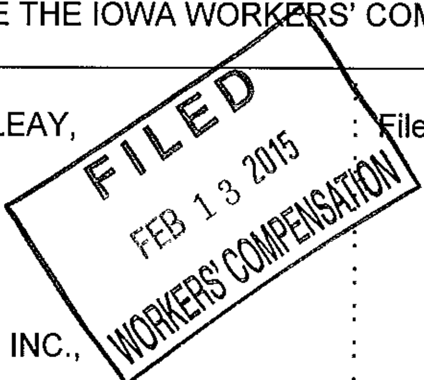
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



PEACHES KEHLEAY, Claimant, vs. TYSON FOODS, INC., Employer, Self-Insured, Defendant.	:	File Nos. 5044037, 5044038, 5044039 5044040, 5044041 ARBITRATION DECISION Head Note Nos.: 1402.20, 1803, 1806

STATEMENT OF THE CASE

Peaches Kehleay, claimant, filed petitions in arbitration seeking workers' compensation benefits from Tyson Foods, Inc. self-insured employer, as a result of alleged injuries she sustained on May 3, 2011, July 3, 2012 and April 4, 2013 that allegedly arose out of and in the course of her employment. This case was heard in Waterloo, Iowa and fully submitted on June 24, 2014. The evidence in this case consists of the testimony of claimant, Jennifer Brustkern and Melvin Hernandez. Claimant's Exhibits 1 through 9, 11, 13 and 15 were admitted into the record. Defendant's Exhibits A through J were admitted into the record. Claimant's Exhibit 12 and defendant's Exhibit A, the deposition of claimant, was submitted as joint Exhibit A.

Defendant objected to the admissibility of claimant's Exhibit 10. Upon review, I admitted the exhibit pursuant to 17A.14 (1).

Claimant requested File No. 5044038 be dismissed with prejudice. Claimant requested File No. 5044040 be dismissed without prejudice. Defendant objected to File No. 5044040 to be dismissed without prejudice. Considering the argument of the parties I found that these files should be dismissed. File No. 5044038 is dismissed with prejudice. File No. 5044040 is dismissed without prejudice.

ISSUES

FOR FILE NO. 5044037, date of injury May 3, 2011:

1. Whether the alleged injury is a cause of permanent disability and, if so;

2. The extent of claimant's disability.

3. Whether defendant is entitled to any credits.

4. Assessment of costs.

The parties stipulated the following for this file:

Claimant had an injury on May 3, 2011, and it was to the left lower extremity. Claimant's weekly rate is $489.84 per week. If permanent partial benefits are awarded, they would commence on May 26, 2011.

FOR FILE NO. 5044039, date of injury July 3, 2012:

1. Whether claimant sustained an injury on July 3, 2012 which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of permanent disability and, if so;

3. The extent of claimant's disability.

4. Whether defendant is entitled to any credits.

5. Assessment of costs.

The parties stipulated the following for this file:

If permanent partial benefits are awarded the commencement date is August 14, 2013. The claimant's weekly rate is $439.91 per week.

FOR FILE NO. 5044039, date of injury April 4, 2013:

1. Whether claimant sustained an injury on April 4, 2013, which was more extensive than her left wrist which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of permanent disability and, if so;

3. The extent of claimant's disability.

4. Whether defendant is entitled to any credits.

5. Assessment of costs.

The parties stipulated the following for this file:

The parties agree the claimant injured her left wrist on April 4, 2013. If permanent partial benefits are awarded the commencement date is April 4, 2013. The claimant's weekly rate is $471.98 per week.

FINDINGS OF FACT

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

Peaches Kehleay, claimant, was 45 years old at the time of hearing. Her primary language is Bassa. Claimant leaned English in Liberia and did not need an interpreter at the hearing. Claimant attended one semester at a community college. She began working for Tyson Foods, Inc. (Tyson) (f/k/a IBP) in December 2000. At the time she started working for Tyson she passed a physical and had no restrictions.

Claimant has had a number of positions with Tyson over the years. She worked as a membrane skinner for about seven or eight years. (Transcript, page 30) Claimant testified she changed from that position due to problems with her hands. Claimant worked a final trim position for about four to five years.

