BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA LIFORD, Claimant, vs. CHRISTENSEN FARMS, Employer, and LIBERTY MUTUAL INSURANCE COMPANY, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 1580224.01, 20006580.01 ARBITRATION DECISION Head Note Nos.: 1108.50, 1402.20, 1803, 3203

STATEMENT OF THE CASE

Teresa Liford, claimant, filed a petition in arbitration seeking workers' compensation benefits from Christensen Farms, employer and Liberty Mutual Insurance Company, insurance carrier and the Second Injury Fund of Iowa, as defendants. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely.

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.

Claimant, Teresa Liford, was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits JE1-JE11, Claimant's Exhibits 1-12, Defendants' Exhibits A-G, and Second Injury Fund of Iowa Exhibits AA-BB. Claimant objected to Joint Exhibits 9, 10, and 11 on the basis of relevancy; the objection was overruled. Claimant objected to Exhibit BB on the basis that claimant had not received the report in a timely manner; the objection was overruled. Claimant's counsel also made an untimely objection to Exhibit G and alleged that Exhibit G had not been timely provided to the clamant. The objection was overruled because it had been waived pursuant to 876 IAC 4.19(3)(d). However, the record was left open at the end of the hearing to provide claimant the opportunity to make a record and submit additional information regarding her objection to Exhibit G. No additional evidence was submitted.

The parties submitted post-hearing briefs on October 8, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

File No: 1580224.01

The parties submitted the following issues for resolution:

1. Whether claimant sustained two separate injuries to her lower extremities or a single bilateral injury as the result of the March 10, 2014 work injury.

2. Claimant's entitlement to permanent partial disability benefits.

3. The appropriate commencement date for any permanency benefits.

File No: 20006580.01

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury which arose out of and in the course of her employment on December 5, 2014.

2. Whether claimant sustained permanent partial disability to her left lower extremity as the result of the December 5, 2014 work injury.

3. Whether claimant's claim is barred by operation of section 85.23, Code of Iowa for failure to provide timely notice.

4. Whether claimant is entitled to benefits under the Second Injury Fund of Iowa Act. If so, the amount of benefits.

FINDINGS OF FACT

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

Claimant, Teresa Liford, filed two petitions. One petition alleges that she sustained an injury to her right leg, left leg, back, hip, and bilateral shoulders on March 10, 2014. However, by the time of the hearing claimant was only alleging injury to her right knee and left knee as the result of the March 10, 2014 date of injury. Ms. Liford also alleges that she sustained an injury to her left leg which arose out of and in the course of her employment on December 5, 2014 and that she is entitled to benefits from the Second Injury Fund of Iowa.

Ms. Liford began working as a farrower for Christensen Farms in 2012. On March 10, 2014, Ms. Liford was working with piglets. The clinical notes state she was reaching into a pen to get a piglet when her knees just went down and she went down to the concrete floor. There is conflicting evidence about whether just her right knee or both knees went to the floor. At the time of the incident Ms. Liford did not think much of the incident, but a few days later her right knee really started to hurt her.

On March 14, 2014, Ms. Liford went to see her family doctor, Paul D. Poncy, D.O. Her chief complaint was right knee pain. She works at a hog confinement and is down on her knees a lot helping deliver pigs. She also gets up and down multiple times during the course of a day. Dr. Poncy examined Ms. Liford and assessed acute myofasciitis of her right knee. He felt her discomfort was related to soft tissue issues that he felt were related to overwork syndrome. He recommended conservative treatment and kept her off work through April 3, 2014. (JE1, pages 1-2)

Ms. Liford also reported the injury to her employer, who then sent her to Davis County Hospital. On March 18, 2014, Ms. Liford was seen by Joseph J. Kruser, ARNP at Davis County. She reported that 8 days ago she was at work when her right knee gave out. She only experienced pain if she was doing something and twisted her knee in a certain direction. The impression was right knee pain. She was prescribed Naprosyn, advised to use an Ace wrap, and given restrictions. She was to follow-up in two or three days. (Testimony: JE2, pp. 1-5)

