BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| BONNIE BLOCK,<br><br>Claimant,<br><br>vs.<br><br>CLARINDA TREATMENT COMPLEX, an agency of the STATE OF IOWA,<br><br>Self-Insured,<br>Employer,<br>Defendant. | FILED<br>NOV 06 2014<br>WORKERS COMPENSATION | File No. 5046672<br><br>ARBITRATION<br><br>DECISION |

STATEMENT OF THE CASE

Bonnie Block, the claimant, seeks workers' compensation benefits from defendant, Clarinda Treatment Complex, an agency of the State of Iowa, a self-insured employer, as a result of an alleged injury on June 6, 2012. The caption of this proceeding is changed to reflect the proper parties. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on October 15, 2014, but the matter was not fully submitted until the receipt of the parties' briefs and argument on October 22, 2014. Oral testimonies and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Claimant's exhibits were marked numerically. Defendant' exhibits were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Exhibit 1-2:4."

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. An employee-employer relationship existed between claimant and defendant employer at the time of the alleged injury.

2. Claimant is seeking temporary total or healing period benefits only from March 1, 2013 through April 3, 2013, and defendant agrees that if it is held liable for the alleged injury, claimant is entitled to these benefits.

3. If the injury is found to have caused permanent disability, the type of disability is a scheduled member disability to the right and left arm compensated under Iowa Code section 85.34(2)(s).

4. If I award permanent partial disability benefits, they shall begin on April 4, 2013.

5. At the time of the alleged injury, claimant's gross rate of weekly compensation was $1,221.65. Also, at that time, she was married and entitled to 2 exemptions for income tax purposes. Therefore, claimant's weekly rate of compensation is $775.06 according to the workers' compensation commissioner's published rate booklet for this date of injury.

6. Defendant waives defenses of lack of notice pursuant to Iowa Code section 85.23 and untimely claim pursuant to Iowa Code section 85.26.

7. The parties stipulated that the providers of the requested medical expenses (Exhibit 9) would testify as to their reasonableness and defendant are not offering contrary evidence.

## ISSUES

At hearing, the parties submitted the following issues for determination:

I. Whether claimant received an injury arising out of and in the course of employment;

II. The extent of claimant's entitlement to weekly temporary total or healing period benefits and permanent disability benefits;

III. The extent of claimant's entitlement to medical benefits.

IV. Claimant's entitlement to reimbursement for the independent medical evaluation (IME) by Dr. Bansal.

## FINDINGS OF FACT

In these findings, I will refer to the claimant by her first name, Bonnie, and to the defendant employer as CTC.

Bonnie, age 62, has worked for CTC as a Licensed Practical Nurse (LPN) since December 1995 and she continues in that capacity today.

Bonnie worked for the Glenwood State Hospital School as a resident treatment worker (RTW) from 1979 to 1982 or 1983. In the period from 1982 to 1990 she was raising children and worked a number of part-time jobs as a waitress, gas station

attendant and motel housekeeper. Bonnie then returned to work for the State of Iowa in August of 1990 and worked approximately five years as an RTW at the Glenwood State School. In December of 1995 she transferred to CTC as an LPN. According to her uncontroverted testimony, the job of an LPN at CTC is a physically demanding job which requires total patient care, passing medications, some cleaning of the facility and pushing wheelchairs. In that job, she was required to transfer residents between a bed and wheelchair, transport residents to and from meals, and dress and cloth residents. According to her testimony, the job required gripping, grasping and significant pushing and pulling.

Bonnie states that she first began to develop problems with her hands in the late 1990s. Bonnie's testimony was that her symptoms with her hands began to worsen in 2001 and she reported the injury to CTC. Injury reports were completed and she made at least one visit to their doctor. Bonnie testified that she did not follow up with the medical care and continued to have significant symptoms in both hands until she had her stomach stapled in 2006. After that surgery, she lost 50 or 60 pounds and, according to her testimony, her hand symptoms completely disappeared.