Claimant was involved in a non-work related motor vehicle accident on March 4, 2012. Claimant did not disclose this accident in her initial answer to interrogatories and did not provide copies of the medical record to defendant, even though she had a copy of the records. (Exhibit 9, p. 22) Defendant, on their own, did obtain a copy of these records. Claimant asserted she supplemented her answers by way of her deposition and additional responses. (Ex. 13, p. 2)

Claimant said at the hearing that the March 4, 2012 accident was not serious at all, that she was a passenger in the back seat and that the car went off the road. She said she and the other passengers were laughing about the incident. In her deposition claimant said the car just slipped and went to the side a bit. (Ex. A, p. 35) She said no police were called. In her deposition claimant stated that the driver of the vehicle involved in the accident did not have a license. She denied there was a rollover incident or that the vehicle hit anything. (Tr. pp. 38, 39) Claimant said she went to the emergency room on March 8, 2012 due to breathing problems. (Tr. 41) Employment records show that claimant was out ill on March 7, and March 8, 2012 and that the next full day absence was in August 2012. (Ex. 1, p. 18)

Claimant said she went to her family physician, Nagarathna Nadipuram, M.D. to be checked out on March 28, 2012, because she had been in an accident. Claimant said she did not tell Dr. Nadipuram she had back and wrist pain and never told her that the accident involved a rollover or hitting a tree or bridge. Claimant denied telling Dr. Nadipuram she had a bloody nose from the motor vehicle accident. (Tr. p. 89) Claimant obtained copies of her records from Dr. Nadipuram in July 2012. Claimant was having her pay garnished due to medical bills and said she wanted the medical records so she could deal with the garnishment. Claimant did not provide these records to the defendant. (Tr. p. 78)

Claimant was asked about the Allen Hospital note of August 8, 2012, which states that claimant was having problems with her back and right rib and that she had the same problem when she had the car accident. Further the note stated, "I never had the problem before the car crash." (Ex. 8, p. 13) Claimant denied telling the hospital any of this information. (Tr. p. 114) An August 9, 2012 physical therapy note said, "The patient reports original injury occurred on 03/04/2012 when a vehicle she was a passenger in was in a rollover accident." (Ex. 8, p. 16)

Claimant denied telling physical therapy on April 4, 2012 that she hurt her back and right wrist in a motor vehicle accident. (Tr. p. 91) Claimant said that physical therapy received incorrect information from Dr. Nadipuram, and other providers received incorrect information as well. (Tr. p. 91)

Claimant said she injured her left ankle on May 11, 2011 when a pallet hit her ankle at work. Claimant said she reported the injury to Tyson. Claimant said at the hearing she continues to have numbness in her left foot and ankle and had difficulty climbing stairs and getting into the SUV. Initially in her deposition claimant testified she had no ongoing problems with her left ankle. (Ex. A, p. 18) Later in her deposition she said that her ankle hurt sometimes when getting into her SUV. (Ex. A, p. 93) Claimant admitted that she has not had any treatment for her left ankle since shortly after the accident in May 2011. (Tr. p. 100; Ex. A, p. 19)

Gregory Clem, M.D. examined claimant's left ankle on May 5, 2011. His assessment was "Left ankle medial malleolar contusion." (Ex. 3. p.1) Claimant was released to return to work with no restrictions as of June 20, 2011. (Ex. 3, p. 5) Robert Gordon, M.D. on May 26, 2011 provided a zero impairment rating for the claimant for her left ankle injury. (Ex. 3, p. 7)

On March 8, 2012 claimant went to the Allen Memorial Hospital Emergency Department. Claimant's complaint was, "WHOLE BODY HURTS AND COUGH SINCE YESTERDAY/. NO FEVER. NO CHILLS. . LAST SUNDAY WAS A PASSENGER IN A CAR THAT HIT A BRIDGE BUT DID NOT SEE A DR FOR THIS." (Ex. 7, p. 1) She was diagnosed with upper respiratory infection. (Ex. 7, p. 6)

On March 28, 2012 Dr. Nadipuram saw claimant for a physical. Dr. Nadipuram noted,

> S: Patient seen in office on 3/28./2012 [sic] for complete physical. As well as was in a [sic] MVA on 3/4/2012. She was in the passenger seat and hurt her black [sic] and wrist. She also got a bloody nose at the time of the accident. She went to Allen ER, and has a [sic] xray taken of her chest, as she was coughing. Family history is reviewed.

