BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JULIE M. ANDERSON f/k/a JULIE M. PIKE, Claimant, vs. THE RASMUSSEN GROUP, Employer, and ARCH INS. CO., Insurance Carrier, Defendants.	File No. 5057073 ARBITRATION DECISION Head Note Nos.: 1803; 1402.30

FILED
JUN 12 2018
WORKERS' COMPENSATION

STATEMENT OF THE CASE

Claimant, Julie Anderson, f/k/a Julie Pike, filed a petition in arbitration seeking workers' compensation benefits from The Rasmussen Group (Rasmussen), employer and Arch Insurance Company, insurer, both as defendants. This case was heard on May 1, 2018 with the final submission date of May 21, 2018.

The record in this case consists of Joint Exhibit 1 through 7, Claimant's Exhibit 1, Defendants' Exhibit A, and the testimony of claimant.

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 sustained a right knee injury that arose out of and in the course of employment.

2. The extent of claimant's entitlement to permanent partial disability benefits.

FINDINGS OF FACT

Claimant drove a truck for Rasmussen. On September 25, 2014, claimant was closing the hood on the truck. Claimant's right foot became caught on a bumper step. Claimant stepped on the ground with her left foot and slipped while her right foot was still stuck on the bumper. Claimant said she injured her left knee.

On September 25, 2014, claimant was seen in the emergency department at Iowa Methodist Medical Center. Claimant was assessed as having a medial collateral ligament tear, and an MCL and ACL tear. Claimant was given medication and put in a knee brace. (Joint Exhibits 1, pages 1-9)

On September 29, 2014, claimant was evaluated by Jason Sullivan, M.D. Claimant was assessed as having a full thickness ACL and PCL tear. Dr. Sullivan recommended letting the MCL tear heal and then proceeding with surgery for the ACL and PCL. (Jt. Ex. 2, pp. 15-17)

On October 27, 2014, claimant underwent surgery with Dr. Sullivan. Surgery consisted of an ACL and PCL reconstruction with allograft and a medial meniscus repair. (Jt. Ex. 2, pp. 19-21)

Claimant returned in follow up with Dr. Sullivan from November 4, 2014 through January 13, 2015. (Jt. Ex. 2, pp. 23-29) On February 19, 2015, claimant returned to Dr. Sullivan with drainage from her incision. Claimant had an infection at the surgery incision. Claimant was admitted to the hospital overnight. Claimant had surgery on February 20, 2015 to deal with infection. (Jt. Ex. 2, pp. 36-37)

Claimant returned in follow up care with Dr. Sullivan from March 5, 2015 through June 30, 2015. (Jt. Ex. 2, pp. 38-51)

In a July 29, 2015 letter, Dr. Sullivan indicated claimant was at maximum medical improvement (MMI), for the left knee. Claimant was found to have a 76 percent permanent impairment to the left lower extremity, converting to a 30 percent permanent impairment to the body as a whole. Dr. Sullivan opined claimant would require a total knee replacement in the future due to the 2014 work injury. (Jt. Ex. 3, p. 65)

In an August 25, 2015 letter, defendant insurer asked Dr. Sullivan for further explanation of the rating. (Jt. Ex. 4, p. 67)

In an October 29, 2015 letter, Dr. Sullivan indicated claimant had a 7 percent body as a whole rating for an antalgic gait; a 4 percent permanent impairment to the body as a whole for a less than 110 degrees of flexion; a 1 percent permanent impairment to the body as a whole for a medial meniscectomy; a 7 percent permanent impairment to the body as a whole for a laxity of the medial collateral ligament; and a 10 percent body as a whole rating for a medial joint space. Dr. Sullivan indicated this resulted in a 29 percent permanent impairment to the body as a whole. (Jt. Ex. 3, p. 66)

In a February 9, 2016 letter, Charles Mooney, M.D., gave his opinions of claimant's permanent impairment following a records review. Dr. Mooney found that claimant had a 10 percent permanent impairment to the lower extremity based on the loss of range of motion; a 2 percent permanent impairment for the medial meniscectomy; and a 17 percent permanent impairment to the left lower extremity for a medial collateral ligament laxity. The combined values of impairment resulted in a 27 percent permanent impairment to the left lower extremity. Dr. Mooney noted Dr. Sullivan provided a 7 percent body as a whole permanent impairment for an antalgic gait. Dr. Mooney believed this was not proper under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, page 525. (Ex. A, p. 2)

Dr. Mooney noted he did not have x-rays and therefore, could not give opinions regarding impairment dealing with cartilage loss in claimant's left knee. (Ex. A)

