BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JANET L. CASSMANN, Claimant, vs. COMPREHENSIVE SYSTEMS, INC., Employer, and UNITED WISCONSIN INSURANCE COMPANY, d/b/a UNITED HEARTLAND, Insurance Carrier, Defendants.	:	File No. 5032709 ARBITRATION DECISION Head Note No.: 1803

FILED
JAN 11 2016
WORKERS COMPENSATION

STATEMENT OF THE CASE

Janet Cassmann, claimant, filed a petition for medical benefits against defendants, Comprehensive Systems, Inc., as the employer, and United Wisconsin Insurance Company d/b/a United Heartland, as the insurance carrier.

Claimant filed a prior petition in arbitration against these same defendants. In a compromise settlement agreement approved by this agency on July 17, 2013, the parties amicably resolved the prior arbitration proceeding. (Exhibit 1) However, in the compromise settlement agreement, the parties agreed, "Pursuant to Iowa Code Section 85.35(6), the parties agree that the Claimant has the right to benefits pursuant to Iowa Code Section 85.27 for reasonable and necessary medical expenses causally related to the August 12, 2006 work injury." (Ex. 1, page 5) Defendants dispute that the medical treatment and expenses claimant has obtained since the 2013 compromise settlement are causally related to the 2006 work injury.

Hearing was scheduled to occur on October 7, 2015. However, the parties agreed to waive any in-person hearing in this case. Instead, the parties agreed to submit this case on a written evidentiary record. The evidentiary record was deemed fully submitted upon receipt of the parties' joint exhibits on October 12, 2015.

Counsel also requested the opportunity to file hearing briefs. The parties filed their respective briefs on October 23, 2015, at which time this case was considered fully submitted to the undersigned.

EVIDENTIARY OBJECTION

Given that this hearing was submitted on a written evidentiary record, defendants preserved their evidentiary objection to the submission of certain deposition exhibits offered by claimant during William R. Boulden M.D.'s deposition, marked as exhibit 12. Specifically, defendants noted their objection to two exhibits offered during that deposition on the joint exhibit list and in their post-hearing brief. In the joint exhibit list, defendants narrowed and clarified their evidentiary objection asserting:

> Defendants' objections: Defendants object to deposition exhibits 1 and 2 attached to Exhibit 12 (Dr. Boulden deposition) as follows:
>
> This exhibit is irrelevant, immaterial and not the type of evidence that reasonably prudent persons are accustomed to rely on for the conduct of their serious affairs. It is not probative of any issue in dispute in this case. Further regarding deposition exhibit 2 of Ex. 12, Defendants object as there is no proper foundation for this exhibit.

Claimant responds to the defense objection in the joint exhibit list, asserting:

> Claimant responds to Defendants' objections to deposition exhibits: Boulden admitted during his deposition to previously testifying to positions that are inconsistent with his current deposition answers; as such, Claimant's deposition exhibits are used for impeachment purposes to show that Boulden's previous testimony was supported by medical literature and is still consistent with the current opinions of Dr. Mooney and Dr. Beck.

(Joint Exhibit List)

Having reviewed the exhibits objected to by defendants and considered the disputed issues in this case, I find that the deposition exhibits offered by claimant are probative, relevant and material to the disputed issues in this case. I further find that a medical opinion expressed in writing as well as medical research article are the types of evidence that reasonably prudent persons are accustomed to rely upon for the conduct of their serious affairs. Therefore, I overrule defendants' objections on these grounds.

With respect to defendants' objection that there was not a proper foundation laid for Deposition Exhibit 2, I note that Dr. Boulden did not dispute the authenticity of the research article offered by claimant. It would appear that this article is authentic and appropriately introduced for the purposes of impeachment. Therefore, I overrule defendants' foundational objection to Deposition Exhibit 2 as attached to Dr. Boulden's deposition transcript (Exhibit 12). Having reached these conclusions, I overrule defendants' objections. All offered joint exhibits are received into the evidentiary record.

ISSUE

The parties submitted only one disputed issue for resolution; namely, whether claimant's medical treatment and expenses, including medical mileage, incurred since a July 17, 2013 compromise settlement are causally related to her August 12, 2016 work injury at Comprehensive Systems, Inc.

