BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JESSICA GREGG n/k/a JESSICA STEFFEN,

Claimant,

vs.

FARLEY'S & SATHERS CANDY COMPANY, INC.,

Employer,

and

TRAVELERS INDEMNITY COMPANY OF CT,

Insurance Carrier,
Defendants.

File No. 5047195

ARBITRATION DECISION

Head Note Nos.: 1100; 1801; 1803

STATEMENT OF THE CASE

Claimant, Jessica Gregg n/k/a Jessica Steffen, filed an arbitration petition seeking workers' compensation benefits from Farley's & Sathers Candy Company, Inc., employer, and Travelers Indemnity Company of CT, insurance carrier.

The record consists of claimant's exhibits 1-14, exhibits A-B, and the testimony of the claimant.

The case was heard on October 15, 2015, in Des Moines, Iowa, and considered fully submitted as of November 5, 2015, upon the simultaneous filing of briefs.

ISSUES

Whether claimant's injury to her right lower extremity arose out of and in the course of her employment on June 2, 2011;

Whether claimant is entitled to temporary benefits from December 3, 2014 through January 19, 2015;

Whether claimant is entitled to an award of permanent disability benefits; and if so, the extent of the industrial disability; and

Claimant seeks payment of medical expenses itemized in Exhibit 14.

STIPULATIONS

The parties stipulate claimant sustained an injury to her left foot and ankle in the course of her employment on June 2, 2011. They further stipulate that the claimant developed deep vein thrombosis (DVT) as a result of the work injury and the April 24, 2012 surgery.

Claimant is seeking temporary benefits from December 3, 2014 through January 19, 2015. Although defendants are contesting liability for the right lower extremity injury, they agree that the claimant was entitled to benefits for this period of time if liability is found.

The parties further agree that disability is industrial in nature and that the commencement date for permanent partial disability benefits would be July 11, 2012 for the left lower extremity DVT and January 20, 2015 for the right knee.

At the time of her injury, the claimant's gross earnings were $1,029.65 per week. She was single and entitled to 3 exemptions. Based on those foregoing numbers a weekly benefit rate is $632.85.

Prior to the hearing, the claimant was paid 50 weeks of compensation at the rate of $632.95. She also received $1,585.72 of short-term disability income. The parties agree that they will discuss and review the insurance policy to see whether the defendants would be entitled to a credit.

FINDINGS OF FACT

Claimant, Jessica Gregg, was a 38-year-old person at the time of the hearing. She had a high school education and an associate's degree from Southwestern Community College in general education. She has been employed by the defendant employer since 1996. Her previous employment includes working as a caregiver and secretarial assistant.

On or about June 2, 2011, she rolled her left ankle. Initially she was unconcerned about the injury and believed that it would resolve itself. However, she continued to have pain. Her employer directed her to Tom Young, D.O.

On or about August 3, 2011, claimant presented to Internal Medicine Consultants where she was seen by Dr. Young for the June 2, 2011 injury. (Exhibit 1)

Dr. Young advised her to undertake ankle exercises, but did not impose any work restrictions. When claimant did not improve, she was referred to Jon C. Gehrke, M.D. (Ex. 2) The x-rays were unremarkable. He recommended Voltaren gel along with physical therapy and inserts for her shoes. (Ex. 2, p. 1) A subsequent MRI on December 29, 2011, revealed a partial-thickness tear of the tibialis posterior tendon at the level of the talus, non-insertional tendinosis of the Achilles tendon, and minimal degenerative changes. (Ex. 2, p. 4)

Because claimant had undergone a course of conservative therapy which included creams, inserts, and physical therapy, Dr. Gehrke recommended she undergo a tendon debridement, and possible flexor digitorum transfer. (Ex. 2 p. 5)

