

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BOBBIE JO CARTER,

Claimant,

vs.

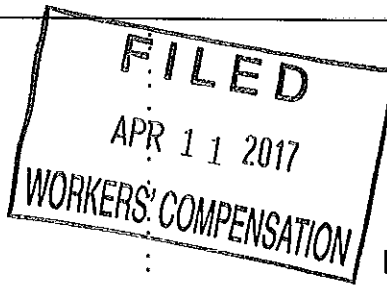
BELLE CITY AMUSEMENTS,

Employer,

and

MEADOWBROOK INSURANCE
GROUP,

Insurance Carrier,
Defendants.



File No. 5054486

ARBITRATION

DECISION

Head Note No.: 1402.10

STATEMENT OF THE CASE

Claimant, Bobbie Jo Carter, filed a petition in arbitration seeking workers' compensation benefits from Belle City Amusements (Belle City), employer and Meadowbrook Insurance Group, insurer, both as defendants. This case was heard in Des Moines, Iowa, on January 17, 2017 with a final submission date of February 7, 2017.

The record in this case consists of claimant's exhibits 1 through 15, defendants' exhibits A through L, and the testimony of claimant, Tony Seay, Zachary Panacek, and John Mannow.

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.

ISSUES

1. Whether an employee-employer relationship existed at the time of injury.

2. Whether claimant sustained an injury on August 12, 2015 that arose out of and in the course of employment.
3. Whether the injury is the cause of temporary disability.
4. Whether there is a causal connection between the injury and the claimed medical expenses.

FINDINGS OF FACT

Claimant was 35 years old at the time of the hearing. Claimant has a GED. Claimant was a homemaker for 12 years. Claimant testified she worked at fast food restaurants and in factories. Claimant testified she has worked at carnivals off and on for the past 7 years.

Prior to the alleged work injury of August 12, 2015, claimant was in a relationship with Mr. Seay. Claimant said she was in the relationship for 7 to 8 years and lived with Mr. Seay for approximately the past year.

Claimant's prior health history is relevant. In 2005, claimant was treated for a closed head injury from blunt trauma. Claimant had been assaulted sitting in a car by her ex-boyfriend and two others. Claimant reported unconsciousness for ten minutes. A CT scan of the brain was normal. (Exhibit F, pages 1-7)

In 2006, medical records report that claimant had a history of seizures and depression. (Ex. F, pp. 8-12)

In 2008, medical records indicate claimant had been assessed for a bipolar disorder. (Ex. E, pp. 1-4; Ex. F, pp. 13-15)

In 2013, claimant was evaluated by a psychologist for a disability determination. Claimant indicated a history of cocaine use. Claimant was assessed as having a schizoaffective disorder. Claimant was found to lack emotional control to work in a competitive work setting. (Ex. I, pp. 1-3)

Claimant testified that prior to the date of the date of injury, she was working for Big A, a carnival company, at the Ohio State Fair in Columbus, Ohio. Mr. Seay was also employed with Big A. Claimant said she was fired from Big A.

Tony Seay testified he is claimant's significant other. At the time of hearing, Mr. Seay was claimant's boyfriend and caregiver. Mr. Seay testified that when claimant was fired from Big A, he quit Big A.

Claimant testified that after she and Mr. Seay left Big A, they spoke to Zach Panacek. Mr. Seay and claimant testified they met with Mr. Panacek, who runs Belle City, in Ohio. Mr. Seay and claimant testified they were both offered jobs with Belle City. Both Mr. Seay and claimant testified they would not accept employment with Belle

City, unless they were both hired together as they were a "package deal". (Transcript pages 8-10) Claimant testified that when she was hired by Mr. Panacek wages and hours were not discussed.

