BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMMY LOUISE MOUNT,

Claimant,

vs.

COMMUNITY ACTION AGENCY OF SIOUXLAND,

Employer,

and

GRANITE STATE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED
NOV 14 2016
WORKERS COMPENSATION

File No. 5052842

ARBITRATION DECISION

Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Tammy Mount, has filed a petition in arbitration and seeks workers' compensation benefits from Community Action Agency of Siouxland, employer, and Granite State Insurance Company, insurance carrier, defendants. Deputy workers' compensation commissioner, Stan McElderry, heard this matter in Council Bluffs, Iowa.

ISSUES

The parties have submitted the following issues for determination:

1. Whether the claimant suffered an injury of arising out of and in the course of employment on January 12, 2015;

2. Temporary disability;

3. Whether the alleged injury resulted in permanent disability, and if so, the extent; and

4. Medical expenses.

FINDINGS OF FACT

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

The claimant was 57 years old on the date of hearing. She quit school in the middle of her senior year, but later may have gotten got a GED through a local community college. She did take some classes to become a certified nurse's assistant but did not complete the course. She has claimed herein to have graduated from Sheldon High School but this is not correct. (Exhibit K, pages 47-48) She denied a left shoulder injury or treatment in her deposition but had treatment in 1996. (Ex. R, p. 70)

Her work history has generally been in very physically demanding jobs such as landscaping. She started working for the employer herein on October 27, 2009 as a food aide. As of the date of hearing she was still employed in that position. She had been unemployed for about the previous two years due to a 2006 shoulder injury with a different employer.

The claimant claims to have sustained an injury arising out of and in the course of her employment on January 12, 2015 when she fell. The fighting issue is whether the incident caused any permanency or loss of earning capacity.

The claimant's fall on January 12, 2015 was witnessed. Claimant claims that she suffered a left shoulder injury when she struck a steel door. The claimant landed on her butt and did not strike a door, steel or no. The claimant testified that a parent, Annette Anderson, had witnessed the accident. However, the claimant did not call on Ms. Anderson to testify, which results in a negative inference that Ms. Anderson would not collaborate claimant's version.

Nor is there medical evidence to support causation. The claimant had an independent medical evaluation (IME) with Sunil Bansal, M.D. (Ex. 5) But Dr. Bansal opines this based on a theory of outstretched arms. (Ex. 5, p. 8) However, no witness saw any outstretched arm. (Transcript, Ex. F, Ex. G) And claimant denied an outstretched arm at hearing. (Tr. pp. 73-74) Douglas Martin, M.D., examined the claimant on January 9, 2009 for a previous injury of right rotator cuff problems. (Ex. U, pp. 86-89) He also conducted an IME of her on March 3, 2015. (Ex. U) As a result he opines that her description of the fall is inconsistent with a rotator cuff tear resulting. (Ex. U, p. 94) Very significant is his finding that the rotator cuff tear on the left is already retracted in an MRI taken February 9, 2015. (Id.) Dr. Martin points out that rotator cuff retraction that quickly is not typical. (Id.) Also, since the door that was supposed to have been hit was on her right is not likely she hit her left side on it. (Ex. V)

The claimant was not a credible witness. She has contradicted herself throughout the proceedings, lied on multiple occasions on her employment application to Community Action, provided implausible (at best) versions of her fall, was contradicted by an eyewitness, denied restrictions from a 2006 injury which clearly exist

and which she violated in her employment at Community Action, et al. Also her demeanor was poor. Her facial and body expressions were at times at odds with her testimony. She at times pivoted her testimony when confronted with contradictions or implausibilities. All was very consistent with a deliberate effort to exaggerate and conceal. Her memory appeared to change or worsen on questions that cast doubt on her case on cross-examination. She has not shown that she did more than fall on her butt (with no real injury at that time) on January 12, 2015.

On January 12, 2015 the claimant was single, entitled to 2 exemptions, and had gross weekly earnings of $365.30. As such, her weekly benefits rate is $258.42. The parties stipulated to a March 28, 2016 commencement date for permanent benefits. Claimant seeks payment/reimbursement of medical expenses detailed in Exhibit 6. Those bills are for treatment of a left shoulder condition which did not arise out of or in the course of employment with Community Action.

REASONING AND CONCLUSIONS OF LAW

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 first issue is whether the claimant suffered a permanent disability or loss of earning capacity from the injury arising out of and in the course of employment.

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 Rule of Appellate Procedure 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 arose out of and in the course of employment. McDowell v. Town of Clarksville, 241 N.W.2d 904 (Iowa 1976); Musselman v. Central Telephone Co., 261 Iowa 352, 154 N.W.2d 128 (1967). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place and circumstances of the injury. Sheerin v. Holin Co., 380 N.W.2d 415 (Iowa 1986); McClure v. Union et al., Counties, 188 N.W.2d 283 (Iowa 1971).

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. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296 (Iowa 1974).

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. The weight to be given to any expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts relied upon by the expert as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974); Anderson v. Oscar Mayer & Co., 217 N.W.2d 531 (Iowa 1974); Bodish v. Fischer, Inc., 257 Iowa 516, 133 N.W.2d 867 (1965).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920) A material aggravation, worsening, lighting up, or acceleration of any prior condition has been viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. U.S. Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980)

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 Rule of Appellate Procedure 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 Elec. 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.

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.

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). Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

The claimant did not meet her burden of establishing any temporary or permanent impairment or loss of earning capacity from the injury of January 12, 2015. As such, all other issues are moot.

ORDER

THEREFORE IT IS ORDERED:

That the claimant take nothing.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Defendants shall receive credit for all benefits previously paid.

That the parties bear their own costs pursuant to rule 876 IAC 4.33.

Signed and filed this 14th day of November, 2016.

STAN MCELDERRY
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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SRM/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.