

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LISA FITCH,

Claimant,

vs.

DES MOINES PUBLIC SCHOOLS,

Employer,

and

EMC INSURANCE COMPANIES

Insurance Carrier,
Defendants.

File No. 5047711

A P P E A L
D E C I S I O N

Head Note Nos: 1804; 2500

FILED

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WORKERS' COMPENSATION

Defendants Des Moines Public Schools, employer, and its insurer, EMC Insurance Company, appeal from an arbitration decision filed on May 23, 2016. Claimant Lisa Fitch responds to the appeal. The case was heard on January 13, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 4, 2016.

The deputy commissioner found claimant sustained a physical-mental injury when she was assaulted on October 17, 2013, by a student claimant was working with. The parties stipulated the assault arose out of and in the course of claimant's employment with defendant-employer. The deputy commissioner found the physical-mental injury sustained by claimant as a result of the assault was a substantial contributing factor, along with other substantial contributing factors, which aggravated claimant's pre-existing anxiety, depression and post-traumatic stress disorder to the extent that claimant became permanently and totally disabled. The deputy commissioner awarded claimant permanent total disability benefits commencing October 17, 2013. The deputy commissioner also found claimant is entitled to payment by defendants of requested past medical expenses for treatment of claimant's injury itemized in the attachment to the hearing report. The deputy commissioner found claimant is not entitled to penalty benefits. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$1,177.23.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a physical-mental injury as a result of the assault. Defendants assert the deputy commissioner erred in finding the physical-mental injury allegedly sustained by claimant as a result of the assault was a substantial contributing factor in the aggravation of claimant's pre-existing mental condition. Defendants assert the deputy commissioner erred in awarding permanent total disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants of the requested past medical expenses. Defendants also assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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

ISSUES ON APPEAL

1. Whether the deputy commissioner erred in finding that the physical injuries sustained by claimant on October 17, 2013, caused claimant to sustain a physical-mental injury which was a substantial contributing factor, along with other substantial contributing factors, which aggravated claimant's pre-existing mental condition to the extent that claimant became permanently and totally disabled.
2. Whether the deputy commissioner erred in failing to determine claimant's injury is a mental-mental injury and in failing to find claimant is unable to meet her burden of proof that the mental-mental injury is compensable.

FINDINGS OF FACT

Having performed a de novo review of the evidentiary record, pursuant to Iowa Code sections 17A.5 and 86.24, and the detailed arguments of the parties, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner and I affirm the deputy commissioner's finding that the physical injuries sustained by claimant on October 17, 2013, caused claimant to sustain a physical-mental injury which was a substantial contributing factor, along with other substantial contributing factors, which aggravated claimant's pre-existing mental condition to the extent that claimant became permanently and totally disabled. I enter the following additional analysis:

Physical/Mental Injury

Claimant currently is 58 years old. (Exhibit J, p. 3) She has dealt with symptoms of major depressive disorder, post-traumatic stress disorder and generalized anxiety disorder for many years prior to the injury which occurred on October 17, 2013. (Ex. J, p. 4) Despite those pre-existing conditions, claimant attained a high level of education and she was capable of engaging in productive professional employment through November 2013 (Hearing Transcript pp. 9-10)

On October 17, 2013, while working as a special education teacher for defendant-employer, claimant was working with a particularly troubled student who had a history of lashing out at teachers and other students, when that student attacked claimant. (Ex. 27; Tr. pp. 27-30) The case investigation report generated by the Des Moines Police Department states what happened:

[The student] has mental health and physical issues. There have been several incidents since the beginning of the school year with [the student] physically and verbally assaulting staff and other students. These incidents have been documented and brought to the attention of [the student's] mother.