Mr. Seay and claimant both testified Belle City put them up in a hotel in Ohio for a week. Mr. Seay testified that Belle City paid for the hotel. Both testified they were given transportation from Ohio to the Iowa State Fair in a Belle City company truck. (Tr. pp. 11-12)

Mr. Seay and claimant testified that when they arrived in Des Moines, they were told to watch company equipment and told to hook up the bunk house, for Belle City employees, when he arrived. (Tr. pp. 12-13)

Zachary Panacek testified he is the general manager for Belle City. He said his duties include ensuring carnival attractions are set up, maintained, and taken down. He said his duties also require him to ensure that carnival attractions are transported to the next location. Mr. Panacek says he also does a little bookkeeping and is involved with placement of ticket booths at fairs. Mr. Panacek testified he hires all employees who run rides. He said he does not hire ticket booth operators. He said the hiring of ticket booth operators is done by John Mannow and Tabitha Sears. (Tr. pp. 73-79)

Mr. Panacek said he was at the 2015 Ohio State Fair. He said he hired Mr. Seay, while at the Ohio State Fair. He said he did not hire claimant. (Tr. p. 74)

Mr. Panacek testified that Mr. Seay had worked for Belle City on prior occasions. He said he knew Mr. Seay was able to operate fair rides. Mr. Panacek said that while he did not offer claimant a job with Belle City in Ohio, he did tell Mr. Seay that he was sure that claimant could get hired at the Iowa State Fair.

Mr. Panacek said he put Mr. Seay up in a hotel for a week. He said he provided transportation to Mr. Seay and claimant to Iowa. He said he did this because he knew Mr. Seay had carnival experience, and since fair season was going on, an employee like Mr. Seay was valuable. He said it was worthwhile providing a hotel for Mr. Seay, and providing transportation for Mr. Seay and claimant, as Mr. Seay's services as a carnival worker were in demand during peak fair season. Mr. Panacek testified it is not unusual for Belle City to provide transportation for the significant others of Belle City employees, who are not employees. (Tr. p. 76)

Mr. Seay and claimant arrived at the Iowa State Fair on August 11, 2015 and were assigned to a Belle City bunkhouse. Claimant stayed with Mr. Seay but did not have a room assigned to her. (Tr. pp. 77-78) While at the Iowa State Fair, and prior to the fair opening for business, Mr. Seay worked on setting up the "rock and roll" ride with Mr. Panacek. (Tr. p. 80)

Mr. Panacek testified that when in Des Moines, claimant and Mr. Seay asked when claimant was going to begin work for Belle City. Mr. Panacek testified he did not hire claimant, and the hiring of ticket sellers was done by Mr. Mannow or Ms. Sears. Mr. Panacek testified that claimant was around the rock and roll ride when he and Mr. Seay were assembling the ride. (Tr. pp. 74, 81-82, 91-92)

John Mannow testified that he is the personnel and cash manager for Belle City. His duties include personnel issues, paperwork for hiring fair employees, taking cash from ticket holders, and dealing with tax issues.

Mr. Mannow testified that both he and Ms. Sears hire ticket booth employees, and both are involved in the hiring decision. Mr. Mannow testified that neither he nor Ms. Sears offered claimant a job prior to her injury of August 12, 2015. (Tr. p. 102)

Mr. Mannow testified that it was his understanding that claimant was with Mr. Seay. He testified that it was not unusual for a wife or a girlfriend to stay with the Belle City employee in the bunkhouse. (Tr. pp. 102-103)

Claimant testified she was injured on August 12, 2015 while cleaning a ticket booth. Claimant says she was told to clean out the ticket booth by a Belle City employee. (Tr. p. 41) Claimant said it was typical to set up the fair booths before the fair opened. Claimant said she was bent over when she heard someone call her name. She said she stood up and hit her head on a panel covering an air conditioning unit in the ticket booth. (Tr. p. 13, Ex. 13) Claimant testified that when she was injured she was an employee of Belle City. Claimant said she would not be cleaning the ticket booth if she was not a Belle City employee. (Tr. p. 42)

Mr. Mannow testified he did not tell claimant to clean the ticket booths. (Tr. p. 106)

