BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DIANE WEST,	:	
Claimant,	:	File Nos. 1258123, 1266721, 1273441
vs.	:	
	:	A R B I T R A T I O N
CONTINENTAL DELI FOODS,	:	
	:	D E C I S I O N
Employer,	:	
Self-Insured,	:	
Defendant.	:	Head Note Nos.: 1402.4, 1803

STATEMENT OF THE CASE

Claimant, Diane West, has filed petitions in arbitration and seeks workers' compensation benefits from Continental Deli Foods, employer, self-insured defendant.

The matter was heard by deputy workers' compensation commissioner, Ron Pohlman on November 21, 2002, in Storm Lake, Iowa. The record in the case consists of claimant's exhibit A, joint exhibits 1-50, and the testimony of the claimant.

The defendant objected to the admission of claimant's exhibit A (telephonic deposition of Adrian Wolbrink, M.D.) on the grounds that it was untimely and constituted unfair prejudice. Dr. Wolbrink was deposed on November 20, 2002, regarding an independent medical examination he performed December 21, 1999. Dr. Wolbrink was listed as a witness in a timely exchanged witness list by the claimant. Dr. Wolbrink could have been called as a live witness. Therefore, use of his deposition, in which defendant participated, cannot be considered prejudicial. The defendant's objection is overruled.

ISSUES

The parties submitted the following issues for determination:

File No. 1266721:

The extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u).

File No. 1273441:

1. Whether the injury on January 26, 1999, was the cause of any permanent disability; and

2. The extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u).

File No. 1258123:

1. Whether the injury on May 12, 1999, was the cause of any permanent disability; and

2. The extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(m).

FINIDINGS OF FACT

The undersigned having considered all of the testimony and evidence in the record finds:

Claimant at the time of the hearing was 55 years old. She finished the eleventh grade and does not have a GED. The claimant did not do well in school. She is right hand dominant. Her prior work history consists of working as a nurse's aide, kitchen aide, and med aide in residential care facilities from 1967 to 1990. For ten months in 1966 she worked in a turkey plant. During this time the only injury of consequence was to her right knee, but that injury resulted in restrictions and did not require surgery.

She began employment for defendant in May 1990 and is still employed there. The claimant's job duties at Continental Deli Foods have involved production work processing and packaging hams. The claimant estimates that there are 600 employees at the Cherokee, Iowa plant, where she is employed, and eight departments. The claimant works on the day shift. There is a collective bargaining agreement in place that covers the claimant and other production employees in the plant.

She began work in the pace boning area using straight and wizard knives. This was fast and repetitive work. In approximately 1992, the claimant moved to the pump room where she is still employed. Her job there is to "massage meat," to put into the shape of ham and then into pans.

There are 56 employees in the pump room. The main jobs there are putting on lids (fast repetitive work); tipper tie; putting on netting; and hanging (35 pound hams put on hook on 'tree'). Bids for jobs go by seniority.

The defendant has on site medical providers- Dr. Garner (full name unknown), who is at the plant on certain days, and Jan Woodall, a physician's assistant.

In 1993 the claimant was diagnosed with osteoarthritis but she denies that this disease has ever spread beyond her fingers. The notes of her family practice physician for January 15, 1999, indicate that the claimant was wondering about receiving total disability for her arthritic condition. (Exhibit 14-12) The notes for March 15, 1999, also indicate that her family doctor believed that this condition had spread throughout the claimant's body and wanted the claimant to see a rheumatologist. (Ex. 14-13)

On January 26, 1999, the claimant fell in the parking lot as she was leaving at the end of the day. She fell on her right side and hurt her lower back and shoulder. She felt a pinched nerve in her back. The gate guard was a witness to this accident.

