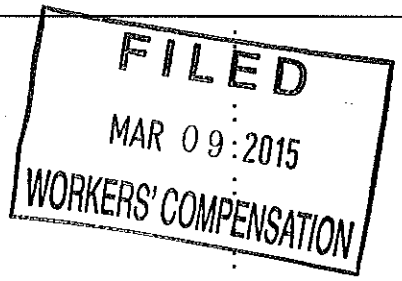
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



DIANE THILL,

Claimant,

vs.

HILLCREST FAMILY SERVICES, INC.,

Employer,

and

IOWA INSURANCE GUARANTY ASSOCIATION on behalf of RED ROCK INSURANCE COMPANY, f/k/a BANCINSURE, in insolvency,

Insurance Carrier,
Defendants.

File No. 5041630

ARBITRATION

DECISION

Head Note Nos.: 1800; 1803

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Diane Thill, filed her original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on February 18, 2013. Claimant eventually alleged she sustained a work-related injury on April 1, 2011. (Original notice and petition)

Defendant, Hillcrest Family Services, Inc., was insured for purposes of workers' compensation by Red Rock Insurance Company, f/k/a, Bancinsure. On March 7, 2013, defendants filed their answer. They admitted the occurrence of the work injury.

The hearing administrator scheduled the case for hearing on March 11, 2014 at 3:00 p.m. The hearing took place in Waterloo, Iowa at the Iowa Department of Workforce Development. The undersigned appointed Ms. Jeanne Strand, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on her own behalf. She was the sole witness to testify.

The parties offered exhibits. Claimant offered exhibits marked 1 through 4. Defendants offered exhibits marked A through F. All proffered exhibits were admitted as evidence in the case. Post-hearing briefs were filed on April 7, 2014. The case was deemed fully submitted on that date.

It is important to note that from September 9, 2014 through February 15, 2015, Governor Branstad had appointed the undersigned, acting workers' compensation commissioner. This deputy was unable to write the decision until after her term as acting workers' compensation commissioner had expired.

Also, this case had been stayed from all proceedings commencing September 23, 2014 and ending on February 10, 2015. The reason for the stay was the insurance company had been placed into Receivership and Liquidation in the State of Oklahoma.

On February 4, 2015, the Iowa Insurance Guaranty Association filed an appearance in this case on behalf of Red Rock Insurance Company, f/k/a Bancinsure. Once the Iowa Insurance Guaranty Association filed its appearance, the contested case was ripe for determination.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury.

2. Claimant sustained an injury on April 1, 2011 which arose out of and in the course of his employment;

3. Temporary benefits are no longer at issue;

4. The commencement date for any permanent partial disability benefits that may be awarded is November 25, 2011;

5. The weekly benefit rate for which benefits should be paid is $270.46 per week;

6. Medical benefits are not at issue;

7. Defendants have waived any affirmative defenses they may have had available; and

8. The parties are able to stipulate to the costs allowed by law.

ISSUES

The issues presented are:

1. Whether the work injury is a cause of temporary and or permanent disability;

2. Whether claimant is entitled to permanent partial disability benefits and if so, the nature of those permanency benefits; and

3. If claimant is entitled to permanency benefits, the extent of those benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This deputy, after listening to the testimony of claimant at hearing, after judging the credibility of claimant, and after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa R. App. P.6.14(6)

Claimant is a pleasant 65 year-old married mother of two grown children. At the time of the stipulated work injury on April 1, 2011, claimant was working as a teaching associate. Her duties included working with high school children who were challenged mentally or else the children had severe behavior problems. Claimant testified a child back-kicked claimant in the right ankle when she was trying to calm down the child.

On the date of the work injury, the campus nurse attended to claimant's ankle. The nurse placed ice and a bandage on the ankle. Claimant did not seek medical attention until April 22, 2011 when Hillcrest Family Services sent her to Tri-State Occupational Health for an initial examination. Michael Stenberg, M.D., examined claimant's lower right leg. (Exhibit B.) The authorized treating physician noted a "Contusion of lower limb – right anterior ankle." (Ex. B) The doctor recommended contrast baths, over-the-counter medications but no work restrictions. (Ex. B)

On May 5, 2011, claimant underwent x-rays. Jason Hughes, M.D., interpreted the x-rays as:

> No acute bony abnormalities are evident. Plantar and posterior calcaneal spurring are incidentally noted. Two screws are in place at the distal 5th metatarsal.
>
> Impression: No acute findings.