Bonnie testified that in 2011 her pain, numbness and tingling in both arms and hands returned and it worsened until she again reported it to her employer on June 6, 2012. Another injury report was completed and approximately two months later she was sent to Concentra, where she was seen by Arthur D. West, M.D., on August 28, 2012. (Ex. 4) Upon a diagnosis of worsening of bilateral carpal tunnel syndrome (CTS), Dr. West felt that Bonnie should be seen and evaluated by a hand surgeon. However, before that could be arranged, defendant denied the claim based on a medical report of Anthony Sciorrotta, D.O., an occupational medicine physician. (Ex. 3) Sciorrotta opined from a review of Bonnie's medical records that her CTS was not related to her work as an LPN. The doctor cites medical articles asserting that age, gender, and obesity are precursors for the development of CTS, not repetitive force, heavy lifting or keyboard use. The doctor admits that force, repetition, and posture are risk factors for CTS, but from his reading of Bonnie's job description, none of the duties are repetitive or forceful. The doctor concluded that Bonnie's CTS is due to her age, gender and obesity. (Ex. B-4:5)

After her claim was denied, Bonnie continued with medical care on her own and was seen by Caliste Hsu, M.D., an orthopedist at Miller Orthopedic Affiliates. Bonnie was first seen by her on January 22, 2013. Dr. Hus performed a left carpal tunnel release surgery on March 1, 2013, and a right-sided carpal tunnel release on March 8, 2013. (Ex. 7)

Dr. Hsu released Bonnie on April 25, 2013. This doctor opines that Bonnie's work, consisting of her extensive repetitive hand use removing lids from pill cassettes over many years as an LPN at CMC, was a substantial factor in causing her CTS. Although this doctor opines that Bonnie has no permanent impairment or activity restrictions from her injury, he opines that Bonnie is at risk of redeveloping bilateral CTS

if she continues repetitive use of her wrists. (Ex. 6-22) Bonnie has had some subsequent problems with grip strength and she was diagnosed by Dr. Hsu with trigger finger and nodules in the palm called Dupuytren's Syndrome, but the doctor does not provide a causation opinion as to those conditions and still maintains that Bonnie has not suffered any permanent impairment from the conditions that she treated. (Ex. 6-31)

At the request of her attorney, Bonnie was evaluated by Sunil Bansal, M.D., another occupational medicine physician. Dr. Bansal agrees with the causation opinions of Dr. Hsu, but opines that Bonnie has suffered a ratable permanent impairment under the AMA Guides, Fifth Edition. He provides a rating of two percent to each extremity or a total permanent partial impairment to both extremities of four percent. The doctor also states that Bonnie does not want restrictions that may impair her ability to continue in her job, but Dr. Bansal recommends that should she leave her job, her permanent restrictions should be no frequent squeezing, pinching, grasping, pushing or pulling with either hand. (Ex. 8-9:11)

I find that Bonnie suffered a significant aggravation of her prior bilateral carpal tunnel syndrome on or about June 6, 2012. This is a cumulative injury process which started years earlier, but later on was aggravated by her repetitive use as described by Dr. Hsu. As in most cumulative trauma cases, there are various manifestation dates as the condition develops over time. The current injury date is the time when her symptoms worsened a second time to the extent that additional treatment was required. I did not find the views of Dr. Sciorrotta convincing. First, he attempts to attribute her current complaints to the prior CTS. The doctor appears to be unfamiliar with the concept that an aggravation of a prior condition can be a work injury. Also, he opined that Bonnie does not engage in repetitive work with her hands. This is clearly not correct, as pointed out by Drs. Hsu and Bansal. Also, he bases his views on medical articles that are contrary to the views of the National Institutes for Occupational Safety and Health (NIOSH) as pointed out by Dr. Bansal in this report.

I find the work injury of June 6, 2012 is a cause of a two percent permanent impairment to each arm, which occurred over the same time period based on the views of Dr. Bansal. The doctors appear reluctant to impose restrictions because they do not want to jeopardize Bonnie's job. However, even Dr. Hsu states that Bonnie should not continue repetitive use of her hands if she wishes to avoid re-injury. Also, Dr. Hsu does not state whether the AMA Guides were used to arrive at the conclusion that Bonnie has no impairment. Dr. Bansal, as a board certified occupational physician, is more familiar with the rating process and clearly uses these Guides, which have been adopted by this agency as a proper tool to assess impairment. As will be explained later, such impairment is compensated as a functional loss to the body as a whole. Dr. Bansal did not convert his ratings to the upper extremity to the body as a whole. This is done in the AMA Guides, using Table 16-3, at page 439 of the Guides. A two percent loss to an upper extremity converts to a one percent impairment to the body as a whole. Using the combined values chart on page 604 of the Guides, two one percent ratings

combined into a single two percent rating. Therefore, I find that work injury of June 6, 2012 is a cause of a two percent permanent partial impairment to the body as a whole.

I find that requested medical expenses set forth in Exhibit 9 constitute reasonable and necessary medical treatment for the work injury of June 6, 2012.