The claimant saw Stephen Veit, M.D., the company physician. Dr. Veit prescribed Darvon, but this provided no relief of her pain. The claimant lost no time from work as a result of this injury. A radiological exam of her right shoulder on February 6, 1999, indicated diffuse osteoporosis, but the right shoulder examine was otherwise negative. (Ex. 27)

On May 12, 1999, the claimant felt a spasm and "electric shock" in her left hand while slamming lids. This job required the claimant to reach behind her with her right hand, grab a lid, and then slam it on the can. Then with her left hand she pushed the 30-pound product against a spring. She did 408 pans an hour, or 1 every 6-7 seconds.

She went to see Phillip Deffer, M.D., who sent her to physical therapy but the claimant did not obtain relief.

On June 28, 1999, the claimant was diagnosed with left carpal tunnel syndrome by Dr. Deffer and scheduled for carpal tunnel release. (Ex. 31-1) She was released to return to work on August 10, 1999, on limited duty. (Ex. 31-2) Dr. Deffer's notes for August 17, 1999, indicated that he had a concern with the employer not following the claimant's restrictions. (Ex. 31-3) Dr. Deffer placed the claimant at maximum medical improvement on November 1, 1999; imposed a zero percent permanent impairment rating; and did not give the claimant any permanent restrictions. (Ex. 31-5)

On October 13, 1999, the claimant experienced a sharp pain in her lower back and could not continue her job lifting baskets weighing 50-80 pounds off of a pallet. Initially, the claimant saw the physician's assistant at the plant, Jan Woodall, who gave the claimant an injection and some medication. (Ex. 13-3; Ex. 14-14)

An x-ray was taken of the claimant's lumbar spine on October 18, 1999, which revealed diffuse osteoporosis, dextroscoliosis, question of disc disease at L4-5 and possibly L5-S1 but no evidence of a fracture. (Ex. 35)

The claimant was seen for a neurological consultation by Thomas J. Clark, D.O., on October 27, 1999. Dr. Clark opined:

IMPRESSION:

1. This is a fifty-two year old woman who has diagnostic evidence of an L5 compression fracture with chronic degenerative disc disease. It appears that she did hurt herself when she bent over and has [sic] severe pain. Although there may be some pain behavior, I do not believe that this is exaggerated. She does have a long history of chronic arthritic problems with no definitive diagnosis. Radiologic evidence is certainly consistent with osteoporosis. These are all contributing factors in her current condition.

RECOMMENDATIONS:

1. I feel that this patient needs to be seen by a spine surgeon and I will arrange this with Dr. Samuelson in Sioux City.

2. She states that she has obtained some relief from Tylenol #3 in the past and I have given her a prescription for this. She was told to discontinue the Darvocet. The case will be further discussed with medical personnel at Continental Deli Foods.

(Ex. 38-2)

On November 8, 1999, the claimant saw William O. Samuelson, M.D., for consultation. Dr. Samuelson opined: "1. Degenerative disc disease lumbar spine with herniated nucleus pulposus L4-5 in L5-S1. 2. Right SI joint sprain." (Ex. 40-2)

Dr. Samuelson recommended an injection and prescribed medication. (Ex. 40-2) Dr. Samuelson also confirms in his December 9, 1999, report, that the claimant had a compression fracture of the L5. (Ex. 40-3) Dr. Samuelson treated the claimant conservatively through October 19, 2000. (Ex. 40) On July 20, 2000, Dr. Samuelson indicated that the claimant could return to work without restrictions. (Ex. 41) On November 30, 2000, Dr. Samuelson opined that the claimant had a five percent impairment of the whole person based upon her back condition and that the claimant had reached MMI on October 19, 2000. (Ex. 43)

On December 21, 1999, the claimant saw Dr. Wolbrink for an independent medical evaluation at the defendant's request. Dr. Wolbrink opined:

> In my opinion, Ms. West has persistent weakness in her left hand secondary to her carpal tunnel syndrome as well as some early osteoarthritis in her fingers and wrist. An x-ray of her wrist, taken in June 1999, was available to me and reviewed. It did not show much arthritic change so this is not too severe at the present time.