Lisa Fitch is one of [the student's] teachers and she was physically assaulted today. Fitch was attempting to protect another student from a pole that [the student] knocked over, in an attempt to strike another student. Fitch bent over in front of [the student] to grab the pole and [the student] grabbed her hair and pulled her down towards him. [The student] used a fist and struck Fitch in the head several time and when she put her hand out to protect herself, [the student] bit her. [The student] bit Fitch on her right hand several times and had one of her fingers in his mouth biting down and he would not let go. Another staff member called for help and the principal was able to verbally get [the student] to release Fitch

(Ex. 1, p.1)

There were documented injuries to claimant's head and face as well as her right hand. (Id.) She testified at great length about the details of the assault at the arbitration hearing. (Tr. pp. 26-30) Claimant indicated she had been working in close quarters with the student who assaulted her when he attempted to knock a metal framed divider onto another student. (Tr. p. 27) Claimant reached out to prevent the divider from falling, and the student who claimant was working with reached out and grabbed claimant by the hair and pulled her head down to the table. (Tr. pp. 27-28) While claimant's head was down, the student began "pommeling" her on the temple and, when claimant reached out to prevent the punches, the student took claimant's entire pinky finger into his mouth and bit down hard on the knuckle. (Tr. p. 28)

As the assault continued, the student "took his hand and started poking" claimant's eyeballs. (Tr. p. 28) The student also lifted up on claimant's nose and pulled on it. (Id.) Claimant testified that as this continued "for a period of time" claimant closed her eyes to prevent them from being poked and claimant testified she became very afraid of being injured. (Tr. pp. 28-29) Claimant testified:

When it got to the point where he was - - - I've never felt not in control with a student that is violent. And at the point where he was poking my eyes out and pulling my nose and pommeling me, I felt I had lost control, and I really was very fearful.

(Tr. p. 29)

When it got to that point, claimant finally called out to a nearby teacher associate and asked her to evacuate the other students. (Id.) The crisis team was then summoned to the classroom, and the principal of the school, Carrie Belt, came in and physically separated the student from claimant. (Tr. pp 29, 58, 106) Claimant testified that afterward, she was very upset and crying and made statements that made it apparent the assault had triggered memories of her troubled childhood. Claimant testified, "I said I didn't want my sisters to see that - - then I changed it. I didn't want my students to see that because I knew one of them did have PTSD." (Tr. p. 29)

The teacher associate who had been close by was Darcy Hankenson who testified by deposition that she was the assaulting student's primary associate, and that she had worked with the student for more than a full school year. (Ex. P, depo p. 7) Hankenson described the student as a smaller child who suffered from cerebral palsy with limitations on some of his functional abilities. (Id.) Hankenson also described the student as an "aggressive" and "explosive" individual who would "sometimes attack other kids or grown-ups and stuff." (Ex. P, depo p. 8) Hankenson indicated that on the days she worked with the student she had a "safety plan" in place to prevent the student from injuring himself and others. (Ex. P, depo p. 9)

Hankenson was working in close proximity to the assault, but her view of what initially took place was blocked by a partition. (Ex. P, depo p. 15) When she first became aware the assault was taking place, Hankenson observed claimant was "leaning over and didn't look well." (Ex. P, depo p. 16) Hankenson then noticed the student had grabbed claimant by the hair, he was holding claimant's face down near the table and he was attempting to hit claimant. (Ex. P, depo pp. 16-17) Hankenson then evacuated the room and went over to assist claimant. Hankenson attempted to use her cell phone to call Principal Belt to the room, but the student knocked the phone out of Hankenson's hand. (Ex. P, depo pp. 19-20)

Hankenson then went across the room to use the land line and she called the front office and told them to send the principal immediately because the student "has Lisa . . . has her hair." (Ex. P, depo p. 20) Hankenson estimated the portion of the

assault she observed lasted “about a minute or a minute and a half.” (Ex. P, depo p. 21) She made the following observations about claimant’s appearance while the student was holding claimant down to the table by her hair:

Q. During that period of time did Ms. Fitch make any effort to get away from [the student]?

A. No. It was – she – no. It was – like I said, it was a little strange, because I was kind of worried about her, because I thought maybe something was wrong like because she was very docile. She just kind of had her head down, and her face was quiet, and she wasn’t asking for help.

