BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAWN CHAPMAN, Claimant, vs. IOWA DONOR NETWORK., Employer, and TWIN CITY FIRE INS. CO., Insurance Carrier, Defendants.	FILED MAR 06 2019 WORKERS COMPENSATION	File No. 5065827 ARBITRATION DECISION Head Note Nos.: 1108.50, 1803

STATEMENT OF THE CASE

Dawn Chapman, claimant, filed a petition in arbitration seeking workers' compensation benefits from Iowa Donor Network (Iowa Donor) and its insurer, Twin City Fire Insurance Company, as a result of an injury she sustained on August 27, 2014, that arose out of and in the course of her employment. This case was heard in Des Moines, Iowa, and fully submitted on October 1, 2018. The evidence in this case consists of the testimony of claimant, Lindsey Jones, Suzanne Conrad, Joint Exhibits 1 - 6, Defendants' Exhibits A - E and Claimant's Exhibits 1 - 9.

The claimant orally moved to amend her petition to allege a right shoulder injury as sequela to her left shoulder injury. Defendants had no objection to the amendment. Defendants denied causation for the right shoulder injury. Claimant's motion to amend was granted.

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 claimant's right shoulder injury is a sequela due to overuse of her left shoulder injury.

2. Whether the claimant is entitled to payment of medical expenses for the right shoulder Injury.

3. The extent of claimant's disability.

4. Assessment of costs.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Dawn Chapman, claimant, was 57 years old at the time of the hearing. Claimant was employed as the executive staff assistant with the Iowa Donor Network. (Transcript page 9). Claimant started working for Iowa Donor in March 2013. Her position required her to provide administrative support to the Iowa Donor top executive staff. (Ex. A, pp. 1 - 4

Claimant graduated from high school and attended a community college. She obtained a degree to be a legal secretary. (Tr. p. 11) Prior to her work for Iowa Donor, claimant was an executive assistant at a power cooperative for about five years. She performed clerical and computer work. Claimant also worked for an insurance company and Mc Loud, USA as an executive secretary. (Tr. p. 13)

Claimant fell at work on August 27, 2014 and injured her left shoulder. Defendants have accepted liability for this injury. (Hearing Report)

Claimant testified she has had three surgeries and one manipulation of the left shoulder. (Tr. p. 9) Claimant is alleging that she has a work-related injury to her right shoulder. Claimant had surgery on her right shoulder. (Tr. p. 10)

Claimant was at a meeting for Iowa Donor when she slipped while walking to a clubhouse. (Tr. p. 18) Claimant injured her left shoulder.

Claimant had her first surgery for the left shoulder on December 9, 2014. Lisa Coester, M.D., postoperative diagnosis was, "Left shoulder high-grade 85% torn supraspinatus rotator cuff tear and minor labral fraying around the biceps anchor." (Joint Exhibit 6, p. 2) Claimant testified that she developed a frozen shoulder after her first surgery and Dr. Coester needed to perform a manipulation of her shoulder. (Tr. p. 25)

On October 15, 2015, Dr. Coester performed a second left shoulder surgery. Her postoperative diagnosis was,

POSTOPERATIVE DIAGNOSES:

1. Anterior labral tear that went from the anterior-inferior aspect up to the biceps anchor.

2. There was very tiny sliver/fissure in the posterior aspect of the rotator cuff. Otherwise, the cuff was healed and intact.

(JEx. 2, p. 5)

Dr. Coester referred claimant to Brian Wolf, M.D., at the University of Iowa Hospitals and Clinics (UIHC). Dr. Wolf provided a third surgery on June 23, 2016. Dr. Wolf performed left shoulder arthroscopy with distal clavicle resection, subacromial decompression and lysis of adhesions. (JEx.1, pp. 1 – 4) Claimant continued physical therapy until September 2016. (Tr. p. 27). Claimant said that Dr. Wolf said that the next surgery for her left shoulder would be a shoulder replacement. (Tr. p. 28) Claimant was placed at maximum medical improvement (MMI) and no restrictions were imposed on December 13, 2016. (JEx. 1, p. 6) Claimant testified Dr. Wolf would ask her if she needed restrictions. Claimant would tell Dr. Wolf the Iowa Donor works with her and she did not need time off. (Tr. p. 29)

Claimant saw Jason Salier, D.C., on December 12, 2016 for headaches. (JEx. 4, p. 1) Claimant saw Dr. Salier on May 16, 2017. The treatment note states, "Patient reports she aggravated her R neck/trap and R buttocks/LB bending over to pick up grandson over the weekend. She felt a sharp pull in buttock and then prolonged holding caused neck/trap pain." (JEx. 4, p. 11) Claimant testified she thought she might have injured her lower back picking up her grandson, but was not sure. (Tr. p. 32) On June 9, 2017, Dr. Salier noted concerning her right shoulder, "No injury but possibly when she helped kids move past month." (JEx. 4, p. 13) Claimant testified that at her visit with Dr. Salier she was asked if she had done something that would have caused an injury. Claimant said:

> A. ... So, you know, I was racking my brain. I was like, well, I helped my kids move. Well, I don't lift heavy things because I can't because of my left shoulder. You know, and I had my grandson that weekend. I don't believe that those are what caused the injury to the shoulder, but just trying to figure out what might have happened when I was at these appointments.

