

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KAREY BRANDON,

Claimant,

vs.

LUCAS COUNTY HEALTH CENTER,

Employer,

and

FIRST DAKOTA INDEMNITY CO.,

Insurance Carrier,
Defendants.

File No. 19700557.01

ARBITRATION DECISION

Head Note Nos.: 1100

STATEMENT OF THE CASE

Claimant, Karey Brandon, has filed a petition for arbitration seeking workers' compensation benefits against Lucas County Health Center, employer, and First Dakota Indemnity Co, insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on November 12, 2020, via Court Call. The case was considered fully submitted on December 3, 2020, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-7, Claimant's Exhibits 1-9, Defendants Exhibits A-I, and the testimony of claimant, Jennifer Newton, and Jessica Goben.

ISSUES

1. Whether claimant sustained an injury arising out of and in the course of her employment on December 19, 2017;
2. Whether claimant is entitled to temporary benefits from March 13, 2018, through April 30, 2018;
3. Whether the alleged injury was a cause a permanent disability;
4. Whether that disability is scheduled member or industrial in nature
5. The extent of permanent disability, if any,
6. Whether claimant is entitled to reimbursement of medical expenses (Ex. 3);
7. Costs.

STIPULATIONS

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 parties stipulate the claimant was an employee at the time of the alleged injury, but dispute that the claimant sustained an injury arising out of and in the course of her employment on December 19, 2017.

While the defendants dispute the claimant's entitlement to temporary benefits, they stipulate that if they are liable for the alleged injury, claimant is entitled to benefits from March 13, 2018, through April 30, 2018. They further agree that although entitlement cannot be stipulated, claimant was off work during this time.

They agree that if the injury is found to be a cause of permanent disability the commencement date for permanent partial disability benefits would be May 18, 2019. At the time of the alleged injury the claimant's gross earnings were \$569.41 per week. The claimant was married and entitled to two exemptions. Based on the foregoing the weekly benefit rate is \$384.07.

Defendants waive all affirmative defenses

Prior to the hearing claimant was paid \$1,068.95 in the form of sick pay or disability income. The parties agree that the defendant is entitled to a credit of that amount against any award of temporary benefits. Defendants also paid medical and hospitalization expenses of \$8,591.59.

As for the disputed medical expenses, the parties stipulate that the fees and prices charged by the providers are fair and reasonable, that those medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and the defendants do not offer contrary evidence. Further, although causal connection of the expenses to the work injury cannot be stipulated, the listed expenses are at least causally connected to the medical condition upon which a claim of injury is based.

FINDINGS OF FACT

At the time of the hearing claimant was a 46-year-old person. She graduated from high school in 1992 and attended classes to become a CNA around 1994 to 1995.

Claimant first began experiencing problems in her ankle during the summer of 1991 during a game of tackle football with her family. She stepped into a hole and injured the outside right ankle.

Ray F. Miller, M.D., issued an Independent Medical Evaluation (IME) on March 3, 2009, pertaining to claimant's back, hip and ankle. (DE C) In the history section, it was noted claimant had two previous surgeries on her right ankle, four surgeries to her right upper extremity and three surgeries on her left upper extremity. (DE C) Dr. Miller opined that claimant suffered from chronic muscle spasms in her back and left trochanteric bursitis that were permanent in nature. (DE C:5)

Claimant had past left hip pain, localized in the left trochanteric bursa. (JE 1:1) She received chiropractic adjustments and injection therapy in 2014 Id. She also had a history of back pain in the thoracic, lumbar, sacral and pelvis region along with some rib cage region somatic dysfunction. (JE 1:6)

On October 9, 2017, she was seen by Allison L. Krutsinger, PA-C for hip pain, chronic low back pain and depression. (JE 3:1) PA Krutsinger noted claimant had received a steroid injection for IT band syndrome/trochanteric bursitis of the left leg. (JE 3:1) Claimant explained that the hip complaints were different than she had previously reported. Id. Claimant was sent to physical therapy.

On or about December 19, 2017, the date of the alleged injury, claimant was working as a ward clerk and CNA. Her duties included answering the telephone, taking care of patient charts, and caring for patients. Physically, the CNA duties included bending, pushing, walking, pulling and lifting. (CE 4:3)

Claimant was rushing down to a room where an alarm had been set off. She started feeling the pain as she helped the patient go to the bathroom. The pain was localized on the inside of the right foot and progressed throughout the day. She spoke to nurse Jennifer Newton about the pain and they were to meet at the nurse's station. Three new patients were admitted and claimant testified that she was rushing around so the meeting was delayed. Jennifer Newton claims that there was no need to rush. The medical charts for the hospital showed low census in the morning with only one or two patients on the floor. She testified that she was later sent to the clinic where she was at a computer helping to transfer patient files into the health system.