Claimant said that when she hit her head on the ticket booth, she cut her head. She said she showed the cut to Mr. Seay and she had "blood everywhere". (Tr. p. 42)

Claimant said she was taken by a golf cart to the state fair office and then taken to Lutheran hospital. She said an office employee from Belle City took her to the hospital. (Tr. pp. 42-43)

On August 12, 2015, claimant was seen at Iowa Lutheran Hospital. Claimant injured her head while hitting it on an air conditioning unit in a ticket booth at the Iowa State Fair. Claimant had a laceration on the top of her head. A CT of claimant's head was normal. Claimant was assessed as having a concussion and her wound was closed with staples. Claimant was discharged from the emergency room at approximately 3:45 p.m. (Ex. 1, pp. 1-47)

Claimant returned to the emergency room the same day at 4:15 p.m. Claimant indicated she had been sitting on a bench waiting for family members when she got light-headed and passed out. Claimant indicated she urinated herself. Claimant reported that she was fatigued and had a headache. Claimant was assessed as having a vasovagal episode. Seizure was considered unlikely. Claimant was assessed with having syncope and discharged. (Ex. 1, pp. 49-82) Claimant testified she was told by hospital staff to take a few days off.

Exhibit 14 is a picture of a Belle City employee badge. Attached to the badge is what appears to be a wrist band with the date of August 13-23, 2015. (Tr. pp. 15, 38, 57)

Mr. Panacek testified that Belle City records indicate claimant's ID badge was not printed until August 13, 2015. (Tr. pp. 97-98)

Mr. Mannow testified that on the morning of August 13, 2015, he had assessed his need for ticket takers and found he was short one ticket taker. He said it was at this time he decided to hire claimant. (Tr. pp. 105-106) Mr. Mannow testified he did not tell claimant to clean the ticket booth prior to August 13, 2015. (Tr. p. 106) Mr. Mannow testified that he and Ms. Sears hired ticket takers. He said claimant did not ask for a job on August 12, 2015, and claimant was not an employee on August 12, 2015. (Tr. pp. 104, 110, 113)

Claimant testified that she was told, by Mr. Panacek, to return to work on August 13, 2015. Claimant's duties include selling tickets and arm bands. Claimant said she had a loss of consciousness. She said she went to the bathroom and passed out. Claimant said she sat on the bench for the rest of the day, next to the ride where Mr. Seay worked.

Mr. Mannow testified that claimant worked only one hour on August 13, 2015. He said she returned to his office after an hour and said that she was not able to work any longer. (Tr. p. 107)

Mr. Seay testified he took claimant back to the bunkhouse. Mr. Seay testified that he stayed with claimant that day and then returned to work on August 14, 2015. (Tr. p. 19)

Mr. Seay testified he returned to the bunkhouse at some point. He said that claimant was not breathing and her lips were blue. Mr. Seay said that Mr. Panacek came to the bunkhouse, and checked claimant's pulse. Mr. Seay testified an ambulance was called to take claimant to the hospital. (Tr. pp. 19-20)

Claimant returned to Lutheran on August 16, 2015 after 6:00 p.m., by ambulance. Claimant reported a loss of consciousness. Claimant indicated she returned to work "full force" which stressed her out. Claimant took Ultram, went to sleep and reportedly woke up with EMS staff at her bed. Claimant had an EKG which was

normal. Claimant was found to be grossly neurologically intact with no focal deficits and no recent trauma. Claimant was taken off Ultram. She was given a note to take her off work. (Ex. 1, pp. 83-128)

In deposition, claimant testified that she was found to be unresponsive and taken by an ambulance to the hospital on August 13, 2017. (Ex. 12, p. 12; Dep. pp. 45-48)

Claimant testified she believed she needed to return home to be with her mother in Florida, given her condition. (Tr. p. 48) She said Belle City bought bus tickets for her and Mr. Seay to return to Florida. She said that on the bus ride to Florida she had multiple seizures. (Tr. pp. 48-50)

