BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LINDA STARKS,	:	
Claimant,	:	File No. 5025316
vs.	:	A R B I T R A T I O N
JOHN DEERE WATERLOO WORKS,	:	D E C I S I O N
Employer, Self-Insured, Defendant.	:	Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Linda Starks, has filed a petition in arbitration and seeks workers' compensation benefits from John Deere Waterloo Works, employer, self-insured defendant.

This matter was heard by deputy workers' compensation commissioner, Ron Pohlman, on April 27, 2009, at Waterloo, Iowa. The record in the case consists of claimant's exhibits 1-74; defendant's exhibits A-M as well as the testimony of the claimant.

ISSUES

The parties submitted the following issues for determination:

Whether the claimant sustained an injury on October 13, 2007, which arose out of and in the course of her employment;

Whether the injury was the cause of any permanent disability;

The extent of claimant's entitlement to permanent disability pursuant to Iowa Code section 85.34(2)(u);

The commencement date for payment of permanent disability benefits;

Whether the defendant has established an affirmative defense pursuant to Iowa Code section 85.23; and

Whether the defendant has established an affirmative defense pursuant to Iowa Code section 85.26.

FINDINGS OF FACT

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

The claimant, at the time of the hearing, was 53 years old. The claimant worked for John Deere Waterloo Works for 27 years. She has worked for John Deere as a hoist inspector, janitor, assembler on the cab line, deburring parts, worked in the welding and inspection departments and worked in other departments performing assembly work. She has also operated a forklift.

The last day the claimant worked for John Deere was October 12, 2007. When the claimant was working on a forklift, she was required to put liquid propane tanks on the forklift truck. The tanks weighed approximately 50 pounds when they were full and 25 to 30 pounds when they were empty. She was required to lift them from waist level to put on the back of the forklift truck. Sometimes, if the truck ran out of fuel before reaching the station where the tanks were kept, she would have to carry a tank to the forklift truck.

The claimant is a high school graduate and attended technical school and obtained a certificate in clerical work. The claimant was laid off for a six-year period, during which time she worked at custodial jobs at the University of Northern Iowa and for a community school district.

The claimant has had problems with her right shoulder since the 1980s when she was working at the University of Northern Iowa. She slipped while cleaning in the shower. She received conservative care only for her right shoulder at that time.

The claimant stopped working on October 12, 2007 because she felt that she could no longer continue because of the pain in her hands.

On October 17, 2007, the claimant submitted a claim for a non-occupational illness or injury disability with John Deere. The diagnoses by the physician reviewing the claim were acute polyarthritis and wrist pain.

On January 15, 2008, the claimant saw company physician Robert L. Broghammer, M.D., at Occupational Health Services. Dr. Broghammer briefly summarizes the claimant's condition at that time and over the course of her employment in his report of January 12, 2009.

> Ms. Starks was last seen in this department on January 15, 2008. At that time she was requesting to pursue a disability retirement due to pain in her wrists, migraine headaches, intermittent cervical radiculopathy,

> supraspinatous [*sic*] tendon tear, esophageal reflux, hypertension, bilateral DeQuervain's, as well as a host of other problems. I note in my January 24, 2008, report for Deere Disability Direct that Ms. Starks had been with John Deere Waterloo Works for 27 years. She had permanent restrictions placed in 1996 to avoid atmospheres of working around dust due to a history of sinusitis. Also in 1996 the worker had seen Dr. Buck at John Deere. In a letter to Dr. Kasarian it was noted that the worker had difficulty performing her work assignments due to chronic back problems with chronic deconditioning. She was placed on permanent restrictions at that time including no repeated lifting over 40 pounds and no repetitive full bending at or below knee level.
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> She missed a short period of time from work in 1998 for idiopathic cervical pain. In April 1999 she had the onset of pain in the right shoulder while doing weekend household chores. In 2003 she was seen multiple times during the summer for right shoulder and upper back pain which continued through February 2004 at which time she was returned to work again with permanent restrictions. She was not seen again in the clinic until October 2007 at which time she was seen for an outside injury with pain and swelling in both hands and wrists as well as both ankles. According to my January 24, 2008, disability letter Ms. Starks had related to our PA, Mark Morris, that she thought it was a combination of a pre-existing injury in 1998 in combination with driving new fork trucks that were causing some of her symptoms, particularly symptoms in her thumbs.

(Exhibit A-13)

Dr. Broghammer opines with respect to causation:

> In summary, given that Ms. Starks had no sentinel event, given that there was no documented work injury, and given that Ms. Starks [*sic*] workup has demonstrated chronic problems with no exacerbation or aggravation or causation with regards to any particular work activity it is my opinion that Ms. Starks' multiple myofascial problems are more likely than not simply reflective of conditions in life and not related to industrial work with John Deere. I state this also because Ms. Starks had been on restrictions for approximately eight to ten years prior to our becoming aware of any of these symptoms and she had been simply driving a fork truck, which as I had noted previously, would not pose any particular risk for development of musculoskeletal injury.
>
> I hope this aids in your management of Ms. Starks [*sic*] case. Should you have any further questions, please feel free to contact me.