FINDINGS OF FACT

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

There is no dispute in this record about whether Janet Cassmann sustained a work-related low back injury on August 12, 2006. She clearly did. The dispute in this case arises over whether medical treatment she received and the corresponding expenses associated with that medical treatment are causally related to the 2006 work injury.

The parties in this case reached a compromise settlement, which was approved by the Iowa Workers' Compensation Commissioner on July 17, 2013. The compromise settlement noted, "Pursuant to Iowa Code Section 85.35(6), the parties agree that the Claimant has the right to benefits pursuant to Iowa Code Section 85.27 for reasonable and necessary medical expenses causally related to the August 12, 2006 work injury." (Exhibit 1, p. 5)

On August 12, 2006, Ms. Cassmann was working through the employer as direct support staff in a residential home for some disabled individuals. She had taken consumers under her care to watch a fireworks display in Marble Rock, Iowa. The pickup truck they were in began to roll backwards. Ms. Cassmann climbed out of the truck and tried to push on the tailgate to stop the truck. Unfortunately, she was run over by the pickup and sustained significant injuries, including low back injuries. (Ex. 10, pp. 14-15; Ex. 2, pp. 6-9)

Ms. Cassmann ultimately treated for her low back with the authorized neurosurgeon, David W. Beck, M.D. On August 8, 2008, Dr. Beck declared claimant at maximum medical improvement and assigned a five percent (5%) permanent impairment of the whole person as a result of claimant's transverse process fractures in her lumbar spine. (Ex. 3, p. 1)

On March 24, 2010, claimant returned to Dr. Beck for evaluation. Dr. Beck reviewed an MRI of claimant's low back at that time and diagnosed her with a disc herniation at L4-5. He recommended surgery for the disc herniation. (Ex. 3, p. 2) In a letter dated March 26, 2010, Dr. Beck opined that the disc herniation and the recommended surgery were "directly related to the significant trauma to her back that she sustained in August 2006." (Ex. 3, p. 3)

Defendants asked William McDevitt, M.D. to perform a records review in April 2010 to assess whether Ms. Cassmann's low back symptoms and the recommended surgery were causally related to the August 2006 work injury. Dr. McDevitt opined:

> [I]t is my opinion that Ms. Cassmann's diagnosis, as far as her lower back is concerned, is transverse process fractures L1-L5, now healed and not a cause of any significant disability. It is well known that transverse process fractures are an indication of significant trauma to the lower back and, although they do not contribute to the integrity of the lumbar spine and the involved vertebrae, they do indicate significant injury to the lower back has occurred. It is my opinion that the disc changes noted on the MRI scan of 12-31-09 are related to the trauma of 8-12-06. It would be my opinion that the necessity for the operation scheduled on the lumbar spine would be directly related to the injury of 8-12-06. I think Ms. Cassmann did have pre-existing conditions as far as degenerative disc changes at L4-5, but I think the accident of 8-12-06 aggravated and accelerated these changes to the necessity of the surgical procedure.

(Ex. 9, p. 4)

Dr. Beck took claimant to surgery and performed an L4-5 laminectomy with medical facetectomy on the right on April 16, 2010. (Ex. 7, p. 1) In June 2010, Dr. Beck opined that claimant had not yet achieved maximum medical improvement (MMI) following the April 2010 back surgery. He confirmed that the ongoing treatment, including the April 2010 surgery, was causally related to the 2006 work injury. (Ex. 3, p. 6) On August 4, 2010, Dr. Beck declared MMI and opined that claimant sustained a 13 percent permanent impairment of the whole person as a result of her transverse process fractures and disc herniation. (Ex. 3, p. 7)

Ms. Cassmann returned to Dr. Beck in late 2011 or early 2012 with ongoing symptoms. Dr. Beck recommended an epidural steroid injection and opined in letters dated January 4, 2012 and January 6, 2012 that claimant's chronic back symptoms were work related. (Ex. 3, pp. 8-9) In July 2012, Dr. Beck noted ongoing symptoms in claimant's low back and indicated, "This was all from a work comp injury . . . in August 2006." (Ex. 3, p. 10) Dr. Beck reviewed a repeat lumbar MRI at that time and noted "a recurrent disc herniation on the right at L4-5." (Ex. 3, p. 10)