(Ex. B, p. 3)

MRI testing of the right ankle occurred on August 18, 2011. (Ex. B, p. 7) Dr. Hughes opined the following relative to the MRI test results:

> Impression: Subcutaneous edema distal lower leg and degenerative change distal navicular. Otherwise, negative study.

(Ex. B, p. 7)

Dr. Stenberg referred claimant to an orthopedic specialist, Robert Magnus, M.D. Subsequent to receiving the results of the MRI tests, Dr. Magnus diagnosed claimant with a "Contusion of lower limb." The orthopedist noted:

> The patient continues to complain of pain over the anterior medial aspect of the distal tibia. She has point tenderness in this area, minimal soft tissue swelling. MRI does show some soft tissue swelling in this area. No bony involvement. Ankle joint is normal. It does have some degenerative changes of the distal navicular. The Achilles tendon itself is normal. She does have some pain at the Achilles insertion but no abnormalities of the Achilles on MRI. Recommend stretching exercise on her Achilles, heel lift and anti-inflammatories. As far as her anterior tibial pain where the contusion occurred I offered her a CORTISONE injection, this should help the soft tissue inflammation as well as any inflammation of the periosteum. She wished to try this and therefore using sterile technique 40 mg of KENALOG mixed with 4 cc of 1% LIDOCAINE were injected into the are [sic] of maximal point tenderness over the anterior medial aspect of overlying the distal tibia just medial to the anterior tendon. She may continue her regular work activities. I will see her back in 1 month for recheck.

(Ex. 3, p. 24)

On September 19, 2011, Dr. Magnus found claimant had greatly improved. The physician indicated in his clinical notes for the same date:

> The patient is 5-1/2 months since her right ankle contusion. She reports the pain is improved following the injection given at her last visit. She still has some discomfort when walking down hill. Minimal tenderness over the anterior medial aspect of the distal tibia just medial to the anterior tibialis tendon. She has good range of motion of the ankle, good stability, ambulates normally. I will see her back on a p.r.n. basis. She may continue with regular work activities. She may try some topical analgesia cream, ice or heat therapy as well. I will see her back on a p.r.n. basis only.

(Ex. 3, p. 26)

On November 11, 2011, claimant returned to Dr. Stenberg for a follow-up examination of her bruised leg. (Ex. 3, p. 27) Dr. Stenberg noted:

> The ankles and feet were symmetrical in appearance. There was no edema, cyanosis, ecchymosis, gross muscle atrophy, or hypertrophy noted. She did have a well-healed surgical scar measuring approximately 2 inches over the dorsum of the left foot. She had a thickened nail on the right great toe. Ankle range of motion was full and symmetrical right to left; however, at end range of both flexion or extension on the right, she had pain in the anterior of the ankle. She also had tenderness in the same spot to palpation. Manual muscle testing noted the right ankle dorsiflexors to be somewhat weaker than the left; however, because this was painful, this was probably not an accurate test. Sensation and circulation was within functional limits and symmetrical right to left.

(Ex. 3, p. 27-28)

Claimant returned to Dr. Magnus on November 25, 2011. There were renewed complaints of right anterior ankle pain. Claimant reported she was taking over-the-counter medications for pain and inflammation. No surgery was recommended. (Ex. 3, p. 29) Claimant was provided with the option of having another cortisone injection. (Ex. 3, p. 29) The diagnosis given was, "Contusion of lower limb-right anterior ankle." (Ex. 3, p. 30)

On April 24, 2012, Dr. Stenberg conducted an evaluation for the purposes of determining whether claimant had any residuals from her work injury. (Ex. 4, p. 48) The physician observed the following during the course of the examination:

> The claimant was able to ambulate independently and transfer freely. Upon removal of her shoes and socks, she was noted to have hypertrophied toenails on the great toe of both feet and on the small toe of the right foot. There were well-healed surgical scars on the left foot. With the claimant's written permission, photographs were taken of the feet and will be appended to this letter.
>
> The claimant was able to ambulate barefoot. She was able to walk on her toes and walk on her heels. She was not able to squat down to the floor, but that was because of the inflexibility of her right knee. She was able to balance on either foot.
>
> Dorsalis pedis and posterior tibial pulses were intact bilaterally. There were no particular tender points noted on either foot. Although advised to let me know if I was doing anything that made her even uncomfortable, the claimant did not complain of any tenderness to palpation over the right or left foot or ankle.
>
> In a seated position, range of motion of the ankles was measured. The unaffected left ankle showed 20 degrees of dorsiflexion or extension and

> 40 degrees of plantar flexion or flexion. Right ankle motion was identical at 20 degrees of extension and 40 degrees of flexion.
>
> DIAGNOSIS:
>
> Contusion of the right ankle, resolved.

