

JEANETTE A. DODD,  
Claimant,  
vs.  
FLEETGUARD, INC.,  
Employer,  
and  
CONSTITUTION STATE SERVICES,  
LLC.,  
Insurance Carrier,  
Defendants.

File No. 5010240  
A R B I T R A T I O N  
D E C I S I O N  
HEAD NOTE NOS: 1108; 1800;  
1803; 2500

This is a proceeding in arbitration that was initiated when Jeanette A. Dodd, claimant, filed her original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on December 29, 2003. Claimant alleged she sustained a cumulative and progressive injury to the right shoulder. Claimant also stated the injury manifested itself on or about April 15, 2001. (Original Notice and Petition)

Fleetguard, Inc. is located in Lake Mills, Iowa in Winnebago County. The town of Lake Mills has a population of 2,140, as listed by the 2005 Transportation Map of Iowa. The town is located near the Iowa-Minnesota border.

Defendants filed their answer on January 8, 2004. They denied the occurrence of a work injury on the date alleged.

On December 14, 2004, claimant filed an amendment to the original notice and petition. Claimant amended the date of injury to April 10, 2001.

The hearing administrator set the case for hearing on September 19, 2005. The hearing was held in Des Moines, Iowa at the office of the Iowa Department of Workforce Development. The hearing was held on the date assigned but the record remained open until claimant produced her requested income tax records for the years 2002 through 2004. The income records were produced on September 26, 2005 and marked as exhibits A and B.

The undersigned appointed Ms. Theresa Kenkel as the certified shorthand reporter. She is the official custodian of the records and notes.

The parties offered exhibits. The deputy requested submission of Exhibits B and C, the income tax records for 2003 through 2004. Claimant offered Exhibit I, pages 1-188 for a total of 252 pages of evidence proffered by claimant. Many of claimant's exhibits were related to conditions that were personal to claimant and had no relevancy to the case at hand. For example, there was no need to include records regarding claimant's hysterectomy or for the surgical repair of claimant's bladder.

Exhibit A was offered by defendants. Exhibits B and C were offered pursuant to a request from the deputy workers' compensation commissioner. All proffered exhibits were admitted as evidence in the case.

Claimant testified on her own behalf. Ms. Danyel Cordona, Ms. Kim Dodd, and Ms. Tami Lunsford are daughters of claimant. All three women testified on behalf of their mother. Mr. Jeff Lalumendrd, manager of hourly employees and the supervisor over the assembly line, testified for defendants.

The parties submitted detailed post hearing briefs. The briefs were filed on October 10, 2005. Claimant submitted a 27-page brief and defendants submitted a 13-page brief.

### STIPULATIONS

In the hearing report, the parties stipulated there was an employer-employee relationship on the date of the alleged work injury. The parties agreed about the issue of credit. They also stipulated to the appropriate costs to litigate the claim. The stipulations are hereby accepted and incorporated by reference herein.

### ISSUES

The issues to address are:

1. Whether claimant sustained a work injury on or about April 10, 2001;

2. Whether the alleged injury is a cause of temporary or permanent partial disability benefits;
3. Whether claimant is entitled to temporary partial disability benefits;
4. Whether claimant is entitled to temporary or healing period benefits;
5. Whether claimant is entitled to permanent partial disability benefits;
6. The proper rate to use if claimant is entitled to weekly benefits;
7. Whether claimant is entitled to an independent medical examination pursuant to section 85.39 of the Iowa Code, as amended;
8. Whether claimant is entitled to alternate medical care pursuant to section 85.27 of the Iowa Code, as amended; and
9. Whether claimant is entitled to penalty benefits pursuant to section 86.13 of the Iowa Code, as amended.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This deputy, after hearing the testimony, after judging the credibility of the witnesses, and after reading the evidence and the extensive post-hearing briefs, makes the following findings of fact and conclusions of law:

Claimant is 58 years old and has lived in the Lake Mills region for her entire life. She resides in a home with two daughters, and one son-in-law. Claimant is right-hand dominant and a smoker. For years, she has suffered from arthritis, fatigue, allergies, chronic bronchitis, sinusitis, migraine headaches, ear infections and contact dermatitis. None of the above conditions are work-related. Dennis E. Colby, D.O. is claimant's personal physician. Dr. Colby also happens to be the corporate physician for Fleetguard, Inc.