Claimant saw the emergency room doctor coming toward her and mentioned her foot pain. She then heard a loud pop. She maintained that Matthew Bogard, M.D., heard it as well and he was insistent that she go to the nurse's station. Her whole interior foot was swollen up to the ankle. Dr. Bogard recommended an x-ray. It was close to the end of her shift and she wanted to complete her shift. Ms. Newton fetched an ace wrap and bandaged claimant's ankle. Claimant finished her shift around 6:30 p.m. and then went to the ER. (JE 2:1)

Dr. Bogard, the ER physician, documented that,

Pt was working today at LCHC and noticed a pain in her right ankle that got progressively worse throughout the day.

This is a new problem. The current episode started today. The onset was gradual. The problem has been gradually worsening. The pain is

associated with an injury (rolled her right ankle walking around a corner in the hallway at work today.)

(JE 2:1) X-rays were negative for traumatic injury.

She later presented to PA-C Christopher Osier with continued swelling and pain. (JE 3:5) She was continued on sit down duty and referred to podiatry for further evaluation. (JE 3:9)

In a statement she gave, she said that she was walking when she started to feel pain and there was no rolling of the ankle. (Ex. E) She was scheduled to work the next three days and despite the pain, she did not take time off.

She was seen at Southern Iowa Orthopedics by Randy Metzger, DPM, on January 2, 2018. (JE 4:1) Under the history section, it was noted that claimant's pain "started after noting some uncomfortableness when she woke up one morning. She then did note sharp stabbing pain as well as a pop as she was walking." (JE 4:1) Dr. Metzger believed claimant likely suffered a tendon injury given the pop and subsequent pain. (JE 4:1) The MRI showed no pathology but Dr. Metzger's opinion was that the tendon did look to be enlarged which was suggestive of tendinosis. (JE 4:3) Dr. Metzger kept her nonweightbearing. (JE 4:3) He also opined that given that pop with more severe pain at work that the injury was partially due to her work activities. (JE 4:3) He wrote "It is my opinion that her injury can be caused by physical stresses at work. Prolonged and consistent [sic] walking, pushing, pulling, bednding [sic] and squatting would all place stress on the posterior tibial tendon." (JE 4:5)

Claimant returned to Dr. Metzger on February 20, 2018, with ongoing complaints of pain. (JE 4:5) He advised that surgery was likely. (JE 4:5) Surgery took place on March 13, 2018. (JE 4:9) The promius longs tendon showed degeneration, a tear in the perineal tendon, and there was signs of an old injury from when claimant was a teenager. (JE 4:10) Her sutures/staples were removed on March 27, 2018, and Dr. Metzger advised claimant she could return to work after being off of pain medication for a full week but to restrict herself to sedentary/non-walking duty. (JE 4:14)

Claimant worked but used a knee scooter for her right leg and propelled herself with the left.

On April 24, 2018, Dr. Metzger released claimant to work with restrictions of limited ambulation and use of the cam boot except during physical therapy. (JE 4:17) In the physical therapy intake notes, the mechanism of injury was recorded as follows:

"Pt initially noted R ankle/foot pain over the medial aspect on 12/19/2017. States the pain was worsening throughout the day until she heard/felt a loud pop over the medial aspect of her foot while turning a corner." (JE 5:1)

On June 5, 2018, claimant was released to regular shoes and activities within her tolerance. (JE 4:20) She denied any pain but did have stiffness and swelling. Id. She was back at work with no restrictions and was doing well. Id. Her discharge note

from physical therapy noted that she had significant reductions in pain levels, improvements in ROM, strength, dynamic balance, gait, progress toward short and long term goals, progression to traditional strength training and independence with HEP. (JE 5:21) She still had some stiffness, ankle pain, swelling and weakness. Id.

On April 25, 2019, claimant saw NP Krutsinger for ongoing pain post-operatively. Ms. Krutsinger wanted to wean claimant off gabapentin and increased claimant's Wellbutrin dose. On April 30, 2019, claimant returned to Dr. Metzger who suggested injections for the neuroma.

