

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MELINDA HAYZLETT,

Claimant,

vs.

WAL-MART,

Employer,

and

NEW HAMPSHIRE INS. CO.,

Insurance Carrier,  
Defendants.

File No. 5066301

ARBITRATION DECISION

Head Note Nos.: 1801, 2501

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STATEMENT OF THE CASE

Melinda Hayzlett, claimant, filed an original notice and petition against defendant employer, Wal-Mart, on October 4, 2018. On January 4, 2019, claimant filed a notice of default sent to the employer, which is in substantial compliance with the Iowa rules of Civil Procedure's requirement. Claimant also filed a proof of service upon the employer on January 4, 2019.

On February 5, 2019, the undersigned issued an order to schedule trial, requiring claimant to obtain a trial date from the agency or seek default to move the case forward. On February 28, 2019, claimant complied with the agency's order and filed an application for default. On March 20, 2019, another deputy commissioner granted the application for default. In his order, the deputy commissioner noted that the record is closed as to Wal-Mart submitting any evidence given its default. The deputy commissioner scheduled a telephonic hearing to occur on the application for default, but granted claimant an opportunity to waive the telephonic hearing and submit record evidence in written form.

Claimant complied with the deputy commissioner's order and filed written evidence for consideration and apparently waived any right to an oral hearing. Specifically, on April 10, 2019, claimant filed a written request for damages. Also on April 10, 2019, claimant filed an affidavit attesting to the accuracy of the information contained in the written request for damages. Claimant's written request for damages, along with the attachments thereto, as well as claimant's affidavit are admitted into the evidentiary record at this time.

Unfortunately, it appears that this file slipped through the cracks thereafter. No further activity was undertaken on this file until claimant filed a request to enter judgment on June 23, 2020. The deputy commissioner that was previously assigned has been temporarily reassigned to work on unemployment appeals and is not currently available to the agency. Therefore, on July 9, 2020, this case was reassigned to the undersigned to review claimant's default request.

On July 9, 2020, the undersigned issued an order to produce additional evidence or request a default hearing. Specifically, the undersigned ordered claimant to produce additional evidence relative to her marital status and the number of exemptions she was entitled to claim on the date of injury. Claimant complied with the undersigned's order and filed an affidavit on July 14, 2020. Claimant's affidavit is admitted into the evidentiary record and the evidentiary record is now closed.

Defendant, Wal-Mart, has not appeared, answered, or filed any other pleadings with this agency. Defendant is in default. All evidence has been cut off on behalf of Wal-Mart. All allegations in claimant's original notice and petition are now accepted as accurate and binding.

#### ISSUES

Claimant submitted the following issues for resolution:

1. The extent of claimant's entitlement to temporary total disability benefits.
2. Whether claimant is entitled to payment, reimbursement, or an order requiring defendant to hold her harmless for all past medical expenses contained in claimant's written request for damages.

#### FINDINGS OF FACT

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

Melinda Hayzlett, claimant, worked for Wal-Mart on July 3, 2018. Claimant sustained injury as a result of her work activities for Wal-Mart on July 3, 2018. As a result of the July 3, 2018 work injury, Ms. Hayzlett incurred causally related medical expenses. Claimant's past related medical expenses as of April 10, 2019 totaled \$46,150.40. (Original Notice and Petition; Claimant's Affidavit; Written Request for Damages)

As a result of the July 3, 2018 work injury, Ms. Hayzlett missed 291.2 hours of work. Ms. Hayzlett earned \$11.22 per hour at the time of her injury. She worked an average of 26 hours per week immediately prior to the injury date. (Claimant's Affidavit; Written Request for Damages) Claimant's gross average weekly earnings at the time of the July 3, 2018 injury were \$291.72.

Ms. Hayzlett was single at the time of her work injury and entitled to one exemption for federal tax purposes. (Claimant's Affidavit filed July 14, 2020)

### CONCLUSIONS OF LAW

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).