Ms. Liford was eventually referred to Christopher Vincent, M.D., at Iowa Orthopaedics. Ms. Liford first saw Dr. Vincent on April 18, 2014. She reported right knee pain from a March 10, 2014 work injury. He examined her and reviewed the MRI. He did not see a medial meniscus tear on the MRI, but felt overall the findings were highly suggestive of a symptomatic medial meniscus tear. After conservative treatment was not successful, he eventually recommended surgery. On August 27, 2014, Dr. Vincent performed right knee arthroscopy with partial medical meniscectomy, chondroplasty and synovectomy. (JE2, JE3, pp. 9-10; JE5)

Unfortunately, the procedure did not provide Ms. Liford with any long-term benefit and she continued to have ongoing right medial knee pain. She underwent physical therapy. She was returned to full duty work, but continued to have pain. (Testimony)

With regard to Ms. Liford's right knee, Dr. Vincent opined that Ms. Liford reached maximum medical improvement (MMI) for her injury on June 26, 2015. (JE5, p. 69)

We now turn to Ms. Liford's claim that she sustained a work-related left knee injury. After the right knee surgery, Ms. Liford returned to work in mid-October of 2014. According to Ms. Liford, her symptoms began in October or November of 2014 when she returned to full duty status after her right knee surgery. The treatment records indicate that on December 5, 2014, Ms. Liford went to Centerville Family Practice with bilateral knee pain. She was diagnosed with bilateral knee osteoarthritis. Dr. Poncy recommended that she avoid repetitive twisting motion that she does multiple times during her work day. She was taken off of work from December 5, 2014 through December 11, 2014. (JE1, pp. 9-10)

On December 23, 2014, Ms. Liford reported to Dr. Vincent that she would like to be seen for her left knee. Dr. Vincent advised her that he would have to seek authorization from workers' compensation to evaluate her for her new left knee complaint. (Testimony; JE5, pp. 38)

Dr. Vincent saw Ms. Liford for her left knee on January 12, 2015. The notes indicate left knee pain with an onset date of October 12, 2014. The pain in her knee is aching, dull, and sharp. Trauma occurred at work. She injured her left knee from overuse back in October. She does not recall a specific injury to her left knee, but when she returned to work after her right knee surgery her work activities continued to aggravate the left knee until her pain became severe enough to seek out medical attention. Dr. Vincent felt her exam, history, and radiographs were highly suggestive of symptomatic medical meniscus tear of her left knee. (JE5, pp. 40-45)

Ms. Liford returned to see Dr. Vincent in February of 2015. Dr. Vincent felt the MRI revealed a small left medial meniscal tear. He recommended an injection for her left knee and physical therapy. (JE5, pp. 46-49)

Ms. Liford did not receive much relief from the injection. She continued to treat with Dr. Vincent who performed a series of Orthovisc injections in both of her knees. She did not find the injections to be very effective. Dr. Vincent noted she still had symptomatic left medial meniscus tear and mild left knee osteoarthritis. Unfortunately, in February of 2015, Ms. Liford sustained a heart attack which set back her left knee rehabilitation; surgery could not be performed until she had been taken off anticoagulants. (JE5, pp. 50-83)

On February 26, 2016, Dr. Vincent performed left knee arthroscopic partial medical meniscectomy and patellofemoral chondroplasty. Following surgery, she

underwent physical therapy and a functional capacity evaluation (FCE). (JE3, pp. 11-12)

Prior to March 10, 2014, Ms. Liford did not have any problems with either of her knees. After her right knee surgery, she returned to work in October of 2014. Her right knee was still a bit tender. The rooms at her job had been remodeled and as a result, the rooms were smaller. Because the rooms were smaller she had to twist more to get into the spaces. Ms. Liford testified at hearing that when she went back to work after her right knee surgery, she babied her right knee and that is what caused her left knee to hurt. (Testimony)

There are several experts who have rendered their opinions regarding Ms. Liford's left knee.