(Ex. 9, p. 15)

On April 8, 2014 Dr. Nadipuram provided a statement. (Ex. B, pp. 1, 2) In this statement she wrote that she was providing care to claimant in March 2012 for an automobile accident. Dr. Nadipuram also stated,

> Yes. The severity and length of complaints involving her right wrist injury from the March 4, 2012 automobile accident are consistent with a trauma-induced carpel [sic] tunnel condition that could require surgery. I did not get a chance to do the additional testing to determine whether surgery is needed before I last saw her in July of 2012.

(Ex. B, p. 1)

On April 4, 2012 Mary Jo Rathe, PT wrote, "The patient states she was on her way back from Des Moines and her friend was driving the car when it hit some ice. She had her hand in the hand grip by the door on the passenger side when the accident happened." (Ex. 8, p. 3) The assessment was low back strain and right wrist strain. (Ex. 8, p. 4)

Claimant testified she injured her right wrist and right shoulder on July 3, 2012 while she was trimming shanks at work. Claimant reported this injury to Tyson. Tyson accepted this injury as a work injury. Claimant eventually had surgery on her wrist performed by Thomas Gorsche, M.D. Claimant was returned to work in September 2012 by Dr. Gordon. In her deposition claimant said the first time she felt pain in her right arm and shoulder was on July 3, 2012. (Ex. A, pp. 75, 76)

Dr. Gordon examined claimant on July 12, 2012. Claimant reported that she noticed pain in her right trapezius along with numbness and tingling and pain in her right wrist and hand. Additionally, claimant noted pain of her left shoulder/left triceps and her left ring finger. (Ex. 3, p. 9) On July 31, 2012 Dr. Gordon's impression was,

> DIAGNOSTIC IMPRESSION:
>
> 1. Right trapezius pain. This symptomatology is consistent with myofascial pain. She does not have any glenohumeral symptoms or examination features consistent with abnormality.
>
> 2. Left hand paresthesias. This is notably improved.
>
> 3. Left ring finger pain in the region of the PIP joint. I did not appreciate any functional abnormality today. There is no edema.

(Ex. 3, p. 12) Dr. Gordon referred claimant to Dr. Gorsche on August 29, 2012. Dr. Gorsche examined claimant. He concluded at that time he had nothing to offer the claimant from an orthopedic point of view. (Ex. 4, p. 4) On September 5, 2012 Dr. Gordon discharged claimant from his care and provided a zero impairment rating. (Ex. 3, p. 17)

On April 28, 2014 Dr. Gordon stated it was difficult to determine if claimant had right-sided residual carpal tunnel syndrome from her carpal tunnel release surgery or recurrent carpal tunnel syndrome. He did state that she may have developed a sequela to her November 2012 carpal tunnel surgery. (Ex. 3, p. 29)

Dr. Gordon was not informed by the claimant that she was in a motor vehicle accident in March 2012. (Ex. C, p. 15) Dr. Gordon stated in his deposition that he believed the March 2012 car accident was the cause of the claimant's right carpal tunnel syndrome, not work. (Ex. C, pp. 19, 20) Dr. Gordon also stated that the right shoulder injury was caused by the motor vehicle accident and not work. (Ex. C, p. 23)

On October 2, 2012 Dr. Gorsche's impression was,

> IMPRESSION
>
> #1 moderate RIGHT carpal tunnel syndrome with both motor and sensory conduction delay.
>
> #2 subacromial bursitis RIGHT shoulder, tendinopathy rotator cuff.
>
> #3 bone marrow changes axillary nodes. Copy of the MRI was given the patient, I recommended that she see her family physician.

(Ex. 4, p. 6) On October 24, 2012 Dr. Gorsche discussed carpal tunnel release procedure for her right wrist. (Ex. 4, p. 7) On November 7, 2012 he performed a right carpal tunnel release surgery. (Ex. 4, p. 10)

Claimant went to the University of Iowa Hospitals and Clinics on December 27, 2012 for an evaluation of her right shoulder. Brian Adams, M.D.'s impression was,

> IMPRESSION:
>
> 1. Right shoulder rotator cuff tendinitis and impingement syndrome with bursitis, but no evidence of a full-thickness rotator cuff tear.
>
> 2. Status post right carpal tunnel release with relief of the paresthesias but some persistent pain.
>
> 3. Basilar thumb pain of indeterminate etiology.