(Ex. 4, p. 50)

At the time of the evaluation, claimant reported her pain to be a 10 on the 0-10 visual analog pain scale. (Ex. 4, p. 49) Dr. Stenberg informed claimant a 10 out of 10 rating would mean claimant was experiencing the worst pain imaginable. Claimant maintained her pain was indeed a 10.

Dr. Stenberg rated claimant as having a zero percent permanent impairment. He based his rating on the following factors: 1) claimant had no fracture or ligamentous injury; 2) claimant had no impairment in range of motion; 3) she had no gait derangement; and 4) claimant had no loss of manual muscle strength. (Ex. 4, p. 51)

Dr. Stenberg examined claimant on September 25, 2012. The physician specifically checked claimant's right ankle. Dr. Stenberg assessed claimant's condition as pain in the ankle. (Ex. 4, p. 32) The physician documented his file with the following information:

> Encounter Documentation
>
> The patient is here with some complaints of discomfort in her right medial lower leg just above the ankle where she was kicked about 2 years ago while at work. At that time she was seen and traced it occupational health and referred to Dr. Magnus who ordered an MRI of the leg which was reportedly normal. This was reviewed and was read as normal except for some mild degenerative change in the distal navicular.
>
> The patient says that she still has some discomfort in the area and some bruising occasionally. She also has some pain that radiates down to the big toe.
>
> I told the patient that I was not an expert in ankle care and recommended that she see tri-state occupational health or Dr. Magnus or whatever she would like. She did mention Dr. Mike Ward who is a local podiatrist who she knows who has taken care of her in the past. I told her I did not think that this was related in any way to her veins.

(Ex. 4, p. 32)

Pursuant to Iowa Code section 85.39, claimant exercised her right to an independent medical examination with Jacqueline M. Stoken, D.O. The examination

occurred on November 20, 2012. Dr. Stoken diagnosed claimant with a contusion of the right ankle and complex regional pain syndrome of the right ankle and foot. (Ex. 2, p. 10) The examining physician assigned an impairment rating of 9 percent to the body as a whole due to station and gait disorders secondary to the complex regional pain syndrome of the right lower extremity. (Ex. 2, p. 10) Dr. Stoken indicated future medical care would consist of pain management measures. (Ex. 4, p. 11) Dr. Stoken suggested reasonable work restrictions such as to avoid prolonged walking or standing and to avoid walking on uneven ground. (Ex. 4, p. 11)

Claimant sought her annual physical examination from Heidi Townsend, M.D., on April 8, 2013. Claimant had no acute complaints. (Ex. B, p. 10) The right ankle injury was not mentioned in the clinical notes. Dr. Townsend did not discuss the right ankle condition.

In response to Dr. Stoken's opinions regarding chronic regional pain syndrome, defendants authorized an examination for claimant with Esther M. Benedetti, M.D., a specialist at the University of Iowa Pain Clinic. Dr. Benedetti examined claimant on September 6, 2013. With respect to the right lower extremity, the physician indicated:

> - Allodynia, hyperalgesia, hyperesthesia,
>
> - Vasomotor changes; no temperature asymmetry compared to left medial malleolus region; lacks color change-no sign of pallor
>
> - negative for edema
>
> - adequate ROM within functional limitations
>
> - lack trophic changes, specifically no changes in hair, nails, skin
>
> Pulses: 2+ and symmetric
>
> Skin: No rashes or lesions present over right medial malleolus region
>
> Neurologic Sensory Intact to light touch over all right lower extremity dermatomes, including intact saphenour nerve distribution
>
> Motor: 5/5 strength of grossly
>
> Reflexes: 2+ and symmetric
>
> Gait: Neutral

(Ex. D, p. 3)

Dr. Benedetti diagnosed claimant with:

1. Chronic right ankle pain.

(Ex. D, p. 3)