She underwent surgery on April 24, 2012. After surgery, she developed a blood clot and in follow up on May 2, 2012, claimant was diagnosed with DVT in the popliteal region. (Ex. 2, p. 7) She was advised to elevate her leg and stay off of work until cleared by Dr. Gehrke. (Ex. 1, p. 2) Because of complications, she was instructed to go to the emergency room for evaluation. (Ex. 2, p. 7)

She developed internal bleeding and was admitted for hospitalization at Mercy Hospital in Des Moines on May 8, 2012, and discharged on May 14, 2012, for treatment of her phlebitis. (Ex. 3)

On May 18, 2012, Dr. Gehrke agreed, via a checklist letter, that claimant did not receive the shot she was supposed to have to thin her blood post-operatively and that as a result she developed DVT. (Ex. 2, p. 9) An independent medical evaluation with Jeffrey A. Passer, M.D., agreed. (Ex. 6)

On October 15, 2012, claimant returned to Dr. Gehrke. She reported some discomfort, but was back to work full time. She exhibited excellent range of motion of the ankle and hind foot with no significant tenderness. Claimant returned to full duty work, 40 hours or more, without restrictions. (Ex. 2, p. 11) Dr. Gehrke also determined that claimant was at maximum medical improvement on this date.

On November 17, 2012, Michael H. McGuire, M.D., performed an independent medical examination at the request of the claimant. (Ex. 5) During the examination claimant exhibited active full range of motion of the foot and ankle, but reduced strength of the tibial muscle and tendon. She ambulated with a subtle, but noticeable, left-sided limp. (Ex. 5, p. 2) Because of her loss of strength, he assigned a ten percent impairment of the lower extremity, which converts to a four percent permanent partial impairment of the whole person. He did not believe she needed work restrictions. (Ex. 5, p. 3)

On February 26, 2013, Dr. Gehrke wrote an opinion letter adopting the same impairment findings of Dr. McGuire. (Ex. 2, p. 13)

Claimant developed right knee pain and discomfort. Her past history with the right knee is relevant.

On August 5, 2003, claimant was seen by Stephen G. Taylor M.D., for a subacute injury to her right knee suffered while bouncing on a trampoline. (Ex. A) She had surgery that same day and underwent a second surgery on August 13, 2003. (Ex. A, p. 2) On October 28, 2003, client returned for a follow-up visit. She was walking without a limp and had full extension and flexion. She had some soft tissue swelling but no effusion. She was returned to work without restriction on that day. (Ex. A, p. 4)

Claimant testified that she spoke up about her right knee pain a month or two after surgery during one of her visits with Dr. Gehrke, but that it was "brushed off." The first medical record noting her right knee complaints is with Dr. Taylor in June of 2013.

She testified that from the time of the left ankle strain, she started favoring her right side "all the time" and that when she stood for long periods of time, she would favor her right leg. When she stopped using her crutches and began to put weight on her left side, she noticed the majority of her pain was localized in her right knee.

A June 25, 2013 MRI revealed degenerative changes, and oblique undersurface tear of the posterior horn of the medial meniscus and oblique undersurface tear of the lateral meniscus. (Ex. A, p. 5) On June 25, 2013, Dr. Taylor informed the claimant that if she continued to have further problems that she could undergo a lateral meniscectomy. (Ex. A, p. 6) The claimant did not choose to go forward with the surgery at this time.

Her care was transferred to John Nettour, M.D. on September 30, 2014, where she reported mechanical problems with her right knee and severe pain. (Ex. 9, p. 1) Surgery was again recommended and ultimately claimant underwent surgery with Timothy Vinyard, M.D. on December 3, 2014. (Ex. 10) Following surgery, claimant returned for treatment with Dr. Vinyard on January 12, 2015, and reported only minimal pain. She was released and returned to work without restrictions on January 19, 2015. (Ex. 9, p. 5)

On February 12, 2015, she complained of shear and mild pain over the anteromedial aspect of the knee. Her gait was normal, but the right knee had mild swelling along with mild crepitation and painful range of motion, both active and passive. (Ex. 11, p. 13)

On February 7, 2014 Dr. Taylor opined that the work-related injury of June 2011 had no significant impact on her underlying condition and that the posttraumatic arthritis and meniscus tears were more likely related to her initial injury, which was known to have significant long-term consequences. (Ex. A, p. 8)

Dr. McGuire opined that as a result of the left foot and ankle injury, claimant protected her left lower extremity by overcompensating with the right and aggravating a pre-existing condition.

