

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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PATRICIA PETERSON,

Claimant,

vs.

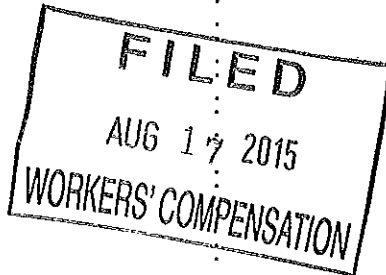
MYSTIQUE CASINO,

Employer,

and

EMC INSURANCE COMPANY,

Insurance Carrier,  
Defendants.



File No. 5043322

ARBITRATION

DECISION

Head Note Nos.: 1802; 1803;  
1803.1; 2501

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STATEMENT OF THE CASE

Claimant, Patricia Peterson, filed a petition in arbitration seeking workers' compensation benefits from Mystique Casino (Mystique), employer and EMC Insurance Company, insurer, both as defendants. This case was heard in Des Moines, Iowa, on February 26, 2015 with a final submission date of May 29, 2015.

The record in this case consists of claimant's exhibits 1 through 13, defendants' exhibits A through E, and the testimony of claimant.

ISSUES

1. The extent of claimant's entitlement to permanent partial disability benefits.
2. The commencement date of permanent partial disability benefits.
3. The extent of claimant's entitlement to temporary benefits.
4. Whether there is a causal connection between the injury and the claimed medical expenses, including medical mileage.

### FINDINGS OF FACT

Claimant was 76 years old at the time of the hearing. Claimant has a GED. Claimant has worked in factories, at a packing house, at restaurants, and a laundry. (Exhibit 12)

Claimant began employment with Mystique (f/k/a Dubuque Racing Association) in September of 1999. Claimant testified she began as a hostess at the buffet. She said she worked for approximately five years in the gift shop. Claimant returned to work as a hostess at the buffet. She said that in approximately 2011 she began working part-time and worked approximately 25 hours per week.

Claimant's prior medical history is relevant. In February of 2012, claimant was evaluated as having moderate osteoarthritis in the right knee. (Exhibit A, pages 6-7) At that time, claimant had a synvisc injection. (Ex. A, pp. 6-7) Claimant was again evaluated in June of 2012 for right knee pain caused by osteoarthritis. X-rays at that time revealed moderate osteoarthritis in the knees. (Ex. A, pp. 8-10) There is no indication in the record that claimant had permanent restrictions or permanent impairment for her right knee at that time.

Claimant also has a history of chronic lower back pain. In 1982, claimant was given restrictions for chronic lower back pain. (Ex. A, p. 4, See also Ex. 2, p. 1)

On July 18, 2012, claimant injured her right knee when she was hit by a busboy moving a dish carrier.

The next day, claimant was evaluated by Julie Muenster, ARNP, with complaints of right knee pain and some back pain. Claimant was given work restrictions and treated with medications. (Ex. 2, pp. 1-5)

On July 30, 2012, claimant was treated by Erin Kennedy, M.D. Dr. Kennedy assessed claimant as having a knee contusion and an exacerbation of right knee arthritis caused by the work injury. Claimant was given a cortisone injection. She was treated with medication and given restrictions for standing at work. (Ex. 2, pp. 10-12) Claimant testified she was allowed to return to work at that time wrapping silverware.

In August of 2012, claimant was evaluated by Robert Ricketts, D.C. Claimant indicated she felt her knee injury aggravated pain in her lower back. Claimant was given chiropractic adjustments. (Ex. 6, pp. 1-2) Claimant testified she continued to see Dr. Ricketts for her back pain from 2012 through 2014. At the time of hearing, claimant testified she was still treating with Dr. Ricketts.

On August 22, 2012, claimant underwent an MRI of the right knee that showed a meniscus tear and advanced osteoarthritis of the right knee. (Ex. 2, pp. 22-23) Claimant was recommended to see an orthopaedic surgeon.