And I – and I looked at her, and I thought like, you know, maybe something had happened to her where she was like – the stupid thing, my first thing I thought, it looked like she’d maybe had a stroke or something because she didn’t seem to have – she just wasn’t doing anything and she was very still.

(Ex. P, depo p. 20) When asked to comment further on this, Hankenson indicated it was as though claimant did not have complete hold of her senses and “seemed kind of almost a little trance-like.” (Ex. P, depo p. 55)

Immediately following the assault, claimant obtained treatment for her physical injuries at the nurse’s station in the school. On the employee injury report generated at that visit, the treating nurse documented the following visible injuries:

Redness, edema [right] little finger, redness [on right] hand knuckles, redness and bruising [right] side of face, scratches beside [right] eye. Bruise inner upper corner of [left] eyelid – nose. Redness back of neck. Also bite marks [right] little finger

(Ex. 2, p. 2)

Later that day, claimant received treatment for her physical injuries at the Methodist Occupational Health and Wellness Clinic. It was noted claimant was visibly upset. (Ex. 3, p. 3) She was assessed at that point with the following injuries: “Right hand contusion and puncture wound, right eyebrow contusion and abrasion, neck strain, nose abrasion.” (Id.) X-rays were taken of claimant’s right hand, but those fortunately showed no evidence of fracture or dislocation. (Id.)

On October 25, 2013, eight days after the assault, claimant returned to the Methodist Occupational Health and Wellness Clinic for re-evaluation of the physical injuries sustained during the assault. It was noted claimant’s physical injuries had almost completely resolved and claimant was discharged from care for those injuries. That evaluation did not address claimant’s mental status. (Ex. 3, p. 4)

Though claimant did end up with a small scar on her nose (Tr. p. 30), the bulk of her physical injuries healed without any permanent residuals. (Ex. 3, p. 4) The real problem for claimant was the emotional injury she sustained as a result of the assault. Immediately after the assault she was trembling and sobbing uncontrollably. (Tr. p. 37) She testified her brain "wasn't working right" and she was not able to focus. (Id.) She was confused and had "the feeling of being violated, loss of control. (Tr. pp. 37-38)

Following the assault, claimant had one of her regular counseling sessions with her therapist, Kelcee Foss, LMHC, on October 22, 2013, five days after the assault. Ms. Foss' note for that session states:

Notes: Client had major PTSD reaction when assaulted at work by student. Connected to not being able to protect others (kids/sisters). Resulting supportive response from school peers has been helpful. She is more grounded and present currently and able to see how she was able to "trust myself" in this situation to see clearly and make good decisions. No EMDR work today due to time limits and sudden needs.

(Ex. 6, p. 39)

The day following the assault, a meeting was held with all of the decision makers in defendant-employer's special education department to discuss how to handle the assaulting student moving forward. (Tr. p. 36) The attack was the catalyst for the meeting (Ex. P, depo p. 61) In the days following that meeting, a plan was put in place to modify the environment in which the student would be working. As part of the plan, it was decided claimant was the person best suited to work one-on-one with the student moving forward. (Tr. pp. 40, 113-114)

For the next few weeks, claimant performed her one-on-one work with the student while trying to maintain a workload that included some of her previous roster of students. (Tr. pp. 40-42) Claimant struggled to keep up with her work duties during this transition and defendant-employer commendably attempted to accommodate those difficulties by continuing to reduce the number of other students who were on claimant's roster. (Ex. K, p. 2; Tr. pp.40-42)

While at work, claimant was able to handle the stress of dealing with the assaulting student in different ways. First, she developed defensive strategies that ensured she would not be put in a position where she would be vulnerable to another assault. The modified surroundings made this much easier for her to accomplish. (Tr. p. 42) Second, she compartmentalized things in her mind, separating the attack from the student, and focusing on the positive things she could do to help the student. Claimant testified:

And so working with [this student] was like in this bubble. The attack was like in this bubble. And I have the ability to just ignore this and look at

what's right here. I never blamed [the student]. I knew he had a hard life. I believe the attack was something that he mimicked from what he saw at home.