Mr. Seay testified that he had conversation with Mr. Panacek and that Mr. Panacek wanted to send claimant home by a plane. Mr. Seay said Mr. Panacek ultimately agreed to send both Mr. Seay and claimant to Florida on a bus, with the understanding that Mr. Seay would return to Iowa to continue to work at the fair. Mr. Seay said he did not return to work at Belle City. Mr. Seay testified Exhibit 15 is a copy of a bus ticket, paid for by Belle City for both claimant and Mr. Seay. (Tr. pp. 21-22)

Mr. Seay and claimant both testified that during the bus ride to Florida, claimant had multiple seizures on the bus. (Tr. p. 23) Mr. Seay testified that claimant has had seizures since August 12, 2013. He said she has approximately three to four seizures per week.

Mr. Panacek testified he advanced money to Mr. Seay so he could take claimant to Florida, with the understanding that Mr. Seay would return to work for Belle City. He said Mr. Seay did not return to Belle City. (Tr. pp. 83-84)

On August 19, 2015, claimant was evaluated at Bayfront Health in Brooksville, Florida. Claimant indicated she hit her head against a hard object while in Iowa. Claimant had been having headaches since. The day after leaving the hospital, claimant indicated seizures. Claimant was assessed as having post-head trauma and recurrent seizures. Claimant was prescribed 500 mg of Keppra. (Ex. 2, pp. 1-2)

On August 24, 2015, claimant filed for Social Security Disability. (Ex. 11, p. 1) Claimant was eventually found to qualify for Social Security Disability in an April 12, 2016 decision. Claimant was found to have a disability due to depression, anxiety, bipolar disorder, and history of a concussion, seizure, and paranoia. (Ex. 11)

On September 2, 2015, claimant was evaluated at Bayfront Health. Claimant reported having a seizure 20 minutes before coming to Bayfront. (Ex. C, pp. 16-17)

On September 8, 2015, claimant was seen at the Hernando County Hospital (Hernando). This was a follow up appointment from Bayfront. Claimant reported headaches and seizures. Claimant's mood was depressed and her affect was flat. There was no finding of objective deficits. (Ex. 3, pp. 1-10)

Claimant returned to Hernando on October 5, 2015. Claimant denied suicidal ideation but acknowledged a history of suicide attempts. Claimant had been admitted to Spring Brook for 72 hours. Records suggest that this was an involuntary commitment. (e.g. "Baker Act")¹ Claimant's exam was found to be normal. (Ex. 3, pp. 11-14)

On October 12, 2015, claimant returned to Hernando for an initial mental health evaluation. Claimant indicated a head injury in August 2015 resulting in seizures. Claimant reported an extensive history of mental health and substance abuse issues. Claimant was advised to get out-patient counseling and medication management. (Ex. 3, pp. 15-20)

On November 12, 2015, claimant was seen at St. Joseph's Hospital for an accidental overdose of Keppra. (Ex. G, pp. 1-2)

On November 16, 2015, claimant was seen at the Southbay Hospital emergency department. Claimant reported seizures occurring one hour prior. Claimant had a normal neurological evaluation. A CT scan of the brain was unremarkable. (Ex. 4, pp. 1-43; Ex. B, pp. 1-9)

Claimant was seen at the emergency room at Brooksville Hospital (Brooksville) on May 9, 2016. Claimant indicated a mild seizure earlier that morning. Claimant was found to be not post-ictal (relating to seizures). Claimant's exam was normal. Claimant had no cognitive deficits. Claimant's Keppra prescription was refilled. (Ex. C, pp. 25-31)

Claimant returned to Brooksville on June 29, 2016. Claimant had been in a car accident with pain in the neck and back. Claimant indicated she had a head injury. She indicated she had grand mal seizures while at the hospital. The tending physician noted that when he arrived in the room, claimant was not in a post-seizure state. The CT scan performed was normal. (Ex. C, pp. 36-46)