Claimant completed the tenth grade only but she did secure her GED. She attended La James College of Beauty but she did not graduate from the school. In 1980, claimant obtained a certificate as a geriatric aide. In 1989, claimant received a certificate for attending a class about basic skills for manufacturing. Claimant also holds a certificate of completion as a medical secretary or word processor from North Iowa Area Community College. Claimant is competent to operate a personal computer. The evidence does not establish she ever used the skills she gained at the community college in an employment situation.

Claimant's prior work history includes work in the food service industry, work as a geriatric aide, self-employment as a house painter, and various positions in manufacturing. The wage rate generally paid to claimant is from \$6.00 to \$8.25 per hour.

Claimant commenced full time employment with Fleetguard, Inc., on July 25, 1994. Throughout her employment there, claimant has worked as an assembler. Claimant is a competent worker as demonstrated by her annual performance evaluations. She is an employee who is in good standing with the company.

Claimant testified she earned \$11.50 per hour on the date of the injury but that at the time of the hearing, she earned \$13.00 per hour, plus the company pays yearly bonuses for qualified employees. The bonuses are based on the profitability of the company. At times the company has mandatory overtime work to offer its employees. The overtime work is compensated at time and one half per hour. There is company provided health insurance, and vacation pay.

On October 11, 1999, claimant sought treatment with Dr. Colby for an event that occurred on October 9, 1999. Claimant complained of left shoulder, left shoulder blade pain and left-sided neck pain. Claimant provided a history. "Says she reached down behind a lamp stand to plug in a lamp and felt a sharp pain." (Exhibit I-33) Dr. Colby diagnosed claimant with a "Thoracic spasm." (Ex. I-33) Dr. Colby noted a marked spasm in the left shoulder trapezius muscle and in the mid thoracic area under the left shoulder blade. (Ex. I-33)

On May 2, 2000, claimant complained of "painful joints, back pain and tendonitis." (Ex. I-35) On July 11, 2000, claimant complained of "painful joints and neck and back problems. Tendinitis. [sic]" (Ex. I-38)

Claimant testified she sustained a work-related injury to her right shoulder on April 9, 2001. Claimant's testimony regarding how the injury occurred was not very clear, however. She explained she was working as a leak tester on assembly line 22. She had to reach across the assembly line to pull certain filters from the line. Claimant testified she experienced a sharp pain in the front part of her right shoulder after pulling a filter from the line. Claimant did not immediately report the work injury. The injury was reported to Ms. Phyllis Stinehart on April 16, 2001. (Ex II-46)

Claimant also testified that she sustained an earlier injury to her right shoulder. The injury allegedly occurred between 1995 and 1997. Claimant was stacking elements into a basket and working at shoulder height. She thought she had pulled a muscle. She did not report the alleged injury to her supervisors.

In a recorded statement claimant made to Ms. Kristie Ransom, an employee of Travelers' Insurance Company, claimant told Ms. Ransom, the April 15, 2001 work injury was a cumulative injury that resulted from repetitious use of her right arm. Claimant stated:

Q. And when did this injury occur?

A. It first started in 1995 and I was doing elements. And I thought it was just a sore muscle, so I shrugged it off. And as the years got by, it just got worse.

Q. What is your injury?

A. It's my shoulder.

Q. Left or right?

A. Right.

Q. Did you report this to anyone in '95?

A. No, I was just talking to one of the girls there that was helping me stack off. She came over to help me stack off because my shoulder hurt so bad.

Q. And when did you first receive medical treatment for that?

A. Oh, I saw Dr. Colby (sp?) a week and a half ago approximately.

(Ex. I-45)

Dr. Colby examined claimant on April 10, 2001 for right shoulder swelling. (Ex. I-41) The physician recorded there was no known injury but the condition was causing claimant problems with "quite severe pain." (Ex. I-41) Dr. Colby assessed claimant with "Impingement right shoulder, possible rotator cuff tear." (Ex. I-41) Dr. Colby discovered the following upon his examination of claimant:

Right shoulder does have marked tenderness noted. Anterior right shoulder as well as somewhat the posterior rotator cuff area. Range of motion shows abduction is diminished. Flexion/extension WNL. Internal rotation is diminished. Does have tenderness noted at the AC joint as well.

