BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JELISA ROSS, Claimant, vs. EATON CORPORATION, Employer, and OD REPUBLIC INSURANCE CO. Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File Nos. 5050197, 5059360 A P P E A L D E C I S I O N Head Notes: 1100, 1801, 1803, 3200

Defendants Eaton Corporation, employer, and its insurer, Old Republic Insurance Company, appeal from an arbitration decision filed on March 21, 2019. Defendant Second Injury Fund of Iowa (the Fund) also appeals. Claimant Jelisa Ross responds to the appeal. The case was heard on October 26, 2018, and it was considered fully submitted before the deputy workers' compensation commissioner on December 7, 2018.

The arbitration decision addressed two files: No. 5050197 and No. 5059360. In File No. 5050197, the deputy commissioner found claimant sustained five percent permanent partial disability of her right arm, as a result of the August 11, 2011, work injury. In File No. 5059360, the deputy commissioner found claimant sustained an injury to her left arm that arose out of and in the course of her employment with defendant-employer on October 15, 2015. The deputy commissioner found the injury was the cause of temporary disability, and found claimant is entitled to receive healing period benefits from May 2, 2016, through May 3, 2017. The deputy commissioner found the injury was the cause of permanent disability, and found claimant sustained 14 percent permanent partial disability of her left arm, commencing October 16, 2015. The deputy commissioner found claimant is entitled to receive Second Injury Fund benefits, and found claimant sustained 20 percent industrial disability. The deputy commissioner

found the Fund is entitled to credit of 47.5 weeks for the two injuries. The deputy commissioner also awarded costs to claimant in the amount of $198.20.

The appeal by defendants employer and insurer relates only to File No. 5059360. Defendants employer and insurer assert in that appeal that the deputy commissioner erred in finding claimant carried her burden of proof to establish her left arm condition is causally related to her employment. Defendants employer and insurer further assert on appeal that if the left arm injury is found on appeal to be compensable, claimant is entitled to receive temporary total disability benefits only from May 2, 2016, through May 11, 2016, and they assert claimant is entitled to receive minimal permanent partial disability benefits, due to her minimal functional disability.

The Fund asserts on appeal in File No.5059630 that the deputy commissioner erred in finding claimant sustained her burden of proof to establish her left arm condition is causally related to her employment. The Fund further asserts on appeal that if the left arm injury was caused by work, it is a sequela of claimant's August 11, 2011, right arm injury, and is not a separate qualifying injury for Fund purposes. The Fund also asserts that if the left arm injury is compensable, the deputy commissioner was correct in awarding temporary benefits from May 2, 2016 through May 3, 2017, and correct in awarding 14 percent permanent partial disability of the left arm.

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

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

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code section 86.24 and 17A.15, those portions of the proposed arbitration decision related to File No. 5059360, filed on March 21, 2019, that relate to issues properly raised on intra-agency appeal are respectfully reversed, with the following additional findings, conclusions, and analysis:

The deputy commissioner based his finding that claimant's alleged left arm injury arose out of and in the course of claimant's employment on the medical opinions of Caliste Hsu, M.D., and Sunil Bansal, M.D., MPH. The deputy commissioner gave the opinions of Dr. Hsu and Dr. Bansal more weight than the opinions offered by Thomas DiStefano, M.D. and Ian Crabb, M.D. A key issue in determining which medical opinions were entitled to greater weight was the deputy's finding that claimant worked in a light duty capacity for the employer from April of 2015, through October 12, 2015. In making this finding, the deputy commissioner relied solely on claimant's testimony, and rejected the other evidence in the record indicating claimant was off work during that time period. I determine this finding was in error.

Defendant-employer's attendance records were accepted into evidence. (See Defendant's Exhibit C) Those records indicate that during 2015, claimant was off work

from January 19, 2015, through March 6, 2015, and again from April 23, 2015, through October 12, 2015. (Ex. C) The records are straightforward and unambiguous. Additionally, claimant was paid temporary total disability benefits from January 19, 2015, through March 8, 2015, and again from April 27, 2015, through October 25, 2015, further indicating claimant was completely off work during those time periods. (Ex. E, p. 51-52). Finally, there are medical records that corroborate the attendance and benefit records. When claimant saw Dr. Crabb on June 23, 2015, she stated she was currently on medical leave. (Ex. B, p. 5) When claimant saw Nicholas Bruggeman, M.D. on August 27, 2015, she told Dr. Bruggeman she had been off work since April of that year. (Joint Exhibit 9, p. 78) Finally, at her functional capacity evaluation (FCE) that took place on September 16, 2015, claimant advised she had been off work since April of 2015. (JE 7, p. 58)

