BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PATRICIA BODMAN,	:	
Claimant,	:	
vs.	:	File No. 1646495.01
MENARD, INC.,	:	ARBITRATION DECISION
Employer,	:	
and	:	
XL INSURANCE AMERICA, INC.,	:	
Insurance Carrier, Defendants.	:	Head Note Nos.: 1402.40, 1803, 2502, 2701, 2907

STATEMENT OF THE CASE

Patricia Bodman, claimant, filed a petition for arbitration against Menard, Inc., as the employer and XL Insurance America, Inc., as the insurance carrier. This case came before the undersigned for an arbitration hearing on September 29, 2020. As the result of an ongoing pandemic in the state of Iowa and pursuant to an order of the Iowa Workers' Compensation Commissioner, this case was tried via videoconferencing using the CourtCall platform. Claimant appeared from her attorney's offices. Defense counsel, the employer's representatives, and the court reporter all appeared remotely from their own locations.

The parties filed a hearing report at the commencement of the hearing. The parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 8, and Defendants' Exhibits A through H.

Claimant testified on her own behalf. Defendants called Darrell Weden to testify. The evidentiary record closed at the conclusion of the evidentiary hearing on September 29, 2020.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on October 30, 2020. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the September 15, 2017 work injury caused permanent disability.

2. The extent of claimant's entitlement to permanent disability, if any.

3. The proper date for commencement of permanent disability benefits, if any.

4. Whether claimant is entitled to reimbursement for her independent medical evaluation (IME) fee.

5. Whether claimant is entitled to alternate medical care.

6. Whether either party is entitled to assessment of costs and, if so, in what amount.

At the commencement of hearing, defendants conceded that claimant had proven entitlement to reimbursement for her IME fee pursuant to Iowa Code section 85.39. Accordingly, the undersigned entered a verbal order directing defendants to reimburse claimant's IME fee. If defendants have not already done so, they should reimburse the IME fee. Given the stipulations and order entered at the commencement of hearing, no additional findings of fact or conclusions of law will be entered on the IME fee issue.

At trial, defendants asserted that the proper date for commencement of permanent partial disability benefits, if any are awarded, is July 24, 2018. Although the issue was disputed on the hearing report, claimant concedes in her post-hearing brief that the proper date for commencement of permanent partial disability benefits is July 24, 2018. Accordingly, it appears the parties can now agree and stipulate that the proper commencement date for permanent disability benefits, if any, is July 24, 2018. That stipulation is accepted. No factual findings or conclusions of law will be entered on the commencement of permanent partial disability benefits issue.

FINDINGS OF FACT

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

Patricia Bodman, claimant, has been an employee of Menard, Inc. (hereinafter referred to as "Menards") since 2000. On September 15, 2017, Ms. Bodman worked as an inventory controller. (Transcript, pages 14-17) Her job title has changed since that date, but she performs similar job duties while supervising three other employees

performing inventory work. On September 14, 2017, claimant was performing her typical work duties. She reached and pulled a bag with a large tow chain in it. She felt a “zap” in her right hand that radiated to her fingers and up into her right forearm. She experienced swelling and reported the injury to the employer. (Defendants’ Exhibit A, p. 12)

Menards accepted the injury and directed Ms. Bodman’s medical care. They initially took her to an occupational medicine physician, Rhea J. Allen, M.D. (Tr., p. 20; Joint Ex. 1) After a few visits with conservative care, the occupational medicine physician referred claimant to an orthopaedic surgeon, Tobias Mann, M.D. (Joint Ex. 1, p. 8)

Dr. Mann evaluated claimant initially on November 7, 2017 and diagnosed claimant with right trigger thumb and right carpal tunnel syndrome. (Joint Ex. 2, p. 15) Dr. Mann attempted injections into claimant’s right thumb. (Joint Ex. 2, p. 17) Unfortunately, the relief provided by those injections was short-lived and wore off without lasting effect. (Tr., p. 25) At that point, Dr. Mann recommended surgical intervention for both the carpal tunnel syndrome and claimant’s right trigger thumb. (Joint Ex. 2, p. 20) Dr. Mann took clamant to surgery on April 11, 2018 and performed a right carpal tunnel release as well as a right trigger thumb release. (Joint Ex. 4)