> In my opinion, Ms. West has a permanent impairment of 10% of the upper extremity due to her median nerve entrapment syndrome or carpal tunnel syndrome of the left wrist with persistent mild difficulties. This is based upon the " Guides to Evaluation of Permanent Impairment " by the American Medical Association, Fourth Edition, using Table XVI.
>
> She will continue to have some difficulty with excessive pulling, pushing, or grasping since she does have some persistent weakness in this hand. It has been less than six months so we may see a little improvement with time. However, some of her early osteoarthritis may also increase with time and cause some persistent weakness.

(Ex. 45-2)

On April 9, 2001, the claimant saw Dr. Deffer again for pain in her left wrist and thumb and numbness. (Ex. 31-6) Dr. Deffer felt that based upon radiographs taken in February 2001 that the claimant had some trapeziometacarpal arthritis with some involvement of the STT joint. (Ex. 31-6) He opined that that the osteoarthritis was not work related but was exacerbated by the claimant's work for the defendant. At that time Dr. Deffer put the claimant in a protective splint for her left thumb and hand and prescribed Vioxx. (Ex. 31-6)

Claimant had an MRI of her lumbar spine on July 2, 2001, which reflected:

> 1. The acute edema component of a Schmorl's node at the upper end plate of L5 has resolved, no residual bony marrow edema is seen at this time. Minor bulging of the annulus posteriorly seen at this level, but this does not appear to extend into the neuroforamina or cause any spinal canal stenosis.
>
> 2. MRI study of the lumbar spine otherwise remains unremarkable as discussed above, similar to prior study.

(Ex. 37-2)

On January 3, 2002, the claimant saw Justin L. Ban, M.D., for an independent medical evaluation at her attorney's request. Dr. Ban diagnosed three conditions: "1. Degenerative back disease of lumbar spine with a herniated nucleus pulposus L4-5 and L5-S1. 2. Right SI joint sprain. 3. Compression fracture of L5." (Ex. 47-6)

Dr. Ban rated the claimant's permanent impairment as 11 percent for range of motion combined with the diagnosed impairment of 5 percent for a total impairment of 15 percent. (Ex. 47-7) Dr. Ban proposed restrictions of moderate lifting of 50 pounds occasionally and 25 pounds frequently. (Ex. 47-7) Dr. Ban causally connects the January 26, 1999, and October 13, 1999, injuries to the claimant's back condition. (Ex. 47-7)

Claimant describes her physical limitations in exhibit 49. The claimant has experienced a significant impact in her activities of daily living.

The deposition of Dr. Wolbrink was taken telephonically on November 20, 2002. Dr. Wolbrink confirmed that his rating expressed in December 1999 was only for the left carpal tunnel surgery. (Ex. A, page 7) Dr. Wolbrink opined that the carpal tunnel was causally related to the work the claimant performed for the defendant. (Ex. A, p. 9) Dr. Wolbrink opined that his impairment rating would be essentially the same under the Fifth Edition of the AMA Guides to the Evaluation of Permanent Impairment. (Ex. A, p. 10) Dr. Wolbrink only reviewed medical records from 1999 and indicates that smokers have greater problems with recovery from carpal tunnel syndrome. (Ex. A, p. 11) Claimant has been a smoker since she was 19. Dr. Wolbrink explained that Heberden's nodules are caused by osteoarthritis. (Ex. A, p. 12) Dr. Wolbrink did allow for the possibility that the claimant would experience some improvement over time following his examination in 1999. (Ex. A, p.13)

REASONING AND CONCLUSIONS OF LAW

File No. 1273441:

The first issue in this file is whether the injury on January 26, 1999, was the cause of any permanent disability.

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. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296 (Iowa 1974).

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. The weight to be given to any expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts relied upon by the expert as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974); Anderson v. Oscar Mayer & Co., 217 N.W.2d 531 (Iowa 1974); Bodish v. Fischer, Inc., 257 Iowa 516, 133 N.W.2d 867 (1965).

The claimant was treated briefly following the January 26, 1999 injury. She describes the incident as giving her a feeling of a pinched nerve. This injury may have been the source of the compression fracture at L5, but since the claimant did not have an x-ray or other radiographic examination to confirm this and she did not seek further treatment until a subsequent back injury on October 13, 1999, she has not proven she

sustained any permanent disability as result of the January 26, 1999, work injury. Therefore, she is not entitled to anything further in this file.

