

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTINE KEERAN,

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

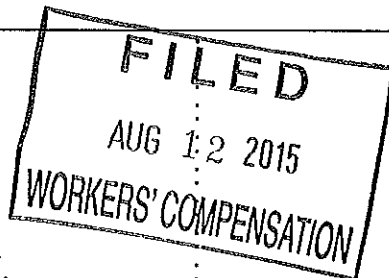
and

INDEMNITY INSURANCE CO. OF
NORTH AMERICA,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.



File No. 5048135

ARBITRATION
DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Christine Keeran, claimant, filed a petition in arbitration seeking workers' compensation benefits from Quaker Oats Company and its insurer Indemnity Insurance Company of North America (defendants) and the Second injury Fund of Iowa (Fund), as a result of an alleged injury she allegedly sustained on September 25, 2012 that allegedly arose out of and in the course of her employment. This case was heard in Cedar Rapids, Iowa, and fully submitted on March 16, 2015. The evidence in this case consists of the testimony of claimant and claimant's exhibits 1 through 20 and defendants' exhibits A through D. The Fund relies upon the submitted exhibits and did not offer additional exhibits. All parties submitted briefs.

ISSUES

1. Whether claimant sustained a cumulative injury on September 25, 2012 which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of temporary disability.
3. Whether the alleged injury is a cause of permanent disability and, if so;
4. The extent of claimant's disability.
5. Whether the claimant's injury is a scheduled or unscheduled injury.

6. Whether the claimant's case is barred by failure to give notice.
7. Whether the claimant's case is barred by the statute of limitations.
8. Whether claimant had a qualifying first and second injuries for Fund liability.
9. Whether claimant is entitled to payment of medical expenses.
10. Whether claimant is entitle to alternate medical care.
11. Assessment of costs.

The stipulations contained in the Hearing Report are accepted and incorporated into this decision as if fully set forth.

The parties stipulated that if a finding is made that claimant suffered a work injury, she would be entitled to temporary total/healing period benefits from September 26, 2012 through October 16, 2013. Claimant asserted that if she is found permanently and totally disabled she would be entitled to benefits commencing September 26, 2012. The parties agreed that the claimant's weekly rate is \$708.24. The parties agree that if a finding of causation is made and the claimant is not permanently and totally disabled, the commencement date of permanent benefits is October 16, 2013. The defendants stipulated that if a finding of causation is made the defendants are liable for the medical expense of the claimant. The defendants also agreed that if a finding of causation is made claimant is entitled to receive medical care from Sandeep Munjal, M.D. The claimant and defendants agreed that if a finding of causation is made the defendants are entitled to a credit for payments already made. The claimant and defendants did not know the amount of the credit, as it would be the amount paid to claimant in non-worker's compensation benefits minus federal and state tax liability. The claimant and defendants agree they would reach an agreement to this figure, if a finding of causation is made. Defendants agreed to pay the cost of the independent medical examination of Stanley Mathew, M.D.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Christine Keeran, claimant, was 62 years old at the time of the hearing. She graduated high school in 1971. She has no other formal education. Claimant worked a couple of years of retail after graduating from high school. She began her employment with Quaker Oats in 1973. She worked for Quaker Oats continuously for over 39 years and left Quaker Oats on September 25, 2012.

Claimant performed a number of different jobs for Quaker Oats. The jobs included sweeper, packer, bag-handler, machine tender, and package operator. Claimant agreed that the job descriptions contained in claimant's exhibit 1, pages 1 – 14

described the physical aspects of her work. (Transcript, page 21) Claimant was a package operator for about 10 years before her retirement. (Exhibit 4, page 3)

In 2003 claimant was diagnosed with bilateral lateral epicondylitis. (Ex. 14, p. 1) Later that year, she was diagnosed with bilateral carpal tunnel syndrome. (Ex. 14, p. 17) On May 20, 2004, Melissa Young Szalay, M.D., returned claimant to work with a restriction of no overtime. (Ex. 14, p. 32) Claimant currently experiences her arms going to sleep and feeling numb on a daily basis. (Ex. 4, p. 5)

On April 5, 2004 claimant was seen by Hugh MacMenamin, M.D., regarding both knees, hip and back pain. Claimant reported to Dr. MacMenamin she has some pain in both knees for several years. (Ex. 14, p. 22) Dr. MacMenamin noted that claimant worked on concrete floors for 31 years at Quaker Oats. His impression was in part:

Impression:

Patellofemoral arthrosis left greater than right.

Degenerative arthrosis of the lumbar spine.