On August 9, 2016, claimant was sent to the McKenzie Medical Center to establish care with Justin Reno, M.D. Claimant indicated she had grand mal seizures beginning one year prior after hitting her head on a box working for the fair. (Ex. D, p. 1)

On August 25, 2016, claimant was seen by Dr. Reno after fainting. Claimant's neurological evaluation was normal. Claimant was given gabapentin "... to help with anxiety and with seizures (if she's really having them)." (Ex. D, pp. 4-5) On September 20, 2016, claimant was evaluated at West Tennessee Neuroscience for conditions of seizures by Christopher Mitchell, M.D. Claimant reported seizures relating

¹ The Baker Act in Florida allows for involuntary commitments concerning mental health issues. <https://ufhealth.org/baker-act>.

to a head injury at a fair. Claimant's neurological exam was normal. Claimant was assessed as having epilepsy. An EMG was recommended. (Ex. 5, pp. 3-9)

Claimant returned on September 21, 2016 to Tennessee Neuroscience. Claimant had prolonged EEG showing no epileptic abnormalities. Dr. Mitchell noted this finding was unusual for someone who was allegedly having frequent convulsions. (Ex. 5, pp. 1-2)

In an August 4, 2016 report, Irving Wolfe, D.O., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant said she had seizures that involved her falling to the ground shaking and jerking. Claimant indicated she was afraid to do anything for fear it would result in a seizure. Claimant expressed difficulty with memory, concentration, and attention. (Ex. 6, pp. 1-9)

Dr. Wolfe opined claimant had a permanent impairment of a post-traumatic epilepsy. Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, he found that claimant had a 14 percent permanent impairment to the body as a whole based on Table 13-2. He opined that the work claimant performed with Belle City on August 12, 2015 was causally related to her head injury and that claimant's head injury was caused by her employment at Belle City. (Ex. 6, pp. 9-11)

Dr. Wolfe believed that claimant required further treatment and recommended she receive treatment at an epilepsy center to optimize seizure control. He believed the claimant was not at maximum medical improvement (MMI). He restricted claimant from driving, climbing heights, and not working with machinery or around flames or under conditions which she could injure herself or others until claimant's seizures have stopped for six months. (Ex. 6, pp. 11-13)

In an August 8, 2016 report, Daniel Tranel, Ph.D., gave his opinions of claimant's condition following an IME. Dr. Tranel noted claimant's diagnosis of seizure disorder was unclear. Initial workups in Iowa came to the conclusion that the seizures were unlikely and an EEG test in Florida was negative. (Ex. H, pp. 1-3)

Claimant indicated she struck her head on an air conditioner while cleaning a ticket booth. Claimant received treatment at Lutheran Hospital and was put on a 24 hour work restriction. Claimant returned to work the next day or was told she would be fired. According to Mr. Seay, claimant was at work on August 16, 2015, got tired, and was taken to a temporary house for a nap. After several hours, Mr. Seay said he went to check on claimant and found that she was not waking up and that her lips were blue. (Ex. H, pp.4-5)

Claimant indicated significant problems with memory and attention. Claimant had difficulty with activities of daily living. Claimant related headaches, dizziness, liver problems, and numerous infections due to the accident. Validity measures and testing suggested inconsistent effort and lack of cooperation. Claimant refused to respond to orientation questions to time and place. (Ex. H, pp. 5-9)

Dr. Tranel found that claimant did not have a post-concussion syndrome and was fully recovered from her head injury. He said claimant did not have any work restrictions and that treatment related to the August 12, 2015 accident was not required. Dr. Tranel had doubts regarding the diagnosis of a seizure disorder. (Ex. H, pp. 9-10)

Claimant testified that, given her condition, she could not work at any of her prior jobs. She could not cook or clean. She said she cannot drive. Claimant said she requires someone to be around her all the time in the event of a seizure. She says that she has seizures three to four times per week.

Claimant testified that she has not applied to work since her injury. She testified that since 1994 she has only had brief employment.

