BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
APR 27 2016
WORKERS' COMPENSATION

JODY DONAHE,

Claimant,

vs.

HEARTLAND COMMUNICATIONS,

Employer,

and

TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5042580

A P P E A L

D E C I S I O N

Head Note No.: 1803

Defendants Heartland Communications, employer, and its insurer, Travelers Property Casualty Insurance Company, appeal from an arbitration decision filed on December 2, 2014. This case was heard on May 12, 2014, and it was considered fully submitted on May 27, 2014, in front of the deputy workers' compensation Commissioner.

This case involves admitted bilateral arm injuries, as well as disputed bilateral shoulder and neck injuries. Defendants assert on appeal that the deputy commissioner erred in finding claimant proved her bilateral shoulder injuries arose out of and in the course of her employment with defendant-employer. Defendants further assert if the bilateral shoulder injuries are causally related to claimant's work activities, claimant is not at maximum medical improvement (MMI) and it is premature to render a permanent disability award in this case.

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

Defendants raise an issue about claimant's credibility pertaining to the alteration of a medical work release. The deputy commissioner was in the best position to personally observe claimant as she testified to render credibility findings. In this instance, I defer to and adopt the deputy commissioner's credibility findings and determination.

With respect to the factual findings of the deputy commissioner, I adopt the majority of the deputy's factual findings with two significant modifications. On page eight of the arbitration decision, the deputy states Dr. Ash "stated her shoulder and neck

condition was common, and based on the sedentary nature of her job, he could not causally connect her shoulder and neck condition to her work." In fact, Dr. Ash offered no opinion regarding the causal connection of claimant's neck condition. (Exhibit 6, p. 83)

Second, I disagree with the deputy's factual findings pertaining to the causal connection of claimant's bilateral shoulder conditions. The deputy commissioner relied upon the medical causation opinion offered by Sunil Bansal, M.D. Dr. Bansal opines, "Ms. Donahe's constellation of neck and upper extremity symptomatology is characteristic of a condition known as computer overuse syndrome, or computer use related upper limb musculoskeletal disorders. This phenomenon can affect the neck, shoulders, elbows, wrists, and hands." (Ex. 8, p. 106)

Dr. Bansal's report contains some errors that are significant and relevant to his formulation of his causation opinion. For example, Dr. Bansal's understanding of claimant's job duties is not accurate.

Dr. Bansal records a history that claimant "does a lot of typing and data entry." (Ex. 8, p. 101) He records that claimant "does a lot of filing." (Ex. 8, p. 101) Dr. Bansal notes, "For several years she did not have a headset to use with the phone, so for a long time she held the phone either with her left hand as she wrote with her right hand, or pinched between her ear and shoulder as she typed while talking on the phone. They did eventually provide headphones, but by this time she had already started having pain and other problems." (Ex. 8, pp. 101-102)

Dr. Bansal's factual assumptions and recitations are not accurate. (Transcript pp. 35, 46, 49-50, 62-63) These assumed work duties make it appear claimant's job duties were more repetitive and more physically stressful than they actually were. Dr. Bansal's reliance upon erroneous information or assumptions calls the accuracy of his causation opinion into question.

Recognizing there are multiple causation opinions in this record, I find the opinions offered by two treating orthopaedic surgeons, Stephen Ash, M.D. and Ze-Hui Han, M.D., to be more convincing as to whether claimant's shoulder conditions are causally related to her work activities. Dr. Han at Iowa Orthopaedic Center, P.C., is a hand surgeon. He performed the deQuarvain surgeries on claimant's wrists. He does not treat shoulders. However, Dr. Han opined that claimant's bilateral shoulder conditions are not work-related. (Ex. 4, p. 71)

Dr. Han referred claimant to a shoulder specialist, Dr. Ash, at Iowa Orthopaedics. Dr. Ash evaluated claimant's shoulders. Dr. Ash opines that it would be "difficult to causally relate [the shoulder conditions] to a low-demand job." (Ex. 6, p. 82) In his deposition, Dr. Ash opined, "This is the most common diagnosis we make in the shoulder in the office, and we see people from all walks of life with this type of shoulder pain, and so in my mind it is a little bit difficult to causally relate it to a low-demand job." (Ex. 6, p. 82) He continued, "its really hard for me to say what exactly set this off

because I see so many people who don't have this type of job, again, from all types of different physical activity backgrounds who develop this problem." (Ex. 6, p. 82)

Claimant performed minimal overhead work and minimal heavy lifting in her position with the employer. The expertise of two orthopaedic surgeons, as well as their ability to evaluate claimant multiple times during their treatment course, carry greater weight in this case. Therefore, I reverse the deputy commissioner's findings of fact and conclusions of law pertaining to claimant's bilateral shoulder conditions. I specifically find claimant has not proven by a preponderance of the evidence that her bilateral shoulder conditions are causally related to her work activities at Heartland Communications.