Once again, Dr. Beck recommended surgical intervention. (Ex. 3, p. 10) In a July 27, 2012 report, Dr. Beck noted, "Given the fact that she has no significant injury following her last surgery I think this is related to her original injury. Indeed, once a disc is herniated there is a 5 to 10% chance of reherniation." (Ex. 3, p. 11)

On August 28, 2012, Dr. Beck took claimant back to surgery for a recurrent L4-5 disc herniation. Dr. Beck performed a bilateral L4-5 posterolateral fusion. (Ex. 7,

pp. 5-6) On May 1, 2013, Dr. Beck declared MMI following the lumbar fusion. (Ex. 3, p. 14)

In April 2013, defendants responded to claimant's requests for admissions in the prior contested case proceeding. In their formal discovery responses, defendants admitted that claimant's low back surgeries of April 16, 2010 and August 28, 2012 were causally connected to her work injury of August 12, 2006. (Ex. 17, pp. 4-5)

In a report dated June 3, 2013, Dr. Beck confirmed "based on reasonable medical certainty that her rollover accident in 2006 was a substantial factor contributing to her need for her 2010 and 2012 low back surgeries." (Ex. 3, p. 19) Shortly thereafter, the parties reached and submitted the compromise settlement for approval. (Ex. 1)

On July 9, 2014, claimant once again returned to Dr. Beck for neurosurgical evaluation. She reported that she began developing increasing symptoms approximately ten months before that evaluation, which would be about October 2013. She reported pain down both legs and Dr. Beck once again evaluated an MRI of claimant's low back and identified a surgical problem. This time, Dr. Beck identified a disc herniation at the L3-4 level and recommended extending the prior fusion from the L4-5 level up to the L3-4 level as well. (Ex. 3, p. 20)

On July 10, 2014, claimant's counsel wrote to Dr. Beck, inquiring if the current recommended surgery was causally related to the August 2006 work injury. In a report dated July 15, 2014, Dr. Beck opined, "I cannot attribute Ms. Cassmann's herniated disc and stenosis at L3-4 to the 2006 back injury." (Ex. 3, p. 24)

Claimant's counsel then sought clarification of Dr. Beck's opinions. In a letter dated August 15, 2014, Dr. Beck opined, "It is my opinion within a reasonable degree of medical certainty that had Ms. Cassmann not been injured at work in 2006 requiring a lumbar fusion at L4-5 she would not have developed the subsequent problem at L3-4 requiring a discectomy and fusion." (Ex. 3, p. 27) He further clarified that "the 2006 accident is a substantial contributing factor for a need for surgery on July 29, 2014." (Ex. 3, p. 27)

Claimant's counsel then asked claimant's pain management physician, Shelley Wells, D.O., to comment on whether the ongoing low back treatment was causally related to the 2006 work accident. Dr. Wells opined in a report dated September 11, 2014, "I am uncertain whether or not this initial 2006 injury contributed to her most recent back issue. Therefore, I am unable to give you a medical conclusion whether this recent surgery was as a direct result of the accident." (Ex. 8, p. 18)

On December 29, 2014, Dr. Beck authored another report in response to inquiries from claimant's counsel. In that report, Dr. Beck opined, "It is my opinion within a reasonable degree of medical certainty that Ms. Cassmann's 2006 injury was a

substantial contributing factor for her need for surgery on July 29, 2014. She developed adjacent level disease following a lumbar fusion, which does occur in as many as [*sic*] 15% of the time." (Ex. 3, p. 33)

In May 2015, claimant's counsel asked Dr. Beck to clarify the potential discrepancy in his opinions. Dr. Beck again confirmed that he believed the August 2006 work injury was a substantial contributing factor to the resulting July 2014 surgery. (Ex. 3, p. 35)

Defendants then retained an orthopaedic spine specialist, William R. Boulden, M.D., who performed an independent medical evaluation of claimant's low back on March 11, 2015. (Ex. 2) Following his records review and physical examination, Dr. Boulden opined, "I do not believe the work injury of 2006 was a substantial contributing factor to the need for the surgery on July 29, 2014." (Ex. 2, p. 5)

