BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LUQUITA HALL,

Claimant,

vs.

REM IOWA,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5052626

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Luquita Hall, claimant, filed a petition for arbitration against REM Iowa, as the employer, and New Hampshire Insurance Company as the insurance carrier. The case was heard by the undersigned on December 5, 2016.

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 evidentiary record includes claimant's Exhibits 1 through 4 and defendants' Exhibits A through L. Claimant testified live at trial. No other witnesses were called to testify live. The evidentiary record closed at the conclusion of the evidentiary hearing, but counsel requested an opportunity to file post-hearing briefs. The parties' request for post-hearing briefs was granted and the case was considered fully submitted to the undersigned on December 30, 2016, after the expiration of the deadline for the parties to file post-hearing briefs.

ISSUES

The parties submitted the following disputed issue for resolution:

1. Whether the June 18, 2014 work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

FINDINGS OF FACTS

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

Luquita Hall is a 40 year old woman, who lives in Des Moines, Iowa. (Exhibit J, page 2) Ms. Hall dropped out of high school just before completing her senior year. However, she obtained a GED in 2003. Ms. Hall came to the Des Moines area in 1999 and started working in the medical field performing work similar to that performed by a certified nursing assistant (CNA). Ms. Hall had a goal of becoming a nurse at that point in time. (Claimant's testimony) She has obtained an associate of arts (AA) degree from DMACC. (Ex. J, p. 2)

In 2000, Ms. Hall worked as a dietary aide at a nursing home, preparing food and serving residents. She left that employment within the first year because she had an employment opportunity with the Des Moines Schools that provided higher wages. (Claimant's testimony)

From 2001 through approximately 2011, Ms. Hall worked as a sub-associate working as a special education associate in various different schools throughout the Des Moines metropolitan area. She worked full-time hours, though she was substituting for other associates who were absent. As a special education associate, Ms. Hall worked with middle school and high school aged students that struggled with both mental and physical disabilities. She was required to assist students weighing up to 250 pounds and was required to assist with bathroom duties, lift and transfer some students in and out of a wheelchair. (Claimant's testimony)

During the summer months when school was not in session, Ms. Hall would also pick up some hours performing respite care. However, this was only on an as needed basis. (Claimant's testimony)

In August 2012, claimant elected to start her own in-home daycare. She operated the daycare in 2012 and 2013. (Claimant's testimony)

In 2013, Ms. Hall took a position working for the employer, REM Iowa. She provided in-home care for physically and mentally disabled individuals. Claimant worked generally 40 hours per week for REM. (Claimant's testimony) She earned $10.50 per hour at REM. (Ex. J, p. 6)

In this position with REM, claimant would go into the clients' home and provide the clients daily assistance with bathing, toilet necessities, cooking, cleaning, laundry and transportation. She worked at the same clients' home consistently. Claimant was required to provide physical assistance to her clients, including assistance with lifts and transfers. (Claimant's testimony)

On June 14, 2014, Ms. Hall was involved in a motor vehicle accident while performing her duties at REM. On June 18, 2014, claimant was called to come to the REM administrative offices to discuss the June 14, 2014 motor vehicle accident. Unfortunately, on her way to the REM offices that date, claimant was involved in another motor vehicle accident. (Claimant's testimony)

After the June 18, 2014 accident, Ms. Hall was transported via ambulance to Methodist Medical Center in Des Moines. (Claimant's testimony) At the emergency room, claimant was diagnosed with an acute sprain of the neck, a chest wall contusion, an abdominal wall contusion, as well as a lumbar strain. The emergency room ordered a CT scan of claimant's cervical spine, a CT scan of her chest, abdomen, and pelvis, as well as a CT of claimant's head and brain. None of the diagnostic tests revealed objective injuries of significance and claimant was released from the hospital. (Ex. A, p. 11; Ex. E, pp. 14-16)

Claimant sought treatment from her family physician and conservative care was initiated. (Ex. D, pp. 62-63) Claimant returned to the emergency room in late June 2014 due to pain complaints. In October 2014, claimant was referred to Mercy Physical Medicine and Rehabilitation. She reported back pain, neck pain, as well as nausea and symptoms of a traumatic brain injury. (Ex. 1)

Ms. Hall testified that she realized she could not continue working for REM with her ongoing symptoms. She elected to move to a "prn" status with REM and took a job with Unity Point as a patient transporter at Methodist Medical Center in Des Moines. In November 2014, Ms. Hall passed a pre-employment physical, as well as a physical capacities evaluation, both indicating she was physically capable of working in the medium work category and capable of performing the patient transporter job. (Ex. E, pp. 27, 30-31) In her position as a patient transporter, claimant was required to move patient carts and wheelchairs to transport patients throughout the hospital.