(Tr. p. 43)

Claimant testified that while she was away from work, the downward mental spiral which started with the attack continued to worsen. Claimant testified that although she continued to work with the student who assaulted her for less than four weeks following the assault, during that time she was experiencing significant distress caused by the assault:

Q. How were you doing outside of the workplace during those weeks that you were working there?

A. I was decompensating. I wasn't eating and I couldn't sleep. I stayed in bed and I isolated myself. And I was hypervigilant, fearful, and worried that I wasn't doing a good enough job.

(Tr. pp. 43-44)

The symptoms claimant was experiencing from the assault ultimately came to a head starting on November 3, 2013, when Principal Belt sent an email to claimant raising concerns about her job performance and requesting an immediate meeting to go over those concerns. (Ex. K, p. 8; Tr. p. 45)

The meeting took place on November 11, 2013. During that meeting, claimant was presented with a written list of "compliance concerns" regarding the manner in which claimant was doing her job. (Ex. K, p. 9) Claimant described this document as a "piece of paper that contained numerous errors and mistakes and ethical behaviors that was put into question." (Tr. p. 45) Claimant believed the claims being made against her were not true and she reacted poorly when she read them. Claimant testified:

And so seeing – I had been trying very, very hard with [the student.] The work had been – started to seem overwhelming after the attack. And I did not sign it because at the bottom, it said it could lead to termination.

(Tr. p. 45)

The meeting concluded without claimant being presented with any documentation to support the allegations against her. (Tr. pp. 45-46) Claimant testified that after the meeting, her mind "just blanked." (Tr. p. 46) She stated she was "crying and sobbing" because she had been trying so hard to do her job and she said she "just couldn't take it anymore." (Id.) Claimant stated she did go back to work for the rest of

that day and she “made it through the workday just barely functioning and on - - did my duties that I needed to do and intermittently was crying.” (Id.)

Claimant testified that when she was on her way home from work that night “something happened to my brain “ and she became extremely suicidal (Id.) The following day claimant was admitted to the psychiatric ward at Iowa Lutheran Hospital for the first course of in-patient mental health treatment she had ever received in her life. (Tr. pp. 47-48; Ex. 10) She has undergone two additional courses of in-patient psychiatric treatment since then. (Tr. p. 48; Ex. 14, Ex. 18)

November 11, 2013, was the last day claimant worked for defendant-employer and it was the last day claimant performed work for any employer. (Tr. pp. 65, Claimant’s Appeal Brief, p. 7)

Shehzad Kamran, M.D, the psychiatrist who began treating claimant when she was hospitalized on November 12, 2013, has opined that both the assault and also the way claimant perceived how she was treated by defendant-employer following the assault, combined to materially aggravate claimant’s pre-existing mental condition. (Ex. 13) Dr. Kamran certified he held the following opinions to a reasonable degree of medical certainty as stated in a letter dated January 16, 2015, which was drafted by claimant’s attorney which summarized the discussion that occurred at a meeting both claimant’s attorney and defendants’ attorney had with Dr. Kamran on January 6, 2015:

One of the issues on which we spent the most time was Ms. Fitch’s workplace assault on October 17, 2013 and the connection between that assault and her current condition. You confirmed that there was a direct connection between that event, including Ms. Fitch’s perception of her employer’s conduct following that event, and the diagnoses you have provided. Ms. Fitch certainly had underlying components of both diagnoses related to prior events in her life; but, the events surrounding her assault on October 17, 2013 triggered those conditions and increased the level of the severity of symptoms she is experiencing at the current time. As you explained it to us, prior to her assault, Ms. Fitch had a baseline level of symptoms due to her underlying conditions, but she was able to manage those symptoms so that she could perform the functions of her job as special needs instructor. The assault and the events surrounding it at work have created a new, lowered baseline where she is experiencing many more symptoms to a degree that she is not able to function in her job, and in many other facets of her life, as she could before.