After appropriate healing time and some physical therapy, Dr. Mann released claimant to return to work without restrictions on July 24, 2018. (Joint Ex. 2, pp. 30-31) By October 16, 2018, Dr. Mann indicated that claimant had “no significant pain and her numbness and tingling has improved significantly.” (Joint Ex. 2, p. 32) Dr. Mann released claimant from his care on October 16, 2018 and released her to continue working without restrictions. (Joint Ex. 2, p. 32) Ms. Bodman has not received or sought any further medical treatment for her right carpal tunnel or right trigger thumb since October 16, 2018. In a report dated June 6, 2019, Dr. Mann opined that claimant does not qualify for any permanent impairment pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Defendants’ Ex. C, pp. 12-13)

However, both parties obtained independent medical evaluations with physicians of their choosing. Defendants obtained an evaluation performed by orthopedic surgeon, Ze-Hui Han, M.D. on August 6, 2020. Dr. Han noted that claimant’s main complaint was right hand weakness. Interestingly, Dr. Han also noted that claimant denied numbness and tingling at his evaluation, though he emphasized that he repeated the request or inquiry several times during his evaluation. (Defendants’ Ex. B, p. 3)

Dr. Han noted that the event of lifting and moving a chain was not sufficient to cause claimant’s injury. However, he opined that the repetitive nature of claimant’s work at Menards over a period of 17 years was sufficient to cause a repetitive injury. (Defendants’ Ex. B, p. 6) Dr. Han opined that claimant achieved maximum medical improvement (MMI) on October 16, 2018, when Dr. Mann released her from his care. Dr. Hann noted that claimant has residual right hand weakness, but opined that she does not qualify for any permanent impairment under the AMA Guides, Fifth Edition. Dr. Han further opined that claimant requires no restrictions and no further treatment for

either the right carpal tunnel syndrome or the right trigger thumb. (Defendants' Ex. B, p. 7)

Claimant obtained an independent medical evaluation (IME) performed by Sunil Bansal, M.D. the day after Dr. Han's IME. (Claimant's Ex. 7) Dr. Bansal confirmed the diagnoses of Dr. Mann and Dr. Han, concurring that claimant had right carpal tunnel and right trigger thumb as a result of her work activities at Menards. (Claimant's Ex. 7, pp. 32) Dr. Bansal also concurred with Dr. Mann and Dr. Han and opined that claimant achieved MMI on October 16, 2018, when Dr. Mann released claimant from his care.

However, Dr. Bansal documented that claimant experiences electrical shock type pain and tinging in her fingers four to five times per day and that she cannot lift more than 10 pounds with her right hand and cannot carry a gallon of milk 15 feet without dropping it. (Claimant's Ex. 7, p. 31) Dr. Bansal also documented a loss of two-point sensory discrimination over claimant's thumb and long finger. (Claimant's Ex. 7, p. 32)

Dr. Bansal diverged somewhat from Dr. Mann and Dr. Han on the issue of future treatment. He recommended future "maintenance" treatment but provided no explanation of what he meant by that or what future maintenance treatment may be required. (Claimant's Ex. 7, p. 33) Dr. Bansal also diverged from Dr. Mann and Dr. Han on the issue of permanent impairment. Dr. Bansal opined that claimant sustained a five percent permanent functional impairment of the right upper extremity as a result of a sensory deficit caused by the work injury. (Claimant's Ex. 7, p. 33) He also recommended permanent work restrictions that preclude lifting more than ten pounds with the right hand. (Claimant's Ex. 7, p. 34)

Ms. Bodman testified that she continues to experience numbness and tingling in her right middle and ring fingers. She described pain in her hand, thumb, and wrist. (Tr., pp. 26, 32) However, she concedes that she has not sought or requested additional medical treatment since Dr. Mann released her from care in October 2018. (Tr., p. 50; Defendants' Ex. A, p. 30) She also concedes that she continues to work at Menards in a similar position without restrictions since released by Dr. Mann. She performs all of her typical job duties, though she described requesting assistance for heavy lifting since the injury. (Tr., p. 50)