Claimant argues that Dr. Vincent provided his opinion on causation which supports the notion that Ms. Liford sustained a discrete and distinct injury in October and November of 2014. Claimant points to a December 23, 2014 clinical note. This is the visit when Ms. Liford requested that Dr. Vincent see her for her left knee. Dr. Vincent noted that the left knee was a new complaint. (JE5, p. 38) Claimant also points to a January 12, 2015 clinical note from Dr. Vincent where he mentions that she injured her left knee due to overuse in October of 2014. The note also states: "she does not remember a specific injury to the LEFT knee, but she states when she returned to work after recovering from RIGHT knee surgery, the work activities continued to aggravate the LEFT knee until her pain became severe enough to seek out medical attention." (JE5, p. 40) Claimant's brief continues to cite to different clinical notes regarding the onset of Ms. Liford's left knee symptoms. However, I do not find these statements to be persuasive. Rather, these notes discuss the onset of her symptoms, not whether the left knee condition is a sequela to the right knee injury. Even if these statements could be construed as causation opinions, the rationale for any such opinions is not set forth in the notes. Dr. Vincent does mention in a letter about her right knee, that he also treated her left knee under a different work injury. Again, there is no explanation for this statement or what he meant by "different work injury". (JE5, p. 69)

At the request of the defendant employer, David S. Field, M.D., performed a records review and issued a report. Dr. Field was under the impression that after Ms. Liford underwent surgery for her right knee, she did not return to work as a farrower; this is incorrect. Dr. Field stated:

> By history it is difficult to know exactly what happened to the left knee by the record. By some records it suggests she landed on the left knee also. It was stated also that the symptoms of the left knee also became more apparent when she returned to work in October 2014. She had been off work and on crutches for a prolonged period of time since her injury to the right knee. She in fact, never returned to the same occupation.

(Defendants' Exhibit G, p. 4)

Ms. Liford testified that after her right knee surgery, she returned to work as a farrower, she babied her right knee and believes that is what caused her left knee to hurt. Because Dr. Field's opinions are based on an incorrect history, I do not find his opinions to be helpful. (Def. Ex. G, p. 4).

At the request of her attorney, Ms. Liford underwent an independent medical evaluation (IME) with John Kuhnlein, D.O. Dr. Kuhnlein opined that the "left knee condition developed as a sequelae to the right knee condition as Ms. Liford accommodated for the right knee injury, and so would also be related to her work for Christensen Farms." (Claimant's Ex. 4, p. 10) With regard to the left knee, I find the opinions of Dr. Kuhnlein carry the greatest weight. Dr. Kuhnlein had the opportunity to review Ms. Liford's medical records and examine and interview Ms. Liford. I find Dr. Kuhnlein's report to be thorough and well-reasoned. Thus, I find that Ms. Liford's left knee condition developed as a sequela to her March 10, 2014 right knee injury.

We now turn to the issue of permanent functional impairment for the right lower extremity. The treating surgeon, Dr. Vincent, assigned four percent impairment of the right lower extremity. Dr. Vincent utilized Table 17-10 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition as a guide to estimate her impairment rating. He estimated a two percent lower extremity impairment for her loss of range of motion. Additionally, Dr. Vincent noted that she underwent a medial meniscectomy and awarded two percent lower extremity rating for loss of substance of the meniscus as well as her risk of osteoarthritic progression. He utilized the combined values table and assigned a total of four percent impairment to the right lower extremity. (JE5, p. 69) Dr. Field agreed with Dr. Vincent's four percent right lower extremity impairment rating. (Def. Ex. G, p. 3) Dr. Kuhnlein assigned two percent impairment to the right lower extremity for the right medial meniscectomy. Dr. Kuhnlein utilized Table 17-33 of the AMA Guides, Fifth Edition. (Cl. Ex. 4, p. 10) With regard to permanent impairment, I find that the opinions of Dr. Vincent and Dr. Field are consistent with one another and carry greater weight than that of Dr. Kuhnlein. Thus, I find Ms. Liford sustained four percent permanent functional impairment to her right lower extremity as the result of the March 10, 2014 work injury.