> As a result of the injury, she was required to ambulate with the use of two crutches and full weight bearing on the right lower extremity to protect the left. This has resulted in a significant aggravation of her pre-existing disease. She now has medial and lateral meniscus tears and has been advised to undergo arthroscopic meniscectomies. I consulted the AMA "Guides to Evaluation of Permanent Impairment", Fifth Edition. Table 17-33 provides Estimates for Certain Lower Extremity Impairments. A partial medial and lateral meniscectomy results in a 10% Impairment of the Lower Extremity, which converts to a 4% Impairment of the Whole Person. It would be reasonable to "split the difference". Therefore, I would assign half of this rating to her initial injury (2003) and half to the aggravation produced by the June 2011 injury.

(Ex. 5, p. 6)

Robert D. Rondinelli, M.D., opined similarly as Dr. McGuire:

> 4. She has history of preexisting [*sic*] underlying the right knee injury with ACL tear and possible meniscal trauma surgically repaired in 2003. She recovered sufficiently from this in so far [*sic*] as she was working with no restrictions or apparent problems or complications after healing had occurred.
>
> 5. Probable aggravation of right knee condition associated with altered gait during healing period for left ankle sprain. She has mild residual stiffness in the right knee relative to her baseline and some alteration in her mobility associated with this.

(Ex. 8, p. 3)

Sunil Bansal, M.D. also concluded that the altered gait gave rise to the right knee pain. (Ex. 11, p. 14)

> RIGHT KNEE/LEFT LOWER EXTREMITY
>
> I agree with Dr. Rondinelli that an impairment for gait derangement is most appropriate, given the antalgic gait from the left lower extremity as well as the pronounced arthritis seen on the right knee x-rays. According to the **AMA Guides of Evaluation for Permanent Impairment** [*sic*]**, Fifth Edition**, Per Table 17-5, she is assigned **a 7% impairment of the body as a whole** for having a shortened stance phase and moderate arthritic changes of the right knee. There is no other rating methodology that fully

captures the multi-faceted problems associated with this combination of bilateral lower extremity conditions. (Emphasis in original.)

(Ex. 11, p. 20) He advised she adopt the following restrictions:

LEFT ANKLE/LOWER EXTREMITY/RIGHT KNEE:

I would place a restriction of no lifting over 20 pounds occasionally, and no lifting over 10 pounds frequently. Doing more causes her pain, and would place additional stress on her left ankle and right knee.

No frequent bending, squatting, climbing, or twisting to avoid further damage to the left ankle and right knee, and to keep pain levels in check. These activities cause her undue discomfort.

Avoid multiple steps, stairs, uneven terrain, or ladders, as these activities cause discomfort.

(Ex. 11, p. 20)

At hearing, claimant reported pain in her left ankle. She needs to sit down during the day and can only stand for about one hour. Her ankle is swollen at the end of the day. As a result of her DVT, she needs to move regularly to avoid blood clots.

Currently claimant works as a crew leader, which does not require her to do heavy lifting nor does it require her to stand in one position. She is able to move freely, sit down on occasion, and the climbing is limited. She believes she is limited in the lifting she can perform and therefore limited in the jobs available to her. For instance, the packing position and kitchen assistant requires her to lift 50 pounds, which are outside the restrictions set forth by Dr. Bansal. The dozer operator also requires her to lift 25 to 40 pounds.

She has difficulty doing simple things such as riding four wheelers, rock hunting, and traversing uneven ground. She did admit to participating in a 5K race since her injury. Her hobby of photography continues.