Claimant was evaluated by David Field, M.D., on September 4, 2012. Dr. Field reviewed claimant's MRI and noted claimant had a meniscal injury and advanced degenerative arthritis. He noted with the degree of osteoarthritis claimant had, he would usually recommend a total knee replacement (TKR). He noted it was possible the work injury injured the meniscus and aggravated pre-existing arthritis in the right knee. (Ex. 5, pp. 1-4)

On September 6, 2012, claimant underwent arthroscopic debridement and contouring of the degenerative torn medial meniscus. (Ex. 3)

On November 26, 2012, claimant returned in follow up with Dr. Field. She still had discomfort with walking and felt that sometimes her knees would give out. Claimant indicated pain she had in her knee, prior to surgery had decreased. Dr. Field noted improvement in claimant's condition. Claimant indicated her job aggravated her knee condition. (Ex. 5, p. 6)

Claimant returned to Dr. Field in follow up on January 7, 2013. Claimant was still having difficulty with certain activities. Dr. Field found claimant at maximum medical improvement (MMI). (Ex. 5, p. 7)

In a January 10, 2013 letter, Dr. Field opined claimant could return to work at full duty. He found claimant was at MMI as of January 7, 2013. He found claimant had a 2 percent permanent impairment to the lower extremity based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Ex. 5, p. 15)

On January 24, 2013, claimant was evaluated by Charles Morrow, M.D., with complaints of right knee pain. Claimant had been having trouble with the right knee for a number of years. Dr. Morrow recommended against synvisc injections and gave claimant a cortisone injection. (Ex. 2, p. 43)

In a May 20, 2013 letter, Dr. Field indicated claimant had pre-existing osteoarthritis in the knee prior to her work accident. He did not feel claimant's musculoskeletal complaints were due to her pre-existing osteoarthritis in her knee. (Ex. B, p. 3)

On June 3, 2013, claimant was evaluated by Robert Magnus, M.D., an orthopaedic surgeon. Claimant had right knee pain and wanted to discuss a TKR. He assessed claimant as having osteoarthritis bilaterally in the knees. Surgery was discussed as a treatment option. (Ex. 2, p. 45f) Claimant testified she chose to treat with Dr. Magnus on her own.

In a June 5, 2015 letter, Dr. Field indicated claimant's right hip complaints were not due to her work injury of 2012. He felt the work injury in 2012 only injured claimant's right knee. (Ex. B, p. 5)

On October 1, 2013, claimant underwent a total knee replacement on the right. Surgery was performed by Dr. Magnus. (Ex. 4, pp. 4-5) Claimant underwent follow up with Dr. Magnus from October 2013 through November 2013. (Ex. 2, pp. 52-58)

In a November 25, 2013 note, written by defendants' attorney, Dr. Field reiterated claimant's need for a TKR was related to underlying arthritis and not the work injury. (Ex. B, pp. 6-7)

On December 18, 2013, claimant returned in follow up with Dr. Magnus. Claimant was walking normally with no walking aid. Claimant was released to return to work on January 1, 2014 with no restrictions. (Ex. 2, pp. 59-60)

Claimant testified she returned to work and had trouble with her right knee.

In a January 15, 2014 note, Dr. Magnus restricted claimant to working only two to three days per week, and five hours per day. (Ex. 2, p. 61) Claimant testified she believed these were permanent restrictions. Claimant testified her employer was unable to accommodate these restrictions. She testified her last day of work was January 16, 2014.

In a January 20, 2014 letter, Dr. Magnus opined claimant's need for the TKR on the right was not work related. (Ex. A, p. 11)

On January 27, 2014, claimant was evaluated by Dr. Magnus. Claimant indicated her return to work caused lower back pain. Dr. Magnus noted that claimant had a history of chronic problems with her low back. Claimant was to remain off work until further evaluation. (Ex. A, pp. 12-13)

Claimant returned to Dr. Magnus on February 24, 2014. Claimant had complaints of swelling in the knee, lower back and buttocks pain. She was continued off of work. (Ex. 8, pp. 14-15)

On April 25, 2014, claimant was evaluated by Peggy Mulderig, M.D., for low back pain. Claimant was recommended to have an MRI. (Ex. A, pp. 17-18)

An MRI, performed on May 1, 2014, showed severe central canal stenosis at the L4-5 levels, and severe stenosis at the L3-4 levels. (Ex. A, p. 23)

Claimant returned to Dr. Mulderig on May 6, 2014 with continued complaints of lower back pain. Claimant was given a right SI joint injection. (Ex. A, pp. 24-25)

In a May 19, 2014 report, Mark Taylor, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant was assessed as having a right knee replacement. She was also assessed as having low back pain and right hip pain, etiology unknown. Dr. Taylor noted claimant's symptoms on the right knee were significantly less pronounced before her injury, when compared after her injury. He believed that the work accident accelerated claimant's need for a TKR.