(Ex. 6, p. 3) On April 25, 2013 Dr. Adams performed arthroscopy of the right shoulder with rotator cuff repair. (Ex. 6, p. 8) Dr. Adams returned claimant to work without restrictions on August 4, 2013. (Ex. 6, p. 27) Dr. Adams provided an 11 percent impairment to her right shoulder on August 21, 2013. (Ex. 6, p. 28) Claimant was still having difficulty with her right shoulder. On December 23, 2013 Dr. Adams noted claimant had a shoulder injection in November 2013 and offered another at that appointment. Claimant declined, as the prior injection did not provide relief. (Ex. 6, p.

36) Defendant's attorney provided Dr. Adams information concerning the claimant's motor vehicle accident. On February 7, 2014 Dr. Adams stated he could not determine whether the motor vehicle accident was more likely than not the cause of her condition in her shoulder. (Ex. 6, p. 43)

Claimant had shoulder surgery performed by Dr. Adams. Claimant was off work from April to August 2013. Claimant said that her right wrist still goes to sleep.

Claimant testified she injured her left wrist and hand on April 4, 2012 while working on the loin line. Claimant said that Dr. Gorsche performed surgery on her left hand/wrist and gave her a three percent impairment rating. Claimant said she had difficulty gripping heavy items with her left hand and wrist. (Tr. p. 70)

Claimant was terminated on April 23, 2014. Claimant was told she was a no call/no show as the reason for her discharge. Claimant disputes that she was a no call/ no show and has filed a grievance. The grievance was pending at the time of the hearing.

Melvin Hernandez, claimant's last supervisor, testified at the hearing. He said that claimant was a good employee and that other than one day when she complained about her wrist she was able to perform her job. (Tr. p. 121) Claimant also complained to him about problems with her right knee, but not about her ankle or shoulder.

Jennifer Brustkern, RN, case manager at Tyson, testified at the hearing. Ms. Brustkern's testimony concerned a conversation claimant had with her. Ms. Brustkern said that claimant told her if claimant was fired, she planned to go back to Africa and sell jewelry. Claimant denied that she told Ms. Brustkern about selling jewelry. The fact that claimant may have said she was thinking of selling jewelry if she was fired is not material to any issue of causation of her injuries. It is, however, another example of claimant having a different memory of events than other persons.

On April 20, 2012 claimant had an MRI of the lumbar spine. The note of the exam stated the reason for the MRI was. "INDICATION: MVC [Motor Vehicle Collision], low back pain, bilateral leg pain." (Ex. 2, p. 2) An MRI of the right shoulder in November 2013 showed the following,

> CONCLUSION:
>
> 1. Adhesive capsulitis.
> 2. Moderate subacromial bursitis.
> 3. Coalescent supraspinatus tendinopathy with fibril crimping posteriorly. No discrete tear. No atrophy.
> 4. Medially subluxed long biceps tendon into a very subtle upper one-third insertional hidden subscapularis tendon tear. May be

intermittent. Associated superolabral cleft favored over a small SLAP 2A tear.

5. AC joint moderate inflammation. Nominal proliferation. Arthropathy related. (Small subcortical cysts at the distal clavicle).

(Ex. 2, p. 5)

Claimant had an MRI of her right shoulder on September 14, 2012. The results were,

IMPRESSION:

1. Moderate supraspinatus, infraspinatus and subscapularis tendinopathy.

2. Heterogeneous signal in the humeral bone marrow of unknown clinical significance. However, together with the multiple benign appearing axillary nodes bone marrow infiltration cannot be excluded. Clinical correlation with systemic disease or granulomatous disease is recommended.

(Ex. 2, p. 3)

On February 5, 2014, Farid Manshadi, M.D. performed an independent medical examination (IME). Dr. Manshadi found that claimant had reduced sensation to light touch and pinprick along the medial border of the left ankle and foot of the big toe. He provided a two percent impairment rating for this May 3, 2011 ankle injury. (Ex. 11, p. 18) Dr. Manshadi provided a four percent impairment rating for the claimant's left carpal tunnel injury. He provided a four percent impairment rating of the residual effect of the right carpal tunnel surgery and 12 percent for the right shoulder. (Ex. 11, p. 19) He recommended claimant avoid activities that require repetitious gripping, pushing, pulling with left hand as well as repetitive activity above her shoulder. He recommended a 15 – 20 pound lifting restriction for the right upper extremity. (Ex. 11, p. 20)

REASONING AND 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. 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).