She has sustained no decrease in her earnings since her injury and has not reported any difficulty in performing her job duties due to the injury.

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 Rule of Appellate Procedure 6.14(6).

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.

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 right knee injury is causally related to claimant's work injury of June 2, 2011. Claimant credibly testified that she noticed right-sided pain in her lower extremity after her left-sided pain had diminished. Claimant's experts, including Dr. Rondinelli and Dr. Bansal, concluded that her right-sided knee problems were associated with overcompensation for the left lower extremity injury. Claimant first received treatment for her right knee in June of 2013 which was a year after she had been taken off of crutches and 11 months after she had been released to return to work full-duty.

Dr. Taylor operated on claimant for a serious knee injury in 2003. He opined after reviewing her medical records in 2014 that he did not believe that the post-traumatic arthritis and meniscus tears on her right side were related to the work injury but rather her initial injury that "is known to have significant long term consequences." (Ex. A, pp. 7-8)

Claimant argues that Dr. Taylor provides no explanation for why claimant was asymptomatic for nearly a decade and only had symptoms following a traumatic injury and significant healing period to her left side. However, claimant was apparently asymptomatic for nearly a year after she had returned to full duty work. While she made one complaint, per her testimony to Dr. Gehrke, it was not serious enough to necessitate medical treatment until June 2013.

Claimant also argues that Dr. Taylor's conclusion has no common sense, but Dr. McGuire recognized that the claimant's prior injury affected her right-sided knee pain. Dr. McGuire felt that some of her right-sided knee problems were the result of her prior injury and felt that "splitting the difference" would result in a fair outcome, assessing 50 percent of the right-sided injury to overcompensation and 50 percent to the original injury.

The other hired examiners in the case find that claimant's right knee injury is the result of gait derangement and overuse. There was no notation of claimant having altered gait on her right side following her surgery until 2013. During her independent medical evaluation (IME) with Dr. McGuire, he noted left-sided limp, but not a right-sided one.

Despite the number of doctors opining the claimant's right knee injury is connected to the work injury of 2011, Dr. Taylor's opinion is afforded the most weight.

Dr. Taylor has treated claimant for many years. Out of all the physicians, he has the most intimate knowledge and complete picture of her extremity injuries. There is no obvious element of bias on Dr. Taylor's part. He was a physician claimant chose to see back in 2003 for an injury unrelated to work.

The claimant's right knee injury is found to be not related to her work injury of June 2, 2011.

Therefore, the issues of temporary disability and medical benefits are moot. The remaining issue relates to the extent of claimant's disability.

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.

As a result of her left-sided lower extremity injury and her DVT, claimant was left with a limp on the left side along with reduced strength of the ankle. She was given a four percent impairment of the whole person as a result of the lower extremity injury. Dr. Gehrke adopted this. Claimant also is at risk for blood clots and must be engaged in regular activity to prevent clotting. However, given her ankle injury, she must have a certain amount of rest as well.

Dr. McGuire and Dr. Gehrke did not give claimant any work restrictions arising out of the left ankle injury.

Claimant is a hard-worker, motivated to work. While she has an associate's degree, she has not used it. Her most recent and relevant work history is working for the defendant employer. Her current position allows her to take regular breaks, does not require her to climb on a regular basis, and allows her be seated during the day.

She would have difficulty performing jobs that required a significant amount of standing and that did not allow her to take regular breaks throughout the day.

Based on the foregoing, it is determined claimant's loss of earning capacity is 20 percent.

ORDER

THEREFORE, it is ordered:

That defendants are to pay unto claimant one hundred (100) weeks of permanent partial disability benefits at the rate of six hundred thirty-two and 95/100 dollars ($632.95) per week from July 11, 2012.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendants are to be given credit for benefits previously paid. If the short-term disability policy does not explicitly allow for repayment, the defendants will not be entitled to a credit of $1,585.72.

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

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 8th day of January, 2016.

JENNIFER S. GERRISH-LAMPE
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.