On the other hand, claimant has offered a medical causation opinion from Dr. Bansal, establishing that her neck injury is causally related to her work activities. (Ex. 8, p. 107) Defendants offer no competing causation opinion pertaining to the neck condition. I find Dr. Bansal's opinion pertaining to claimant's neck condition to be sufficiently detailed and credible to overcome the lack of any competing evidence. I accept Dr. Bansal's unrebutted medical opinion regarding claimant's alleged neck injury.

Therefore, I affirm the deputy commissioner's findings and conclusions with respect to claimant's neck injury. I further accept Dr. Bansal's three percent permanent impairment rating of the whole person as a result of claimant's neck injury. I accept Dr. Bansal's recommendations for work restrictions.

I specifically find that the restriction requiring avoidance of bilateral repetitive hand work is related to the admitted bilateral deQuarvain's syndrome. Dr. Bansal's recommendation to limit claimant's tasks that require sustained neck flexion is clearly related to her neck injury. Finally, Dr. Bansal's recommendation against overhead lifting greater than ten pounds with either arm is a reasonable precaution due to both the bilateral deQuarvain's syndrome, as well as claimant's neck injury. (Ex. 8, p. 108)

When reviewing Dr. Bansal's recommendations pertaining to future treatment, his opinions appear to include maintenance-type treatment and no future invasive care for claimant's neck. (Ex. 8, p. 108) I concur with the parties' stipulation that claimant achieved maximum medical improvement for the admitted bilateral deQuarvain's syndrome on or about April 25, 2013.

Claimant has not had any significant or invasive care for her neck. Given that only maintenance treatment is recommended for the neck, I find claimant also achieved maximum medical improvement for the neck on or before April 25, 2013. Therefore, I find claimant achieved maximum medical improvement for the causally-related wrists and neck by April 25, 2013. I concur that permanent partial disability benefits should commence as of April 26, 2013. Iowa Code section 84.34(2).

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.

Factors to be considered in determining industrial disability include the employee's medical condition prior to the injury, immediately after the injury, and presently; the situs of the injury, its severity, and the length of the healing period; the work experience of the employee prior to the injury and after the injury and the potential for rehabilitation; the employee's qualifications intellectually, emotionally, and physically; earnings prior and subsequent to the injury; age; education; motivation; functional impairment as a result of the injury; and inability because of the injury to engage in employment for which the employee is fitted.

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W. 2d 614, 617 (Iowa 1995).

Considering the situs and severity of claimant's injuries, the permanent impairment ratings, the permanent restrictions, as well as claimant's age, educational background, employment history, and all other factors of industrial disability, I find claimant has proven a 45 percent loss of future earning capacity. In this sense, I concur

with, and I affirm, the deputy commissioner's findings and conclusions. Given this finding, I find the deputy commissioner correctly awarded 225 weeks of permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u).

Claimant's seeks the award of medical treatment for her bilateral shoulders. Claimant's claimed medical expenses are found at exhibit 11. These medical expenses were incurred for treatment of claimant's bilateral shoulder conditions.

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).

Having found claimant did not prove her bilateral shoulder conditions arose out of and in the course of her employment with defendant-employer, I reverse the deputy commissioner's award of the past medical expenses.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of December 2, 2014, is MODIFIED.

Defendants shall pay claimant two hundred twenty-five (225) weeks of permanent partial disability benefits at the rate of five hundred twenty-five and 76/100 dollars ($525.76) per week from April 26, 2013.

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

Defendants shall be given credit for benefits previously paid.

Defendants shall pay claimant's future medical expenses necessitated by the work injury.

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

Defendants shall pay the costs of the arbitration proceeding.

The parties shall equally share the costs of this appeal, including the cost of the hearing transcript, pursuant to rule 876 IAC 4.33

Signed and filed this 27th day of April, 2016.

Joseph S. Cortese II

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WORKERS' COMPENSATION
COMMISSIONER

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