(Ex. I-41)

Dr. Colby ordered an x-ray and referred claimant to Raymond L. Emerson, M.D., an orthopedic surgeon. The x-ray demonstrated osteoarthritic changes in the right AC joint. (Ex. I-42)

On May 10, 2001, claimant had a multiplanar MRI of the right shoulder. (Ex. I-50) The results demonstrated:

1. Full thickness tear of the supraspinatus and infraspinatus tendons with a gap of at least 1.5 cm in both the anterior-posterior and medial-sagittal imaging planes.
2. Prominent osteoarthritic disease acromioclavicular articulation, with inferiorly directed osteophytes and mass effect.

(Ex. I-50)

On the following day, claimant returned to Dr. Colby for follow up treatment. In his clinical notes for the same date, Dr. Colby wrote:

Came in for recheck on right shoulder. Is quite sore. Does hold her arm next to herself. MRI report showed a full thickness tear of the supraspinatus and infraspinous tendon as well as prominent osteoarthritic acromioclavicular articulation. She states that she did have an injury five years ago when she was a new steamer. Was stacking off shoulder high. She denies reporting this. She states at that time another worker "Fairchild" took her place on the line due to marked increase in pain. She thought this was a muscle and would slowly go away. Did seem to subside and at the present time has been getting progressively worse.

(Ex. I-51)

On May 15, 2001, Dr. Emerson examined claimant for the first time. Claimant explained to Dr. Emerson she had been experiencing difficulties off and on for five years. The difficulties occurred after claimant had been stacking some elements at work. Claimant explained how the stacking incident did not prevent claimant from painting her house. Claimant reported to the physician, her right shoulder symptoms exacerbated three to four weeks prior to her appointment with him. She explained to Dr. Emerson, she was stretching forward and pulled something. Dr. Emerson opined it would be difficult to know when the rotator cuff tear had occurred. He recommended arthroscopic surgery. Dr. Emerson released claimant back to work with a shoulder immobilizer. (Ex. I-53) Dr. Emerson diagnosed claimant with:

1. Probable large rotator cuff tear, right shoulder.
2. Acromioclavicular (AC) joint arthrosis.

(Ex. I-53)

Claimant was off work on personal medical leave from June 15, 2001 through August 15, 2001. One month later, claimant returned to Dr. Colby with right shoulder complaints. (Ex. I-57) She complained of exquisite right shoulder pain since her return to work. Claimant desired arthroscopic surgery for her right shoulder. (Ex. I-57) Dr. Colby restricted claimant from working with her right arm.

On October 15, 2001, Dr. Emerson performed an arthroscopy and bursocopy, an anterior acromioplasty and excision of the distal clavicle and a right rotator cuff repair. Claimant tolerated the procedures well. (Ex. I-64)

Dr. Emerson directed the follow up care. Claimant progressed to the point she had nearly full range of motion. (Ex. I-69) On January 4, 2002, the surgeon released claimant to return to work effective January 7, 2002. Claimant was restricted from working above her shoulder, and she was not to engage in repetitious work with her

right arm for more than four hours per day. Dr. Emerson opined claimant was allowed to return to full duty work on February 4, 2002. (Ex. I-69)

Defendants sent claimant to Jon Yankey, M.D. Claimant complained of right shoulder pain and weakness. (Ex. I-131) Dr. Yankey prescribed conservative care, including physical therapy and home exercises.

On May 11, 2004, Dr. Emerson examined and evaluated claimant for the purpose of rendering an opinion concerning permanent impairment. Dr. Emerson recorded in his clinical note for the day, "It is fortunate she is not impaired enough to stop work. It is encouraging that she has full range of active and passive motion." (Ex. I-144)

Dr. Emerson opined:

In all ranges of motion, especially forward elevation, abduction, and external rotation, there is discomfort toward the end of the range of motion, both passively and actively. Based on this, the previous rotator cuff repair, and mild weakness, I estimate her permanent partial impairment to be approximately 6% of the right upper extremity, based on the findings of pain and mild weakness.

