

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMMATHA L. BROWN,
Claimant,

vs.

MENARDS, INC.,
Employer,

and

ZURICH NORTH AMERICA,
Insurance Carrier,
Defendants.

FILED

JAN 12 2015

WORKERS' COMPENSATION

File No. 5040961

APPEAL

DECISION

Head Note Nos.: 1106, 1402.40,
1403.30, 2803

This was an arbitration case that was heard on August 20, 2013. The presiding deputy workers' compensation commissioner issued the arbitration decision on November 5, 2013. The deputy determined claimant sustained a work injury but did not prove the work injury caused anything more than a temporary injury. The deputy also found claimant failed to prove the work injury caused more than three days lost time or any permanent disability. As a consequence, the presiding deputy concluded claimant was not awarded any temporary disability, healing period benefits, or permanent partial disability benefits. (Arbitration, page 14)

On March 10, 2014, the then Workers' Compensation Commissioner, Christopher J. Godfrey, issued an order, granting claimant an extension of time for filing an appeal. On March 10, 2014, claimant filed her notice of appeal. On May 21, 2014, claimant filed her appeal brief. Defendants filed their interagency responsive brief on June 10, 2014.

In the appeal brief, claimant argued the following:

1. The deputy has properly ruled that claimant suffered an injury while working at Menard's on or about October 17, 2010;
2. The deputy properly ruled defendants had actual knowledge of the injury;

3. Claimant clearly suffered physically from the injury, as the medical record established;
4. The deputy failed to consider properly claimant's legitimate desire to keep her employment as the reason why she did not file her claim earlier than she did; and
5. The deputy failed to recognize that claimant's problems with her low back, hip and right leg began on October 17, 2010.

The undersigned has reviewed the record de novo. The deputy workers' compensation commissioner wrote in precise detail why he determined claimant failed to meet her burden of proof with respect to causation, temporary disability and permanent disability. For example, the presiding deputy cited to the many inconsistencies he noted in the record. The deputy discussed:

In September 2011, Ms. Brown took a trip to Jamaica for five days. (Ex. B, p. 18-Depo. Tr., p. 66) Such a leisure trip with her family seems at odds with her proclaimed symptoms as well as her proclaimed financial hardship. I find it difficult to believe that a person with the level of symptoms Ms. Brown reports and the financial inability to seek medical treatment for such symptoms would almost simultaneously take a trip to Jamaica. Ms. Brown certainly offered no explanation for this discrepancy.

Claimant's demeanor at the hearing was not consistent with her reported difficulties or symptoms. She appeared to be comfortable and without any overt pain while testifying to extremely high pain levels and offering very high pain levels to physicians. Ms. Brown arose from her witness chair quickly and moved quickly without any apparent difficulties more than once during the hearing and almost at inappropriate times. Her behavior in this regard demonstrated no obvious pain or difficulties but was certainly out of the ordinary. She did not appear to be overly nervous at the time to explain such behavior.

At the very least, there was inconsistency between her reported pain levels, her reported functional abilities, and her actions I observed at trial. To the extent that I have trouble accepting many aspects of claimant's testimony about her symptoms, I also have trouble accepting the opinions of Dr. Hines, which necessarily rely upon those reports since he had little medical evidence available for review.

(Arbitration, pp. 8-9)

The presiding deputy, later in the arbitration decision, described in detail why he accepted the opinions of Charles Mooney, M.D., over the opinions of Marc Hines, M.D. The deputy explained:

Other than Dr. Mooney and Dr. Hines, no physician offers a causation opinion. When comparing the opinions of Dr. Mooney and Dr. Hines, I find that Dr. Mooney's opinions are more reliable and convincing in this case. Dr. Mooney clearly had far more medical evidence before him to consider when rendering his opinions. Dr. Mooney's opinions are consistent with the return to work three days after the injury, the ability to work at Menards for an additional 16 months after the injury, the relative lack of medical care between October 2010 and February 2012 when claimant terminated her employment at Menards, and the changing symptoms and changing location of symptoms. Dr. Hines' opinions fail to explain the changing symptoms and his history is inconsistent with my observations and other medical evidence introduced into the record. Therefore, I accept Dr. Mooney's causation opinions in this case and find that claimant failed to prove she sustained anything more than a temporary strain of her lumbar spine.

(Arbitration, pp. 11-12)

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision the proposed arbitration decision filed on November 5, 2013.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of November 5, 2013 is AFFIRMED.

Claimant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 12TH day of January, 2015.



MICHELLE A. MC GOVERN
ACTING WORKERS' COMPENSATION
COMMISSIONER

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