

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

OLIVIA GUEVARA,

Claimant,

vs.

TYSON FOODS, INC.,

Employer,  
Self-Insured,  
Defendant.

File No. 5045221

A P P E A L

D E C I S I O N

Head Note No.: 1803

**FILED**

AUG 5 2016

WORKERS' COMPENSATION

Defendant Tyson Foods, Inc., self-insured employer, appeals from an arbitration decision filed on January 27, 2015. Claimant Olivia Guevara responds to the appeal. The case was heard on September 26, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 12, 2014.

The deputy commissioner found claimant carried her burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant on November 24, 2012, caused injuries to both claimant's left wrist and her left shoulder. The deputy commissioner found that while claimant had reached maximum medical improvement (MMI) for her left wrist injury, claimant had not reached MMI for her left shoulder injury. The deputy commissioner found it was premature, as of the time of the arbitration hearing, to determine the nature and extent of the permanent disability to claimant's left shoulder, if any, resulting from the work injury. The deputy commissioner awarded alternate medical care for claimant's left shoulder injury. The deputy commissioner also awarded claimant's costs of the arbitration proceeding.

Defendant asserts on appeal that the deputy commissioner erred in failing to find claimant's left shoulder condition caused by the work injury was temporary only and resolved completely and without permanent disability within a short time after the injury occurred. Defendant also asserts the deputy commissioner erred in awarding alternate medical care for claimant's left shoulder.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I reverse the determination of the deputy commissioner and I find claimant's left shoulder condition caused by the work injury was temporary only and resolved completely and without permanent disability within a short time after the work injury occurred. I also reverse the deputy commissioner's award of alternate medical care. I provide the following analysis regarding those issues:

#### FINDINGS OF FACT

Claimant was 75 years old at the time of the arbitration hearing. (Transcript page 6) Her education consists of completing the sixth grade in Mexico. (Id., Exhibit 5, p. 9) She cannot read or write in English, although she knows some words. She can read and write in Spanish. (Tr. pp. 6-7) She required an interpreter at the hearing. (Tr. pp. 5-6)

Claimant began working for Tyson, then known as IBP, on July 16, 1998. (Tr. p. 7) She first had to undergo a physical exam, which she passed. (Id.) On November 24, 2012, the date of injury in question, claimant stepped onto some ice and fell backwards. The ice was in the "cold room" of defendant's plant where claimant worked. (Tr. pp. 7-8) Her job was to bag two pieces of pork and put them together. She worked about 52 hours per week, and she loved her job. She stated she had an excellent reputation as a worker. (Tr. p. 12)

When claimant slipped and fell to the ground, her left arm was behind her and her body fell on top of her arm. Her left wrist broke and her left shoulder was injured. She was helped to her feet by a supervisor and a co-worker. She was taken to the nursing area, and from there she was quickly taken to be evaluated by Catherine Schell, M.D., of Midwest Occupational Health Associates (MOHA), who ordered x-rays of claimant's left wrist, left elbow, left shoulder and cervical and thoracic spine. Those x-rays were obtained from Corridor Radiology. (Tr. pp. 8-9; Ex. A, pp. 1-2; Ex. B, pp. 2-7) The imaging was negative for fractures, with the exception of a fracture of claimant's left wrist. (Ex. B, pp. 2-7; Ex. 2, p. 3)

On November 28, 2012, claimant was evaluated by Brian Wills, M.D. upper extremity specialist at the Steindler Orthopedic Clinic in Iowa City, Iowa. (Ex. C, pp. 1-4) In the patient information form which claimant filled out for that evaluation, claimant indicated she was there for treatment of her fractured wrist. On the pain diagram, claimant indicated her pain was confined to the left wrist. She did not indicate in the pain diagram that any pain was present in her left shoulder. (Ex. C, p. 1)

In his report for that evaluation, Dr. Wills stated the following, in pertinent part:

... She slipped and fell, landing backwards on an outstretched left arm. She had immediate pain in the arm and neck. A series of radiographs

were obtained, including bilateral AC joints, cervical spine, 7 views; 3 views of the wrist, 2 views of the left shoulder, 3 views of the thoracic spine; 3 views of the left elbow. The imaging was felt to be negative for acute injury with the exception of a slightly impacted intra-articular distal radius fracture with minimal displacement. She was placed into a splint and follows up today. She states she has no pain at all now aside from the left wrist. She does not have any pain with the left wrist unless she attempts to move it . . .

. . .