Given defendant's default and the un rebutted statements of claimant that she sustained work related injury at Wal-Mart, I found that claimant sustained a work injury working for Wal-Mart on July 3, 2018. Therefore, I conclude that claimant has sustained her burden of proof to establish that she sustained an injury arising out of and in the course of her employment with Wal-Mart on July 3, 2018. Claimant is entitled to an award in some amount.

Ms. Hayzlett seeks an award of temporary total disability benefits. When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Ms. Hayzlett asserted and I found that she missed 291.2 hours of work as a result of her injury. It appears claimant desires for these lost hours to be paid at her

straight-rate pay rate. However, worker's compensation benefits are paid based upon 80 percent of the employee's weekly spendable earnings. Iowa Code section 85.37.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings that fairly represent the employee's customary earnings, however. Section 85.36(6).

Ms. Hayzlett's gross average weekly earnings were \$291.72. She was single and entitled to one exemption on the date of injury. However, Iowa has established a minimum weekly benefit amount that is "equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wages." Iowa Code section 85.37.

According to the Iowa Workers' Compensation Manual (rate book), on July 3, 2018, the statewide average weekly wage was \$882.26. Thirty-five percent of the statewide average weekly wage was \$309.00. Pursuant to the Iowa Workers' Compensation Manual (rate book) (<https://www.iowaworkcomp.gov/ratebook>), the applicable worker's compensation rate for claimant's injury is \$208.78.

Claimant did not provide a breakdown of the specific days or hours missed from work. Without specific information upon which to base the determination of temporary disability benefits, it is determined that claimant shall be paid temporary total disability for 11 weeks (26 hours per week for 11 weeks). Those benefits will be ordered to commence the day after the injury, July 4, 2018.

Claimant missed an additional 5.2 hours of work, which will be compensated as temporary partial disability benefits pursuant to Iowa Code section 85.33(3). Temporary total disability benefits are payable at the rate of 66 and two-thirds percent of difference between claimant's gross weekly earnings and the actual earnings in a given week. Using claimant's hourly rate of \$11.22, her work of 5.2 hours would result in earnings of \$58.34. Her gross weekly earnings were \$291.72. This results in lost wages in a given week of \$233.38. Sixty-six and two-thirds percent of \$233.38 totals \$155.59 in temporary partial disability benefits. Iowa Code section 85.33(3).

Ms. Hayzlett also seeks an award of medical benefits in this case. 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).

Having found that claimant proved by un rebutted evidence that her medical expenses contained within and attached to the written request for damages were causally related to her July 3, 2018 work injury, I conclude that claimant is entitled to an award of the past medical expenses she documented in her written request for damages.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant eleven (11) weeks of temporary total disability benefits commencing on July 4, 2018.

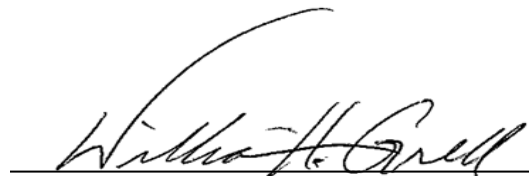
Temporary total disability benefits shall be payable at the rate of two hundred eight and 78/100 dollars (\$208.78) per week.

Defendant shall pay temporary partial disability benefits in the amount of one hundred fifty-five and 59/100 dollars (\$155.59).

Defendant shall pay medical providers directly, reimburse claimant for any payments made, and shall hold claimant harmless against any liens or third-party payments for all medical expenses contained in claimant's written request for damages totaling forty-six thousand one hundred fifty and 40/100 dollars (\$46,150.40).

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 15<sup>th</sup> day of July, 2020.



WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Robert Murphy (via WCES)

Wal-Mart Stores, Inc. (via regular mail)  
302 Enterprise Drive  
Independence, IA 50644

New Hampshire Insurance Co. (via regular mail)  
PO Box 14731  
Lexington, KY 40512-4731

**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.