(Ex. 13, p. 152)

Claimant underwent an independent mental health evaluation with Catalina D'Achiardi-Ressler, Ph.D. on October 22 and 23, 2014. In the report Dr. D'Achiardi-Ressler issued following the evaluation, she stated the following, in pertinent part:

Yes, there is a connection between the assault of 10/17/13 and the diagnoses provided above. I believe that the acute stress disorder was a direct result of the assault. Unfortunately, because of the history that Ms. Fitch has in her experience with the Des Moines Public Schools, this was not the first incident where she felt humiliated and punished after an incident with a student. It was also not the first time that she had perceived that she was not supported by her school principal. I believe that these series of events combined with the circumstances of the last assault made her susceptible to an intense trauma-response that is not necessarily proportional with the assault of 10/17/13. Moreover, while the major depressive disorder is likely recurrent as evidenced by the social history described above by Ms. Fitch, I believe that her symptoms were definitely aggravated by two factors: the assault, and the many consequences that have ensued for her since that time.

...

SUMMARY & CONCLUSIONS

There is no question that Ms. Fitch has a long history of mental health concerns. She had an ongoing and repeated set of traumatic events during her childhood and early adulthood which pre-disposed her to an adulthood characterized by a fearful-avoidant attachment style. As a result, despite having a desire for close relationships, it is very difficult for her to trust others or depend upon them because she believes that she will be ultimately hurt by them. It is this belief which likely contributed to the difficult relationships she had with all the school principals that she worked with in the DMPS. Her perception of unfair treatment from the school principals, particularly from the one at Hubbell Elementary, was likely a response to both the distrust of others as well as the actual events where Ms. Fitch was not offered the validation or support she was seeking.

Individuals who develop full acute stress disorder symptoms after a traumatic event often have a long history of previous trauma as is the case for Ms. Fitch. I believe that is the reason why the intensity of her response to the assault was far more complex than would be expected. Therefore, the assault and the relationship with the school principal both aggravated the symptoms that were previously present but also brought about a trauma-response that was far more intense than other individuals (without

a similar history) are likely to have experienced under the same circumstances.

(Exhibit 16, pp. 208-210)

Defendants had claimant undergo an independent medical evaluation with C. Scott Jennisch, M.D., psychiatrist, on February 5, 2015. Dr. Jennisch indicated he was in agreement that “Ms. Fitch experienced a further exacerbation of her underlying depression and anxiety disorder after 10/17/13.” (Ex. J, p. 9) Dr. Jennisch also indicated “one could assert that [claimant] also had an exacerbation of her underlying posttraumatic stress disorder,” but that it was difficult to differentiate due to the “imprecise and overlapping” nature of the symptoms associated with claimant’s diagnoses. (Id.) Dr. Jennisch acknowledged it would be a “natural assumption for a clinician to conclude that the assault was the primary issue associated with the exacerbation of her psychiatric illness. (Ex. J, p. 10) However, it was Dr. Jennisch’s opinion that the exacerbation claimant experienced was caused by her perceptions of how she was treated by defendant-employer related to “numerous employment issues rather than the 10/17/13 assault.” (Id.)

At the time of his original report, Dr. Jennisch did not specifically comment on whether the “numerous employment issues” in question could be issues related to the assault. However, in an addendum report he authored on December 14, 2015, Dr. Jennisch opined that it was “very clear that issues Ms. Fitch had with her school administration, in part due to the assault, were the reason she left the workplace.” (Ex. J, p. 16) Thus, while Dr. Jennisch was not willing to attach “primary” significance to the assault, he conceded the assault was at least part of the causative puzzle.