(Ex. 14, p. 33)

Claimant was advised that with time her symptoms may get worse and at some time she could consider knee arthroscopy and lateral retinacular release. (Ex. 14, p. 34)

On June 4, 2004, claimant's right elbow medial epicondylitis was minimally symptomatic, her left elbow lateral epicondylitis was symptomatically resolved and her bilateral carpal tunnel was mildly symptomatic. Claimant's restriction of no overtime was removed. (Ex. 14, pp.36, 37) Claimant has not had any treatment for her arms since 2005. (Tr. p. 73) On May 18, 2015, Dr. Young Szalay found that claimant's elbow symptoms had resolved. He noted ongoing carpal tunnel symptoms. Using the AMA Guides for the Evaluation of Permanent Impairment, Fifth Edition, he found a zero impairment rating. He noted claimant has limitations in lifting and firm grasping and adopted the restriction of a functional capacity evaluation in February 2005. The FCE found that claimant was within certain limitations and she could perform light to medium work activities. (Ex. 13, p. 9) Dr. Young Szalay placed a permanent restriction of no overtime. (Ex. 14, pp. 40, 41) Claimant testified that Quaker Oats would regularly assign overtime work to employees. (Tr. p. 24)

As part of an independent medical examination (IME) Stanley Mathew, M. D., evaluated claimant's upper extremities. He concluded claimant's carpal tunnel had gotten worse since 2005 and provided a five percent impairment rating to the upper extremities. He recommended permanent restrictions of no lifting over 15 pounds, no repetitive pushing, pulling, use of vibratory tools, and no repetitive lifting. (Ex. 5, p. 12)

Thomas Gorsche, M.D., performed an IME of the claimant on June 18, 2014. His impression concerning claimant upper extremities was:

IMPRESSION:

1. Bilateral carpal tunnel syndrome, verified by nerve conduction studies done August of 2003, persistent symptoms of carpal tunnel. Have not worsened in the last number of years per patient.

(Ex.10, p. 14) He found claimant reached maximum medical improvement in May 2005. He provided a two percent for the right upper extremity and two percent rating for the left upper extremity. For her carpal tunnel impairment for restrictions he recommended no use of vibratory tools. (Ex. 10, p. 16)

On October 27, 2009, claimant was referred to Fred Pilcher, M.D., reporting right knee pain. Claimant said she was concerned about climbing ladders at work. Claimant reported no specific injury. (Ex. 11, p. 1) Dr. Pilcher noted an antalgic gait. Radiographs revealed medial joint space arthritis with loose body in the suprapatellar patch. Dr. Pilcher recommended surgery. (Ex. 11, p. 1) Claimant returned to Dr. Pilcher on May 11, 2010. Dr. Pilcher's impression was:

IMPRESSION:

- 1) Degenerative meniscus disease and degenerative arthritis, left knee.
- 2) Right knee meniscus tears and loose body.

(Ex. 11, p. 6) He recommended arthroscopic surgery of both knees. (Ex. 11, p. 6) On August 18, 2010, Dr. Pilcher took claimant off work. He noted that claimant did a lot of climbing and walking at work. (Ex. 11, p. 8) Dr. Pilcher wrote:

PLAN:

This woman is in a tough situation. She is quite disabled but young and certainly does not want a total knee replacement. For that reason, we're going ahead with arthroscope of the right knee with debridement and removal of loose body. While we're in the operating room, we're going to work on the left side. This may be beneficial or it may not. We have to try something because of her disability.

(Ex. 11. p. 9)

I find August 18, 2010, to be the date of claimant's injury to her knees. Claimant underwent arthroscopy on left and right knee on August 26, 2010. (Ex. 9, p. 1) Dr. Pilcher noted on a short term disability form he completed at the time that claimant's condition was not work related. (Tr. p. 55) Claimant was returned to work on November 22, 2010. (Ex. 5, p. 13) On March 1, 2011, Dr. Pilcher noted claimant was

symptomatic with respect to both wounds. He also discussed claimant's pes planus (flat feet) and commented claimant walked like a penguin. (Ex. 11, p. 15) He filled out a form on that date indicating that claimant's bilateral knee condition was not work related. (Ex. 4, p. 9) On August 22, 2011, Dr. Pilcher noted moderate tricompartmental arthritis. Her condition was painful, caused an antalgic gait and difficulties with ADL and work. (Ex. 11, p. 17) Claimant testified that she thought her knee problems were a part of the aging process and not a work injury. (Tr. p. 58)

Claimant was seen by David Tearse, M.D., on September 30, 2011. (Ex. 7, pp. 1, 2) His impression was, "Bilateral knee DJD, more symptomatic on the left than the right, with limited motion." (Ex. 7, p. 1) He was not optimistic about any surgical options.

