BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EUSTOQUIA BROWN,

Claimant,

vs.

GOLDEN CRISP PREMIUM FOODS,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,
Defendants.

File No. 5062366

ARBITRATION

DECISION

Head Note Nos.: 1402.40, 1801, 2501

STATEMENT OF THE CASE

Claimant, Eustoquia Brown, filed a petition in workers' compensation seeking benefits from Golden Crisp Premium Foods (Golden), employer, and Safety National, insurer, both as defendants. This case was heard in Des Moines, Iowa on August 29, 2017 with a final submission date of October 4, 2017.

The record in this case consists of Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 4, Defendants' Exhibits A through E, and the testimony of claimant, Nathan Frens and Dean Murphy.

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.

ISSUES

1. Whether claimant's injury resulted in a permanent disability; and if so
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. The extent of claimant's entitlement to temporary benefits.

4. Whether there is a causal connection between the injury and the claimed medical expenses.

5. Costs.

FINDINGS OF FACT

Claimant was 38 years old at the time of hearing. Claimant grew up in Mexico. Claimant went up to the sixth grade in Mexico. Claimant worked at Golden from 2006 through 2009. Claimant returned to Mexico for three years. She returned to the United States in 2012. Claimant returned to work with Golden in 2012. (Exhibit 2, pages 18-19)

Claimant has performed a number of different jobs at Golden. These include packaging, labeling, cleaning, and operating the interlever machine.

At the date of injury claimant worked in the microwave department. The job description for claimant's position is found at Exhibit E. Claimant testified her job in the microwave department required working with the interlever machine.

Claimant testified she was underneath the interlever machine, picking up paper. She said while under the machine, she struck her head. Claimant testified after striking her head she felt pain in the head, neck, back, and left shoulder. Claimant was not knocked unconscious. She testified she did not fall to the ground after striking her head.

Claimant testified she was nauseous and dizzy after the accident. Claimant said she saw stars.

Claimant testified she reported the injury and was transferred to lighter work, packing bacon on a production line.

Claimant testified that approximately six days after the accident she was evaluated by a chiropractor. Records from this visit are not in evidence. (Joint Ex. 6, p. 77)

On January 19, 2015 claimant was evaluated by Douglas Martin, M.D. Claimant complained of head and neck pain and nausea. Claimant indicated she vomited. She was assessed as having a cervical and trapezius strain with myofascial pain and a concussion. Claimant was treated with medication and referred to physical therapy three times a week. (Jt. Ex. 6, pp. 77-80)

Claimant returned to Dr. Martin on January 28, 2015. Claimant reported no change in symptoms. Claimant had only attended one physical therapy visit. Dr. Martin noted claimant needed to be more compliant with attending physical therapy. (Jt. Ex. 6, pp. 75-76)

Claimant returned to Dr. Martin on February 25, 2015. Dr. Martin noted defendants had stopped claimant's physical therapy after February 13, 2015 and stopped payment for claimant's medication. Claimant's range of motion in the neck and head improved with medical care. Dr. Martin noted claimant may have been at maximum medical improvement (MMI) except that defendants meddled with claimant's medical care. Claimant had slight improvement in symptoms. Physical therapy and medications were continued. (Jt. Ex. 6, pp. 72-74)

Claimant returned to Dr. Martin on April 8, 2015. Claimant had normal range of motion in the neck. Claimant was found to be at MMI. Dr. Martin found claimant had no permanent impairment. (Jt. Ex. 6, pp. 69-71)

On May 26, 2015 claimant was evaluated by Grant Shumaker, M.D., a neurosurgeon. Claimant complained of neck and left-sided head pain. Claimant was working full time but still had pain. An MRI of the cervical spine was recommended. Claimant was given an injection at the C2 level. (Jt. Ex. 5, pp. 61-67)

Claimant returned to Dr. Shumaker on June 4, 2015 with continuing complaints of neck pain. An MRI, taken on June 4, 2015, found a small C6-7 disc herniation. Claimant's MRI was otherwise unremarkable. Claimant was found to be at MMI. Claimant was returned to work at full duty. Claimant was also treated with medication. (Jt. Ex. 5, pp. 55-60)

In June of 2015 claimant was seen by Karen Pennings, ARNP. Claimant had neck pain radiating into the left arm. Claimant complained of worsening pain. Claimant had muscle spasms. Claimant was prescribed medication. Nurse Practitioner Pennings believed claimant required more extensive rehabilitation for the neck and shoulders. Efforts were made to reach the medical care manager. (Jt. Ex. 2, pp. 32-38)

In an August 13, 2015 email, representatives from defendant insurer denied authorization of further care, as claimant had been released to return to work by Drs. Martin and Shumaker. (Jt. Ex. 4)