After reviewing the reports from Dr. Jennisch, Dr. D’Achiardi-Ressler stated the following, in pertinent part, in a supplemental report:

My opinion has not changed and I still believe that Ms. Fitch’s mental health concerns are directly related to the events of the injury that occurred on 10/17/2013 and the relationship that she had with school administrators. As Dr. Jennisch himself noted in the conclusions of his 12/14/2015 report: “. . . it was clear that the issues that Ms. Fitch had with her school administrator, in part due to the assault, were the reasons she left the workplace.” Moreover, Dr. Jennisch also offered a diagnosis of PTSD for which there needs to be a precipitant event where the individual felt threatened as is the case of Ms. Fitch.

(Ex. 17, p. 212)

CONCLUSIONS OF LAW

The first issue is whether claimant sustained a compensable physical-mental injury as a result of the assault which occurred on October 17, 2013.

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. 14(f).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it arose out of and in the course of employment. McDowell v. Town of Clarksville, 241 N.W.2d 904 (Iowa 1976); Musselman v. Central Telephone Co., 261 Iowa 352, 154 N.W.2d 128 (1967). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place and circumstances of the injury. Sheerin v. Holin Co., 380 N.W.2d 415 (Iowa 1986); McClure v. Union, et al, Counties, 188 N.W.2d 283 (Iowa 1971).

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. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296 (Iowa 1974).

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. The weight to be given to any expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts relied upon by the expert as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1974); Anderson v. Oscar Mayer & Co., 217 N.W.2d 531 (Iowa 1974); Bodish v. Fischer, Inc., 257 Iowa 516, 133 N.W.2d 867 (1965).

In Iowa, when physical trauma causes or aggravates a mental condition (physical-mental) which increases or prolongs disability, all disability, including the effects of the nervous disorder, is compensable. Gosek v. Garmer and Stiles Co., 158 N.W.2d 731, 733 (Iowa 1968). No special legal causation test showing unusual stress exists in such cases. Only medical causation need be shown as would be the case in other workers' compensation claims. See generally, Lawyer and Higgs, Workers' Compensation, section 4-6 (2010-2011).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both

the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920) A material aggravation, worsening, lighting up, or acceleration of any prior condition has been viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961) While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980)

In Coghlan v. Quinn Wire & Iron Works, 164 N.W.2d 848 (Iowa 1969) the Iowa Supreme Court affirmed an award of permanent total disability based upon a mental injury. The court noted that a board certified psychiatrist and a psychiatric social worker opined that the claimant's injury aggravated an already precarious emotional status to the point of disability. Coghlan, *Id.* p. 852.

In this case, claimant suffered an assault with physical injuries. Claimant has a number of mental health issues which predate the work-related assault. Based on the opinions of Dr. Kamran as supported by the opinions of Dr. D'Achiardi-Ressler, I find claimant has carried her burden of proof that the assault which occurred on October 17, 2017, was one substantial contributing factor, along with other substantial contributing factors, which aggravated claimant's pre-existing depression, anxiety and post-traumatic stress disorder. I find Dr. Jennisch's causation opinion of no causal relationship unconvincing because while he was not willing to attach "primary" significance to the assault, he did concede the assault was at least part of the causative puzzle. As stated above, the assault does not need to be the sole proximate cause of the aggravation of claimant's mental condition, it only needs to be one proximate cause for it to be compensable.

Defendants argue the opinions in favor of causation should be ignored because they are allegedly based upon inaccurate information. However, the opinions of claimant's treating psychiatrist, Dr. Kamran were given after he had an hour-long conference with both claimant's attorney and defendants' attorney. (Ex. 13, p. 151) There is nothing in the record to indicate that after meeting with both attorneys, Dr. Kamran was missing any necessary information when he provided his opinions.