On October 10, 2010, Wayne Alberts, M.D., noted claimant was still not at work and was not doing well and was limping around. (Ex. D, p. 4) On November 28, 2011, Dr. Alberts noted claimant was in a tearful state and frustrated as to her chronic bilateral knee pain. Claimant was using a cane at home but could not use it at work. Claimant did not feel she could continue to work on concrete floors. Dr. Alberts wrote, "She [claimant] states she cannot get job modifications at work because it is not a work comp related injury." (Ex. D, p. 10)

On April 26, 2012, John Callaghan, M.D., at the University of Iowa Hospital and Clinics (UIHC) examined claimant. He recommended claimant discontinue physical therapy and consider total knee arthroplasties. (Ex. 12, p. 5)

On May 4, 2012, Michael Brooks, M.D., a rheumatologist, examined claimant. He said that in the long term the only thing that will make a substantial difference is for the claimant to have total knee arthroplasties. He commented that claimant's current symptoms would improve if she quit her present work. (Ex. 8, p. 9) Dr. Brooks filled out a form which stated that claimant's condition was not work related. (Ex. 4, p. 10)

On June 25, 2012, Dr. Munjal examined claimant. His assessment was osteoarthritis of the right and left knee. (Ex. 6, p. 3) He recommended a total left knee arthroplasty. (Ex. 6, pp. 4, 5)

Claimant's surgery was scheduled for September 25, 2012. Claimant's last day of work was September 25, 2012.

The surgery was delayed due to the discovery of a mass on her femur. On October 16, 2012, Dr. Munjal performed a total left knee replacement. (Ex. 9, p. 5) On December 12, 2012, Dr. Munjal recommended a surgical manipulation of claimant's left knee. This took place on December 8, 2012. (Ex. 9, p. 9) This was unsuccessful and a second manual manipulation occurred on March 12, 2013. (Ex. 9, p. 12) On June 3, 2013, Dr. Munjal noted that claimant only had limited range of motion after the surgical manipulation. He recommended continued therapy and light duty work with no ladders or lifting heavy weights. (Ex. 6, p. 37)

Claimant applied for Social Security Disability benefits on July 18, 2013 based upon knee injuries and lack of mobility. (Ex. 17, p. 1) Claimant was found eligible for Social Security Disability benefits in August 2013 with an onset date of September 26, 2012. (Ex. 17, pp. 8, 9) The analysis of the claimant by the Social Security Administration was that claimant was limited to sedentary work. (Ex. 17, p. 7) Claimant was receiving long term disability benefits from Quaker Oats at the time of the hearing of about \$50.00 per month. (Tr. p. 70) She also was receiving a pension from Quaker Oats. (Tr. p. 76) Claimant would not have retired from Quaker Oats but for her knee conditions.

Dr. Mathew's IME of November 5, 2013 opined that claimant sustained a cumulative injury to her knees arising out of her work at Quaker Oats for over 30 years. (Ex. 5, p. 12) He provided an impairment rating of 25 percent to the whole person for claimant's knee conditions. Dr. Mathew found claimant had a severely altered gait pattern and an antalgic gait, as well as a gait that is limited bilateral knee flexion and contractures. Dr. Mathew found that claimant's knee conditions were material contributing factors to her gait condition. He recommended claimant avoid prolong walking, standing, stairs, climbing, squatting and lifting more than 10 pounds. (Ex. 5, p. 12)

On February 12, 2014, Dr. Munjal signed-off and agreed to the contents of a letter prepared by claimant's counsel. This letter stated that claimant had degenerative joint disease in both knees and her diagnosis was multifactorial. It also stated that the physical demands of her work would be one of the factors. He also agreed with the restrictions recommend by Dr. Mathew. (Ex. 6, pp. 44, 45)

Dr. Gorsche's IME report of June 19, 2014 examined claimant lower extremity medical conditions. His impression was:

IMPRESSION:

....

2. Severe arthritis, left knee, status post total knee arthroplasty, October of 2012, now with arthrofibrosis and stiffness.
3. Arthritis, right knee, seen radiographically, mostly in the medial compartment, less so in the patellofemoral compartment with stiffness and arthrofibrosis.