Claimant's counsel sought clarification of Dr. Boulden's opinions directly from the physician via correspondence. Dr. Boulden responded to claimant's counsel via correspondence dated June 4, 2015. Dr. Boulden responded to that correspondence and explained, "There have also been some recent studies over the last several years that state that the adjacent spinal disease is not as predictable as one used to think; therefore, I think this is multifactorial based on person to person and I cannot state that [the August 2006 work injury] was a material contributing factor as you want to describe it." (Ex. 2, p. 14)

In a supplemental report solicited by defense counsel, Dr. Boulden bolstered his opinion by stating:

> [T]here has been more recent literature discussing adjacent segment disease (ASD) after lumbar fusion. As I stated in the past, we were usually taught that there was an issue with this developing in the proximal aspect of the fusion; however, the literature and the newer studies do not really demonstrate that this is an issue.

(Ex. 2, p. 16) Dr. Boulden continued by explaining:

> It is my opinion that she had pre-existing problems and she was at risk for developing segmental disease above her fusion and the fusion, itself, is not the significant issue. The surgical fusion that pre-dated this development was not the sole issue. As I stated, there are multiple articles in the literature. We have discussed two of these and I believe the fusion she had at L4-5 was not a substantial contributing factor.

(Ex. 2, p. 16)

Then, in September 2015, defense counsel sought clarification of Dr. Beck's opinions. In response, Dr. Beck indicated that he would "render no opinion within a

reasonable degree of medical certainty as to whether or not the original laminectomy (April 26, 2010) and subsequent fusion (August 20, 2012) are causally related to the August 12, 2006 work incident that caused transverse process fractures." (Ex. 3, p. 43) He confirmed that only if the 2012 fusion was causally related to the original work injury would the subsequent fusion in 2014 at the L3-4 level be causally related. (Ex. 3, pp. 43-44)

Then, seeking yet another clarification, claimant's counsel wrote to Dr. Beck on October 1, 2015. Claimant's counsel asked Dr. Beck to confirm that the 2006 work accident was a substantial factor contributing to claimant's need for both the 2010 and 2012 low back surgeries. Specifically, claimant's counsel asked Dr. Beck to confirm that these surgeries "are all causally connected to her August 2006 work injury." Dr. Beck responded on October 2, 2015, indicating that he disagreed with this statement and provided a handwritten response that indicates, "Cannot say with a reasonable medical certainty." (Ex. 3, p. 47)

The parties also deposed Dr. Boulden prior to the time of hearing. (Ex. 12) In his deposition, Dr. Boulden reiterated his opinion that the surgeries in 2010, 2012, and 2014 were not causally related to the 2006 work injury. Despite efforts at impeachment and challenges to Dr. Boulden's credibility, Dr. Boulden maintained a consistent opinion, concluding that the medical care obtained after the 2013 settlement was not causally connected to the 2006 work injury. (Ex. 12, pp. 4-5, 9-11)

Having considered and weighed the evidence, including the medical opinions outlined above, defendants' response to request for admission, and claimant's deposition testimony, along with all other evidence in the record, I find that Dr. Beck's opinions are equivocal at best. I find that it would be inappropriate to pick and choose which of Dr. Beck's opinions to accept in light of the fact that he ultimately indicated he could not offer a causation opinion within a reasonable degree of medical certainty. I do not find Dr. Beck's opinions to be persuasive or consistent and give them minimal weight in this case.

I find Dr. Wells' opinions to be equivocal. She similarly indicates that she cannot offer a definitive medical causation opinion within a reasonable degree of medical certainty. I do not find Dr. Wells' opinions to be helpful on the causation issue and give them no weight.

I find that Dr. Boulden offered the only definitive and consistent medical causation opinion in this record. Although claimant sought to impeach Dr. Boulden, I find Dr. Boulden's explanation for the change in his medical opinions from 2006 to the present to be rational, reasonable, and credible. Although claimant pointed out cases in which this agency found Dr. Boulden's opinions not credible, I find his opinions in this particular case to be the most convincing medical opinions in the record. Therefore, I find that claimant failed to prove by a preponderance of the evidence that the medical

treatment obtained, the medical expenses incurred, or the medical mileage traveled after the 2013 compromise settlement are causally related to the 2006 work injury.