X-RAYS: All of her imaging from the Corridor Radiology portal was reviewed. The imaging of the AC joints does not demonstrate any evidence of AC joint separation. She does have some disk space narrowing in the mid portion of the cervical spine, but I see no evidence of acute fracture or dislocation. The imaging of the shoulder and elbow demonstrate no evidence of fracture or dislocation. The imaging of the thoracic spine again demonstrates no evidence of obvious acute injury. The 3 views of the wrist demonstrate what appears to be a slightly impacted dorsal distal radius fracture with a nondisplaced intraarticular fracture line between the scaphoid and lunate facets.

AP, lateral and oblique views of the left wrist were ordered, obtained and evaluated today at the Steindler Orthopedic Clinic and compared to her injury films. These again demonstrate some dorsal comminution that does extend to the very dorsal aspect of the intraarticular surface of the radius and a very minimally displaced fracture between the scaphoid and lunate facets is again noted . . .

IMP: Minimally displaced intra-articular and impacted left distal radius fracture with dorsal comminution that is in acceptable alignment for closed treatment.

PLAN: I showed Mrs. Guevara her radiographs and went over the anatomy, pathology and treatment options with her, her interpreter, and case manager. We will place her into a short-arm cast today and follow her injury closely . . . All of her and the case manager's questions were answered today. They know to contact me in the interim with questions; otherwise; I will see them in one week.

(Ex. C, pp. 3-4)

Claimant followed up with Dr. Wills on the following dates:

December 5, 2012

December 12, 2012

December 31, 2012

January 28, 2013

March 11, 2013.

Treatment on those dates was confined to claimant's left wrist and claimant did very well with healing of her left wrist fracture. An interpreter attended all of those appointments with claimant. There is no mention in Dr. Wills' clinical notes for those evaluations of any left shoulder discomfort reported by claimant. On March 11, 2013, Claimant was instructed to follow up with Dr. Wills in six months to address MMI. (Ex. C, pp. 6-12)

On March 19, 2013, claimant returned to MOHA, where she was evaluated by Jeffrey Lee, M.D. In his clinical note for that evaluation, Dr. Lee noted the following, in pertinent part:

SUBJECTIVE: Ms. Guevara returns to the clinic today for a follow up on her fall that she suffered in November of 2012. At that time, she suffered a radial fracture, cervical spine injury, and left shoulder injury. Patient states that her neck and left shoulder are totally resolved and no longer bother her. Patient continues to be followed for her wrist. Patient was referred to MOHA today to be cleared for her neck and shoulder injury.

...

CERVICAL EXAM: Negative tenderness to palpation. Full range of motion. No deformity, ecchymosis or edema.

LEFT SHOULDER EXAM: Full range of motion. Negative tenderness to palpation. Neurovascularly intact. Strength was 5/5.

ASSESSMENT:

1. Cervical strain. The condition is resolved. Patient is at MMI with 0% impairment.
2. Left shoulder sprain. This condition is resolved. This is at MMI with 0% impairment.
3. Status post radial fracture. This condition continues to be followed by orthopedics.

PLAN:

1. Return to duty.
2. May use Aleve as needed.
3. Patient encouraged to return if condition should reoccur. [sic]

(Ex. A, p. 3)

It appears the next treatment claimant received for the November 24, 2012, work injury was on September 11, 2013, when she was re-evaluated by Dr. Wills. In his clinical note for that evaluation, Dr. Wills noted the following, in pertinent part:

History of Present Illness

The patient is a 74 year old female seen today for the left hand. She is seen today with her case manager and a Spanish interpreter. She does not have any complaints of pain. She is returned to full duty at work and is able to do all of her activities at work at home. There is no numbness or tingling.

...

Treatment Plan:

I went over my findings with her and her case manager today. She has done extremely well. I think at this point in time, she is at MMI. Report to employer as completed and she will continue at full duty without restriction. Given she is at MMI we have agreed on as needed follow-up. All of the patient's and their family's/friend's questions were answered and concerns addressed. They were encouraged to contact me with any future questions or concerns . . . The patient is instructed to return if pain or symptoms arise.

(Ex. C, pp.12-13)

On September 15, 2013, Dr. Wills issued a report in which he stated pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, claimant sustained a functional permanent impairment of four percent of the left upper extremity, which corresponds to two percent impairment of the whole person, as a result of the work injury of November 24, 2012. (Ex. C, p. 15)

On April 17, 2014, 13 months after claimant was evaluated by Dr. Lee and clamant told Dr. Lee her left shoulder pain was completely resolved, claimant was re-

evaluated for her left shoulder at MOHA by Gregory Clem M.D. In his clinical note for that evaluation, Dr. Clem noted the following, in pertinent part:

Evaluation Summary:

Ms. Guevara is here for a first injury. She is here with the Spanish interpreter. Communication was excellent.