On March 29, 2016, claimant returned to Dr. Sullivan. Claimant had gotten back to work. Claimant had some right knee pain. Dr. Sullivan indicated claimant was overcompensating for the left knee injury. There were no structural problems concerning claimant's right knee. Claimant was returned to work without restrictions. (Jt. Ex. 2, pp. 54-56)

On June 14, 2016, claimant was evaluated by Matthew DeWall, M.D. Claimant's right knee was bothering her more. Dr. DeWall could not opine claimant's right knee problems were due to overcompensation for the left knee. Claimant was told she needed to lose weight and have physical therapy. (Jt. Ex. 2, pp. 57-59)

Claimant saw Dr. DeWall on October 13, 2016 and November 30, 2017 with continued left knee pain. Claimant was becoming more limited with the left knee. Claimant was told that a total knee replacement on the left was her only long-term fix. Dr. DeWall was reluctant to do surgery on claimant given her weight. Claimant was given an injection in the knee. (Jt. Ex. 2, pp. 60-64)

In a March 15, 2017 report, Jacqueline Stoken, D.O., gave her opinions of claimant's condition following an independent medical evaluation (IME). Claimant had left and right knee pain, back pain, right hip pain, left ankle pain, and right arm pain. Dr. Stoken opined claimant had a 30 percent permanent impairment to the left lower extremity based upon her loss of range of motion and knee flexion and flexion contracture. (Cl. Ex. 1, p. 13)

Dr. Stoken opined claimant had a pre-existing right knee condition which was aggravated by the September 2014 incident. She opined claimant developed trochanter bursitis as a result of her gait pattern. (Cl. Ex. 1, p. 14)

Dr. Stoken did not find that claimant had a permanent impairment to the right knee. (Cl. Ex. 1, pp. 1-16)

In a March 1, 2018 note, written by claimant's counsel, Dr. Stoken opined that claimant had a 5 percent permanent impairment to the right knee. (Cl. Ex. 1, pp. 31-32)

Claimant said that when she returned to work at Rasmussen, she was accommodated. Claimant drove an automatic transmission as she could not operate a manual transmission given her left knee condition. Claimant also had difficulty bending to inspect her truck, difficulty putting air in tires, and difficulty getting in and out of the cab of the truck.

Claimant testified she is unable to stand for long periods and cannot walk very far. Claimant cannot squat. Claimant said she has difficulty climbing in and out of trucks. Claimant has difficulty getting off of the floor. She has difficulty walking on uneven ground. Claimant had difficulty sitting at hearing due to her left knee and continually shifted during the course of testimony.

Claimant said she has difficulty with sleeping due to her left knee.

Claimant testified that in the summer of 2017, she began employment with Hoovestol. Claimant drives a trailer truck. Hoovestol is a United States mail contractor. Claimant drives a route that alternates from Johnston, Iowa to Moline, Illinois, and from Johnston, Iowa to Elm Creek, Nebraska. Claimant testified she averages over 50 hours of work per week driving for Hoovestol.

Claimant testified she still rides a motorcycle. Claimant testified she takes prescription medication for pain in her left knee.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained a right knee injury that arose out of and in the course of employment.

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 R. App. P. 6.14(6).

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).

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012).

The Iowa Supreme Court noted "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Schofield & Welch, 266 N.W. 480, 482 (1936). The Court explained:

> If an employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable. Where an employee suffers a compensable injury and thereafter returns to work and, as a result thereof, his first injury is aggravated and accelerated so that he is greater disabled than before, the entire disability may be compensated for." Id. at 481.

A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). A sequela can take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the

claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788758, (Arb. November 15, 1991).

A sequela can also take the form of a later injury that is caused by the original injury. For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury. Taylor v. Oscar Mayer & Co., 3 Iowa Ind. Comm. Rep. 257, 258 (1982).

Claimant treated at Des Moines Orthopedic Surgeons (DMOS) for her left knee condition from September 29, 2014 through November 30, 2017. (Jt. Ex. 2) During the entire time of her treatment at DMOS, there were only two references of complaints to right knee pain. These occur on March 29, 2016 and June 14, 2016. Dr. DeWall, one of claimant's treating physicians, indicated he could not say claimant's knee condition was caused by her right knee condition. Dr. DeWall believed claimant had osteoarthritis in the right knee that would have developed no matter what condition she had on the left. (Jt. Ex. 2, pp. 57-58)

Dr. Stoken evaluated claimant once for an IME. Dr. Stoken opined that claimant's pain in the right knee was a sequela to the September 2014 left knee injury. However, Dr. Stoken offers no rationale or explanation why claimant's right knee problems are a sequela to the left knee. Given this record, it is found Dr. Stoken's opinions regarding causation of an alleged right knee condition are not convincing.