(Tr. pp. 71, 72)

Claimant went to an urgent care clinic on May 20, 2017 for pain in her right shoulder. Claimant had been experiencing the right shoulder pain for about a week and mentioned she had watched her grandson and helped her son move last weekend. Claimant denied any specific injury. (JEx. 5, p. 3) In her deposition, claimant said she noticed her right shoulder began to bother her in May 2017. (JEx. 1, p. 8)

Steven Young, M.D., saw claimant on May 22, 2017 for right shoulder pain. Dr. Young wrote,

> S: 1 and ½ weeks of right shoulder pain coincident with helping her son move into a house and lifting her 21# grandson quite a bit. Pain is anterior and worsened considerable over the weekend. Hydrocodone that she had left over from right shoulder surgery wasn't helping. She didn't feel a 'pop' or an actual event that brought on the pain. She's had 4 left shoulder surgeries and says it feels a lot like the rotator cuff tear that she had on the left. Can't lay on the right shoulder to sleep due to pain.

(JEx. 5, p. 5)

Claimant was referred to orthopedic surgeon Fred Pilcher, M.D., who saw claimant on June 1, 2017. Dr. Pilcher wrote that the MRI showed a partial tear of the right rotator cuff. Dr. Pilcher and claimant discussed the possibility the claimant's injury was caused by overuse of her right shoulder due to the left shoulder injuries. Dr. Pilcher opined that overuse could be the case and commented that claimant believed it to be the case. (JEx. 2, p. 10)

Claimant was referred to Dr. Wolf at UIHC for her right shoulder and was seen on July 25, 2017. (JEx. 1, p. 8) Dr. Wolf wrote, "55-year-old female seen today as a one-time visit for Worker's Compensation with 2 months of right shoulder pain that is likely the result of an overuse injury while compensating for her complex history with regarding her contralateral left shoulder." (JEx. 1, p. 11) Claimant testified that there was a delay in returning to Dr. Wolf as defendants did not authorize another appointment. (Tr. p. 38)

Claimant was informed by defendants on January 12, 2018 that defendants were denying the right shoulder claim. (Tr. p. 38; Ex. 8, p. 1) Claimant testified that she believed defendants were misreading her medical records when they sent the denial letter and contacted Dr. Salier to have him explain the record. (Tr. p. 39) In her deposition claimant said:

> Q. Dawn, you mentioned the example of checking bags rather than using the overhead bin; is that just an example of the type of modification you have to make in your everyday life because of your shoulders?
>
> A. Yes, it is.
>
> Q. And you were asked questions about your right shoulder, either your grandson or lifting boxes. Did you do anything with your grandson which you believe caused you to have right shoulder problems?
>
> A. No.

Q. Similarly with boxes, did you do anything lifting boxes which you believe caused a right shoulder problem?

A. No.

Q. Were those just examples of how you were using your right arm and how you were guarding your left side?

A. Correct, yes.

Q. And is that when you noticed how bad the shoulder pain was?

A. Absolutely, yes.

Q. Before either of those instances with your grandson or lifting boxes, were you having problems with your right shoulder?

A. Yes.

Q. And was that something that your coworkers knew as well?

A. I believe so, yes.

(Ex. 1, p. 14)

In a letter, fax dated January 23, 2018, Dr. Salier wrote a letter concerning clarifying his treatment records. Dr. Salier said that the treatment note of June 6, 2017 should be, "possibly **aggravated** when she helped kids move." (Ex. 2, p. 1) Dr. Salier said that claimant's right shoulder pain was not a new condition since helping her kids move but rather an aggravation to that shoulder. Dr. Salier said that there was no shoulder evaluation or shoulder treatment or a known direct injury that caused the right shoulder pain. (Ex. 2, p. 1) Dr. Salier wrote that he has not treated claimant's shoulders and that after her left shoulder injury claimant relied heavily on her right arm. It was Dr. Salier's opinion that claimant's right rotator cuff tear was likely due to overuse of her right shoulder. (Ex. 2, p. 1)

On January 23, 2018, Dr. Wolf examined claimant and wrote,

Impression:

Chronic right shoulder pain which began this summer with insidious onset, it is possible that it is an overuse issue as the result of compensating for her left shoulder which had undergone surgery in June 2016.