Claimant returned to Nurse Practitioner Pennings on November 12, 2015. Claimant had neck pain radiating into the left shoulder. Claimant was still working, and work aggravated her symptoms. Claimant was prescribed medication. Claimant was recommended to undergo physical therapy and return to Dr. Shumaker. (Jt. Ex. 2, pp. 28-31)

On January 7, 2016 claimant was evaluated by Michael Puumala, M.D., a neurosurgeon. Claimant had neck pain radiating to the left shoulder and arm. Dr. Puumala thought it was possible, after reading claimant's MRI, claimant had radiculopathy caused by a C5 nerve root. He assessed claimant as having myofascial problems. A second MRI was recommended. (Jt. Ex. 3, pp. 40-44)

Claimant underwent a second MRI on January 28, 2016. It showed claimant had a small central disc protrusion at the C6-7 level, but was otherwise normal. (Jt. Ex. 7)

On August 15, 2016 claimant returned to Nurse Practitioner Pennings. Claimant had continued neck pain. Claimant was recommended to continue physical therapy. Work restrictions were discussed but not recommended. (Jt. Ex. 2, pp. 20-23)

In a November 23, 2016 letter, C. Robert Adams, M.D. indicated he evaluated claimant on November 18, 2016. Claimant had continued neck pain radiating into the left shoulder and arm. Dr. Adams opined claimant had a cervical neck strain following an accident. Claimant was prescribed medications and given exercises. Claimant was limited to lifting no more than 20 pounds. (Jt. Ex. 1, pp. 3-5)

On January 4, 2017 claimant was evaluated by Jason Koelewyn, M.D. for chronic left shoulder, arm and neck pain. Claimant had pain in the left arm. Dr. Koelewyn gave claimant a 10-pound lifting restriction with no repetitive movement. Dr. Koelewyn recommended an EMG, although records noted prior EMGs were negative for radiculopathy. (Jt. Ex. 1, p. 2; Joint Ex. 2, pp. 15-19)

Claimant was evaluated on February 9, 2017 by James Case, M.D., a neurologist. EMGs were performed at that time. Findings were within normal limitations. (Jt. Ex. 5, pp. 48-53)

Claimant testified she left Golden in February of 2017. She said her symptoms have gotten worse since leaving Golden.

Nurse Practitioner Pennings evaluated claimant on March 2, 2017. Claimant was told her EMGs were within normal limitations. Claimant indicated difficulty with repetitive work. She requested Nurse Pennings call defendant employer so she could return to work. Nurse Pennings spoke with Nathan Frens with Golden. Mr. Frens had noticed claimant working in pain. Mr. Frens was concerned claimant's symptoms would worsen if she continued to work. Nurse Practitioner Pennings indicated Golden would be given a note advising claimant be kept off of work from March 2, 2017 through March 15, 2017. (Jt. Ex. 2, pp. 10-14)

Claimant returned to Dr. Koelewyn on March 15, 2017. Claimant had continuing neck pain. Claimant wanted to return to work. Claimant's pain appeared to be muscular in nature. Claimant had normal strength in both arms. (Jt. Ex. 2, pp. 7-9)

Claimant returned to Dr. Adams on June 17, 2017. Claimant had continued neck and shoulder pain. Dr. Adams recommended ongoing chronic pain management. He found claimant at maximum medical improvement (MMI). He limited claimant to lifting 10 pounds occasionally. (Jt. Ex. 1, p. 1)

In a May 30, 2017 report Jacqueline Stoken, D.O. gave her opinion of claimant's condition following an independent medical evaluation (IME). Claimant complained of head pain, neck pain, left shoulder pain, arm pain, back pain, and pain radiating into her

legs. Claimant indicated a mild amount of relief with the use of essential oils. Dr. Stoken found claimant had an 8 percent permanent impairment to the cervical spine and an 11 percent permanent impairment to the left shoulder. She diagnosed claimant as having complex regional pain syndrome (CRPS). She assigned claimant a 45 percent permanent impairment to the body as a whole for the CRPS. When all impairments were combined, Dr. Stoken found claimant had a 55 percent permanent impairment to the body as a whole. She restricted claimant from lifting more than 5 pounds on the left occasionally. Dr. Stoken opined the mechanics of claimant's injury at Golden in December of 2014 caused injury to claimant's neck, shoulder and body as a whole. (Claimant's Exhibit 1)