CONCLUSIONS OF LAW

Typically, a compromise settlement extinguishes this agency's jurisdiction over a worker's compensation claim. United Fire v. St. Paul Fire and Marine, 677 N.W.2d 755, 761 (Iowa 2004); White v. Northwestern Bell Telephone Co., 514 N.W.2d 70, 74 (Iowa 1994). Parties are not permitted to grant this agency jurisdiction that has not otherwise been delegated by the legislature. United Fire, 677 N.W.2d at 761; Smith v. CRST, Inc., File No. 976632 (Arbitration Dec. November 15, 1993) ("parties cannot, by contract, alter the statutory plan for jurisdiction in workers' compensation cases."). Given its limited jurisdiction, this agency can and should exercise jurisdiction when specifically permitted to do so. Zomer v. West River Farms, Inc., 666 N.W.2d 130, 132 (Iowa 2003) (noting that Iowa Workers' Compensation Commission "has no inherent power and has only such authority as is conferred by statute or is necessarily inferred from the power expressly granted.").

Iowa Code section 85.35(6) provides:

> The parties to any settlement made pursuant to this section may agree that the employee has the right to benefits pursuant to section 85.27 under such terms and conditions as agreed to by the parties in the settlement, for a specified period of time after the settlement has been approved by the workers' compensation commissioner. During that specified period of time, the commissioner shall have jurisdiction of the settlement for the purpose of adjudicating the employee's entitlement to benefits provided for in section 85.27 as agreed upon in the settlement.

Section 85.35(6) specifically provides that this agency may retain jurisdiction over section 85.27 medical disputes, if specifically provided for and pursuant to the terms and conditions agreed upon by the parties in a settlement agreement.

This agency approved a compromise settlement agreement between these parties on July 17, 2013. The compromise settlement agreement provides:

> Pursuant to Iowa Code Section 85.35(6), the parties agree that the Claimant has the right to benefits pursuant to Iowa Code Section 85.27 for reasonable and necessary medical expenses causally related to the August 12, 2006 work injury . . . . The parties agree that the Workers' Compensation Commission will retain jurisdiction as to I.C.S. 85.27 medical care disputes.

(Ex. 1, p. 5) Given that the parties specifically referenced Iowa Code section 85.35(6), noted their intention that this agency retain jurisdiction over medical disputes pursuant

to Iowa Code section 85.27, and specifically noted the terms and conditions under which claimant may recover medical benefits, I conclude that this agency retains jurisdiction to decide the current medical dispute between the parties.

As noted, the parties outlined in their settlement agreement the specific terms and conditions under which claimant could recover additional medical benefits. The parties specifically indicated that claimant remains entitled to medical benefits provided for in Iowa Code section 85.27 for all "reasonable and necessary medical expenses causally related to the August 12, 2006 work injury." (Ex. 1, p. 5)

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6). Pursuant to the terms of the parties' settlement agreement, claimant bears the burden to establish that the medical care and expenses she seeks to be awarded are reasonable, necessary and causally related to the August 12, 2006 work injury.

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).

Three physicians have analyzed whether claimant's medical treatment and expenses after the 2013 settlement are causally related to the August 12, 2006 work injury. The first is a treating pain management physician, Shelley Wells, D.O. In a September 11, 2014 report, Dr. Wells indicated, "I am uncertain whether or not this initial 2006 injury contributed to her most recent back issue. Therefore, I am unable to give you a medical conclusion whether this recent surgery was as a direct result of the accident." (Ex. 8, p. 18) Dr. Wells' opinion is not definitive or helpful in determining whether the claimed medical treatment and expenses are causally related to the August 2006 work injury. I did not find Dr. Wells' opinions helpful in determining the causation issue.

Claimant's treating neurosurgeon, Dr. Beck, has offered a variety of written opinions on the causal connection issue. His opinions have seemed to waver, at best. In certain reports, he indicates that the August 2006 work injury was a substantial

contributing cause of claimant's medical treatment and expenses after the 2013 settlement. However, in his last two reports, Dr. Beck indicates that he is unable to say with a reasonable degree of medical certainty whether the medical treatment obtained after the 2013 settlement is causally connected to the August 2006 work injury.

