BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHARON FREEMAN, Claimant, vs. TYSON FOODS, INC., Employer, Self-Insured, Defendant.	:	FILED JUN 15 2018 WORKERS' COMPENSATION File No. 5054755 APPEAL DECISION Head Note Nos: 1402.40, 1803, 1803.1

Defendant, Tyson Foods, Inc., appeals from an arbitration decision filed on February 17, 2017. In that decision, the deputy commissioner found Sharon Freeman, claimant, carried her burden to prove she sustained a permanent injury to her shoulder. The deputy commissioner also found claimant was entitled to an award of 65 percent industrial disability.

Defendant asserts the work injury sustained by claimant on January 28, 2014 resulted in no permanent impairment to claimant's shoulder. In the alternative, defendant asserts any industrial disability sustained by claimant is negligible.

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I respectfully disagree with the presiding deputy commissioner's findings and analysis. Therefore, I modify the arbitration decision.

FINDINGS OF FACT

Claimant sustained a stipulated work injury on January 28, 2014. In her statement of injury to the defendant, she marked her right arm and shoulder as locations of injury, pain or problem. (Claimant's Exhibit 12, page 95) She was initially examined by Timothy Vinyard, M.D., on February 5, 2014, with complaints of right shoulder pain. (Cl. Ex. 2, p. 11) Based on his examination, Dr. Vinyard had a "low concern for structural damage" in claimant's shoulder and instead believed claimant was dealing with impingement syndrome. (Cl. Ex 2, p. 11) He performed a

corticosteroid injection, assigned work restrictions, and gave claimant a prescription for physical therapy and a pain reliever. (Cl. Ex. 2, p. 11)

When claimant returned to Dr. Vinyard on April 3, 2014, her shoulder pain had improved; in fact, she was experiencing "mild-to-no-pain in her shoulder." (Cl. Ex. 2, p. 13) By this time, her complaints were "more pain in her hand and wrist." (Cl. Ex. 2, p. 13) All objective testing performed by Dr. Vinyard with respect to claimant's shoulder was normal, including her range of motion measurements. (Cl. Ex. 2, p. 14)

Dr. Vinyard also reviewed a March 13, 2013 MRI of claimant's shoulder at the April 3, 2014 appointment. While the radiologist indicated there was a "subtle linear high T1 and T2 signal intensity possibly reflecting labral tear" (Cl. Ex. 5, p. 71), Dr. Vinyard reviewed the MRI and determined there was no obvious structural pathology. (Cl. Ex. 2, p. 15) As a result, Dr. Vinyard deemed claimant to be at maximum medical improvement with respect to her shoulder injury, and he discharged claimant from his care without any permanent restrictions. (Cl. Ex. 2, p. 15) Claimant never returned to Dr. Vinyard or any other physicians for treatment of her shoulder.

In a letter to defendant on October 17, 2016, Dr. Vinyard confirmed that when he last saw claimant on April 3, 2014, she had "excellent range of motion and strength and no evidence of shoulder laxity or instability." (Def. Ex. B, p. 1) He reiterated that he reviewed claimant's MRI himself and did not see any obvious structural pathology or anything to suggest she had a symptomatic labral tear. (Def. Ex. B, p. 1) Based on his examination, the MRI, and the fact that claimant did not get any improvement from the injections or medication, Dr. Vinyard believed claimant's symptoms stemmed from somewhere other than her shoulder. (Def. Ex. B, p. 1)

Claimant obtained an independent medical examination (IME) with Sunil Bansal, M.D., on May 15, 2015. In his report, Dr. Bansal opined that claimant sustained an anterior labral tear "as overuse from repetitive forceful pulling of the hog heads with her right hand." (Cl. Ex. 8, p. 85) He assigned a two percent whole body impairment for deficits in claimant's shoulder range of motion and recommended restrictions on lifting and pushing/pulling with the right arm. (Cl. Ex. 8, p. 87) Dr. Bansal had no recommendations for further care other than maintenance treatment. (Cl. Ex. 8, p. 87)

The first question in dispute in this case is whether claimant sustained a permanent injury to her right shoulder. Claimant relies on the opinion of Dr. Bansal, and defendant relies on the opinion of Dr. Vinyard. The deputy commissioner who authored the arbitration decision found that Dr. Bansal's opinion was "more complete, more accurately reflecting the reports of the claimant, claimant's ongoing pain, and based on a more recent examination of the claimant." (Arbitration Decision, pp. 2-3)

Review of the physician's records and reports reveals that each opinion has weaknesses. Dr. Vinyard is an orthopaedic surgeon. He personally reviewed the MRI of claimant's shoulder, and was the authorized treating physician. He evaluated claimant twice and saw improvement both subjectively and objectively during his evaluations.