On June 18, 2019, she returned to LMC Chariton Family Medicine and was seen by PA Krutsinger for bilateral hip pain. "The right side just started a couple of weeks ago. . . . The left has been ongoing and is worse than the right," the subjective note reads. (JE 3:10) Claimant did not walk with a limp but her right foot was permanently inverted. Id. She complained of pain that radiated into the back of the left thigh into her knee. (JE 3:10) X-rays of the hip showed no abnormalities. (JE 2:7, JE 3:13) A Kenalog and marcaine injection was administered with a recommendation for further testing if the hip pain continued. (JE 3:13)

Claimant acknowledges the medical records do not have any mentions of hip pain until after she went to the IME with Dr. Kuhnlein. She testified that she feels like she mentioned her hip pain to Dr. Metzger and in therapy but that she and the medical providers were concentrating on improving her foot pain.

Jennifer Newton, the registered nurse working at the time of claimant's alleged injury testified that she had no independent recollection of December 19, 2017, and that she became aware she was on duty the day of the incident because the schedule documented her working that day. She did not recall speaking with the claimant but did become aware of the claimant's pain complaints following the incident. Ms. Newton appeared very nervous during the hearing and was visibly shaking during testimony.

Jessica Gobin is currently the med surgery manager and was working that position on December 19, 2017. She did not recall any spots on the floor nor any slipperiness or wetness on the floor. She testified that claimant was walking in a straight line when the pop occurred. She did not recall claimant reporting hip issues.

Claimant maintained at hearing that the account recorded in the medical records is not accurate. However, it is the account that was repeated both in the records with Dr. Bogard as well as the statement she gave to the insurance company and all the following medical records such as Dr. Metzger's office visit and the therapy office visits. I find that the accurate representation of how the injury occurred was pain noticed early on December 19, 2017, without any specific insult, and that the pain worsened throughout the day culminating in a "pop" in the afternoon. I further find that the floor was dry with no obstacles. Claimant's early morning involved only one or two patients followed by computer work.

On May 23, 2019, claimant underwent an IME with John Kuhnlein, D.O. (CE 1) Dr. Kuhnlein's records notes that on or about December 19, 2017, she developed an aching sensation in the medial foot while assisting a patient to the bathroom. During the day she noticed more pain and spoke to the registered nurse on duty who suggested she see Dr. Bogard in the ER. Coincidentally, she was walking in the unit and Dr. Bogard was walking toward her. She explained the pain situation and pivoted on the right foot to head into a patient room. She heard and felt a pop with the immediate onset of moderate-severe pain. (CE 1:2)

At the time of the IME with Dr. Kuhnlein, claimant reported left hip pain extending from the buttock into the left trochanteric area and to the left iliotibial band. She was not able lie on her left hip and she heard clicking while walking. Her right foot is inverted and this causes her more activity-dependent lateral foot and mid foot pain. She described paresthesias in the lateral left foot extending to the right fourth and fifth toes. She cannot stand on the right foot alone because of discomfort. She had sensations of left foot giveaway. (CE 1:7-8)

Dr. Kuhnlein diagnosed claimant with right ankle strain and medial foot pain which he attributed to the injury as well as a lighting up of a left great toe bunion. (CE 1:10) Additionally, claimant had trochanteric bursitis associated with gait changes which Dr. Kuhnlein attributed to the work injury. (CE 1:10-11)

Claimant explained that the March 13, 2018, surgery initially allowed her to return to normal without limping or foot pain but then around October 15, 2018, she developed a recurrent pain in the perineal and posterior tibial tendons as well as in her left great toe where she had a pain-free bunion. These recurrent symptoms led to a second surgery by Dr. Metzger on December 18, 2018. The right arch issues predated the injury and the rebuilding of the arch itself was related to the pre-existing condition with no specific evidence that the arch condition was materially aggravated by the December 2017 injury according to Dr. Kuhnlein. (CE 1:11)

Dr. Kuhnlein opined that the claimant reached MMI on May 18, 2019, and that claimant sustained a 11 percent impairment of the right lower extremity for deficits in the ankle and hind foot range of motion loss. (CE 1:11) The numbness in the lateral foot appeared to be from the pre-existing injury but the numbness in the right lateral ankle arose from the work injury and subsequent surgeries. (CE 1:12) As a result of this sensory deficit, Dr. Kuhnlein assigned a 1 percent right lower extremity impairment. Id. Together, the claimant's total foot/ankle impairment is 12 percent.