While there is no suggestion claimant was intentionally misleading during her hearing testimony, it appears she did not accurately recall the dates in 2015 during which she worked. As noted by the Fund, at her deposition, taken one month prior to hearing, claimant's answers regarding her work during this time frame were noncommittal:

> Q. And again, I guess I'm still a little confused on this and it very well could be the fact that the notes I have been provided are inaccurate, but I just want to clarify between April 27, 2015, and September 2015, you were doing miscellaneous items for HR or whatever your supervisors needed?
>
> **A. Until they ran out of things for me to do, then I was put out of work. I was put on – classified as short-term disability, work comp.**
>
> Q. Do you know roughly how long you would've been off work during that period of time?
>
> **A. Until I went back in October. I think they ran out of things for me to do in – I'm not positive when they sent me out.**

(Ex. A, p. 8; Deposition Transcript, p. 26:13-25)

Claimant also agrees on appeal that she only worked 39 days in 2015 prior to the alleged October 15, 2015 injury. (Claimant's Appeal Brief, p. 7) As such, the deputy commissioner's finding that claimant was working from April of 2015 to October 12, 2015, was in error. I find that the greater weight of evidence proves that during 2015, claimant was off work from January 19, 2015, through March 6, 2015, and again from April 23, 2015, through October 12, 2015. (Ex. C)

Having determined claimant was not working for most of 2015, the medical evidence regarding causation must be reexamined. 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 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).

Four separate physicians provided opinions regarding causation with respect to claimant's left arm: Dr. DiStefano, Dr. Crabb, Dr. Hsu, and Dr. Bansal. The deputy commissioner rejected the opinions of Dr. DiStefano and Dr. Crabb, and gave greater weight to the opinions of Dr. Hsu and Dr. Bansal, finding that claimant's left arm condition is causally related to claimant's work. I respectfully disagree with the deputy commissioner in that regard.

Claimant first saw Dr. DiStefano on November 10, 2015. (JE 12, p. 84) Dr. DiStefano stated that based on the information available to him at that time, he believed claimant had left lateral epicondylitis due to overuse of the left upper extremity, and therefore it was related to the right arm injury of August 11, 2011. (JE 12, p. 85) It should be noted that claimant does not claim the left arm condition is a sequela of the August 11, 2011, injury to her right arm.

Claimant later presented to Dr. Crabb for an independent medical evaluation (IME) on January 5, 2016. (Ex. B) Dr. Crabb assessed symptoms consistent with carpal tunnel syndrome and mild tendinitis over the medial and lateral epicondyle. (Ex. B, p. 14) Dr. Crabb opined that claimant's symptoms were primarily related to her underlying physiologic condition, but it was *possible* that her job activities had exacerbated her condition. (Ex. B, p. 14) Dr. Crabb did not believe claimant's left arm symptoms were due to overuse of her left arm because of the injury to her right arm. (Ex. B, p. 15)

On January 7, 2016, counsel for defendant-employer sent Dr. Crabb claimant's attendance records, indicating claimant was off work from January 19, 2015, through March 6, 2015, and again from April 23, 2015, through October 12, 2015. (Ex. B, p. 31) After receipt of the attendance records, Dr. Crabb signed a letter authored by defense counsel in which he agreed with the statement that while medically possible that claimant's job duties could aggravate an underlying condition, it is more likely than not that her left arm symptoms reported on October 15, 2015, are not causally related to her work activities. (Ex. B, p. 16)

Likewise, on April 6, 2016, defense counsel provided claimant's attendance records to Dr. DiStefano, as well as Dr. Crabb's report. (JE 12, p. 86) After reviewing the additional information, Dr. DiStefano indicated he agreed that based on the amount of time claimant worked in 2015, he does not believe claimant's left arm symptoms were caused by her work activities at defendant-employer. (JE 12, p. 87) Dr. DiStefano further agreed that claimant's work did not materially and permanently aggravate, accelerate, or "light up" claimant's left arm symptoms. Id. Finally, Dr. DiStefano agreed claimant's left arm symptoms were not materially and permanently aggravated, accelerated, or "lit up" due to overuse related to her right arm injury. Id.

The deputy commissioner rejected the opinions of Dr. Crabb and Dr. DiStefano. With respect to Dr. Crabb, the deputy commissioner gave his opinion little weight due to his modification of his opinion "without discussion of any additional evidence he may have reviewed or any other basis for this modification/explanation of his prior opinion." (Arbitration Dec., p. 10) I find this was in error. Dr. Crabb initially stated it was "possible" claimant's work had exacerbated her underlying physiologic condition. After reviewing the attendance records supplied by the employer, Dr. Crabb clarified that while medically possible, it was "more likely than not" that claimant's left arm symptoms were not causally related to claimant's work activities. The clear basis for the clarification of his opinion was his receipt and review of the attendance records.