The patient states that she fell 2 years ago and broke her left wrist. Her arm was caught behind her body. She states that her left shoulder has not been correct since that time. She has not been able to sleep on the left shoulder. She is right-hand dominant. She is on light duty for the last week which is picking ham trim. Her normal job is bagging tenders/trimming boneless loins . . .

. . .

. . . Communication was excellent. She would not let me examine the left shoulder. She states it is too painful. She would not abduct it. We brought the physical therapist in who knew her from prior injuries. She did let him pull the shoulder in about 40 degrees of abduction and it appears she does have a positive drop arm test.

She does have some rotator cuff weakness on the left side compared to the right. I could not assess for adhesive features . . .

ASSESSMENT:

1. Left shoulder pain for the last 2 years after a fall by her history. Rule out adhesive capsulitis +/- rotator cuff tear . . .
2. History of chest pain in a diabetic and hypertensive individual.

PLAN: She is going to see Nicholas E. Walker, M.D., cardiologist at the Iowa City Heart Center on Tuesday, 04/22/14. I will hold her out of the work place until she is medically cleared by Dr. Walker. If he does clear her, she can come back to work on her light duty job. I would like to start therapy for range of motion activities of the left shoulder. If she does not respond to the above, I would recommend a second opinion from an orthopedic arm specialist.

(Ex. A, p. 8)

When claimant returned to MOHA five days later on April 22, 2014, she was evaluated by Dr. Lee, who noted, in pertinent part:

. . . Patient did see a cardiologist today. I do not have cardiologist's note, just a brief handwritten note that says noncardiac shoulder pain. Patient has a stress echo that was normal today. Patient is not doing physical therapy and states she does not want to do physical therapy.

Review of previous ex-rays from her fall in 2012 was reviewed which showed moderate degenerative joint disease in her left AC joint.

Translator: A translator was present and communication was excellent.

. . .

#### ASSESSMENT:

1. Left AC joint arthritis. This was discussed at length with the patient. I told her this will probably not get better and that the only medication safe for her to use because of her blood pressure is Tylenol.

#### PLAN:

1. Tylenol over the counter. Use as directed.
2. No physical therapy or work restrictions at this time.
3. Patient was instructed to return to clinic if her condition should worsen.
4. Patient directed to go to her family physician for work parameters on her blood pressure.

(Ex. A, pp. 10-11)

At the request of her attorney, claimant had an independent medical evaluation (IME) on August 14, 2014, with Richard L. Kreiter, M.D., orthopedic surgeon in Davenport, Iowa. (Ex. 2) Dr. Kreiter diagnosed a left wrist fracture and significant left shoulder pathology resulting from the work injury of November 24, 2012. (Ex. 2, p. 3) Dr. Kreiter stated in his IME report that he agreed with Dr. Wills that claimant was at MMI for her left wrist and Dr. Kreiter agreed with Dr. Wills' September 9, 2013, impairment rating for claimant's left wrist. (Id.) Dr. Kreiter stated he believed claimant was not at MMI for her left shoulder condition resulting from the work injury and Dr. Kreiter recommended further treatment for claimant's left shoulder. (Id.) Dr. Kreiter

recommended that claimant be referred to the University of Iowa Shoulder Clinic for evaluation and treatment. (Id.)

Dr. Kreiter stated in his IME report that the Steindler Clinic never addressed claimant's left shoulder condition during the several months when claimant received treatment there. (Id.) That comment by Dr. Kreiter clearly is not correct because Dr. Wills of the Steindler Clinic stated in his clinical note for November 28, 2012, that he reviewed all of claimant's x-rays, including the left shoulder x-rays, which were taken at Corridor Radiology on the day claimant was injured. Dr. Wills specifically commented in some detail in his clinical note of November 28, 2012, regarding those shoulder x-rays and he also noted claimant stated she had "no pain at all now aside from the left wrist." (Ex. C, p. 3) One can only assume claimant would have told Dr. Wills on November 28, 2012, that she had pain in her left shoulder if that actually were the case. There is no reason to believe that if claimant did report left shoulder pain on November 28, 2012, that Dr. Wills would have ignored such complaints or that he would have failed to document those complaints in his clinical note.

Perhaps most telling is that on the patient information form which claimant filled out on November 28, 2012, during Dr. Wills' evaluation (Ex. C, p. 1), claimant indicated on the pain diagram that the only location where she was experiencing pain on that day was her left wrist. Claimant did not indicate on the pain diagram that she had any pain in her left shoulder. (Id.) Claimant offered no explanation during her testimony at the arbitration hearing as to why on November 28, 2012, she did not indicate on the pain diagram that she had pain in her left shoulder. Dr. Kreiter also did not address this particular point in his IME report.