For the hip, he assigned a 7 percent impairment for the chronic trochanteric bursitis and abnormal gait. (CE 1:12)

He recommended material handling restrictions of lifting 30 pounds occasionally from floor to waist, 40 pounds occasionally from waist to shoulder and 30 pounds occasionally over the shoulder. She should be able to change positions for comfort and limit her sitting, standing, walking to an occasional basis. (CE 1:12)

On October 8, 2020, Joseph F. Galles, Jr., M.D., issued an opinion based on a records review. (DE A) He opined that the claimant was moderately obese which was a substantial contributing factor to the soft tissue related pathology of the foot and ankle and that her work activities did not contribute due to the fact that she sustained the injury while walking normally. (JE A) Dr. Galles also specifically opined that the work activities did not necessitate the need to rebuild her arch or contribute to the diagnosis of neuroma. (DE A) On the same day, Steven A. Aviles, M.D., issued an opinion that claimant's hip bursitis was unrelated to her work injury. (DE B) Dr. Aviles pointed to her past medical history including medical visits just four months preceding the December 2017 alleged injury where she was treated for trochanteric bursitis. (DE B) Dr. Aviles writes that claimant did not complain of the left hip pain until the IME with Dr. Kuhnlein. (DE B:2)

CONCLUSIONS OF LAW

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. 6.904(3).

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. Cihra, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer 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. Cihra, 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).

The crux of the dispute is whether the injury arose out of and in the course of employment. Claimant has the burden of proving, by a preponderance of the evidence, that her injury arose out of and in the course of his employment with defendant. Iowa Code § 85.3(1) (1999). See also 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). The words "arising out of" refer to the "causal relationship between the employment and the injury." Id. The words "in the course of" refer to the time, place and circumstances of the injury. McClure v. Union, et al., Counties, 188 N.W.2d 283, 287 (Iowa 1971).

An injury occurs in the course of employment when the employee was where she was directed to be and in the process of performing, about to perform or engaging in acts incidental to his required job duties. See, e.g., Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996). An injury arises out of the employment only if it is a "rational consequence of the hazard connected with the employment." Fernandez, 528 N.W.2d at 128 (quoting Burt v. John Deere Waterloo Tractor Works, 247 Iowa 691, 700, 73 N.W.2d 732, 737 (1955)). In assessing this factor the Iowa Supreme Court has approved the actual risk doctrine.[2] Under that doctrine the "arising out of" element is satisfied if "the nature of the employment exposes the employee to the risk of such an injury." Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990).

Claimant argues that the nature of her job which required frequent walking, standing, pushing, pulling and lifting led to the pain and injury to her right posterior tibial tendon. Dr. Metzger did opine that claimant's injury "can be" caused by physical stresses at work and Dr. Kuhnlein agreed.

In McIlravy v. North River Ins. Co., 653 N.W. 2d 323, 327 (Iowa 2002), the Iowa Supreme Court ruled that there was no inherent risk in walking on a flat surface. Claimant's injury was idiopathic in that there was no increased risk of injury when she was walking down the hall and heard a pop in her right foot. In McIlravy, the employee

descended from a ladder and was walking across a level cement floor to pick up some items some distance away. While walking, he felt and heard a pop in his knee. He was not wearing his tool belt at the time, and was not carrying anything. He had experienced no prior problems with his knee.

Id. at 326. This case is similar to McIlravy in that claimant was walking on a flat surface, not carrying anything and her only previous complaint of pain in the right ankle occurred

sometime earlier in the day with no specific instance causing that pain.

It is found that claimant sustained an idiopathic fall consistent with McIlravy, and therefore this injury is not compensable. The remaining issues as it relates to this injury are moot.

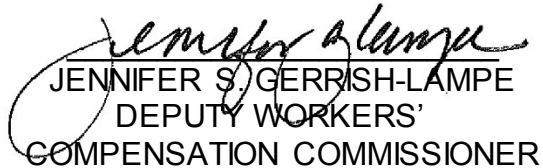
ORDER

THEREFORE, it is ordered:

That claimant shall take nothing.

The parties are responsible for their own costs with the cost of the transcript shared equally between claimant and defendants.

Signed and filed this 7th day of June, 2021.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Michael Carpenter (via WCES)

Caroline Westerhold (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.