In deposition, Dr. Stoken testified she believed claimant fell backwards after striking her head and that claimant landed on her back. Dr. Stoken testified claimant's back pain was caused by this fall. (Ex. D, Deposition pp. 9-10) Dr. Stoken assessed claimant as having CRPS but indicated no other doctor had assessed claimant as having CRPS. (Ex. D, Depo. pp. 14-17) Dr. Stoken said claimant's leg pain was caused by her back pain. (Ex. D, Depo. pp. 19-20) Dr. Stoken testified that the IME report noted claimant had sustained a cumulative injury. (Ex. D, pp. 34-38)

In a June 23, 2017 report, Dr. Martin gave his opinions of claimant's condition following an IME. Dr. Martin noted claimant presented with symptoms that were far different from when he originally saw claimant back in 2015. Dr. Martin disagreed with Dr. Stoken's diagnosis that claimant had CRPS. This is because, in part, there was no finding of CRPS by any other treating physician. Dr. Martin noted a diagnosis of CRPS would not explain claimant's left hemiplegic symptoms. Dr. Martin also noted claimant did not strike her left arm or shoulder, but only struck her head. He noted it was very uncommon to find CRPS on the left side of the body when claimant only suffered a blow to the head. (Ex. A, pp. 1-12)

Dr. Martin also disagreed that claimant fell into a DRE Cervical Category II, as claimant had no loss of range of motion. He reiterated claimant was at MMI as of April 8, 2015 and had no permanent impairment. (Ex. A, pp. 11-16)

On July 27, 2017 claimant returned to Dr. Shumaker. He indicated claimant did not show any objective signs of CRPS, including changes in skin color, temperature, swelling, or loss of hair on the arms. He also noted claimant sustained a blow to the head, which would not cause CRPS symptoms on the left upper extremity or left side of the body. He found claimant had no permanent impairment. (Ex. B)

Claimant testified symptoms in her neck and back have worsened since leaving Golden. She said she has difficulty with sleeping. She says she has not looked for work since leaving Golden.

Claimant said she does some cooking at home. She sometimes sends her kids to school and sometimes does grocery shopping. Claimant says she is unable to wash dishes, do sweeping or mopping due to pain.

Claimant testified she is still considered an employee with Golden. She said the last time she spoke to Nathan Frens, the plant manager at Golden, he told claimant she was welcome to return to work.

Dean Murphy testified he is a safety manager and workers' compensation coordinator with Golden. In that capacity, he is familiar with claimant and her work injury. Mr. Murphy said after the date of injury, claimant was moved to a pack-off and labeling job. In pack-off claimant was required to left up to 2-1/2 pounds of bacon. He said claimant did very little lifting in the labeling job. Mr. Murphy testified claimant could return to work with the current restrictions in the pack-off area. He said Golden could find work for claimant given the restrictions given by Dr. Adams and Dr. Stoken. Mr. Murphy testified claimant told Golden she could not return to work due to pain. He said claimant had not contacted Golden about a return to work. Mr. Murphy testified that, at the time of hearing, claimant was considered off work for non-work-related reasons.

Nathan Frens testified he is a plant manager at the Golden plant where claimant worked. He said claimant is still considered an employee of Golden. Mr. Frens testified he met with claimant in February of 2017. Mr. Frens testified claimant said she was frustrated with the care she was receiving. Mr. Frens testified he believed the care claimant complained of was due to non-work-related issues. As of February 17, 2017, claimant was working as a packer. In February of 2017 claimant was also labeling boxes. Mr. Frens believed claimant's last day physically at the plant was March 2, 2017.

Mr. Frens testified given her current restrictions claimant could return to the labeling job. He said claimant could return to the pack-off area but would be limited in the jobs she could do given her current restrictions. Mr. Frens said claimant is still considered a Golden employee.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained a permanent disability that arose 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 R. App. P. 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 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).

Three experts have opined claimant's work injury resulted in a permanent disability.

Dr. Stoken evaluated claimant one time for an IME. Dr. Stoken found claimant had a permanent impairment to the cervical spine and left shoulder. Dr. Stoken also opined claimant had CRPS and had a permanent impairment due to the CRPS. (Ex. 1)

There are a few problems concerning Dr. Stoken's report. Dr. Stoken found claimant had lower back pain caused by a fall backwards following claimant striking her head. (Ex. D, Depo. pp. 9-10) The record is clear claimant did not fall backwards after striking her head. (Tr. p. 29)

Claimant was evaluated by two neurologists, Dr. Shumaker and Dr. Puumala. Neither Dr. Shumaker nor Dr. Puumala assessed claimant as having CRPS. Dr. Stoken is the only expert to assess claimant as having CRPS. Dr. Martin disagreed with Dr. Stoken's diagnosis of CRPS noting, in part, that claimant struck her head but not her

neck and shoulder. Dr. Martin indicated a blow to the head would not explain CRPS in claimant's left side of the body. (Ex. A, pp. 1-12)

Dr. Koelewyn also indicated claimant failed to meet criteria for assessing with CRPS. (Jt. Ex. 2)

The AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition notes that in order to make a finding of CRPS, eight of the eleven diagnostic criteria should be identified. (Guides, pp. 495-496) Dr. Stoken does not identify any of the eight criteria in her report.