Claimant treated with DMOS for three years for her left knee. During the entire time, there are only two references in medical records regarding a right knee condition. Dr. DeWall indicated he could not opine claimant's right knee problems were caused by the left knee. Dr. Stoken's opinion regarding causations is found not convincing. Given this record, claimant has failed to carry her burden of proof, at this time, her right knee condition arose out of and in the course of employment.

Finding that claimant's left knee condition did not cause her right knee condition, at this time, does not preclude claimant from bringing this issue to hearing at a later date on a review-reopening. The finding in this decision, is that, at this time, claimant has failed to carry her burden of proof her right knee injury is caused or materially aggravated by the left knee condition.

Having found that claimant failed to carry her burden of proof, at this time, that her right knee condition was caused by her left knee injury, all other issues regarding the right knee are moot.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits for the left knee injury.

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).

Claimant underwent an anterior cruciate and a posterior cruciate ligament reconstruction using allograft. She also underwent a meniscus repair. (Jt. Ex. 2, pp. 19-21) Claimant walks with a limp. Claimant had difficulty sitting during the hearing due to her left knee injury. Claimant credibly testified her left knee injury impacts her ability to sleep and limits her in many activities. Claimant has permanent restrictions regarding her left knee that limit her ability to drive a truck. Claimant takes prescription medication for pain for her left knee.

Three experts have opined regarding extent of permanent impairment claimant has as a result of her left knee injury. Dr. Mooney did not evaluate claimant and only performed a records review. Dr. Mooney opined claimant had a 27 percent permanent impairment to the left lower extremity as a result of her injury and surgery. Dr. Mooney's report notes that he did not have access to claimant's x-rays and therefore, could not opine regarding permanent impairment as it relates to loss of cartilage. (Ex. A)

Dr. Mooney did not examine claimant. His rating is based only on a records review. Dr. Mooney's report indicates he lacked x-rays and was not able to opine regarding permanent impairment as it relates to loss of cartilage. Based on these facts, Dr. Mooney's opinion regarding permanent impairment to the left knee are found not convincing.

Dr. Stoken evaluated claimant once for an IME. She found that claimant had a 28 percent permanent impairment to the left lower extremity. (Cl. Ex. 1-14)

Dr. Sullivan treated claimant for an extended period of time. He performed claimant's surgeries. Dr. Sullivan opined that claimant had a 76 percent permanent impairment to the left lower extremity as a result of her injury and later surgery. (Jt. Ex. 3, p. 65)

The opinions of treating doctors are not to be given greater weight as a matter of law, solely because they are treating physicians. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994). As a factual matter, Dr. Sullivan treated claimant for

over a year and one-half. He performed surgery on claimant. He has far more experience and familiarity with claimant's history and medical presentation than Dr. Stoken or Dr. Mooney. Dr. Sullivan's opinions regarding permanent impairment are supported by claimant's credible testimony, and limitations and difficulties that claimant has since surgery and since returning to work. Given this record, it is found that Dr. Sullivan's opinions regarding permanent impairment are more convincing than those of Dr. Stoken and Dr. Mooney as it relates to permanent impairment of claimant's left knee. Dr. Sullivan opined that claimant had a 76 percent permanent impairment to the left lower extremity. Claimant is due 167.2 weeks of permanent partial disability benefits for the left knee. (220 weeks x 76 percent)

ORDER

THEREFORE, IT IS ORDERED:

That defendants shall pay claimant one hundred sixty-seven point two (167.2) weeks of permanent partial disability benefits at the rate of five hundred seventy and 38/100 dollars ($570.38) per week commencing on June 30, 2015.

That defendants shall pay accrued weekly benefits in a lump sum.

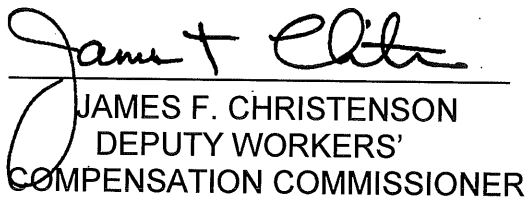
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. April 24, 2018).

That defendants shall receive credit for benefits previously paid.

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 12th day of June, 2018.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Marlon Mormann
Attorney at Law
3320 Kinsey Ave.
Des Moines, IA 50317
aljmormann@gmail.com

Garrett Lutovsky
Attorney at Law
1350 Woodmen Tower
Omaha, NE 68102
glutovsky@ekoklaw.com

JFC/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.