(JEx. 1, p. 14) On March 30, 2018, Dr. Wolf performed a right shoulder arthroscopic surgery. (Tr. p. 40) Claimant was undergoing physical therapy for her right shoulder at

the time of the hearing. Claimant testified she had attended over 130 physical therapy sessions for her left shoulder and 20 for her right shoulder. (Tr. p. 42)

Defendants requested on February 20, 2018 , after providing Dr. Wolf with additional records, if claimant's right shoulder condition was based on overuse. (Ex. B, p. 1) On February 21, 2018, Dr. Wolf wrote,

> I have been provided some additional outside records for my review. These included notes from Cedar Rapids where Dawn Chapman was seen by a primary care physician as well as an orthopedic surgeon for her right shoulder problem. It was noted in these clinical notes that her right shoulder pain was initially related to doing some moving and lifting of her grandson on a repetitive nature. This was documented in at least two clinical notes. Based on this clinical information, I do not believe Ms. Chapman's right shoulder problems are a result of overuse syndrome while compensating for her left shoulder injury.

(Ex. B, p. 3)

Claimant incurred medical expenses for the right shoulder that she had to use her health insurance to pay and her own copay. (Ex. 4; Ex. 5)

I find these expenses in Exhibit 4 and Exhibit 5 are causally related to her right shoulder injury. I find the treatment was reasonable and that the costs are reasonable.

Claimant's immediate supervisor at Iowa Donor is Lindsey Jones, the business manager. Claimant provided executive support to Suzanne Conrad, the chief executive officer and to Sarah Fewell the chief clinical office at Iowa Donor. Claimant helps them with day to day activities as well as the leadership team and board of directors. Claimant said she spends a lot of time on the computer and arranges several meetings Iowa Donor holds throughout the year. (Tr. p. 14) Claimant said that her organizational abilities have not diminished due to her injuries. (Tr. p. 51) Claimant said she does take more breaks now when she is working on the computer. (Tr. 51) Claimant considers herself proficient on the computer and able to use a number of computer office programs. (Tr. pp. 50, 53)

Claimant testified that Iowa Donor has accommodated her injuries. (Tr. p. 16) Iowa Donor raised her work desk and purchased a new chair so she can sit or stand as needed. Claimant was allowed to work from home especially after her surgeries. (Tr. p. 25) Although, at the time of the hearing, she was primarily working in the office. (Tr. p. 63) Claimant said that staff assistants will help her at work if they see her trying to pick up something. (Tr. p. 45) She has help setting up for board meetings and for retrieving items from top shelves. (Ex. 1, p. 3)

Claimant has pain in her left shoulder daily. Claimant testified that she is exhausted every day after work and it is due to shoulder pain. (Tr. pp. 43, 44) Claimant said that in order to lift she has to keep her elbows in and cannot lift away from her body. (Tr. p. 44) Claimant said that she has pain in her right shoulder that is more than her left, but believes that is due to the recent surgery. (Tr. p. 48) Claimant has difficulty in raising her left arm above her head. (Ex. 1, p. 7) Claimant is unable to put any baggage in an overhead bin on an airplane. (Ex. 1, p. 13)

Lindsey Jones, business manager for Iowa Donor testified. Ms. Jones is claimant's direct supervisor. (Tr. p. 76) Ms. Jones has daily interactions with claimant. Ms. Jones said Iowa Donor did not need to see any physician restrictions to make accommodations. (Tr. p. 81) Ms. Jones said that she did see claimant guard her left arm after her injury and use her right arm more. (Tr. p. 84) Ms. Jones said that she and other staff have assisted claimant in lifting. (Tr. p. 86)

Suzanne Conrad, chief executive of Iowa Donor testified. Ms. Conrad described the claimant as "essentially my right hand." (Tr. p. 90) Ms. Conrad said that two male employees in the North Liberty office go out of their way to help claimant, as well as other staff. (Tr. p. 92)

Based upon claimant's credible testimony, I find that claimant cannot use her arms above her shoulders, and must keep her arms close to her body when lifting to shoulder height. Claimant's left shoulder pain causes fatigue and limits adult daily living skills (ADLs) such as washing her hair, dressing, some household chores and driving. Claimant has had to adapt to restrictions of pain and weakness due to her left shoulder injury.