File No. 1258123:

The first issue in this file is whether the injury on May 12, 1999, was the cause of any permanent disability.

The same citations of law set out in File No. 1273441 on the issue of causation applies here and will be reiterated.

The claimant's treating physician for her carpal tunnel gave the claimant a zero percent impairment and no restrictions. However, the evidence shows the claimant continued to have pain and some problems with numbness in her thumb. The defendant's examining physician imposed an impairment rating of ten percent. The examiner was aware of the claimant's osteoarthritis problems and considered them in his rating. The rating of Dr. Deffer does not seem to follow with the problems the claimant continued to experience following her surgery.

The rating of Dr. Wolbrink is given greater weight. The claimant sustained a permanent disability as a result of the May 12, 1999, work injury.

The next question is the extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(m).

The claimant has established a 10 percent permanent impairment to her left upper extremity as a result of the May 12, 1999, work injury entitling her to 25 weeks of permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(m).

File No. 1266721:

The issue in this file is the extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u) based upon the injury to the claimant's back on October 13, 1999.

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 and inability to engage in employment for which the employee is fitted. 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).

A finding of impairment to the body as a whole found by a medical evaluator does not equate to industrial disability. Impairment and disability are not synonymous. The degree of industrial disability can be much different than the degree of impairment because industrial disability references to loss of earning capacity and impairment references to anatomical or functional abnormality or loss. Although loss of function is

to be considered, and disability can rarely be found without it, it is not so that a degree of industrial disability is proportionally related to a degree of impairment of bodily function.

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. Loss of earnings caused by a job transfer for reasons related to the injury is also relevant. Likewise, an employer's refusal to give any sort of work to an impaired employee may justify an award of disability. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980). These are matters which the finder of fact considers collectively in arriving at the determination of the degree of industrial disability.

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 State of Iowa Industrial Commissioner Decisions 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 State of Iowa Industrial Commissioner Decisions 654 (App. February 28, 1985).

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 the October 13, 1999, work injury the claimant has significant permanent impairment ranging from 5 percent to 15 percent. Her treating physician did not impose work restrictions, but the independent medical examination report proposed that the claimant occasionally lift no more than 50 pounds and frequently lift no more than 25 pounds.

She has had a significant impact on her activities of daily living following the back injury.

However, the claimant has a serious non-work related medical condition which overlays her back symptoms and likely produces much of the pain she now experiences. Further, she currently works up to 50 hours per week and has not experienced a reduction in her actual earnings.

Considering these, and all factors of industrial disability, it is concluded that the claimant has sustained a 15 percent industrial disability entitling her to 75 weeks of permanent partial disability pursuant to Iowa Code section 85.34(2)(u).

ORDER

THEREFORE, IT IS ORDERED:

File No. 1273441:

That claimant take nothing further from this file.

The costs of this file are taxed to the claimant.

File No. 1258123:

That defendant shall pay claimant twenty-five (25) weeks of permanent partial disability at the weekly rate of three hundred forty nine and 94/100 dollars ($349.94) commencing October 12, 1999.

That defendant shall receive credit for twelve point five (12.5) weeks of benefits previously paid at the rate of three hundred fifty and 79/100 dollars ($350.79).

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code Section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

The costs of this file are taxed to the defendant.

File No. 1266721:

That defendant shall pay claimant seventy-five (75) weeks of permanent partial disability at the weekly rate of three hundred sixty three and 29/100 dollars ($363.29) commencing July 24, 2000.

That defendant shall receive credit for twenty-five (25) weeks of benefits previously paid at the rate of three hundred sixty three and 29/100 dollars ($363.29).

Accrued benefits shall be paid in a lump sum together with interest pursuant to Iowa Code Section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

The costs of this file are taxed to the defendant.

Signed and filed this ____17th_____ day of January, 2003.

_____
RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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