

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CATRICE PINKS,

Claimant,

vs.

IOWA HOME CARE, LLC,

Employer,

and

EXPLORER INS. CO.,

Insurance Carrier,  
Defendants.

File No. 20700568.01

ARBITRATION DECISION

Head Note Nos.: 1402.40, 1701, 1801,  
2501, 2502, 2701, 2907

## STATEMENT OF THE CASE

Catrice Pinks, claimant, filed a petition for arbitration against Iowa Home Care, L.L.C., as the employer and Explorer Insurance Company, as the insurance carrier. This case came before the undersigned for an arbitration hearing on August 31, 2021. Due to the ongoing pandemic in the state of Iowa and pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using CourtCall.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 3, as well as Defendants Exhibits A through F. All exhibits were received without objection. The record was suspended at the conclusion of the arbitration hearing pending receipt of Defendants' Exhibit F, which was timely filed and is received into the evidentiary record.

Claimant testified on his own behalf. No other witnesses testified live at the hearing. The testimonial record closed at the conclusion of the arbitration hearing and the evidentiary record closed completely once defense Exhibit F was filed.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on October 1, 2021. The case was considered fully submitted to the undersigned on that date.

### ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent partial disability benefits.
2. Whether claimant is entitled to reimbursement of her independent medical evaluation fees.
3. Whether claimant is entitled to alternate medical care into the future.
4. Whether costs should be assessed against either party and, if so, in what amount.

At the commencement of hearing, the parties were able to resolve the issue of reimbursement of claimant's independent medical evaluation (IME) fees. Defense counsel represented during the hearing that the IME charges had already been paid and sent to claimant's counsel. (Transcript, pages 7-8) The parties' stipulations on the record are accepted and defendants should reimburse the IME fee, if that payment has not already been made.

The parties were also able to resolve the alternate medical care dispute at the commencement of the hearing. Defendants offered to return claimant for further evaluation and potential treatment by Todd J. Harbach, M.D. (Tr., p. 7) Claimant was agreeable to that offer of care, a verbal consent order was issued by the undersigned, and the alternate medical care issue was removed as a disputed issue. (Tr., pp. 8-9) Defendants should abide by their offer and authorize return care with Dr. Harbach, if that has not already occurred.

### FINDINGS OF FACT

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

Catrice Pinks, claimant, is a 43-year-old woman. Ms. Pinks is a high school graduate and obtained an Associate of Arts degree in human services from Des Moines Area Community College (DMACC) in May 2012. Ms. Pinks has not utilized her educational degree in the employment setting since obtaining her degree.

After high school, Ms. Pinks worked for a daycare for approximately ten years. In the early 2000s, claimant worked as a job coach. In that position, she transported a special needs client to and from his employment and helped him fulfill his job requirements.

While attending college, claimant worked at Link Associates as a residential counselor part-time. In that position, Ms. Pinks worked with special needs individuals in a group home setting. She assisted four clients and helped them with life skills such as cooking, cleaning, and participating in the community. She did not have significant physical requirements or duties to perform in this position.

In December 2012, after graduating from DMAACC, claimant sought full-time employment with higher pay at Iowa Home Care, the employer in this case. Claimant worked as a home health aide for Iowa Home Care. In this position, claimant worked evenings at various locations as a substitute home health aide. She did not have a regular client but instead filled in for clients during absences or emergencies. She would assist clients with their medications, bathing, cooking, transferring from chair to bed, and other daily necessities.

Claimant worked full-time for Iowa Home Care earning approximately \$12.00 per hour. She worked the evening shift from 3:00 to 11:00 p.m. Her position required her to travel to various locations, including but not limited to Osceola, Newton, Des Moines, and West Des Moines.

Sometime between 2015 and 2017, claimant opened an in-house day care and began working a part-time status at Iowa Home Care. In this capacity, she worked three evenings per week from 3:00 to 11:00 p.m.

On August 12, 2019, claimant was working for Iowa Home Care. During her shift, she was assisting a client in Des Moines. Specifically, she was assisting the client in transferring from a chair to his bed for the evening. Claimant was responsible to move the client's lower extremities and transfer them into his bed.

In the process of transferring her client's lower extremities, claimant experienced and heard a pop in her lower back toward her right side. Initially, she experienced a discomfort. However, she fell into the client's bed and had difficulty getting up. When Ms. Pinks attempted to stand, she fell to the ground.