Ms. Bodman contends that she experienced improvement with physical therapy after surgery. She asserts that she needs additional physical therapy to increase or improve her right hand strength. (Tr., pp. 53-54; Defendants' Ex. A, p. 40) However, Ms. Bodman also admits that Dr. Mann did not recommend additional physical therapy and no other physician, including Dr. Bansal, specifically recommends additional physical therapy at this time. (Tr., pp. 54-56, 67) I find that Ms. Bodman has not proven that additional physical therapy is required or necessary at this time. Although she believes it would be beneficial, no physician has recommended additional therapy for her condition. Defendants have provided reasonable and appropriate medical care for claimant's condition and claimant has not proven that additional, or more extensive, care is reasonable, appropriate, and necessary at this time.

With respect to the competing medical opinions on the issue of permanent impairment, I note consistent opinions that Ms. Bodman has achieved MMI. I find that claimant achieved MMI on October 16, 2018, when Dr. Mann released her from his care.

I note several differences between the physicians that require some clarification and factual resolution. First, it seems odd that Dr. Han and Dr. Bansal would come to different findings and conclusions with their evaluations one day apart. Moreover, the history portion of their evaluations are significantly different. Dr. Han notes repeated inquiries and repeated denials of numbness and tingling. Then, the next day, Dr. Bansal documents numbness and tingling. This could be due to inaccurate or misleading reporting by claimant or poor documentation by a physician. I am not entirely sure what to make of this discrepancy standing alone.

I note that Dr. Mann released claimant from his care. However, in his October 16, 2018 office note, he documents “no significant pain.” (Joint Ex. 2, p. 32) This does not mean claimant was pain free. Dr. Mann’s language leaves open the possibility that claimant had some residual pain, which corresponds with her testimony and the history later given to Dr. Bansal. Dr. Mann also documents that claimant’s numbness and tingling are “significantly” improved in October 2018. (Joint Ex. 2, p. 32) Again, this suggests she still had some minor numbness and tingling occurring. This is again also consistent with the history provided by claimant to Dr. Bansal and likely contradicts the history recorded by Dr. Han.

I also note that Dr. Han documented some loss of strength in claimant’s right hand. I find it odd that Dr. Han and Dr. Mann both document some sensory changes or strength changes but find no loss of function or functional impairment in claimant’s right hand or arm.

On the other hand, it appears that Dr. Bansal’s analysis considers all of the symptoms. Moreover, it appears that Dr. Bansal performed specific two-point sensory discrimination testing. Neither Dr. Mann nor Dr. Han specifically reference or document performing two-point sensory discrimination testing. In this sense, I find Dr. Bansal’s evaluation, testing, and opinions to be more thorough and accurate.

Considering all of the medical opinions in this record, I find that Dr. Bansal’s impairment rating is the most thorough and convincing. Therefore, I find that claimant proved she sustained a five percent permanent functional impairment of the right arm as a result of her work injury at Menards on September 15, 2017.

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 this case, I analyzed all of the relevant medical opinions and found the opinion of Dr. Bansal to be most thorough, credible and convincing on the issue of permanent functional disability. Therefore, I found that Ms. Bodman has achieved maximum medical improvement and has proved she sustained five percent permanent functional disability of the right arm as a result of the September 15, 2017 work injury at Menards. Having reached this factual finding, I conclude that claimant has proven she sustained permanent disability and is entitled to permanent partial disability benefits in some amount.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) (2017) or for a loss of earning capacity under section 85.34(2)(v) (2017). The parties stipulate that this injury should be compensated using the scheduled member functional disability analysis. (Hearing Report)

The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

When determining the functional loss of a scheduled member injury:

> [T]he extent of loss of percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American [M]edical [A]ssociation, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment . . .

Iowa Code section 85.34(2)(x) (2018).

Carpal tunnel syndrome involves structures within the wrist. Wrist injuries are compensated as arm injuries under Iowa Code section 85.34(2)(m). Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008). Therefore, I conclude that this case should be compensated on a functional disability method based on claimant's permanent loss of function of the right arm. Id.