"When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion." Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995).

FOR FILE NO. 5044039 (D/O/I: 7/3/12):

Claimant's testimony concerning the motor vehicle accident in March 2012 raises serious credibility concerns. It makes sense that no police or accident report was filed when the driver of the car did not have a license. (Ex. A, p. 36) It is not consistent for claimant to repeatedly testify that the accident was nothing serious, but tell some health providers she had a significant accident. I do not find claimant's explanation that all of the "miscommunication" was the fault of Dr. Nadipuram. Claimant asserts that there was a language barrier between Dr. Nadipuram and herself. While it is certainly a possibility, it does not explain the detailed medical notes that Dr. Nadipuram put into her records and other providers had about the March 4, 2014 accident. The language barrier between claimant and Dr. Nadipuram would not explain claimant's report to the

emergency room on March 8, 2012. The March 8, 2012 visit to the emergency room notes at Allen Memorial Hospital state that she was a passenger in a car that hit a bridge. (Ex. 7, p. 1) The physical therapy record of April 4, 2012 stated claimant was holding onto the right door grip during the accident. (Ex. 8, p. 3) That record indicated it was dictated by Mary Jo Rathe, PT. Dr. Nadipuram did not write this note.

I am unable to accept claimant's testimony concerning her injury to her right wrist/arm and shoulder. Defendant provided evidence that her right wrist/arm and shoulder complaints were the result of her motor vehicle accident in March 2012. I find based upon the opinions of Dr. Gordon, Dr. Gorsche and Dr. Nadipuram claimant has not proven she had a work injury on July 3, 2012. I do not find the opinion of Dr. Manshadi to be convincing. He accepted claimant's version of the motor vehicle accident and that there was miscommunication with Dr. Nadipuram. I do not find claimant's version of the accident and miscommunications to be believable. Dr. Manshadi's opinion relies upon inaccurate factual information and therefore is not given much weight as far as the July 3, 2012 injury date. Claimant has failed to meet her burden of persuasion, a preponderance of the evidence. She is not credible as to this injury. It also lessens her credibility for her injury to her left foot and left arm. Claimant shall take nothing on File No. 5044039, the July 3, 2012 alleged injury.

FOR FILE NO. 5044037 (D/O/I: 5/3/11):

Claimant has alleged an injury to her left ankle. Dr. Manshadi found reduced sensation to light touch and pinprick along the medial border of the left ankle and foot of the big toe. Claimant received care for a short time after this accident at work. There is a paucity of evidence that this injury had caused claimant any impairment or reduction in functioning. Claimant testified that when she climbs into her SUV her foot hurts. There is no record that claimant complained to any health care providers after she was returned to work after this injury that she was having any problem with her left foot and ankle. Claimant failed to prove that her left ankle problem is related to her injury on May 3, 2011. I do not find claimant to be credible, and therefore, Dr. Manshadi's opinion, which is based in part on claimant's statements, is not convincing. Claimant may have some loss of sensation in her left foot, but has not proven it was the result of a work injury on May 3, 2011. Claimant takes nothing on this file.

FOR FILE NO. 5044041 (D/O/I: 4/4/13):

Claimant has proven by a preponderance of the evidence that her left wrist/arm carpal tunnel injury was causally related to her work for Tyson. It was not related to her accident in March 2012. The reports of Dr. Manshadi and Dr. Gorsche support her claim and support causation of a work-related injury. Dr. Gorsche provided a three percent rating for the left upper extremity. Dr. Manshadi provided a four percent rating for the left upper extremity. I accept Dr. Manshadi's opinion. His report is more detailed as to why he chose his rating. Claimant is entitled to 20 weeks of permanent partial disability benefits for this claim (500 x 4% = 20). Claimant did not prove any other injury for the April 4, 2013 injury.

CREDIT

Iowa Code section 85.34(5):

> If an employee is paid any weekly benefits in excess of that required by this chapter..., the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a subsequent injury to the same employee.