Dr. Taylor opined that, but for, the work accident, claimant would not have had a TKR when she did. (Ex. 10, pp. 1-12)

Dr. Taylor opined claimant was not at MMI. However, he gave a rating for administrative purposes and found claimant had a 50 percent permanent impairment to the right lower extremity based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 17-33. He limited claimant to lifting no more than 15-20 pounds. He also recommended claimant be allowed to elevate the right knee whenever possible. (Ex. 10, pp. 12-14)

Claimant returned to Dr. Magnus on May 30, 2014. Claimant's knee improved following aspiration. Claimant's pain and gait had improved. (Ex. A, p. 27)

On October 1, 2014, claimant was evaluated by Dr. Magnus. Claimant still complained of right knee pain and swelling, and lower back pain. Dr. Magnus did not believe claimant could return to work at the casino. (Ex. A, pp. 31-32)

On February 17, 2015, Dr. Field reiterated claimant's need for a TKR was not related to the work injury. He also indicated claimant's hip and back injury was not related to the claimant's knee injury. (Ex. B, p. 8)

In a February 18, 2015 note, written by defendants counsel, Dr. Magnus indicated claimant's need for a TKR was not due to her work activity. (Ex. A, pp. 36-37)

In a March 17, 2015 note, Dr. Kennedy indicated she had reviewed claimant's medical records, including reports from Dr. Field and Dr. Taylor. Dr. Kennedy agreed with Dr. Taylor that the need for claimant's TKR was accelerated by the 2012 work accident and the accident was a factor in claimant having a TKR. (Ex. 2, p. 97)

In a March 28, 2015 letter, Dr. Ricketts opined claimant's 2012 knee injury worsened claimant's degenerative condition in her lumbar spine. He also opined his chiropractic charges were reasonable and necessary. (Ex. 6, p. 26)

Claimant testified her knee still swells and she has continued knee pain. She said she believes she lacks strength in the right knee. She said that she will occasionally wake from sleep due to knee pain.

Claimant testified she believes her right hip and back pain are caused by the way she limps due to knee pain.

Claimant testified she has not looked for work since leaving employment with Mystique. She testified she does not believe there are any jobs she can perform.

#### CONCLUSIONS OF LAW

The first issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

If claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant makes two contentions regarding her entitlement to permanent partial disability benefits. First, claimant contends that her need for a TKR was causally connected to her July 2012 work injury. Second, claimant contends that she has a body as a whole injury to her spine caused by her July 2012 work injury.

The record indicates that claimant had degenerative osteoarthritis in both knees prior to the July 2012 injury. (Ex. A, pp. 6-10)

Four experts have opined regarding the causal connection between claimant's injury of July 2012 and her need for a TKR.

Dr. Field performed claimant's arthroscopic surgery on her right knee and treated claimant for an extended period of time. He opined claimant's need for a TKR was related to underlying arthritis, and not the work injury. (Ex. B, pp. 6-7)

Dr. Magnus performed claimant's TKR. He treated claimant for an extended period of time. He opined claimant's need for a TKR was not due to her work injury. (Ex. B, p. 8)

Dr. Taylor evaluated claimant on one occasion for an IME. He noted claimant's symptoms on the right knee were significantly less before her July 2012 work injury compared with after the injury. Based on this, he believed claimant's work injury accelerated claimant's need for a TKR on the right. (Ex. 10, p. 12)

Dr. Kennedy was a physician authorized by defendant to treat claimant. Dr. Kennedy shared Dr. Taylor's opinions regarding the causal connection between claimant's work injury and her need for a TKR. (Ex. 2, p. 97)

The record indicates claimant had osteoarthritis in both knees prior to the July 18, 2012 injury. Claimant had treatment for osteoarthritis in the knee. The record suggests that because of claimant's pre-existing condition, she may have been a candidate for a TKR in the future. There is no evidence in the record, until after the date of injury, indicating a date certain when claimant would require a TKR. Prior to the

July 18, 2012 injury, claimant had no permanent impairment or permanent restrictions to the right knee.

On July 18, 2012, claimant sustained a right knee injury. Diagnostic testing assessed the claimant as having a meniscal injury and advanced degenerative arthritis. After arthroscopic surgery failed to resolve claimant's symptoms, claimant underwent a TKR on the right.

I recognize claimant had pre-existing osteoarthritis of the right knee. There is no indication in the record claimant had a loss of strength or range of motion in her right knee before the July 2012 work injury. As noted, there is no evidence claimant had any permanent restrictions or permanent impairment of the right knee until after the July 18, 2012 injury. The record indicates that the July 2012 accident was a traumatic event that worsened claimant's condition to the point that she needed a TKR.