The treating neurologist, Heike Schmolck, M.D., permitted claimant to attempt to return to work full duty on December 9, 2014. (Ex. 1, p. 25) Claimant did return to full-duty work as a patient transporter and continued in that position through December 2015. Dr. Schmolck noted on March 10, 2015, that claimant had not missed any work as a patient transporter since returning to work in December 2014. (Ex. 1, p. 27)

However, in December 2015, Dr. Phu, the treating physiatrist, opined that claimant required functional restrictions that include no lifting greater than 20 pounds, no pushing or pulling more than four hours in an eight-hour work day, and no repetitive grasping for more than four hours in a work day. (Ex. 1, pp. 39-40) When presented with Dr. Phu's restrictions, Unity Point removed claimant from her position as a patient transporter. (Claimant's testimony)

Unity Point later moved claimant into a diet clerk position, which is compatible with Dr. Phu's restrictions. Ms. Hall continues working as a diet clerk as of the date of the hearing. However, she only works part-time in that position, working approximately

32 hours every two weeks. She is awaiting a full-time opening as a diet clerk. (Claimant's testimony)

In addition to working as a diet clerk, Ms. Hall also works in a Headstart program in the Des Moines Public Schools pre-school program. She obtained that position because she has an associate of arts degree and is paid on a salaried basis. The Headstart position is clearly within Dr. Phu's restrictions. She estimates she earns approximately $12.00 per hour and she works 37.5 hours per week in this position. (Claimant's testimony; Ex. J, p. 13) Between her two jobs, claimant currently works more than 50 hours per week. (Ex. J, p. 13)

As mentioned above, claimant was ultimately evaluated by a neurologist, Dr. Schmolck, for a head injury. (Ex. 2) A head MRI was performed in March 2015, but revealed no objective abnormalities. (Ex. 2, p. 2) Dr. Schmolck opines that Ms. Hall is at maximum medical improvement from a neurologic standpoint and requires no permanent work restrictions and may continue to work full-duty. (Ex. K, p. 1) As the treating neurologist, I accept Dr. Schmolck's opinions as they pertain to the head injury and find that claimant requires no permanent work restrictions as a result of the head injury.

Defendants obtained an independent medical evaluation performed by Charles D. Mooney, M.D. Dr. Mooney evaluated claimant on August 16, 2016. He documented claimant's complaints of headaches three times per week, as well as her complaints of ongoing neck and low back pain. Dr. Mooney confirms that the medical records support a finding that claimant sustained an injury to her head, neck and low back as a result of the June 2014 motor vehicle accidents.

However, Dr. Mooney opines that Ms. Hall achieved maximum medical improvement on December 16, 2015 and that she has not sustained any permanent impairment as a result of the work accident. Dr. Mooney also opines that claimant requires no permanent work restrictions and that any ongoing headache symptoms are not related to the motor vehicle accident at work. (Ex. A) Interestingly, Dr. Mooney opines that claimant's bilateral carpal tunnel syndrome is not related to the work accident, but concedes that it would be reasonable and appropriate for claimant to undergo neuropsychological testing as a result of the June 18, 2014 motor vehicle accident at work. (Ex. B, p. 21)

No other physician has offered an opinion about whether claimant sustained permanent impairment as a result of the work injury. Although I perceive Dr. Mooney's opinion that claimant sustained no permanent impairment to be inconsistent with his opinion that claimant sustained an injury and that it would be reasonable to pursue a neuropsychological evaluation as a result of a potential head injury resulting from the June 18, 2014 motor vehicle accident, there is no contrary medical evidence on the issue of permanent impairment. Therefore, I find that claimant failed to prove she sustained permanent impairment as a result of the June 18, 2014 work injury.

Defendants also appropriately point out that claimant complained of symptoms and sought treatment for headaches prior to June 2014. In fact, claimant complained of almost daily headaches in 2007. (Ex. D, p. 13) In January 2010, claimant described to a medical provider that she had experienced a headache for approximately a month. (Ex. D, p. 20) However, claimant describes a change in her headache symptoms since the motor vehicle accident. I find claimant's testimony in this regard to be credible and convincing. I find that claimant experiences headaches since the June 18, 2014 motor vehicle accident and that they are different than the headaches claimant treated for prior to the date of injury.