Claimant urges that defendants be bound by a prior response to request for admission offered by defendants on April 11, 2013. Specifically, claimant argues that defendants are bound by their admission that claimant's low back surgeries of April 16, 2010 and August 28, 2012 were causally connected to the August 2006 work injury. (Ex. 17, pp. 4-5) Urging that defendants are conclusively bound by their admission, claimant then points out and argues that Dr. Beck has definitively opined that if the 2010 and 2012 low back surgeries are causally connected to the work injury, then the subsequent medical treatment and surgery in 2014 would also be causally connected. (Ex. 3, pp. 43-44)

Claimant offers two theories of why defendants are bound by their response to request for admission offered prior to the compromise settlement. First, claimant relies upon the Iowa Rules of Civil Procedure and specifically rule 1.511. Iowa Rule of Civil Procedure 1.511 provides:

> Any matter admitted under rule 1.510 is conclusively established in the pending action unless the court on motions permits withdrawal or amendment of the admission. Subject to the provisions of rule 1.604 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining that party's action or defense on the merits. Any admission made by a party under rule 1.501 may be used only as an evidentiary admission in any other proceeding.

Defendants provided the admission relied upon by claimant in the underlying contested case proceeding. That proceeding was resolved by amicable settlement and the compromise settlement of the parties was approved by this agency. Pursuant to Iowa Code section 85.35(6), the terms and conditions of the settlement agreement govern whether claimant is entitled to additional medical care and expenses.

I conclude that this is a separate and subsequent proceeding. I conclude that defendants are not conclusively bound to their admission in the prior proceeding, particularly since the agency was not aware of and did not rely upon that admission when reviewing and approving the compromise settlement in 2013. Nevertheless, the admission is admissible as an evidentiary statement against interest and has been received into the evidentiary record for consideration.

Claimant also urges that defendants should be bound by their 2013 admission under the principles of res judicata. Although not specifically outlined or urged in claimant's hearing brief, claimant is presumably urging for the application of issue preclusion, or collateral estoppel. Issue preclusion applies only when:

1. The factual issue currently in dispute is identical to the issue decided in a prior action;

2. The issue was raised and litigated in the prior action;

3. The issue was material and relevant to disposition of the prior action; and

4. The factual determination made in the prior action must have been necessary and essential to the outcome of the prior action.

Winnebago Industries, Inc. v. Haverly, 727 N.W.2d 567, 571-572 (Iowa 2006).

"[A]n admission by a party may be treated as conclusive or be admissible in evidence against that party in a subsequent action." Id. at 572. However, "'[f]acts determined by admissions and stipulations ordinarily are not entitled to collateral estoppel effect, because facts so determined are not actually litigated, unless the parties to the stipulation manifest an intent to be bound in a subsequent action.'" Id. (quoting 50 C.J.S. Judgments § 813, at 381 (1997)).

In order to rely upon the doctrine of issue preclusion, or collateral estoppel, claimant must prove that the issue sought to be precluded or the admission enforced was actually raised and litigated in the prior action. Tyson Foods, Inc. v. Hedlund, 740 N.W.2d 192, 195 (Iowa 2007). In this instance, the admission claimant seeks to enforce was a potential disputed issue in the prior case. However, the parties resolved the issue (and all other disputed issues) via compromise settlement.

The parties did not fully litigate the issue in the underlying compromise settlement. In fact, the compromise settlement specifically states that there is a dispute between the parties and that the "settlement is a reasonable and informed compromise of the competing interests of the parties." (Ex. 1, p. 1) The compromise settlement further notes that, "Defendants admit that an injury occurred, but deny that all or a substantial portion of the Claimant's current alleged disability is a result of the work incident." (Ex. 1, p. 4) In this sense, the parties asserted to this agency that a bona fide dispute existed as to causal connection at the time of the 2013 settlement, which was after the defendants' admission. Claimant cannot assert to this agency in the compromise settlement that a bona fide dispute as to causal connection existed and now take a contrary position that a dispute did not and does not exist. Wilson v. Liberty Mut. Group., 666 N.W.2d 163, 166-167 (Iowa 2003).