Given this record, I find the opinions of Drs. Taylor and Kennedy are more convincing regarding the causal connection between claimant's July 2012 and her need for surgery. I find the opinions of Drs. Field and Magnus regarding the causal connection between claimant's July 2012 injury and her need for TKR less convincing. Claimant has proven that her need for a TKR arose out of and in the course of employment. See Plumrose USA v. Hathaway, No. 13-0495, filed January 23, 2014 (Iowa Court of Appeals), 844 N.W.2d 469 (Table).

The next issue to be determined is if claimant's knee injury resulted in an injury to the body as a whole.

As noted in the Findings of Fact, claimant did have a history of back problems dating back to at least 1992. Claimant was given, what appear to be, permanent restrictions for her lower back problems. (Ex. A, p. 4) Both Dr. Field and Dr. Magnus opined that claimant's low back complaints were not causally related to her July 2012 work injury. (Ex. A, p.32; Ex. B, pp. 3-5, 8)

Dr. Taylor, the IME physician chosen by claimant, also gave no opinions regarding the cause of claimant's low back problems. (Ex. 10, p. 7)

Only Dr. Ricketts opined that claimant's back problems were caused by the July 2012 work injury. (Ex. 6, pp. 26-28) Based on his records and opinions, it does not appear that Dr. Ricketts was familiar that claimant had physical restrictions for her lower back dating back to 1992. Based on this omission, it is found that Dr. Rickett's opinions, regarding causation of claimant's lower back problems to her July 2012 injury, are found not convincing.

Dr. Field and Dr. Magnus found claimant's back condition was not caused by the July 2012 work injury. Dr. Taylor, the IME physician, retained by claimant, gave no opinion regarding causation of claimant's back condition. The opinion of Dr. Rickett's regarding causation is found not convincing. Given this record, claimant has failed to



prove that her back condition was caused and materially aggravated by her July 2012 work injury.

Dr. Taylor found that claimant had a 50 percent permanent impairment to the lower extremity from her injury and total knee replacement. Claimant is due 110 weeks of permanent partial disability benefits (220 weeks x 50 percent).

Claimant was released to return to work following the total knee replacement effective January 1, 2014. (Ex. 2, p. 59) Permanent partial disability benefits shall commence on January 1, 2014.

The next issue to be determined is the extent of claimant's entitlement to healing period benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant was excused from work on July 30, 2012 because of an adverse reaction to an injection to her right knee. (Ex. 2, p. 11) Claimant was off work from October 12, 2012 through October 19, 2012 for her first knee surgery. (Ex. 5, p. 9) Claimant was also off work from October 1, 2013 through December 31, 2013 for her total knee replacement. (Ex. 2, p. 59) Claimant is due healing period benefits for these periods.

The next issue to be determined is if there is a causal connection between the injury and the claimed medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

As noted above, it is found that claimant's need for a TKR was accelerated and causally connected to the July 2012 work injury. Medical costs associated with the TKR, including medical mileage, shall be paid by the defendants. It is also found that claimant has failed to carry her burden of proof that her lower back injury was causally

connected to her July 2012 work injury. For that reason, defendants are not liable for bills associated with treatment for her lower back and hip, including but not limited to, charges associated with chiropractic care.

ORDER

THEREFORE IT IS ORDERED:

That defendants shall pay claimant healing period benefits at the rate of two hundred forty-one and 42/100 dollars (\$241.42) per week for July 30, 2012; October 12, 2012 through October 19, 2012; and from October 1, 2013 through December 31, 2013.

That defendants shall pay claimant one hundred ten (110) weeks of permanent partial disability benefits at the rate of two hundred forty-one and 42/100 dollars (\$241.42) per week commencing on January 1, 2014.

That defendants shall pay accrued benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits as awarded above as set forth in Iowa Code section 85.30.

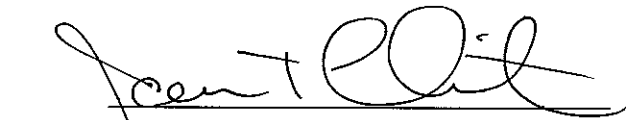
That defendants shall receive a credit for benefits previously paid.

That defendants shall pay medical charges, including medical mileage, as detailed above.

That defendants shall pay the costs of this matter.

That defendants shall file subsequent reports of injury as required under rule 876 IAC 3.1(2).

Signed and filed this 17<sup>th</sup> day of August, 2015.



JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JFC/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.