BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIGETTE DEWITT, Claimant, vs. CROWN MOTOR GROUP a/k/a MOUNT PLEASANT AUTO GROUP a/k/a KBDS HOLDINGS, Employer, and UNKNOWN, Insurance Carrier, Defendants.	:	File Nos. 20700574.01, 20700575.01 ARBITRATION DECISION Head Note Nos.: 1803, 3001

STATEMENT OF THE CASE

Brigette DeWitt, claimant, filed two petitions for arbitration against Crown Motor Group a/k/a Mount Pleasant Auto Group a/k/a KBDS Holdings (hereinafter referred to as "Crown Motor Group"). The employer failed to appear or answer the petition. Claimant moved for a default, which was entered. In the order granting default, the undersigned cut off all activity for the employer and scheduled the case for a default hearing on December 11, 2020. Ms. DeWitt appeared telephonically as did her attorney, James Hoffman, for the hearing.

The evidentiary record includes Claimant's Exhibit 1. Claimant also testified on her own behalf. No other witnesses were called to testify and the evidentiary record closed at the conclusion of the December 11, 2020 hearing.

ISSUES

Ms. Dewitt asserted a claim for permanent disability at the time of the default hearing. Accordingly, the undersigned must determine the extent of claimant's entitlement to permanent disability benefits and the proper commencement date for permanent disability benefits.

Claimant did not assert a specific weekly rate at which benefits should be payable. However, she conceded she was single and entitled to only one exemption on

the dates of injury. Therefore, the undersigned must determine claimant's applicable average gross weekly earnings on the date(s) of injury and the applicable weekly rate at which benefits should be awarded.

FINDINGS OF FACT

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

Brigette DeWitt slipped and fell on snow and ice while on her employer's premises on January 17, 2020, when returning to work after her lunch break. The claimant fell in the employee parking lot. (Claimant's testimony; Exhibit 1, page 3)

Again on February 14, 2020, Ms. DeWitt fell on snow and ice on her employer's premises. This time, she fell while leaving work and again fell while walking toward her car, which was located in the employee parking lot. (Exhibit 1, p. 3)

She testified that both falls arose out of and in the course of her employment on both dates. Given that there is no contrary evidence in this record, I find that Ms. DeWitt sustained falls on the employer's premises on January 17, 2020 and again on February 14, 2020 and that both falls arose out of and in the course of her employment with Crown Motor Group. Ms. DeWitt reported the injuries to the employer within 90 days of each incident, but the employer did not provide medical care for the injuries. (Claimant's testimony; Exhibit 1, p. 3)

Ms. DeWitt testified that she injured her right foot, right knee, and right hip as a result of both falls. However, following the January 17, 2020 fall, Ms. DeWitt returned to work for the employer. She continued working without medical care or medical restrictions between January 17, 2020 and February 14, 2020. Ms. DeWitt asserts no claim for temporary disability, or healing period, after either injury date.

Following the February 14, 2020 injury, Ms. DeWitt sought medical care on her own after the employer failed to offer any medical care. Ms. DeWitt was referred to physical therapy and participated in therapy for a few weeks. She also sought chiropractic care on her own and received chiropractic manipulations to both hips and was told by the chiropractor that she needed adjustments to both sides because she was "bearing more weight on her left leg to compensate for the right." (Exhibit 1, p. 3)

Ultimately, Ms. DeWitt obtained an independent medical evaluation performed by Sunil Bansal, M.D. Dr. Bansal evaluated claimant and authored a report dated December 3, 2020. (Exhibit 1) Dr. Bansal's opinions are not rebutted in this evidentiary record and are accepted.

Dr. Bansal diagnosed claimant with a right hip strain and expressed concern that she may have labral pathology as well. Dr. Bansal further diagnosed claimant with both lateral and medial meniscus tears of the right knee, a right ankle sprain, lateral and medical meniscus tears of the left knee, and a nearly complete tear of the anterior cruciate

ligament of the left knee. (Exhibit 1, p. 4) Dr. Bansal opined that the bilateral knee and right hip injuries are causally related to the falls on January 17, 2020 and February 14, 2020. Dr. Bansal did not offer a causation opinion or a permanent impairment pertaining to the right ankle condition. (Exhibit 1, pp. 4-5) Therefore, I find that claimant has proven work related injuries to her right hip and both knees. However, claimant has not proven that she sustained a permanent injury to the right ankle.