However, Dr. Benedetti could not comment on the current etiology of the persistent right lower extremity pain. (Ex. D, p.4) The pain physician opined claimant did not suffer from chronic regional pain syndrome (CRPS). Dr. Benedetti cited the reasons why claimant did not have CRPS. Claimant showed no symptoms of allodynia, edema, temperature/color changes, motor alterations, myoclonias, fasciculations or trophic changes such as skin nail or hair changes. (Ex. D, p. 4)

Dr. Benedetti could not comment on whether work restrictions would be appropriate for claimant. (Ex. D, p. 4) The doctor did recommend a multi-modality approach to assist claimant with her pain. The modalities included: Gapapentin, Amitriptyline, topical lidocaine jelly or patch, over-the-counter anti-inflammatory medications or Acetaminophen, plus physical therapy, aqua therapy, a TENS unit, and finally assistance with coping and cognitive behavioral techniques through the use of psychological counseling. (Ex. D, pp.4-5)

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).

Claimant has established she sustained a temporary injury to her right lower extremity in the vicinity of her right ankle. Basically, claimant has a 1cm bruise, bump or contusion on her right leg. While she has complaints of pain, those complaints far outweigh any objective test results. Claimant described her pain on the pain analog scale as the worst pain imaginable. It is difficult to comprehend she experiences such a high level of pain when she holds down two jobs. One of the jobs involves working as a waitress and claimant is expected to stand and walk during her shift.

Claimant had standard x-rays which showed no acute findings. (Ex. B, p. 3) Claimant underwent MRI testing. The only finding was "Subcutaneous edema distal lower leg and degenerative change distal navicular. Otherwise, negative study." (Ex. B, p. 7) In short, some swelling appeared for a period of time. By November 11, 2011, Dr. Stenberg found no swelling in the right leg. (Ex. 3, p. 28)

Dr. Stenberg rated claimant as having no permanent impairment. He found a zero permanent impairment rating. Dr. Stenberg examined claimant on numerous occasions. He based his impairment rating on four factors: 1) Claimant had no fracture or ligamentous injury; 2) Claimant had no impairment in range of motion; 3) Claimant had no gait derangement; and 4) Claimant had no loss of manual muscle strength. (Ex. 4, p. 51) Dr. Stenberg did not impose any work restrictions for claimant's right leg.

Dr. Magnus, a specialist in orthopedics, examined claimant on several occasions. He too diagnosed claimant with a contusion of the lower limb. He injected claimant with Cortisone. He did not recommend any surgical intervention. (Ex. 3, p. 29) Dr. Magnus opined the contusion of the right ankle had greatly improved by September 19, 2011 and claimant was ambulating normally. (Ex. 3, p. 26) Dr. Magnus imposed no permanent work restrictions for the right leg injury. Claimant's personal physician, Dr. Townsend, never noted any right ankle abnormalities. Her April 8, 2013 clinical notes were silent on the topic.

It is acknowledged Dr. Stoken rated claimant as having a 9 percent impairment rating to the body as a whole due to chronic regional pain syndrome of the right ankle and foot. (Ex. 2, p. 10) Dr. Stoken examined claimant on one occasion, November 12, 2012. Dr. Stoken is the only physician who found any indication of CRPS. Dr. Stoken recommended permanent work restrictions.

Finally, in the fall of 2013, Dr. Benedetti, a specialist in pain management at the University of Iowa, found absolutely no indication of CRPS in claimant's right ankle or leg. The pain specialist could not state with any degree of medical certainty what caused claimant's right leg pain. Nor did Dr. Benedetti recommend any permanent work restrictions. The pain management doctor did recommend some future treatment modalities but again, she could not state claimant's chronic pain was work related.

In light of the foregoing, it is the determination of the undersigned; claimant has not met her burden of proof with respect to the issue of permanency. As a consequence, claimant takes nothing additional from these proceedings.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing additional from these proceedings.

Each party shall pay her/its/their own costs.

Signed and filed this 9th day of March, 2015.

Michelle A. McGovern

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Dirk Hamel
Attorney at Law
770 Main St.
Dubuque, IA 52001-6820
dhamel@dbqlaw.com

Steven M. Augspurger
Attorney at Law
801 Grand Ave., Ste. 3700
Des Moines, IA 50309-2727
augspurger.steven@bradshawlaw.com

Lindsey Mills
Attorney at Law
225 2nd St., SE, Ste. 200
PO Box 36
Cedar Rapids, IA 52406
lmills@scheldruplaw.com

MAM/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.