On the other hand, Dr. Vinyard notes in his April 3, 2014 office note that claimant has "mild-to-no pain in her shoulder." However, in the same office note, Dr. Vinyard notes that claimant has reported pain of 7/10 and that the location of those symptoms was claimant's right shoulder. (Cl. Ex. 2, p. 13) It is difficult to reconcile Dr. Vinyard's comments about little or no pain with his comments that claimant has 7/10 occasional pain in her shoulder.

Dr. Bansal's opinions also have weaknesses. First, it does not appear that Dr. Bansal personally reviewed claimant's shoulder MRI. It appears he likely reviewed the radiologist's report, but appears unlikely that he actually reviewed the MRI films. (Cl. Ex. 7, p. 74, Cl. Ex. 8, p. 81) Dr. Bansal also notes that claimant reports constant pain in her right shoulder as of the date of his evaluation. (Cl. Ex. 8, p. 82) Dr. Vinyard noted only occasional symptoms as of his last evaluation over a year earlier. (Cl. Ex. 2, p. 13)

Dr. Bansal's objective measurements and testing also contradict and reflect significant changes between Dr. Vinyard's April 3, 2014 evaluation and Dr. Bansal's May 15, 2015 evaluation. For instance, claimant demonstrated a negative O'Brien's test in April 2014. (Cl. Ex. 2, p. 14) In May 2015, Dr. Bansal noted a positive O'Brien's test.

Dr. Vinyard recorded normal, or at least significantly better ranges of motion in claimant's right shoulder in April 2014 than Dr. Bansal recorded in May 2015. (Cl. Ex. 2, p. 14; Cl. Ex. 8, p. 83) Dr. Bansal then assigned permanent impairment to claimant's right shoulder based upon his May 2015 range of motion findings. (Cl. Ex. 8, pp. 86-87) No explanation is provided by Dr. Bansal why claimant's range of motion measurements worsened between April 2014 and May 2015. No explanation is provided by Dr. Bansal why claimant would have no permanent impairment for range of motion issues in April 2014 but would be assigned range of motion impairment ratings in May 2015.

Ultimately, I disagree with the presiding deputy commissioner on the weight to be given to the competing medical opinions. The objective changes in range of motion and the O'Brien testing demonstrate some change in claimant's right shoulder condition between April 2014 and May 2015. It was incumbent upon claimant and her medical expert to explain why or how those objective changes occurred and how they were related to the initial work injury given the normal objective findings documented by Dr. Vinyard in April 2014.

Dr. Bansal is a board certified occupational medicine physician. Certainly, Dr. Bansal is trained and specializes in occupational injuries and causation of such injuries. However, Dr. Vinyard is an orthopaedic surgeon. He is specifically trained in orthopaedic conditions and injuries. He personally reviewed the shoulder MRI films and was able to compare those with his physical examinations of claimant. Considering the physician's qualifications, the information available to each, and the substance of their respective medical opinions, I find the opinion of Dr. Vinyard to be more persuasive than the opinion of Dr. Bansal.

Therefore, I find that when claimant was last seen by Dr. Vinyard on April 3, 2014, her shoulder was in mild to no pain and all of her objective testing was normal. (Cl. Ex. 2, pp. 13-14) Of particular significance is the range of motion measurements captured by Dr. Vinyard at this visit, all of which were within normal range and later described by Dr. Vinyard as "excellent." (Cl. Ex. 2, p. 14; Def. Ex. B, p. 1) While claimant reported to Dr. Bansal that she continued to have constant right shoulder pain after being released from Dr. Vinyard's care, claimant's reports are not consistent with the fact that she never returned to any physician for treatment of her right shoulder. Instead, the absence of continued treatment is more consistent with claimant's reports to Dr. Vinyard of waning right shoulder symptoms.