Earning statements shown in claimant's Social Security Disability filings indicate that in 1998 claimant earned approximately \$311.00. In 1999, claimant earned approximately \$519.00. In 2000, claimant earned approximately \$9,526.00. In 2001, claimant earned approximately \$640.00. For every year after 2001, claimant has earned less than \$300.00 per year. (Ex. I, p. 27)

CONCLUSIONS OF LAW

The first issue to be determined is did an employee employer relationship exist at the time of injury.

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. 6.14(6).

Section 85.61(11) provides in part:

"Worker" or "employee" means a person who has entered into employment of, or works under contract of service, express or implied, or apprenticeship, for an employer. . . .

It is claimant's duty to prove, by a preponderance of the evidence, that claimant or claimant's decedent was an employee within the meaning of the law. Where claimant establishes a prima facie case, defendants then have the burden of going forward with the evidence which rebuts claimant's case. The defendants must establish, by a preponderance of the evidence, any pleaded affirmative defense or bar to compensation. Nelson v. Cities Serv. Oil Co., 259 Iowa 1209, 146 N.W.2d 261 (1967).

Factors to be considered in determining whether an employer-employee relationship exists are: (1) the right of selection, or to employ at will, (2) responsibility for payment of wages by the employer, (3) the right to discharge or terminate the relationship, (4) the right to control the work, and (5) identity of the employer as the authority in charge of the work or for whose benefit it is performed. The overriding issue is the intention of the parties. Where both parties by agreement state they intend to form an independent contractor relationship, their stated intent is ignored if the

agreement exists to avoid the workers' compensation laws, however. Likewise, the test of control is not the actual exercise of the power of control over the details and methods to be followed in the performance of the work, but the right to exercise such control.

Also, the general belief or custom of the community that a particular kind of work is performed by employees can be considered in determining whether an employer-employee relationship exists. Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503 (Iowa 1981); McClure v. Union County, 188 N.W.2d 283 (Iowa 1971); Nelson, 259 Iowa 1209, 146 N.W.2d 261; Lembke v. Fritz, 223 Iowa 261, 272 N.W. 300 (1937); Funk v. Bekins Van Lines Co., I Iowa Industrial Commissioner Report 82 (App. December 1980).

Claimant contends she was hired for work with Belle City when she and Mr. Seay were approached by Mr. Panacek at the Ohio State Fair. Defendants contend that claimant was not hired as a ticket taker until the day after the injury on August 13, 2015.

Claimant and Mr. Seay both testify they were both hired as a "package deal" by Mr. Panacek when they approached him at the Ohio State Fair. (Tr. pp. 1, 8-10) They testified that proof of this employment arrangement is shown by Belle City putting them both up in a hotel, providing transportation from Ohio to Iowa, and providing both of them living spaces at the Iowa State Fair. (Tr. pp. 11-13; 36-37)

Mr. Panacek testified that he only hired Mr. Seay at the Ohio State Fair. He testified he wanted Mr. Seay given his experience and because fair season was at a peak. He testified he did not hire ticket takers. He said that the duty of hiring ticket takers belonged to Mr. Mannow and Ms. Sears. Mr. Mannow testified that he and Ms. Sears hired ticket takers. (Tr. pp. 73-79)

Mr. Mannow and Mr. Panacek said that it was customary for Belle City to provide transport for employees and their significant others, who were not employees, and to let significant others stay in Belle City quarters. (Tr. pp. 76-78; 102-103) Mr. Mannow testified that the bunk at the Iowa State Fair was assigned to Tony Seay and not the claimant. (Tr. pp. 74-80; 102)

Claimant testified she was told by a coworker to clean up the ticket booth. She said it was typical to set up the ticket booths before the fair opened. She testified she would not have been cleaning the ticket booth if she was not asked to do so by an employee of Belle City. (Tr. pp. 41-42)

Claimant testified that after her injury, she was taken by a Belle City employee to the hospital. She said she was told by hospital staff to take a few days off. (Tr. pp. 42-45)