Dr. Stoken is the only doctor to have assessed claimant as having CRPS. Dr. Stoken's understanding of the mechanics of claimant's injury is incorrect. Both Dr. Martin and Dr. Koelewyn opine claimant does not have the criteria to diagnose CRPS. Dr. Stoken's assessment of CRPS does not follow guidelines as detailed in the Guides. For these reasons, and as detailed above, Dr. Stoken's opinions regarding claimant's permanent impairment from her injury are not convincing.

Dr. Martin opined claimant had no permanent impairment and was at MMI as of April 8, 2015. He based this opinion, in part, on finding claimant's symptoms had dramatically changed since the date of injury. He noted claimant's left-sided hemiplegic-type symptoms did not appear until 2016. (Ex. A, pp. 1-12)

Dr. Shumaker evaluated claimant for an IME. He is a neurosurgeon. He indicated claimant had no objective findings for CRPS. Dr. Shumaker notes the MRI of claimant's cervical spine was normal. He found claimant had no permanent impairment. (Ex. 5, pp. 61-67; Ex. B)

Claimant had a cervical MRI in June of 2015. It showed a tiny C6-7 disc herniation and was otherwise normal. A second MRI done in January of 2016 had the same results. Claimant also had a left arm EMG in November of 2016 and February of 2017. Both tests were normal and showed no objective evidence of left arm radiculopathy.

Dr. Martin and Dr. Shumaker found claimant had no permanent impairment. Dr. Stoken's opinions regarding permanent impairment are found not convincing. Claimant had two MRIs that were essentially normal. Claimant had two EMGs showing no left arm radiculopathy. Given this record, claimant has failed to carry her burden of proof she sustained a permanent impairment from the injury of December 5, 2014.

The next issue to be determined is whether claimant is entitled to temporary 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).

As noted above, it is found claimant has failed to carry her burden of proof she sustained a permanent disability. As a result, claimant would only be entitled to temporary total disability benefits, and not healing period benefits.

Claimant alleges she is due temporary benefits from February 25, 2017 through May 30, 2017.

As noted above, claimant was found by Dr. Martin to be at MMI as of April 8, 2015. (Ex. 6, pp. 69-71; Ex. A, p. 12) Claimant was also evaluated by Dr. Shumaker for a second opinion. In a June 4, 2015 opinion, claimant was found to be at MMI. (Ex. 5, pp. 55-60; Ex. B)

There is some reference in the record from Nurse Practitioner Pennings that claimant was advised to be off work from March 2, 2017 through March 15, 2017. (Ex. 2, p. 13) However, it is not clear from Nurse Practitioner Pennings' records if claimant was to be taken off for a work-related injury. As noted, claimant's EMGs from November 2016 and February of 2017 were normal and showed no left arm radiculopathy. MRIs from June of 2015 and January of 2016 were normal except for a small C6-7 disc extrusion.

Both Dr. Martin and Dr. Shumaker found claimant at MMI as of April 8, 2015 and June 4, 2015 respectively. Nurse Practitioner Pennings took claimant off work from March 2, 2017 through March 15, 2017. However, it is unclear if this was for a work-related injury. Given this record, claimant has failed to carry her burden of proof she is entitled to temporary total disability benefits from February 25, 2017 through May 30, 2017.

The next issue to be determined is if there is a causal connection between the injury and the claimed 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).

Claimant seeks reimbursement of $15,266.65 for medical expenses. (Claimant's Ex. 3, pp. 21-22)

As indicated in claimant's itemization of bills, these costs were incurred between July 16, 2015 and June 9, 2017. Medical care occurring during these periods was not

authorized by defendants. As noted above, Dr. Martin found claimant at MMI as of April 8, 2015. (Ex. 6, pp. 69-71; Ex. A, p. 12) Dr. Shumaker found claimant at MMI as of June 4, 2015. (Ex. 5, pp. 55-60; Ex. B) Given this record, claimant has failed to carry her burden of proof that defendants are liable for medical charges as detailed in Claimant's Exhibit 3.

ORDER

Therefore it is ordered:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 10th day of January, 2018.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Tom L. Drew
Attorney at Law
PO Box 12129
Des Moines, IA 50312-9403
tdrew@drewlawfirm.com

Deena A. Townley
Attorney at Law
4280 Sergeant Rd., Ste. 290
Sioux City, IA 51106
townley@klasslaw.com

JFC/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.