Defendants argue that the physical injuries claimant experienced when she was assaulted were not significant enough to trigger a physical/mental injury. In essence defendants argue claimant could not have sustained a compensable physical/mental injury because her physical injuries were not serious enough to be independently compensable. This argument was squarely addressed and rejected by the Iowa Court of Appeals in Heartland Specialty Foods v. Johnson, 731 N.W.2d 397 (Iowa App. 2007):

Heartland argues the claim should be dismissed because a “compensable” physical injury is a necessary component of any physical/mental injury claim. In essence, because the underlying physical injury was deemed not compensable by the Iowa Supreme Court, Heartland argues the claim for mental injury should be dismissed. We reject Heartland’s attempt to heighten the standard for recovery for a mental injury resulting from a work-related injury. Our review of prior case law finds sporadic and incidental use of the word “compensable” when referring to the work-related injury, but no indication that the underlying physical injury must be compensable in order to give rise to the compensable mental injury. Even though the physical/mental standard arose from cases where the claimant sought additional compensation for mental injuries stemming from a previously awarded compensable injury, see e.g., Coghlan v. Quinn Wire & Iron Works, 164 N.W.2d 848 (Iowa 1969); Gosek v. Garmer & Stiles Co., 158 N.W.2d 731 (Iowa 1968), we do not read these cases to require that the underlying work-related trauma must be a compensable injury in and of itself. This holding is consistent with the underlying purpose of the workers’ compensation statute—“to benefit workers and their dependents insofar as the statute permits.” Brown v. Star Seeds, Inc., 614 N.W.2d 577, 580 (Iowa 2000) (citation omitted); see also Mortimer, 502 N.W.2d at 14 (stating the workers’ compensation statute “is for the benefit of the working person and should be, within reason, liberally construed.”)

(731 N.W.2d,, pp. 401-402)

I find that while the physical injuries claimant sustained during the assault in this case were of a temporary nature for which no temporary or permanent disability benefits are to be awarded, I also find the nature of the attack itself was such that it was quite capable of significantly aggravating claimant’s pre-existing mental condition. I therefore affirm the deputy commissioner’s finding that the physical injuries sustained by claimant on October 17, 2013, caused claimant to sustain a physical-mental injury which was a substantial contributing factor, along with other substantial contributing factors, which aggravated claimant’s pre-existing mental condition.

Permanent Total Disability

The record in this matter reveals there is no real dispute that after claimant sustained the aggravation of her pre-existing mental condition in October and November, 2013, that claimant became permanently and totally disabled. Therefore, I affirm the deputy commissioner’s award of permanent total disability benefits commencing on October 17, 2013.

Alleged Mental/Mental Injury

Because claimant carried her burden of proof that she sustained a compensable physical/mental injury on October 17, 2013, which was a substantial contributing factor, along with other substantial contributing factors, causing claimant to become permanently and totally disabled, the issues of whether claimant sustained a mental/mental injury, and whether that alleged mental/mental injury is compensable, are rendered moot.

Medical Expenses

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant has unpaid/unreimbursed medical bills for this work injury as itemized in the attachment to the hearing report. There is no real dispute that the compensable aggravation of claimant's mental condition which occurred in October and November, 2013, necessitated those medical charges. Therefore, I affirm the deputy commissioner's finding that defendants are responsible for those expenses.

Penalty Benefits

Claimant did not cross-appeal from the deputy commissioner's finding that claimant is not entitled to penalty benefits in this matter. I therefore affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits.

Costs

I affirm the deputy commissioner's order that defendants pay claimant's cost of the arbitration proceeding in the amount of \$1,177.23.

Claimant's Credibility

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who

presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 23, 2016, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits commencing October 17, 2013, at the weekly rate of eight hundred forty-six and 60/100 dollars (\$846.60), and continuing for as long as claimant is disabled.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.


Defendants shall receive credit for all benefits previously paid.

Defendants shall reimburse/pay claimant's past medical expenses itemized in the attachment to the hearing report.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand one hundred seventy-seven and 23/100 dollars (\$1,177.23), and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed this 12th day of December, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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