I found that claimant proved she sustained a five percent loss of function in her right arm as a result of the September 15, 2017, work injury. The Iowa legislature has established a 250-week schedule for arm injuries. Iowa Code section 85.34(2)(m). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of her arm. Iowa Code section 85.34(2)(w); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969). Five (5) percent of 250 weeks equals 12.5 weeks. Claimant is, therefore, entitled to an award of 12.5 weeks of permanent partial disability benefits against the employer as a result of the September 15, 2017 right arm injury. Iowa Code section 85.34(2)(m), (w).

In addition to her request for permanent partial disability, Ms. Bodman also requested an order granting alternate medical care. Specifically, Ms. Bodman asserts a need for additional physical therapy.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

In this case, claimant testified that physical therapy was helpful and that she believes additional physical therapy would be helpful. However, none of the physicians

offering opinions in this case have opined that additional physical therapy is needed. At best, claimant produces the opinion of Dr. Bansal that she will need treatment for "maintenance," but that term is not defined. Dr. Bansal certainly did not specifically recommend additional physical therapy. Both Dr. Mann and Dr. Han opined that no further treatment is needed.

Simply put, claimant failed to prove additional physical therapy is medically reasonable, appropriate, and necessary to treat her injury at this time. Claimant bears the burden to establish the need for alternate medical care. She has not carried her burden to establish that the care offered by defendants to date has been unreasonable and not reasonably suited to treat her injury. Therefore, I conclude that the claim for alternate medical care should be denied.

Finally, claimant requests assessment of her costs related to this contested case proceeding. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Claimant has prevailed on the issue of permanent disability and I conclude it is appropriate to assess her costs in some amount.

Claimant outlines her requested costs in Claimant's Exhibit 8. The initial cost sought by claimant is her independent medical evaluation fee with Dr. Bansal. Defendants agreed to reimburse that expense pursuant to Iowa Code section 85.39. Accordingly, that is not an appropriate cost to be taxed.

Ms. Bodman seeks assessment of her filing fee ($100.00). I conclude this is an allowable and appropriate cost to tax. 876 IAC 4.33(7). Ms. Bodman seeks assessment of the costs ($83.85) of obtaining a transcript of her deposition. In this case, defendants introduced Ms. Bodman's deposition as an exhibit. Therefore, I conclude this is also an appropriate cost to tax. 876 IAC 4.33(2).

The final costs sought by Ms. Bodman are the expense of obtaining medical records from Unity Point Trinity and Rock Valley Physical Therapy. These expenses were not specific reports sought to be introduced in lieu of testimony. Rather, these were simply the copy fees charged by the medical providers to provide their medical records. Claimant asserts these expenses should be taxed pursuant to 876 IAC 4.33(6) and (8). I disagree that either subsection of administrative rule 4.33 is applicable to the expense of obtaining medical records from a provider. I decline to tax these costs. In total, I conclude it is appropriate to tax $183.85 in costs against defendants.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant twelve point five (12.5) weeks of permanent partial disability benefits commencing on July 24, 2018 at the stipulated rate of three hundred fifty-four and 38/100 dollars ($354.38) per week.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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. Gamble v. Ag Leader Technology, File No. 5054686 (Appeal April 2018).

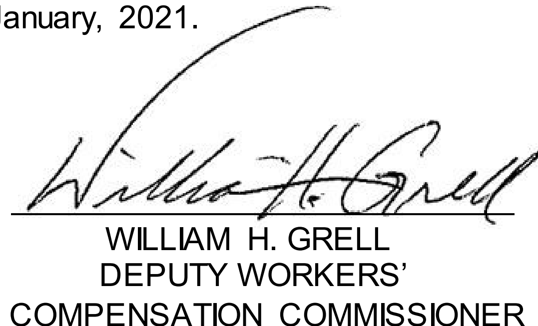
Defendants are entitled to the credit stipulated to by the parties in the hearing report.

Defendants shall reimburse claimant's independent medical evaluation fee totaling two thousand five hundred sixty-five and 00/100 dollars ($2,565.00).

Defendants shall reimburse claimant's costs totaling one hundred eighty-three and 85/100 dollars ($183.85).

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 5th day of January, 2021.



WILLIAM H. GRELL
DEPUTY WORKERS' COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Shaull (via WCES)

Charles A. Blades (via WCES)
Rachael Neff (via WCES)

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.