Claimant crawled to her phone and called her supervisor after the incident. Her supervisor asked to wait for a period of time to see if the symptoms would subside but instructed her to call an ambulance if they did not subside. Unfortunately, claimant's symptoms did not subside and an ambulance transported her to the emergency room that evening.

Ms. Pinks testified that she experienced pain in her low back and down her right leg at the emergency room on August 12, 2019. The emergency room record from that evening diagnosed claimant with a musculoskeletal strain. Claimant had full strength in her legs at the emergency room and negative straight leg raises in each leg. The emergency room provider prescribed the use of over-the-counter medications and a muscle relaxer. Claimant was discharged from the hospital on the same day. (Joint Exhibit 2, pp. 15-16)

The employer instructed claimant to be evaluated by their authorized medical providers at DoctorsNow. Claimant reported for evaluation at DoctorsNow on August 13, 2019. She reported constant muscle pain in the right lower back and described it as sharp. However, she reported that she did not have radiation of pain into the legs and had no paresthesia. The evaluating provider on August 13, 2019 noted claimant had no spasms or decrease in her strength and documented negative straight leg raises. However, claimant was placed on light-duty work restrictions. (Joint Ex. 3, pp. 33-35)

Ms. Pinks returned to DoctorsNow on August 20, 2019. At that time, she reported pain had radiated down her right buttock and into her right thigh or hamstring. (Joint Ex. 3, p. 44) DoctorsNow referred claimant for orthopaedic evaluation. (Joint Ex. 3, p. 53)

Orthopaedic surgeon, Todd J. Harbach, M.D., evaluated claimant on September 13, 2019. She reported pain levels of seven out of ten, including low back pain and right lower extremity pain. However, Dr. Harbach documented normal strength in the legs and negative straight leg raises. He did note tenderness to palpitation of the right SI joint, however. (Joint Ex. 4, p. 57) Dr. Harbach recommended light duty for four weeks and a return evaluation. He further recommended an MRI of the lumbar spine if claimant was not improved at her return evaluation. (Joint Ex. 4, p. 58)

Claimant returned for evaluation by Dr. Harbach on October 11, 2019. Dr. Harbach recorded that claimant was feeling much better and reporting only mild severity of continuing symptoms. However, he did note claimant remained painful at the right SI joint. He recommended no further treatment for claimant's condition, offered claimant no ongoing prescription medications for her condition, declared maximum medical improvement (MMI) and released claimant from his care to only return as needed. (Joint Ex. 4, pp. 63-64) Dr. Harbach recommended no permanent restrictions for claimant, but did recommend she not care for patients exceeding 200 pounds for several months. (Joint Ex. 4, p. 64)

Interestingly, on October 14, 2019, claimant's physical therapist concurred that claimant could be released from physical therapy. The therapist documented that claimant was capable "to meet job demands per most recent FSR testing." (Joint Ex. 1, p. 8) The therapist also had documentation from claimant of the actual job demands she faced at Iowa Home Care. (Joint Ex. 1, p. 10) The physical therapist's release and opinion that claimant could return to her job demands supports and bolsters the opinions offered by Dr. Harbach.

Iowa Home Care accommodated Dr. Harbach's recommendations and claimant was assigned to a client that did not require lifting or transfers. Claimant has not returned to Dr. Harbach for additional care prior to the time of hearing. She obtained one chiropractic treatment for her low back since her October 11, 2019 evaluation by Dr. Harbach.

In her deposition, Ms. Pinks acknowledged that she had increased mobility and range of motion in her back when she was re-evaluated by Dr. Harbach on October 11,

2019. (Defendants' Ex. A, p. 29) She also acknowledged that she did not have radiating pain at that evaluation or at the time of her deposition on June 30, 2021, but asserted that she was not 100 percent recovered either. (Defendants' Ex. A, pp. 29, 36)

Ms. Pinks obtained an independent medical evaluation performed by Sunil Bansal, M.D. on July 29, 2020. Dr. Bansal diagnosed claimant with sacroiliitis, but concurred with Dr. Harbach that claimant achieved MMI on October 11, 2019. (Claimant's Ex. 2, p. 9) Dr. Bansal opined that claimant should be assigned a five percent permanent impairment rating pursuant to DRE Category II of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Claimant's Ex. 2, p. 10) Dr. Bansal's rationale for awarding the five percent permanent impairment rating was that "She has radicular complaints, loss of range of motion, and guarding. She has positive provocative testing of her right sacroiliac joint." (Claimant's Ex. 2, pp. 10-11)

Dr. Bansal also recommended claimant not lift anything greater than 25 pounds and that she avoid prolonged standing over one hour at a time. Interestingly, in the October 14, 2019 physical therapy discharge note, the therapist documented claimant had performed testing on October 16, 2019 and that claimant was capable of safely lifting more than Dr. Bansal's recommended restrictions by that date.