In Swiss Colony, Inc. v. Deutmeyer 789 N.W.2d 129 (2010) the Supreme Court analyzed this provision of the law. The court held,

> Deutmeyer argues that section 85.34(5) is the exclusive remedy for the overpayment of permanency benefits by employers. That section provides:
>
> If an employee is paid any weekly benefits in excess of that required by this chapter . . ., the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a subsequent injury to the same employee.
>
> Iowa Code § 85.34(5). Under section 85.34(5), Deutmeyer asserts that when an overpayment of weekly benefits occurs, employers are only entitled to a credit against a future injury and not against future weekly benefits for the same injury. In support, Deutmeyer points to the phrase *"any* weekly benefits."
>
> Swiss Colony conversely asserts that the claimant is interpreting section 85.34(5) too expansively, finding the operative words of the statute to be "in excess of that required by this chapter." According to the employer, section 85.34(5) only applies where the employer has overpaid the total permanent disability award and not the rate of each separate weekly payment. Section 85.34(5) simply has no relevance where, as is the case here, the claimant has not yet received his total permanency award. In such cases, equity and public policy support allowing employers a credit for overpayments on future benefits for the same injury.
>
> We agree with Deutmeyer. In interpreting statutes, our goal is to derive legislative intent. State v. Wagner , 596 N.W.2d 83, 87 (Iowa 1999). ...
>
> The plain language of section 85.34(5) directs that the overpayment of *any* weekly benefits be credited to payments for subsequent injuries. "Any" is commonly understood to have broad application. *See* Merriam-Webster's Collegiate Dictionary 53 (10th ed.2002) (defining "any" as "every" or "used to indicate one selected without restriction"); see also State v. Owens, 635 N.W.2d 478, 486 (Iowa 2001) (reading "any

> state or federal statute" broadly); Fisher Controls Int'l, Inc. v. Marrone, 524 N.W.2d 148, 149 (Iowa 1994) (holding phrase "any legal action" broader than "an action"); Iowa Realty Co. v. Jochims, 503 N.W.2d 385, 386 (Iowa 1993) (interpreting "antennas of any kind" not to create an ambiguity and to include satellite dishes). By using a word with an expansive import, we conclude that section 85.34(5) must be interpreted to apply to all overpayments of benefits, including an overpayment of weekly benefits and not simply an overpayment of the entire benefit award. As a result, Swiss Colony is only entitled to a credit for the overpayments against future benefits for a subsequent injury and not against future benefits for this injury.

Swiss Colony Id. 137, 137

In this case defendant paid 50.76 weeks of benefits for the July 3, 2012 alleged injury. As I have found claimant has not proven entitlement to this claim, the 50.786 weeks of benefits at $464.45 per week is an overpayment. Claimant's award for her left carpal tunnel was based upon an injury that occurred after the July 3, 2012 alleged injury. As such, defendant may claim a credit for the benefits it paid for File No. 5044039 (D/O/I: 7/3/12).

SANCTION

I am awarding no additional costs to the claimant in this case due to her failure to properly disclose records to the defendant. I deem this to be an appropriate sanction for her failure to timely disclose medical records and treatment.

ORDER

FOR FILE NO. 5044039 (D/O/I: 7/3/12):

The claimant shall take nothing.

FOR FILE NO. 5044037 (D/O/I: 5/3/11):

The claimant shall take nothing.

FOR FILE NO. 5044041 (D/O/I: 4/4/13):

Defendant shall pay claimant twenty (20) weeks of permanent partial disability benefits at the weekly rate of four-hundred seventy-one and 98/100 dollars ($471.98) per week commencing April 4, 2013.

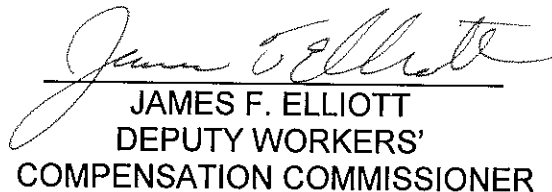
Defendant shall have a credit of fifty point seven eight (50.78) weeks of benefits paid at the weekly rate of four-hundred sixty-four and 45/100 dollars ($464.45) to offset the award in this file.

FOR ALL FILES:

No additional costs are awarded.

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

Signed and filed this 13th day of February, 2015.



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JFE/sam

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.