## CONCLUSIONS OF LAW

I. 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.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

More than one injury or manifestation date may be appropriate for each stage of a long term and progressive injury process. Jenson v. Fleetguard, Inc., File Nos. 1169339, 1138300 (App. March 31, 1999).

In the case sub judice, I found that claimant carried the burden of proof and demonstrated by the greater weight of the evidence that she suffered an injury arising out of and in the course of employment with defendant.

II. 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).

A treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Iowa Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. DeLong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133; 106 N.W.2d 95, 98 (1960).

The parties agreed that compensation for this injury should be measured as a scheduled member pursuant to Iowa Code section 85.34(2)(s). Under this stipulation, claimant's permanent disability is measured only functionally as a percentage of loss of

use for each extremity which is then translated into a percentage of the body as a whole and combined together into one body as a whole value. This can be done using the AMA Guides. Simbro v. DeLong's Sportwear, 332 N.W.2d 886 (Iowa 1983).

In the case sub judice, I found that claimant suffered a combined 2 percent impairment to the body as a whole as a result of the injury. Therefore, claimant is entitled as a matter of law to 10 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(s) which is 2 percent of the 500 weeks, the maximum allowable for a simultaneous injury to two extremities in that subsection.

Claimant's entitlement to permanent partial disability also entitles her to weekly benefits for healing period under Iowa Code section 85.34 for her absence from work during a recovery period until claimant returns to work; until claimant is medically capable of returning to substantially similar work to the work she was performing at the time of injury; or, until it is indicated that significant improvement from the injury is not anticipated, whichever occurs first.

The parties stipulated to this entitlement and these benefits will be awarded accordingly.

II. Pursuant to Iowa Code section 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendant to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In the case at bar, I found that the requested medical expenses in Exhibit 9 were causally related to the work injury and they will be awarded.

III. Claimant seeks reimbursement under Iowa Code section 85.39 for the IME by Dr. Bansal in the amount of $2,295.00. Defendant asserts that it is not reimbursable under Iowa Code section 85.39, because defendant never obtained a prior evaluation of claimant from a physician of their choice. IBP, Inc. v. Harker, 633 N.W.2d 322 (2001). Dr. Hsu was chosen by claimant. I agree with defendant. The only physicians retained by defendant in this case were those at Concentra and Dr. Sciorrotta. None of those physicians evaluated claimant's permanent disability. The views of Dr. Hsu on permanent disability were requested by claimant's attorney, not defendant's attorney.

Defendant also assert that the prior agency precedent allowing reports not qualified for reimbursement under Iowa code section 85.39 to be still eligible for reimbursement as a report cost pursuant to our administrative rule, 876 IAC 4.33(6) is no longer valid in light of a recent holding by the Iowa Court of Appeals in Des Moines Area Regional Transit Authority and United Heartland v. Young, No. 14-0231, 2014 WL 4937960 (Iowa Ct. App. Oct 1, 2014). However, that decision conflicts with an earlier decision of the Court of Appeals In John Deere Dubuque Works v. Caven, 804 N.W.2d

297 (Iowa App. 2011), which affirmed this division's award of a medical report in the amount of $972.00 pursuant to Iowa Administrative Code rule 876 IAC 4.33(6) in a case in which Iowa Code section 85.39 was inapplicable. The court in Young did not overrule the holding in Caven. It is unknown if the Young decision is final or will be published and therefore binding. Absent additional guidance from my superiors, I will enforce the agency precedent that was affirmed by Caven.

I will award claimant the fees of Dr. Bansal as a cost.

ORDER

1. Defendant shall pay to claimant ten (10) weeks of permanent partial disability benefits at the stipulated weekly rate of seven hundred seventy-five and 06/100 dollars ($775.06) from the stipulated date of April 4, 2013.

2. Defendant shall pay to claimant healing period benefits from March 1, 2013 through April 3, 2013, at the rate of seven hundred seventy-five and 06/100 dollars ($775.06) per week.

3. Defendant shall pay the medical expenses listed in Exhibit 9. Defendant shall reimburse claimant for her out-of-pocket medical expenses and shall hold claimant harmless from the remainder of those expenses.

4. Defendant shall pay accrued weekly benefits in a lump sum.

5. Defendant shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

6. Defendant shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter and reimbursement to claimant for the report of Dr. Bansal the sum of two thousand two hundred ninety-five and 00/100 dollars ($2,295.00).

7. Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 6th day of November, 2014.

LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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**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.