Claimant is able to perform her work at Iowa Donor with accommodations provided by her employer. Claimant has no formal restrictions from a physician. However, with three left shoulder surgeries and a manipulation she is limited in using her left arm above her head or away from her body. Claimant is very motivated to work and clearly is appreciated by her employer. From the testimony at the hearing, claimant's skill as an executive staff assistant helps keep the administrative function of Iowa Donor run smoothly.

I find claimant's gross earnings were $1,090.00 per week. Claimant was married and entitled to four exemptions. Based upon the rate manual in effect at the time of the injury the claimant's weekly workers' compensation rate is $702.06.

Claimant has requested cost of the filing fee of $100.00 and the deposition transcript of Randy Engel of $112.10. (Attached to Hearing Report) The only deposition submitted into the record was that of the claimant. (Ex. 1)

CONCLUSIONS OF LAW

The parties have stipulated that claimant's left shoulder injury arose out of and in the course of her employment with Iowa Donor. The parties have not agreed as to the extent of disability for the left shoulder.

The defendants deny that the claimant's right shoulder injury is causally related to a work injury. Defendants deny that the claimant's right shoulder injury was due to overuse.

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

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. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. 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).

In this case claimant's assertion that her right shoulder injury was due to overuse is certainly a rational reasonable assertion.

However, I do not find that claimant has met her burden of proof by a preponderance of the evidence that her right shoulder injury was the result of overuse due to the work injury to the left shoulder.

Claimant's treating orthopedic surgeon, Dr. Wolf, would not support overuse as the cause of her right shoulder injury. After Dr. Wolf stated that he did not find the right shoulder injury to be as a result of overuse, claimant obtained a clarification from her chiropractor, Dr. Salier, that the medical note should be amended and it was his opinion that the right shoulder injury was the result of overuse and thus work related.

Dr. Salier, however, was not treating claimant's shoulders. Also, there are references by other medical providers that claimant mentioned lifting her grandchild or helping her son move as a possible cause of her pain.

The record does not have a convincing medical opinion from a physician that the claimant's right shoulder was the result of overuse. A number of providers agreed it was possible, but there is not a clear opinion as to causation. I find the opinion of Dr. Wolf most convincing on the issue of causation of the injury to the right shoulder. Dr. Wolf performed both a left and right shoulder surgery on the claimant. He is a specialist at the UIHC.

Claimant has failed to prove by a preponderance of the evidence that her right shoulder injury arose out of and was in the course of her employment at Iowa Donor. Claimant's request for indemnity benefits and medical expenses for the right shoulder is denied.

The extent of claimant's industrial disability for her left shoulder is the next issue to decide.

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 Ry. 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.

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

In considering claimant's industrial disability I consider only the injury to the left shoulder. I have not included any limitation based upon the right shoulder injury as it happened subsequent to the left shoulder. I found claimant has not proven the right shoulder to be an injury causally related to her work.

Claimant has had three surgeries and a manipulation of her left shoulder. She is limited in the use of her left arm. Claimant is working with accommodation at Iowa Donor. Claimant is motivated to work at Iowa Donor and has not lost any income due to her left shoulder injury.

In considering claimant's industrial disability I must consider the loss of earning capacity in the labor market, not just with her current employer. Claimant is successful at being an executive staff assistant at Iowa Donor. Her workplace has allowed her accommodations and coworkers offer her assistance in a number of tasks. There was no evidence that all those accommodations would be available in the claimant's labor market.

Considering all the factors for industrial disability I find claimant has a 30 percent loss of earning capacity in the labor market. I find claimant has a 30 percent industrial loss. Claimant is entitled to 150 weeks of permanent partial disability benefits.

Claimant has requested costs for the filing fee of $100.00. This is awarded to the claimant. Claimant also requested cost of $112.00 for a deposition of Randy Engel. No deposition of Randy Engel was submitted into the record and that cost is denied. There was the deposition of the claimant submitted into the record which could be awarded. If the $112.00 is actually for claimant's deposition and the mention of Randy Engle was a scrivener's error claimant's deposition cost is awarded.

ORDER

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits commencing December 13, 2016 at the weekly rate of seven hundred two and 6/100 dollars ($702.06).

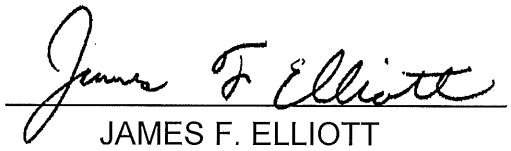
Defendants shall pay costs as set forth in this decision.

Defendants are entitled to a credit of fifty (50) weeks of permanent partial disability they previously paid at the weekly rate of seven hundred two and 06/100 dollars ($702.06).

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See. Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018)

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

Signed and filed this 6th day of March, 2019.



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JFE/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.