Dr. Bansal's recommendation for work restrictions is also inconsistent with the fact that claimant was performing unrestricted work with defendant at the time of the hearing and had been doing so since the fall of 2014. (Hearing Transcript, p. 39) Again, claimant's ability to return to full-duty work with defendant is more consistent with the opinion of Dr. Vinyard.

Dr. Vinyard opined, "I do not think the patient's symptoms are coming from her shoulder. I do not think she has a significant tear of her labrum. I do not see any reason that she needs to be placed on permanent restrictions or to receive an impairment rating for her shoulder." (Def. Ex. B, p. 1) Dr. Vinyard's opinions are accepted.

For these reasons, Dr. Bansal's opinions with respect to claimant's right shoulder condition are found to be less persuasive than the opinions of Dr. Vinyard. Therefore, I find that claimant has failed to prove she sustained a permanent right shoulder injury.

Having found that claimant's January 28, 2014 injury is limited to her arm, the next issue to be decided is the extent of claimant's right arm impairment. Claimant's right wrist was treated by Benjamin Paulson, M.D. After conservative treatment failed and nerve testing was consistent with carpal tunnel syndrome, Dr. Paulson performed a right carpal tunnel release on May 27, 2014. (Cl. Ex. 3, p. 36) Following a period of light duty, Dr. Paulson released claimant to regular duty work with no restriction as of July 16, 2017. (Cl. Ex. 3, p. 45)

Claimant continued to follow-up with Dr. Paulson through January of 2015. After an injection to claimant's right long finger in November and another brief stint of modified duty, Dr. Paulson declared her to be at MMI as of January 19, 2015. (Cl. Ex. 3, p. 67) Dr. Paulson assigned a one percent impairment to claimant's right upper extremity, though it is not entirely clear how Dr. Paulson arrived at this rating. He indicated he was placing claimant in "category II" using page 495 of the AMA Guides because claimant was "minimally symptomatic"; this page of the Guides, however, makes no reference to categories regarding carpal tunnel syndrome.

In contrast, Dr. Bansal assigned a three percent upper extremity impairment based on claimant's measurable sensory deficits. (Cl. Ex. 8, p. 86) Because Dr. Bansal offered specific reasoning consistent with the Guides when coming to his conclusion regarding claimant's wrist impairment, I find Dr. Bansal's three percent upper extremity rating to be more convincing than Dr. Paulson's rating. I also find that Dr. Bansal's three percent permanent impairment rating is an appropriate assessment of claimant's functional loss as a result of the right arm injury. Thus, it is found that claimant sustained a three percent upper extremity impairment as a result of her January 28, 2014 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 Dr. Vinyard's opinion with respect to claimant's shoulder more persuasive than the opinion of Dr. Bansal. Therefore, I conclude that claimant failed to prove she sustained a permanent injury to her shoulder and body as a whole.

The employer admitted a permanent injury to the right arm as a result of claimant's right carpal tunnel syndrome. Therefore, her claim for permanent disability must be addressed.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Having found that claimant failed to prove she sustained a permanent injury of her right shoulder, I conclude that claimant proved only a permanent scheduled member injury to her right arm. With respect to claimant's right wrist injury, I found Dr. Bansal's three percent upper extremity rating to be more convincing than the impairment rating of Dr. Paulson.

The Iowa legislature has established a 250-week schedule for arm injuries. Iowa Code section 85.34(2)(m). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of her leg. Iowa Code section 85.34(2)(v). Three (3) percent of 250 weeks equals 7.5 weeks. Claimant is, therefore, entitled to an award of 7.5 weeks of permanent partial disability benefits against the employer. Iowa Code section 85.34(2)(o), (v).

ORDER

IT IS THEREFORE ORDERED:

The arbitration decision of February 17, 2017, is modified.

Defendants shall pay 7.5 weeks of benefits commencing on June 10, 2014.

Benefits shall be paid at the stipulated rate of three hundred seventy-five and 35/100 dollars ($375.35) per week.

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.

The costs of appeal, including the cost of the transcript, are assessed against claimant.

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

Signed and filed this 15th day of June, 2018.

WILLIAM H. GRELL
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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