Dr. Bansal opines that Ms. DeWitt sustained permanent functional impairment ranging from 2 to 4 percent of the whole person as a result of the right hip injury. I accepted the lower of these impairment ratings because claimant cannot definitively prove a higher impairment rating. Dr. Bansal also assigns a 10 percent permanent impairment of the right lower extremity as a result of the right knee injury. (Exhibit 1, p. 5) Finally, Dr. Bansal opines that Ms. DeWitt sustained a 17 percent permanent impairment of the left lower extremity as a result of the work injuries. (Exhibit 1, p. 6)

Dr. Bansal did not offer any analysis or opinion about whether the injuries resulted in permanent impairment after the first injury date or only after the second injury date. Claimant did not offer clarification of the issue. Claimant failed to prove that any of the permanent impairment is the direct result of the January 17, 2020 slip and fall. She returned to work without restrictions after that injury, lost no time from work, sought no medical care after that injury, and Dr. Bansal does not assign specific permanent impairment to that injury. Therefore, I find that Ms. DeWitt failed to prove she sustained any permanent disability as a result of the January 17, 2020 work injury.

However, claimant did require medical attention after the February 14, 2020 injury. She now has permanent impairment. I find that Ms. DeWitt sustained 2 percent permanent functional impairment of the whole person as a result of the right hip injury. I find that Ms. DeWitt sustained 7 percent permanent functional impairment of the right leg as a result of the February 14, 2020 fall and right knee injury. I also find that Ms. DeWitt sustained 17 percent permanent functional impairment of the left leg as a result of the February 14, 2020 fall.

Pursuant to the AMA Guides, Fifth Edition, page 15, “An impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized, often termed the date of **maximum medical improvement (MMI)**.” (emphasis in original) Dr. Bansal offers permanent impairment ratings in this case and claimant has not obtained medical treatment since August 2020. Accordingly, I conclude that Ms. DeWitt achieved MMI on the last date of her treatment, August 19, 2020. (Exhibit 1, p. 3)

The 7 percent permanent functional impairment of the right leg converts to 3 percent impairment of the whole person utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 17-3, page 527. The 17 percent permanent functional impairment of the left leg converts to 7 percent impairment of the whole person according to the same Table. Using the Combined Values Chart of the AMA Guides, Fifth Edition, located on page 604, the 2 percent impairment and 7 percent impairment combine for a total whole person impairment of 9 percent as a result of the right leg and

hip injuries. Then, combining the 9 permanent impairment for the right leg with the 7 permanent impairment for the left leg, I find that claimant has proven a combined 15 percent permanent functional impairment of the whole person as a result of the February 14, 2020 fall at work.

Claimant did not testify to any permanent work restrictions. Dr. Bansal did not offer an opinion that claimant requires permanent work restrictions. Therefore, I find that claimant failed to prove she requires permanent work restrictions. However, Dr. Bansal did note that Ms. DeWitt has difficulties bending over and is unable to stand for long periods of time. Dr. Bansal also noted that claimant's legs begin to shake if she stands for long periods of time. (Exhibit 1, p. 4) Claimant confirmed this fact during her testimony.

Dr. Bansal also noted that claimant is unable to mow and sits in a desk chair with wheels to move around her house performing her chores and activities. Ms. DeWitt testified that she has difficulties standing and performing daily routine items like showering and requires the assistance of her daughter to do things like shave her legs. I find Ms. DeWitt's testimony and the examples outlined by Dr. Bansal to be realistic and accurate as to Ms. DeWitt's residual functional capabilities.

Ms. DeWitt is 55 years of age. Her employment and educational backgrounds were not provided. However, she was laid off and subsequently terminated by the employer. At the time of Dr. Bansal's evaluation, Ms. DeWitt was unemployed and drawing unemployment benefits. (Exhibit 1, p. 4)

Considering Ms. DeWitt's age, her inability to return to this employment, her residual functional abilities and difficulties, as well as her permanent impairment rating, I find that Ms. DeWitt proved a 20 percent permanent loss of future earning capacity as a result of the February 14, 2020 work injury.

