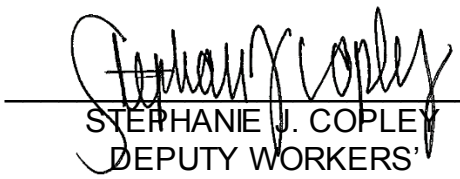
Defendant shall be entitled to the stipulated credits against this award.

Defendant 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)

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant's costs in the amount of one hundred and 00/100 dollars ($100.00).

Defendant 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 20th day of August, 2021.



STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Gary Mattson (via WCES)

Jennifer Clendenin (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.