

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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WANDA PORTER,

**FILED**

Claimant,

NOV 28 2017

vs.

WORKERS COMPENSATION

File No. 5057139

SECURITAS SECURITY SERVICES,

ARBITRATION DECISION

Employer,

and

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,

Insurance Carrier,  
Defendants.

Head Note Nos.: 1108.50, 1402.40,  
1802, 1803, 2500

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STATEMENT OF THE CASE

Wanda Porter, claimant, filed a petition in arbitration seeking workers' compensation benefits from Securitas Security Services, employer and Indemnity Insurance Company of North America, insurance carrier, both as defendants. Hearing was held on June 23, 2017 in Des Moines, Iowa.

Claimant, Wanda Porter, testified live at trial. The evidentiary record also includes Joint Exhibits JE1-JE13, Claimant's Exhibits 1-5 and Defendants' Exhibits A-E.

The parties filed a hearing report at the commencement of the arbitration hearing. On 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 parties submitted post-hearing briefs on July 7, 2017.

ISSUES

The parties submitted the following issues for resolution:

1. The extent of industrial disability, if any, claimant sustained as a result of the December 28, 2015 work injury.

2. Whether claimant is entitled to healing period benefits from September 21, 2016 through October 27, 2016?
3. Whether claimant is entitled to past medical benefits?
4. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) pursuant to Iowa Code section 85.39?
5. Assessment of costs.

### FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

The parties have stipulated that Wanda Porter sustained a compensable injury on December 28, 2015. At that time, she was working for Securitas as a full-time security officer. The job involved sit-down security tasks and at times she worked patrol by walking the perimeter and monitoring the facility or location. (Ex. C) On December 28, 2015, Porter was at work when she slipped on ice and fell. She landed on her left hip with her left leg underneath her bottom. She felt a pulling sensation in her left knee when she tried to get up; she eventually required help to get up. She felt pain and discomfort on her left side in her knee, hip, and thigh. Another employee of Securitas escorted her to her post. Porter testified that she arrived at work around 5:00 a.m. and that the fall happened early in her shift. Her first break was at 10:00 a.m. At that time, she called the main office and informed John that she fell and needed to file a report. She was able to complete her shift for the day. (Testimony)

Porter testified that she self-treated the day after the fall. She first received medical treatment on January 7, 2016. The delay in treatment was due to her employer not knowing she had been hurt because John never conveyed the information to the office. Porter continued to work during this timeframe. She testified she was able to work because her duties mostly involved sitting at a post. Although she experienced discomfort, she was able to perform her job because no patrolling was necessary.

The treatment Porter received on January 7, 2016 was at Concentra Medical Center. She reported she had slipped on the ice, landed on her left hip and her left leg went underneath her, and she felt a pull on the inside of her left knee. She was not able to bear weight on her left side. The notes state that she was bruised on her left hip and that there was also some swelling. The notes also indicate tenderness in the proximal adductors and anterior hip joint. The assessment was contusion of hip, left, and strain of left knee. Porter was referred to physical therapy and given work restrictions. (JE 3, pages 19-22)

Porter returned to Concentra for follow-up on January 11, 2016. The notes indicate that she felt somewhat better overall but her soreness was worse after therapy. Her left hip was yellowish and the bruising was noted to be healing. (JE 3, pp. 23-25)

On April 5, 2016, Porter was seen at Concentra Urgent care. She reported continued pain and tenderness over the left trochanteric bursa and left groin area, in the area of the true left hip joint. Decreased range of motion was also noted. A left trochanteric bursa was injected. (JE 3, pp. 55-60) She returned to Concentra on April 14 and reported no improvement. Porter was referred to an orthopedic specialist. (JE 3, pp. 61-67)

Porter saw Steven A. Aviles, M.D. at Iowa Ortho on April 20, 2016. Dr. Aviles felt that her exam appeared to be mostly consistent with femoral acetabular impingement. He ordered an MR arthrogram. (JE 4, pp. 73-78) The MR arthrogram findings were concerning for posterior superior labral tear. (JE 6, p. 87)

On June 18, 2016, Porter saw Scott B. Neff, D.O. at Broadlawns Medical Center, Orthopedic Clinic. Dr. Neff diagnosed Porter with left hip pain, persistent, aggravated by injury. He referred her to Jason Sullivan, M.D. (JE 7, pp. 88-90)

Porter saw Dr. Sullivan at Des Moines Orthopaedic Surgeons, P.C. on June 2, 2016. His assessment included left hip mixed pincer greater than Cam impingement, posterior-superior labrum tear. He also noted a small labrum tear on her MRI. Dr. Sullivan was concerned that the intraarticular injection that she had received did not give her any relief. He felt there was merit in repeating the injection. Dr. Sullivan noted that if the injection helped her symptoms substantially then she would be a candidate for a hip arthroscopy for a pincer takedown and repair of the labrum. (JE 8, pp. 91-95)