Similarly, the deputy commissioner rejected Dr. DiStefano's opinion based on the doctor's "misunderstanding of claimant's work history and the nature of his reversal of opinion and lack of explanation or discussion." (Arb. Dec., p. 10) Again, Dr. DiStefano's opinion changed after receiving claimant's attendance records. Although the letter Dr. DiStefano signed is a "check box" letter authored by defense counsel, it very clearly states his opinions are "based on the additional information regarding the amount of time claimant worked in 2015." (JE 12, p. 87) I find Dr. Crabb and Dr. DiStefano were provided with accurate information regarding the amount and type of work claimant performed in 2015 prior to reporting the alleged left arm injury.

To the contrary, Dr. Hsu and Dr. Bansal were not provided with accurate information regarding claimant's work attendance and job duties. With respect to Dr. Hsu, the deputy commissioner noted that as the treating physician, she was in a "unique position" to see the claimant over a period of time on multiple occasions and actually performed the surgery on her arm. (Arb. Dec., p. 10) While this is true, Dr. Hsu's letter dated June 29, 2016, clearly demonstrates a misunderstanding as to the amount and type of work claimant was performing while recovering from her right arm surgeries. In that letter, Dr. Hsu opines that claimant developed left carpal tunnel syndrome, left lateral epicondylitis, and left radial tunnel syndrome "as a result of her work duties related to her employment at Eaton Transmission." (JE 14, p. 97) However, Dr. Hsu goes on to state that while claimant was recovering from surgeries on her right arm, "she had been doing a great deal of lifting with the left arm as well as pushing, pulling, and grasping." (JE 14, p, 97) Later, on November 30, 2016, Dr. Hsu again stated claimant's left arm conditions were causally related to her employment because her work duties "required lifting, pushing, pulling, [and] grasping on a daily basis." (JE 14, p.

103) Dr. Hsu's understanding of claimant's work duties during her recovery from her right arm surgeries is simply inaccurate. Claimant was working in a light duty position, which involved checking sheets for machines and helping human resources with office tasks, during much of her recovery from her right arm surgeries. (Ex. A, p. 6; Depo. Tr., p. 17-20) Claimant was then off work entirely for 24 weeks prior to reporting the left arm symptoms. (Ex. C) Dr. Hsu was not provided with information regarding claimant's actual job duties, nor information regarding the number of days claimant worked in 2015 and what portion of those days were light duty.

Similarly, Dr. Bansal was not provided with accurate information regarding claimant's job duties and attendance during 2015. While Dr. Bansal describes some of claimant's prior job duties during the entire course of her employment, there is no indication he was made aware of her light duty assignments and time completely off work during 2015. (See JE 18) It is unclear whether more specific information regarding claimant's exact work duties and the amount of time spent performing those duties would have changed Dr. Bansal's opinion, but without that information, his report is not reliable.

Dr. Hsu and Dr. Bansal were not provided with accurate information in reaching their conclusions regarding causation. As a result, neither of their opinions are reliable. Both Dr. DiStefano and Dr. Crabb had the opportunity to review claimant's attendance records, and as a result determined claimant's work did not cause, nor materially aggravate, claimant's left arm condition. I find the opinions of Dr. DiStefano and Dr. Crabb to be more reliable than those of Dr. Hsu and Dr. Bansal. As such, I respectfully reverse the deputy commissioner's finding that claimant sustained an injury to her left arm that arose out of and in the course of her employment on October 15, 2015.

I find claimant failed to prove an injury to her left arm arising out of and in the course of her employment with defendant-employer on October 15, 2015. As such, claimant is not entitled to receive any benefits for File No. 5059360, and the remaining issues are moot. As claimant has failed to prove a qualifying second injury in File No. 5059360, she is not entitled to receive benefits from the Fund.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 21, 2019, is reversed with respect to File No. 5059360, alleged injury date of October 15, 2015.

File No. 5050197, Date of Injury August 11, 2011:

Defendants shall pay claimant twelve and one half (12.5) weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred fifty-five and 94/100 dollars ($555.94), however, the parties stipulated claimant was previously paid nineteen (19) weeks of permanent partial disability benefits at the stipulated rate prior to the hearing. Therefore, claimant shall take nothing further in File No. 5050197.

File No. 5059360, Alleged Date of Injury October 15, 2015:

Claimant shall take nothing from these proceedings.

Both Files:

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

Pursuant to rule 876 IAC 3.1(2), defendants employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed this 24th day of July, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jacob J. Peters (Via WCES)

Kent M. Smith (Via WCES)

Meredith C. Cooney (Via WCES)