(Ex. A-14)

The claimant underwent an MRI at the request of Ivo Bekavac, M.D., on March 14, 2006, which revealed a C4-5 and C5-6 disc herniation. Dr. Bekavac also had the claimant undergo EMG testing of both upper extremities, which were normal. Dr. Bekavac referred the claimant to Darren S. Lovick, M.D., a neurosurgeon, for evaluation of the cervical disc herniations. Dr. Lovick did not recommend surgery. Instead he recommended therapy and conservative measures.

The claimant underwent a cervical spine MRI on March 13, 2009. The impression was no disc herniation; C5-6 level degenerative disc disease and moderate bilateral neural foraminal stenosis; and C6-7 level mild left neural foraminal stenosis.

The claimant underwent an independent medical evaluation with Farid Manshadi, M.D., on March 20, 2009. Dr. Manshadi's impression was:

1) Neck pain with reduced range of motion

2) Right-sided shoulder pain with reduced range of motion with MRI findings of right rotator cuff tear

3) Low back pain with reduced range of motion and lower extremity radicular symptoms

4) Complaints of bilateral hand numbness and weakness

(Ex. 73, p. 108)

Dr. Manshadi opines that the claimant has permanent impairment of 13 percent of the right upper extremity; 5 percent of the whole person for neck pain; 5 percent of the whole person for low back pain; and restrictions of no lifting over 5 pounds with the right upper extremity; avoid any activity which requires constant neck flexion or extension or rotation to either side; no lifting more than 20 to 30 pounds on an occasional basis and to avoid any activity which requires continuous gripping or any activity that requires repetitive activity of both hands. Finally, Dr. Manshadi opines with respect to causation:

> It is my opinion that I believe Ms. Linda Starks' work activities while she was working at John Deere which expands from 1975 until 2007 were a substantial factor in bringing about Ms. Starks' current symptomatology including her neck pain, low back pain, right-sided shoulder pain and finally her bilateral hand numbness and weakness. I have reached this conclusion from reviewing the provided medical records as well as interviewing of Ms. Linda Starks.

(Ex. 73, p. 108)

In his deposition, Dr. Manshadi indicated that he was unaware that claimant had problems with her neck at a time when she was not working at John Deere and he was not aware that the claimant had been under permanent work restrictions.

In his deposition, Dr. Broghammer testified regarding the claimant's permanent restrictions:

> Q. Okay, doctor, I'm handing you back Deposition Exhibit 2. Can you indicate for the record what permanent restrictions Ms. Starks had and when they were placed on her?
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> A. She had permanent restrictions of limited exposure to fumes, gases, and no working in dust placed in October of 1995. She had no repetitive at or below knee lifting, twisting, or reaching placed in October of 1996. No lifting over 40 pounds also in '96, October 1996. And it looks like it was just added – or amended to no repeated lifting over 40 pounds then in 2004.
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> My recollection of review of the record is that in October of 1988 she actually had a permanent restriction of no lifting over 50 pounds placed by Dr. Bendixen. She later wanted this removed. Dr. Bendixen felt it was still appropriate and kept the restriction on.
>
> And then at some point in the future, that restriction was again removed, allowing her to bid on different jobs at her request, because it hampered her ability to bid on different jobs. Subsequently she had recurrent symptoms and was placed back on permanent restrictions.

(Ex. M-6, Deposition pp. 23-24)

Since leaving employment at John Deere, the claimant has not sought other work. She applied for Social Security Disability, but was denied.

REASONING AND CONCLUSIONS OF LAW

The first issue in this matter is whether the claimant sustained an injury arising out of and in the course of her employment on October 13, 2007.

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 Elec. 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).

The opinion of Dr. Broghammer is accepted over the opinion of Dr. Manshadi. The question of whether the claimant's current conditions were caused or aggravated by her work turned closely on an understanding of what the claimant was doing on her job as well as an understanding of the claimant's current and prior medical condition. Dr. Broghammer's opinion demonstrates that he has the best understanding both of the claimant's current and prior medical condition as well as, and most importantly, the activities the claimant was performing on her job. Dr. Broghammer's opinion demonstrates that those activities were not causative of the claimant's current physical condition. Therefore, the claimant has not established that she sustained an injury arising out of and in the course of her employment on October 13, 2007. The other issues raised in this file are moot and will not be addressed.

ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from this file.

Costs of this action are taxed to the claimant pursuant to rule 876 IAC 4.33.

Signed and filed this 8th day of July, 2009.

RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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