We now turn to the issue of permanent functional impairment for the left lower extremity. Dr. Vincent placed Ms. Liford at MMI for her left knee as of July 14, 2016. Dr. Vincent assigned two percent permanent functional impairment of the left lower extremity. Dr. Vincent assigned the impairment pursuant to Table 17-33 of the AMA Guides, Fifth Edition. (JE5, p. 106) Dr. Field noted that Dr. Vincent's impairment rating was acceptable. (Def. Ex. G, p. 4) Dr. Kuhnlein did not address the issue of permanent impairment for the left knee because Ms. Liford was not at MMI for her left knee at the time she was evaluated by Dr. Kuhnlein. Thus, I find Ms. Liford sustained two percent permanent functional impairment to her left lower extremity as the result of the March 10, 2014 work injury.

We now turn to the second alleged date of injury, December 5, 2014. Ms. Liford also alleges that she sustained a distinct and discrete work injury to her left knee after returning to work in October of 2014. However, based on the above findings of fact, I find that Ms. Liford's left knee condition is a sequela to the right knee injury; thus, she failed to prove that she sustained a separate and distinct injury to her left knee on December 5, 2014. Because Ms. Liford failed to prove she sustained an injury which arose out of and in the course of her employment on December 5, 2014, I find that all other issues related to the December 5, 2014 alleged date of injury are rendered moot.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6)(e).

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 injury is considered to be 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 held long ago that "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. Scofield & Welch, 222 Iowa 764, 266 N.W. 480, 482 (1936). The Court explained as follows:

> If the 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 aftereffect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). A sequela can also 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).

Based on the above findings of fact, I conclude that Ms. Liford sustained an injury to her right knee which arose out of and in the course of her employment on March 10, 2014. I further conclude that her left knee condition developed as a sequela to the March 10, 2014 right knee injury. As such, Ms. Liford should be compensated pursuant to Iowa Code section 85.34(2)(s).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

I conclude Ms. Liford sustained 4 percent permanent functional impairment to her right lower extremity which is the equivalent of 2 of the whole person as the result of the March 10, 2014 work injury. I further conclude Ms. Liford sustained 2 percent

permanent functional impairment to her left lower extremity which is the equivalent of 1 percent of the whole person as the result of the March 10, 2014 work injury. Utilizing the combined values chart in the AMA Guides, Fifth Edition, I find that Ms. Liford sustained 3 percent permanent functional impairment to her whole person which is the equivalent of 15 weeks of permanent partial disability benefits. Thus, claimant has demonstrated entitlement to 15 weeks of permanent partial disability benefits at the stipulated rate of four hundred nine and 82/100 dollars ($409.82). The appropriate commencement date for these benefits is July 14, 2016, the date claimant reached MMI for her left knee.

We now turn to the December 5, 2014 date of injury. Based on the above findings of fact, I conclude claimant failed to carry her burden of proof to demonstrate by a preponderance of the evidence that she sustained an injury to her left lower extremity which arose out of and in the course of her employment on December 5, 2014.

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1979).

The central issue is whether claimant's left knee condition, which developed after her right knee was injured, is a separate and discrete injury, or a sequela of the first injury? If they are two separate injuries, Fund liability may be established. If the left knee condition is a sequela of the right knee injury, then there is no Fund liability because only one injury has occurred and the claimant cannot show, under Iowa Code section 85.64, that she has ""previously" lost the use of an enumerated member, and cannot show a "latter injury."

Because the left knee condition is a sequela of the right knee injury, there is no Fund liability because only one injury has occurred and the claimant cannot show,

under Iowa Code section 85.64, that she has ""previously" lost the use of an enumerated member, and cannot show a "latter injury."

Claimant failed to prove a compensable December 5, 2014 injury. Therefore, all remaining issues related to the December 5, 2014 alleged injury are rendered moot.

ORDER

THEREFORE, IT IS ORDERED:

File No: 1580224.01

All weekly benefits shall be paid at the stipulated rate of four hundred nine and 82/100 dollars ($409.82).

Defendants shall be responsible for payment of fifteen (15) weeks of permanent partial disability benefits commencing on July 14, 2016. Defendants shall be entitled to credit for all weekly benefits paid to date.

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 Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

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

File No: 20006580.01

Claimant shall take nothing further from these proceedings.

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

Signed and filed this 16th day of December, 2020.

ERIN Q PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Michael O. Carpenter (via WCES)

Abigail A. Wenninghoff (via WCES)

Sarah C. Timko (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.