(Ex. 10, p. 14)

Dr. Gorsche stated that claimant's periodic locking of her knee that she experienced in October 2009 was cause by a loose body in her knee and not by her work. (Ex. 10, p. 15) Concerning claimant's conditions in both knees he wrote:

Regarding the arthritis in her left knee as well as right knee, there are many systemic risk factors associated with developing arthritis. These include age, gender, ethnicity, genetic factors, and possibly dietary factors and smoking. Other factors that can be taken into account are joint mechanics, muscle weakness, obesity, occupational stress, and physical activity. While it is possible that work duties of going up and down ladders continuously could aggravate and contribute to developing arthritis, I believe in this situation it would be a minor contribution at best.

(Ex. 10, p. 15)

In direct response to a question from defendants' counsel concerning causation and her knee conditions Dr. Gorsche wrote:

Degenerative arthritis is multifactorial. In my opinion, since there is no specific injury that brought on her symptoms that they are more than likely related to her systemic risk factors such as her age, gender, ethnicity, genetic factors, and possibly dietary factors. It is medically possible that physical activity at work could have played a role in this, but in my medical opinion, that is unlikely. If it did play a role, in my medical opinion, it would be very minor.

(Ex. 10, p. 17)

He concluded that claimant's systemic risk factors such as age, gender, ethnicity, genetic and possibly dietary factors were more likely to bring about her symptoms. He conceded that physical activity at work could have played a role, but it was unlikely. And if it did play a role, it was very minor. (Ex. 10, p. 17) Dr. Gorsche provided permanent impairment ratings for the right and left knee as well as for the claimant's antalgic gait. He provided a 36 percent to the whole body. (Ex. 10, p. 18) Dr. Gorsche related claimant's gait problem to her both knees and loss of motion. He found claimant had a permanent gait condition. (Ex. 10, p. 19)

CONCLUSIONS OF LAW

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. Cihra, 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).

Did the bilateral knee injury arise out of the claimant's work at Quaker Oats?

Claimant is not required to prove her current knee condition was caused solely by her work, or that none of it was the result of natural degenerative processes. She is only required to show that those natural degenerative processes were accelerated, speeded up or aggravated by her work activities, and that her work was at least a substantial cause, not necessarily the only or the primary cause, of her current knee condition. I find the claimant has not shown that her condition was permanently accelerated by work activities.

Dr. Gorsche's IME was thorough. Dr. Gorsche held that it was not likely that her knee conditions were related to her work. While admitting to the possibility, this is not an agreement that work caused or was a material factor in permanently aggravating or lighting up claimant's condition. Dr. Gorsche's opinion is that it is not likely that work is the cause of claimant's knee conditions.

What is missing from the record is convincing medical evidence that claimant's work at Quaker Oats permanently accelerated, worsened or lighted up her knee conditions. Dr. Munjal agreed that her work was a factor in her degenerative joint

disease. He did not state what type of factor and if it was a significant factor. I cannot tell if it was a de minimis factor, a substantial factor, or a major factor.

Dr. Mathew states that the claimant sustained a cumulative injury to her knees arising out of her physically demanding work at Quaker Oats for 30 years. He provided a brief statement to this effect without much analysis. Dr. Mathews did not review the 2004 medical report concerning claimant's knee pain. Dr. MacMenamin reported in 2004 that claimant had been experiencing knee pain for the last several years. Dr. Mathews did not have that information. That omission is significant. Due to the above factors I do not find Dr. Mathew's opinion to be convincing.

Dr. Brooks and Dr. Pilcher wrote that claimant's knee conditions were not related to work.

There is evidence supporting both sides in this case. However, the claimant has the burden of proof by a preponderance of the evidence that her injury arose out of her employment at Quaker Oats. The claimant's evidence is not more convincing than the defendants. I find the opinion of Dr. Gorsche to be the most thorough. In addition, no physician identified the claimant's knee conditions as being work related until Dr. Mathews did in November 2013.

Claimant clearly has a significant medical condition in her knees. She has an altered gait which is a result of her knee conditions. All of those conditions are disabling. The Social Security Administration has found her to be totally disabled. She is 62 years old. She is precluded from returning to factory work and has no other practical vocational skills.

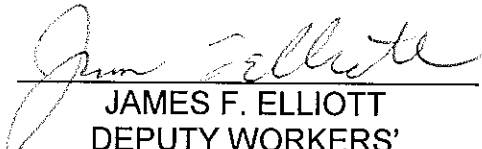
Because I have found that claimant has failed to prove her case by a preponderance of the evidence, the other issues are moot. She has not proved she has a second qualifying injury for Fund liability purposes. The issue of notice and statute of limitations are moot as well.

No costs are awarded to the claimant.

ORDER

The claimant shall take nothing in this case.

Signed and filed this 12th day of August, 2015.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/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.