(Ex. I-144)

This was the final appointment claimant had with Dr. Emerson. The surgeon released claimant to return to him on a prn basis. (Ex. I-144)

Claimant exercised her right to an independent medical examination pursuant to section 85.39 of the Iowa Code. John D. Kuhnlein, D.O., MPH, CIME examined claimant on January 12, 2005. The evaluating physician issued an opinion on June 16, 2005. He opined claimant sustained two injuries to her right shoulder. The first one occurred in 1997 or 1998 and the second one occurred on April 15, 2001. Dr. Kuhnlein opined claimant's condition was not caused by a cumulative trauma. Dr. Kuhnlein opined:

To a reasonable degree of medical certainty, I believe that the Fleetguard work activities constituted a substantial factor in producing Ms. Dodd's right shoulder injury. I do not believe that this was a cumulative injury based on the history presented by Ms. Dodd.

(Ex. I-169)

Dr. Kuhnlein based his opinion on the conversation he held with claimant. Dr. Kuhnlein rated claimant as having a 16 percent permanent impairment to the right upper extremity. (Ex. I-169) Dr. Kuhnlein detailed the permanent work restrictions he deemed appropriate for claimant. The restrictions were detailed in a chart on page 172 of Exhibit I.

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 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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

In her petition, as amended, claimant has alleged she sustained a cumulative and progressive injury to her right shoulder that manifested itself on or about April 10, 2001. Defendants have denied claimant sustained either a cumulative injury or a specific trauma.



At hearing, claimant testified her injury involved a specific trauma to her right shoulder. Her less than clear testimony discovered how she injured her right shoulder. Her testimony was contradicted by the medical notes of Dr. Colby for April 10, 2001. At hearing, claimant testified she sustained a work injury on April 9, 2001 when she felt pain after pulling filters from the line. Claimant sought treatment for her right shoulder on April 10, 2001. On that date, just one day later, claimant did not report any work injury to Dr. Colby, her personal physician and the corporate doctor. Likewise, claimant did not discuss her work activities and how her duties impacted her right shoulder condition. Claimant attempted to explain away the discrepancy between her testimony and the doctor's clinical notes. However, her testimony was not especially convincing. Claimant is not especially credible. Since Dr. Colby was both claimant's personal physician and the company retained doctor, it stands to reason, he would inquire into the cause of claimant's condition. The reasonable inference is that since claimant did not provide a history of an injury, no work injury occurred.

Additionally, no treating physician opined the right shoulder condition was work-related. Dr. Colby, Dr. Emerson and Dr. Yankey did not render opinions favorable to claimant's claim.

The only physician who rendered a favorable opinion relative to causation is Dr. Kuhnlein. He opined claimant's work activities constituted a substantial factor in producing claimant's right shoulder condition. However, Dr. Kuhnlein is adamant; claimant's injury was the result of a specific trauma and not caused by a cumulative trauma. Dr. Kuhnlein opined claimant sustained two separate injuries, one in 1997 or 1998 and the second on April 15, 2001, the date claimant originally alleged as her date of injury.

This deputy does not accord as much weight to the opinion of Dr. Kuhnlein as is accorded to the opinions of Dr. Emerson, Yankey and Colby. Dr. Kuhnlein was not a treating physician. The other three physicians treated claimant. Dr. Kuhnlein only examined claimant on one occasion and the examination occurred three and one half years after the alleged date of injury. Dr. Kuhnlein based his opinions entirely on the statements made to him by claimant. Claimant was less than credible when she provided her medical history. She reported an injury to her right shoulder in 1997 or 1998. No such injury date was ever reported to management officials at the company. Nor did claimant ever discuss such a work injury with Dr. Colby, even though claimant had treated with Dr. Colby on numerous occasions. Finally, it is evident Dr. Kuhnlein is mistaken when he states the alleged work injury occurred on April 15, 2001. The medical evidence establishes claimant sought treatment for her right shoulder on April 10, 2001, five days prior to the date provided by Dr. Kuhnlein. Since Dr. Kuhnlein provided an inaccurate date of injury, this deputy questions Dr. Kuhnlein's credibility as an expert witness.

It is the determination of the undersigned, claimant has failed to prove she sustained a work-related injury to her right shoulder and that her work caused her right shoulder condition. Claimant takes nothing from these proceedings.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing from these proceedings.

Each party shall pay her/its own costs to litigate this claim.

Signed and filed this 31st day of March, 2006.

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MICHELLE A. MCGOVERN  
DEPUTY WORKERS'  
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