Dr. Harbach authored a report on October 8, 2020, responding to the findings and opinions offered by Dr. Bansal. Dr. Harbach concurred that claimant has sacroiliitis. However, he also explained that this is a temporary problem and not a permanent condition. Dr. Harbach also clarified that claimant:

[D]efinitely did not show signs that would put her in category #2, which would put [sic] her a 5% permanent partial impairment. If anything, she would be category #1 when I saw her and should receive 0% permanent partial impairment of the whole person. I believe that her aggravation is temporary in nature and not a permanent life-changing event.

(Defendants' Ex. B, p. 2)

Dr. Harbach confirmed in his October 8, 2020 letter that he does not believe claimant requires any permanent work restrictions. He further asserted that the restrictions offered by Dr. Bansal "are unreasonable and arrived at by personal opinion only." (Defendants' Ex. B, p. 3) Coupled with the testing and opinions of the physical therapist, I find Dr. Harbach's opinions most convincing and credible on the issue of permanent work restrictions. Specifically, I find that claimant has not proven a need for permanent work restrictions as a result of the August 12, 2019 work injury.

Dr. Bansal's findings of loss of range of motion and radicular complaints are contrary to the findings of Dr. Harbach. Therefore, I must decide which physician's history and findings are most accurate. In this instance, claimant's own testimony suggests that the findings recorded by Dr. Harbach were accurate and that the findings of reduced range of motion and radicular symptoms noted by Dr. Bansal were not accurate.

As noted above, claimant conceded in her deposition that she had increased range of motion and mobility in her low back when she was re-evaluated by Dr. Harbach. She also testified in her deposition that she had no radicular symptoms at the time of Dr. Harbach's evaluation on October 11, 2019 or at the time of her deposition on June 30, 2021. It would seem odd for claimant to have no radicular complaints in 2019 or 2021 but to have radicular complaints during Dr. Bansal's evaluation in 2020. Moreover, if radicular symptoms existed at Dr. Bansal's evaluation, Ms. Pinks had no treatment after Dr. Bansal's evaluation that would cause her radicular complaints to resolve.

I find claimant's deposition testimony to most closely align with the findings and opinions of Dr. Harbach. Ultimately, I find the medical opinions of Dr. Harbach to be most credible and convincing in this situation. Once again, I accept Dr. Harbach's opinions and find that claimant achieved maximum medical improvement on October 11, 2019 and that she failed to prove she sustained permanent impairment or requires permanent work restrictions as a result of the August 12, 2019 work injury. Having reached these findings, I similarly accept Dr. Harbach's opinions and find that claimant's injury of August 12, 2019 resulted in only a temporary aggravation or injury. I specifically find that claimant failed to prove she sustained permanent disability as a result of the work injury.

#### CONCLUSIONS OF LAW

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, I found the opinions of Dr. Harbach to be most credible and convincing. Claimant's deposition testimony supported the findings and opinions of Dr.

Harbach and tended to contradict the opinions of claimant's independent medical evaluator, Dr. Bansal. Having accepted the opinions of Dr. Harbach as the most credible and convincing medical opinions in the evidentiary record, I found that claimant failed to prove she sustained permanent disability as a result of the August 12, 2019 work injury. Accordingly, I conclude that claimant failed to carry her burden of proof to establish she sustained permanent disability. I conclude claimant failed to prove entitlement to an award of permanent disability benefits in this case.

The only other disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. In this case, claimant failed to prove entitlement to permanent disability. Exercising the agency's discretion, I conclude that neither party's costs should be assessed in this case. Rather, all parties should bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes no weekly benefits.

Defendants shall reimburse claimant's independent medical evaluation fee, if they have not already done so, pursuant to the stipulation entered at the commencement of hearing.

Defendants shall authorize and pay for further causally related medical care with Dr. Harbach pursuant to the consent order agreed upon by the parties at the commencement of the hearing.

All parties shall pay their own costs.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 24<sup>th</sup> day of January, 2022.

A handwritten signature in black ink, appearing to read "William H. Grell", is written over a horizontal line.

WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Richard Schmidt (via WCES)

Lindsey Mills (via WCES)

**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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.