On July 14, 2016, Porter returned to see Dr. Sullivan. She reported that she did get some very good relief of her groin pain but the pain had since returned. She had considerable lateral hip pain as well as groin pain. Dr. Sullivan felt that because she did get some benefit from the injection that she might also receive some benefit from arthroscopy. Porter was to work on smoking cessation. (JE 8, p. 96)

By September of 2016 Porter reported that she had stopped smoking. Dr. Sullivan decided to proceed with the hip arthroscopy. (JE 8, p. 97)

On September 21, 2016, Dr. Sullivan performed a left hip arthroscopy, pincer and cam osteoplasty, and debridement of the anterior-superior labrum. (JE 10)

Nine days after the surgery Porter returned to see Dr. Sullivan. Porter reported that her symptoms were much better. Dr. Sullivan kept her on crutches for one more week and recommended continued physical therapy. (JE 8, p. 99)

On October 27, 2016, Porter again returned to Dr. Sullivan. She reported that her groin pain was gone and that she was very happy with her progress. Dr. Sullivan released her to return to sit down only work on December 8, 2016. (JE 8, pp. 100-101) She was released to return to work with no restrictions on December 18, 2016. (JE 8, p. 103)

On February 6, 2017, Dr. Aviles issued a report to defense counsel in this matter. He noted that the calcification demonstrated on Porter's imaging takes years to develop and cannot be attributed to the work injury. He further stated, "[g]iven the lack of any bruising or findings consistent with an acute injury to that area, I also do not believe it is likely that any aggravation or exacerbation of the condition occurred as the result of the reported work accident on December 28, 2015." (JE 9, p. 110) Dr. Aviles then stated that it remained his opinion that Porter did not have any associated permanent impairment or restrictions. Dr. Aviles felt that the surgery performed by Dr. Sullivan was not necessitated by the work injury. (JE 9)

A review of the records from the medical treatment generated close in time to the work injury reveals that Dr. Aviles's opinion is based on an incorrect history. He bases his opinion on a lack of bruising or any findings in the area of her left hip. However, Porter did have bruising and swelling and tenderness after the fall; this was noted in the early treatment records. (JE 3, pp. 19-25 and 55-60) Because Dr. Aviles's opinions are based on an incorrect history, I do not find his opinions to be persuasive.

Porter again saw Dr. Sullivan on March 14, 2017. Porter returned for her final recheck. She reported that she had a difficult time walking at the end of the day and felt like she walked with a limp. She still had some pain in her hip but it was improved since the surgery. Dr. Sullivan encouraged her to continue to work on normalizing her gait. He noted she did still have some pain due to her labral debridement. He felt this would likely persist in some capacity and that she might develop arthritis in the future. They briefly discussed labral reconstruction but she was not interested in the procedure at that point in time. (JE 8, p. 104)

On March 21, 2017, Dr. Sullivan responded to a letter from Porter's attorney. Dr. Sullivan stated that Porter's diagnosis was femuroacetabular impingement calcified labrum, torn labrum; he felt these were causally related to the work injury. Dr. Sullivan opined that the "portion of the labrum of over 3 cm that was completely frayed" which he observed during surgery was causally related and connected to Porter's work injury. (JE 9, p. 106) Dr. Sullivan placed Porter at MMI as of December 22, 2016. Dr. Sullivan assigned 5 percent impairment to her left lower extremity as a result of her work injury. The doctor also opined that Porter's left hip condition would probably progress in degenerative fashion over time and that she would eventually require a left total hip replacement. Dr. Sullivan recommended that Porter minimize any excessive lifting or bending activities. Dr. Sullivan agreed with the February 6, 2017 opinions of Dr. Aviles. Specifically, he agrees that the calcification of the labrum was not caused by the work incident. However, Porter had no symptoms before the fall therefore, Dr. Sullivan believes that the fall exacerbated a pre-existing condition. (JE 9, pp. 106-109)

On March 30, 2017, Porter returned to Dr. Sullivan requesting a left intraarticular hip injection. She reported substantial pain around her left hip. Dr. Sullivan provided her with a cortisone injection. (JE 8, p. 105)

On May 15, 2017, Sunil Bansal, M.D. issued an IME report to claimant's counsel. The report was based on an examination that took place on March 17, 2017 and upon a

review of the records provided to the doctor. Dr. Bansal felt the appropriate diagnosis for Porter was left hip cam impingement, posteriosuperior labral tear; status post left hip arthroscopy with pincer and cam osteoplasty, and debridement of the anterosuperior labrum. Dr. Bansal felt that the frayed portion of the labrum was causally connected to the work injury. He also opined that the above diagnoses were related to the work injury. Dr. Bansal assigned 4 percent whole person impairment. He opined that Porter's need for hip replacement was accelerated by the December 28, 2015 injury and subsequent surgery. Dr. Bansal did place permanent restrictions on Porter's activities which include no lifting over 25 pounds, no frequent squat, climb, or twist. No prolonged standing or walking greater than one hour. She should also avoid multiple steps, stairs, uneven terrain, or ladders. Dr. Bansal stated he did not agree with the opinions of Dr. Avilles and set forth his rationale. (JE 12)

With regard to causation I find the opinions of Dr. Sullivan and Dr. Bansal to be persuasive. I find that the preponderance of the evidence demonstrates that as a result of the work injury Porter sustained both an impingement of her left hip and a posterior superior labral tear. Both doctors opined that the treatment Porter received following the injury was reasonable and necessary. I further find that the work injury was the cause of both temporary and permanent disability.