Also, Dr. Kreiter does not indicate in either his clinical note for his IME, or in his IME report itself, (Ex. 2, pp. 3-6) whether he reviewed Dr. Lee's clinical note of March 19, 2013, (Ex. A, p. 3) in which Dr. Lee stated claimant's left shoulder condition and claimant's cervical condition resulting from the work injury were completely resolved with zero percent impairment attributed to both of those conditions. Dr. Kreiter does not dispute Dr. Lee's conclusion of March 19, 2013, that claimant's left shoulder was pain-free and at MMI with zero percent impairment from the November 24, 2012, work injury. Dr. Kreiter does not explain how the left shoulder pain claimant reported to Dr. Clem 13 months later, on April 17, 2014, can be related back to the November 24, 2012, injury, despite Dr. Lee's conclusion on March 19, 2013, that claimant's left shoulder was at MMI with no permanent impairment.

Claimant acknowledged in her hearing testimony that when Dr. Lee re-evaluated her on April 22, 2014, Dr. Lee told her that her ongoing shoulder pain was caused by arthritis. (Tr. p. 24) Dr. Lee's clinical note for that evaluation does not indicate he believed that the shoulder pain claimant reported on that date related back to the work injury of November 24, 2012. (Ex. A, pp. 10-11)



At no point during her hearing testimony did claimant explain that if her left shoulder pain from the work injury was not completely resolved within a few days or a few weeks after the injury occurred, why she waited until April 17, 2014, 13 months after Dr. Lee's evaluation of her left shoulder and her cervical spine, to request further treatment for her shoulder.

I find Dr. Lee's report of March 19, 2013, to be consistent with all of the other medical evidence in this case and I find it to be more convincing than Dr. Kreiter's opinions regarding claimant's left shoulder. I find the only conclusion that can be drawn from the evidence is that claimant had no significant problems with her left shoulder during the almost 17-month period from November 28, 2012, through mid-April, 2014. I find that the left shoulder symptoms claimant reported on April 17, 2014, when she returned to MOHA for further evaluation of her shoulder were the result of some cause other than the work injury of November 24, 2012.

### CONCLUSIONS OF LAW

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 Electric 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).

Based on the medical evidence in this case, I find claimant's left shoulder condition resulting from the work injury of November 24, 2012, was essentially resolved four days later on November 28, 2012, when claimant was evaluated by Dr. Wills. (Ex. C, pp. 1-4) I find claimant clearly was at MMI for her work-related left shoulder condition on or before March 19, 2013, when Dr. Lee evaluated claimant to address claimant's left shoulder and her cervical spine. (Ex. A, p. 3) Based on Dr. Lee's report of March 19, 2013, I find claimant's work-related left shoulder injury of November 24, 2012, was a temporary injury only and claimant sustained no permanent disability as a result of that injury. (Id.)

I find claimant's permanent disability resulting from the November 24, 2012, accident is confined to claimant's left wrist. Both Dr. Wills and Dr. Kreiter agree that the permanent disability to claimant's left wrist resulting from the work injury is four percent functional impairment of the left upper extremity, which entitles claimant to ten weeks of permanent partial disability (PPD) benefits. I find this is the total extent of claimant's permanent disability resulting from the November 24, 2012, work injury. Dr. Wills' report of December 31, 2012, indicates claimant was released to return to work with temporary restrictions as of December 31, 2012. Therefore, claimant's PPD benefits for the November 24, 2012, work injury are payable from January 1, 2013. Entitlement to temporary benefits was not raised as an issue in this matter.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Because I find claimant's ongoing left shoulder condition is not causally related to the work injury of November 24, 2012, I also find claimant is not entitled to alternate medical care for the left shoulder condition. I therefore reverse the deputy commissioner's award of alternate medical care in this matter for claimant's left shoulder condition. Claimant is entitled to any medical care she may need in the future for her left wrist necessitated by the work injury.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of January 27, 2015, is reversed.

Defendants shall pay claimant ten (10) weeks of permanent partial disability benefits at the rate of four hundred thirty-six and 34/100 dollars (\$436.34) per week from January 1, 2013, for the work-related injury of November 24, 2012.

Defendants shall pay accrued weekly benefits in a lump sum.

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

Defendants are to be given credit for benefits previously paid.

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

Pursuant to rule 876 IAC 4.33, defendants shall pay the costs of the arbitration proceeding and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 5<sup>th</sup> day of August, 2016.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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