I conclude that the doctrine of issue preclusion, or collateral estoppel, does not apply in this situation because the admission claimant seeks to enforce against

defendants was not fully litigated in the underlying contested case proceeding and because the parties affirmatively asserted to this agency in their compromise settlement that this was a disputed issue at the time of settlement.

Although not specifically raised by name in claimant's hearing brief, there are two analogous legal theories that are potentially asserted within claimant's hearing brief. The first is the doctrine of the law of the case. "The doctrine of the law of the case represents the practice of courts to refuse to consider what has once been decided." State v. Grosvenor, 402 N.W.2d 402, 405 (Iowa 1987). The doctrine of the law of the case only applies, however, if the agency or a court has made a finding or conclusion on an issue previously in the litigation of a claim or case. Winnebago Industries, Inc. v. Haverly, 727 N.W.2d 567, 573 (Iowa 2006).

In this instance, the agency did not make a finding or enter any conclusions pertaining to whether claimant's 2010 and/or 2012 low back surgeries were causally related to the 2006 work injury. Instead, the parties resolved any disputes pertaining to those issues via the compromise settlement. Therefore, I conclude that the doctrine of the law of the case is not applicable.

Claimant's brief potentially also raises judicial estoppel as a theory as to why defendants should be estopped from disputing the causal connection between the 2006 work injury and the 2010 and 2012 back surgeries. Judicial estoppel prohibits a party from asserting a position or argument contrary to a position or argument it has successfully advocated before a court or administrative agency in a prior legal proceeding. Haverly, 727 N.W.2d at 573.

"[J]udicial estoppel applies only when the position asserted by a party was material to the holding in the prior litigation." Hedlund, 740 N.W.2d at 198. "'Absent judicial acceptance of the inconsistent position, application of the rule is unwarranted because no risk of inconsistent, misleading results exists.'" Id. (quoting Vennerberg Farms, Inc. v. IGF Insurance Co., 405 N.W.2d 810, 814 (Iowa 1987)). In this instance, defendants did not successfully advocate or assert the admission now sought to be enforced. Instead, the settlement documents executed by all parties and approved by the agency identify causal connection between claimant's condition and the 2006 work injury as a dispute disuse. Therefore, I conclude that judicial estoppel does not apply in this instance.

Having determined that none of the potential theories of preclusion require defendants' prior admission to be strictly enforced, I considered Dr. Beck's causation opinions in light of the past evidence, developments over time, and in light of his equivocal opinions. Ultimately, I found that Dr. Beck was not able to definitively causally connect claimant's medical treatment, including the 2014 fusion surgery, to the 2006 work injury. I did not find his opinions to be helpful or persuasive.

The third physician that considered the causal connection of claimant's medical treatment after the 2013 settlement was Dr. Boulden. Dr. Boulden offered the only definitive opinion in this record. Dr. Boulden opined that claimant's treatment after the 2013 surgery, including the 2014 fusion extending to the L3-4 level, was not causally related to the 2006 work injury. Given that Dr. Boulden's opinion was definitive and consistent even in the face of cross-examination at his deposition, I accepted Dr. Boulden's opinion as the most convincing medical opinion.

Having accepted Dr. Boulden's causation opinion as the most convincing medical opinion, I reached a finding that claimant failed to prove the medical treatment she received after the 2013 settlement was causally connected to the 2006 work injury. Therefore, I conclude that claimant has failed to carry her burden of proof and has failed to establish entitlement to an award of the medical expenses or mileage she seeks.

Claimant also seeks an assessment of her costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. In this instance, claimant failed to prove that the medical expenses she seeks were causally related to the 2006 work injury. Therefore, I conclude it would be inappropriate to assess claimants' costs against defendants. Each party will be ordered to bear their own costs associated with this contested case proceeding.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing.

Each party shall bear their own costs.

Signed and filed this 11th day of January, 2016.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Kim R. Snitker
Attorney at Law
PO Box 679
Mason City, IA 50402
krsnitker@iabar.org

Lee P. Hook
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266-2504
lee.hook@peddicord-law.com

WHG/srs

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.