The parties have stipulated that if claimant sustained permanent disability the disability is an industrial disability. At the time of the hearing Porter was in her early forties. She had a high school diploma and an associate's degree in criminal justice. At the time of hearing she was working towards and very close to obtaining her four-year degree in human services. Porter testified that she believes she is now precluded from returning to some of her prior jobs including cashier, cleaning, deli manager, loading and unloading trucks, and full-duty security officer. She testified that she continues to experience gluteal locking, left hip and groin pain. If she works patrol and does quite a bit of walking or climbing stairs her pain increases. Porter continues to work within her current restrictions. With regard to permanent impairment and restrictions I find the opinions of Dr. Sullivan to carry the greatest weight. Thus, I find Porter sustained five percent impairment of her left lower extremity which is the equivalent of two percent of the whole person. I further find that as a result of the work injury Porter should minimize excessive lifting or bending activities.

Considering Porter's age, educational background, employment history, ability to retrain, motivation to obtain a job, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that she has sustained a 20 percent loss of future earning capacity as a result of her work injury with Securitas.

Claimant is also seeking payment of temporary benefits from September 21, 2016 through October 27, 2016. Defendants do not dispute that Porter was off work during this period of time. Because I find that the injury was the cause of permanent disability, any temporary benefits would be classified as healing period benefits. I found the opinions of Dr. Sullivan and Dr. Bansal to carry the most weight. Both doctors indicated that it was necessary for her to be off work due to the injury. Therefore, I find

Porter is entitled to healing period benefits from September 21, 2016 through October 27, 2016.

Claimant is also seeking payment of past medical expenses under Iowa Code section 85.27. Based on the opinions of Dr. Sullivan and Dr. Bansal I find that the treatment Porter received was reasonable and necessary and connected to the work injury. Furthermore, based on the medical records in evidence I find that the treatment was beneficial to the claimant. Thus, I find that the defendants are responsible for the medical bills contained in Claimant's Exhibit 1.

Claimant is seeking reimbursement under Iowa Code section 85.39 for the IME performed by Dr. Bansal. Defendants obtained an impairment rating from Dr. Sullivan in March of 2017. In May of 2017 Dr. Bansal issued his IME report with his impairment rating. Defendants provide no argument why the claimant should not be reimbursed for the IME. I find that the defendants shall reimburse claimant for the cost of the IME. (Cl. Ex. 5)

Finally, claimant is seeking an assessment of costs. I find that claimant was generally successful in her claim. Thus, I exercise my discretion and assess costs against the defendants. (Cl. Ex. 5) Defendants are assessed costs in the amount of \$100.00.

### CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6)(e).

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).

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.

Based on the above findings of fact I conclude Porter sustained 20 percent industrial disability. Therefore, she is entitled to 100 weeks of permanent partial disability benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of

improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Based on the opinions of Dr. Sullivan and Dr. Bansal I concluded that the preponderance of the evidence showed that it was necessary for Porter to be off work due to the injury. Thus, I conclude Porter is entitled to healing period benefits from September 21, 2016 through October 27, 2016.

Claimant is also seeking payment of past medical expenses. 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).

Based on the above findings of facts, I conclude the defendants are responsible for the medical bills contained in Claimant's Exhibit 1.

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. I conclude that defendants are responsible for reimbursing claimant in the amount of two thousand seven hundred eighty-four and no/100 dollars (\$2,784.00).

Costs are to be assessed at the discretion of the deputy commissioner who heard the case. Defendants are assessed costs as noted above.

#### ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of three hundred fifteen and 14/100 dollars (\$315.14).

Defendants shall pay one hundred (100) weeks of permanent partial disability benefits commencing on the stipulated date of October 28, 2016.

Defendants shall pay five point two eight six (5.286) weeks of healing period benefits from September 21, 2016 through October 27, 2016.

Defendants shall be entitled to credit for all weekly benefits paid to date.



All past due weekly benefits shall be paid in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall reimburse IME costs in the amount of two thousand seven hundred eighty-four and no/100 dollars (\$2,784.00).

Defendants shall reimburse claimant's costs in the amount of one hundred and no/100 dollars (\$100.00).

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 28<sup>th</sup> day of November, 2017.

  
ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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EQP/srs

**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.