Claimant clearly experienced carpal tunnel symptoms prior to June 2014 and was diagnosed with carpal tunnel syndrome prior to June 2014. (Ex. D, p. 55; Ex. E, p. 13) I accept Dr. Mooney's opinion on the issue of carpal tunnel syndrome and find that claimant has not proven that her carpal tunnel syndrome is causally related to the June 18, 2014 motor vehicle accident. (Ex. B, p. 21)

Claimant also clearly experienced low back pain prior to June 2014. However, her treatment was relatively sporadic and not an ongoing, clearly chronic condition, prior to June 18, 2014. As Dr. Mooney noted, the medical evidence confirms that claimant sustained a low back injury on June 18, 2014. Similarly, claimant's medical records demonstrate that she also sustained a neck or cervical injury as a result of the June 18, 2014 motor vehicle accident.

The question to be answered is whether the neck, low back, and/or head injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits. Although I accepted the unrebutted impairment rating from Dr. Mooney, I nevertheless find that claimant proved she sustained a permanent injury resulting from the head trauma. Claimant's headaches changed in nature and location. Claimant did not prove that she requires permanent work restrictions as a direct result of the head injury, however. Instead, the evidence demonstrates that claimant has been successful at returning to work, maintaining employment, and actually locating new employment opportunities even after the work injury. I find that claimant's head injury has not been proven to have caused any loss of future earning capacity.

Claimant's neck and low back injuries have caused permanent disability. Although claimant does not have a permanent impairment rating, she now has permanent restrictions imposed by Dr. Phu, the treating physiatrist. Dr. Phu's restrictions are consistent with claimant's testimony and claimant's change in jobs. In fact, I specifically accept claimant's testimony that she changed jobs because of her ongoing symptoms in the low back and neck. I accept Dr. Phu's restrictions as accurate and necessary for claimant's neck and low back injuries.

Moreover, Unity Point is not the employer in this case. Yet, despite its pre-employment physical, Unity Point accepted Dr. Phu's restrictions as accurate and moved claimant from a patient transporter position to her current part-time diet clerk

position. Unity Point clearly believed Dr. Phu's restrictions were applicable and appropriate and those restrictions had an actual impact on claimant's employment.

Nevertheless, it is also apparent that Ms. Hall has had only a minor impact on her future earning capacity as a result of these injuries. She has not proven permanent impairment. She returned to work at REM and performed the patient transporter job for extended periods of time after the injury. She earns more now per hour at Unity Point than she earned at REM. Ms. Hall works more than 50 hours per week at the present time. She is clearly capable of ongoing and future gainful employment. She is clearly able to find new employment into the future and has demonstrated the ability to obtain positions with increased wages. At Ms. Hall's age, it is reasonable to anticipate that she can continue to be gainfully employed and that she could pursue additional education or training, if desired.

Considering the situs of claimant's injury, the lack of any permanent impairment, claimant's ability to return to work at REM, find subsequent and higher paying employment opportunities, the conservative nature of her treatment, the relatively short healing period, her permanent work restrictions, work history, educational background, and age, her motivation, and all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Ms. Hall has proven a 15 percent loss of future earning capacity.

CONCLUSIONS OF LAW

The parties stipulated that claimant sustained a work related injury on June 18, 2014. The parties further stipulate that the injury, if determined to have caused permanent disability, should be compensated industrially pursuant to Iowa Code section 85.34(2)(u). (Hearing Report)

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 this case, I found that Ms. Hall has proven she sustained permanent disability and a loss of future earning capacity as a result of her neck and low back injuries. Therefore, pursuant to the parties stipulations and Iowa Code section 85.34(2)(u), claimant is entitled to industrial disability benefits.

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.

However, having considered all of the relevant industrial disability factors outlined by the Iowa Supreme Court, I found that claimant has proven a 15 percent loss of future earning capacity. This is equivalent to a 15 percent industrial disability and entitles claimant to an award of 75 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u).

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant seventy-five (75) weeks of permanent partial disability benefits commencing on June 22, 2015 at the stipulated weekly rate of two hundred ninety-nine and 69/100 dollars ($299.69).

Defendant shall be entitled to a credit in the amount stipulated to on the hearing report against this award.

Defendant shall pay accrued weekly benefits, if any, in lump sum, along with applicable interest calculated pursuant to Iowa Code section 85.30.

Defendant 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 28th day of February, 2017.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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