Mr. Mannow testified that he did not direct any Belle City employees to take claimant to the hospital and that Belle City did not pay claimant's hospital charges. (Tr. p. 104)

Claimant testified on the next day, August 13, 2015, she was told by Mr. Panacek to work in the ticket booth. (Tr. p. 45)

Mr. Mannow testified that the day the fair opened on August 13, 2015, he was short a ticket taker. He said claimant did not ask for a job on August 12, 2015 and the claimant was not an employee on August 12, 2015. He said claimant was hired on August 13, 2015 as a ticket taker. (Tr. pp. 104, 106, 110, 113)

In brief, claimant and Mr. Seay contend that claimant was hired by Mr. Panacek. Both claimant and Mr. Seay testified they were hired as a team. Both Mr. Seay and claimant indicate Belle City provided lodging for both of them in Ohio and Iowa, and transported both of them from Ohio to Iowa. They suggest this is proof of an employer-employee relationship between Belle City and claimant.

Mr. Panacek and Mr. Mannow testified that only Mr. Seay was hired in Ohio. They testified it was common practice for Belle City to provide transport for significant others, who were not employees. They testified it was common practice for significant others to stay in the bunkhouse with Belle City employees. Mr. Panacek testified they paid for a hotel in Ohio as Mr. Seay was a valued employee. They said Mr. Seay was advanced money for a bus ticket to Florida with the indication that Mr. Seay would return to work at Belle City.

The record indicates that most carnival employees do not keep checking accounts and that Belle City paid employees in cash. (Tr. pp. 22-23, 49, 110) There is little documentary evidence to support either claimant or defendant, with the exception of Exhibit 14. This is the Belle City employee badge and fair bracelet. It indicates a date of August 13-23, 2015. (Ex. 14)

Claimant suggests the bracelet merely indicates the date of the fair. Defendants argue that these dates suggest that these are the dates that claimant was to be employed. Mr. Panacek's un rebutted testimony was that claimant's employee ID was not printed until August 13, 2015. (Tr. pp. 97-98)

The fact Belle City provided lodging for Mr. Seay and claimant in Ohio and Iowa, and provided transportation for Mr. Seay and claimant to Iowa and Florida, might suggest an employer-employee relationship. However, these are not factors identified in Iowa law in determining an employer-employee relationship. See Nelson, 259 Iowa 1209, 146 N.W.2d 261 (1967).

Mr. Panacek credibly testified lodging in Ohio was provided to Mr. Seay to encourage him to work for Belle City during a peak fair period. Mr. Panacek and Mr. Seay testified bus fare was advanced to Mr. Seay with the understanding he would return to Belle City to work. Mr. Panacek and Mr. Mannow both credibly testified it was common practice for significant others of Belle City employees to be transported to different fairs and to stay in the Belle City bunkhouse.

Mr. Panacek credibly testified he did not have the authority to hire ticket takers. (Tr. pp. 74, 96) He testified only Mr. Mannow and Ms. Sears hired ticket takers. This testimony was corroborated by Mr. Mannow. Mr. Mannow testified he hired claimant on August 13, 2015 as he was short a ticket taker. Both Mr. Mannow and Mr. Panacek testified it was common practice to provide transportation and lodging for significant others of Belle City employees. The photo of claimant's employee badge shows an August 13, 2015 as a beginning date of employment. Mr. Panacek's un rebutted testimony is that the Belle City records indicate claimant's badge was not printed until August 13, 2015.

Claimant has the burden to prove she was an employee on August 12, 2015, when she had her head injury. Given the above facts, claimant has failed to carry that burden of proof she was employed at Belle City on August 12, 2015.

As claimant has failed to carry her burden of proof she was an employee on August 12, 2015, all other issues are moot.

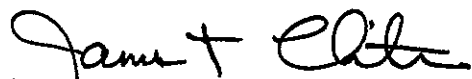
ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 11th day of April, 2017.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFC/kjw

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.