Ms. DeWitt testified that she earned $12.00 per hour and worked 40 hours per week for the employer. No other wage information is available. Accordingly, I find that Ms. DeWitt earned $480.00 per week at the time of her February 14, 2020 injury. She was single and entitled to only one exemption on that date of injury. (Claimant's testimony)

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 File No. 20700574.01, I found that Ms. DeWitt proved she sustained a work injury but failed to prove that she sustained permanent functional impairment or permanent disability as a result of the injury. Accordingly, I conclude that no permanent disability benefits should be awarded to Ms. DeWitt in File No. 20700574.01. She asserts no other claims under this file. Accordingly, no benefits will be awarded in File No. 20700574.01.

In File No. 20700575.01, considering the testimony of claimant and the opinions of Dr. Bansal, I found that Ms. DeWitt proved she sustained permanent functional disability and permanent disability. Her injury involves a right hip injury.

A hip injury is generally an injury to the body as a whole and not an injury to the lower extremity. The lower extremity extends to the acetabulum or socket side of the hip joint. For a hip injury to be industrially ratable, disability in the form of actual impairment to the body must be present. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943).

In this instance, Dr. Bansal offered an unrebutted medical opinion that claimant's right hip injury resulted in permanent functional disability of the whole person. Accordingly, I conclude that Ms. DeWitt has proven she sustained an unscheduled injury. Iowa Code section 85.34(2)(v).

In 2017, the Iowa legislature changed the provisions of Iowa Code section 85.34(2)(v). To obtain an award of industrial disability after the statutory change, claimant must establish that she has been terminated from employment. In this case, claimant has introduced unrebutted evidence that she was laid off and subsequently terminated after the February 14, 2020 injury. Accordingly, I conclude that her injury should be compensated with industrial disability. Iowa Code section 85.34(2)(v).

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 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.

I considered all of the relevant, available factors outlined by the Iowa Supreme Court to assess industrial disability. I found that Ms. DeWitt proved a 20 percent loss of future earning capacity as a result of the February 14, 2020 work injury. This is equivalent to a 20 percent industrial disability and entitles claimant to an award of 100 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(v) (2018).

Claimant last sought medical care on August 19, 2020. Having found that to be the date of maximum medical improvement, I conclude that permanent disability benefits should commence on August 20, 2020. Iowa Code section 85.34(2).

I must also determine the rate at which weekly benefits should be paid. Iowa Code 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 the employee was 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.

Ms. DeWitt testified that she was paid hourly in her position with the employer. 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 is excluded, however. Section 85.36(6). In this case, the only evidence provided is that Ms. DeWitt earned $12.00 per hour and worked 40 hours per week for the employer. Accordingly, I found that her gross weekly earnings at the time of the February 14, 2020 injury were $480.00 per week.

The weekly benefit amount payable to an employee shall be based upon 80 percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to 66-2/3 percent of the statewide average weekly

wage paid employees as determined by the Department of Workforce Development. Iowa Code section 85.37.

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Having found that claimant's gross average weekly wage was $480.00, single, and only entitled to one exemption on the February 14, 2020 injury date, I used the Iowa Workers' Compensation Manual with effective dates of July 1, 2019 through June 30, 2020, to determine that the applicable rate for permanent partial disability benefits is $313.30 per week.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 20700574.01:

Claimant takes nothing.

In File No. 20700575.01:

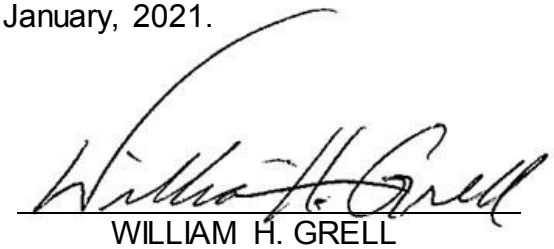
Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing on August 20, 2020.

All weekly benefits shall be payable at the weekly rate of three hundred thirteen and 30/100 dollars ($313.30) per week.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

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 7th day of January, 2021.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James P. Hoffman (via WCES)

Crown Motor Group (via regular and certified mail)
2301 E. Washington St.
Mount Pleasant, IA 52641

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.