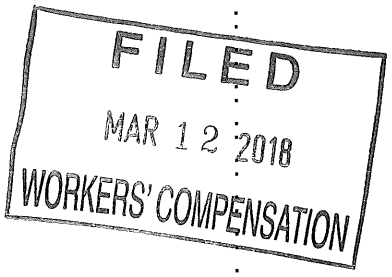
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BLANCA CABRERA, Claimant, vs. TYSON FOODS, INC., Employer, Self-Insured, Defendant.		File No. 5055898 ARBITRATION DECISION Head Note No.: 1803

STATEMENT OF THE CASE

Blanca Cabrera, claimant, filed a petition in arbitration seeking workers' compensation benefits from self-insured employer Tyson Foods, Inc. (Tyson) as a result of an injury she allegedly sustained on April 22, 2014 that allegedly arose out of and in the course of her employment. This case was heard in Davenport, Iowa, and fully submitted on August 15, 2017. The evidence in this case consists of the testimony of claimant and David Duncan, Joint Exhibits 1 – 11 and Claimant's Exhibit 1. Claimant's Exhibit 2 and Defendants' Exhibit A were excluded as not being timely disclosed. Neither claimant nor defendant offered any good cause as to why they did not follow the timelines for disclosure in rule 876 IAC 4.19 (2017) and the Hearing Assignment Order. The hearing was interpreted by Alejandra Sosa.

The claimant filed a motion to withdraw any claim for a left shoulder and left arm injury after the arbitration hearing. Defendant had no objection. The motion was granted by the undersigned.

ISSUES

1. Whether claimant sustained a permanent injury on April 22, 2014 which arose out of and in the course of employment;

2. The extent of claimant's disability.

3. Payment of an independent medical examination.

4. Assessment of costs.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration) decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

Defendants agree that claimant had a temporary aggravation injury to the low back, left hip, but did not stipulate to any permanency. (Transcript, page 5)

FINDINGS OF FACT

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

Blanca Cabrera, claimant, has alleged she suffered a permanent impairment as a result of an injury on April 22, 2014 that arose out of and in the course of her employment at Tyson Foods, Inc. (Tyson). Claimant was 27 years old at the time of the hearing. She went through the third grade of school in El Salvador.

Claimant began her work for Tyson in 2008. In April 2014 claimant was working on "The line of the bones." (Tr. p. 10) Her job was to skin neck bones using a saw. (Tr. p. 10) Claimant said that she injured her hip, left leg and pain down her leg on April 22, 2014. (Tr. p. 11) Claimant said the pain became so bad that she had to report her injury. (JE 8, p. 3) Claimant reported her injury to Tyson and was seen by Gregory Clem, M.D., on May 22, 2014. (JE 7, p. 1) Claimant reported to Dr. Clem:

> The patient states that she apparently was performing a job where she was standing on her right leg with her left foot up on a pipe for about one month. She demonstrated this for me today. She is not in that area any longer. She states she developed left low back pain that is not resolved. She has some radiation around to the front of the inguinal area as well.

(JE 1, p. 1) Dr. Clem's assessment was "Left S1 and low back pain with some left inguinal ligament involvement." (JE 1, p. 1) Dr. Clem prescribed medicine, a support band, and physical therapy. Claimant said the physical therapy was too painful to continue. (Tr. p. 12) Claimant had an MRI of her spine on July 1, 2014. Jared Nelson, M.D., noted a possible left renal mass that should be examined. Claimant subsequently was examined by urologists at the University of Iowa Hospitals and Clinics (UIHC) and no mass or kidney problem was found. (Tr. pp.18, 23) Concerning the spine, Dr. Nelson's impression was

> Impression:
>
> 1. In a background of more mild multilevel degeneration of the mid to lower lumbar spine, there are no areas of appreciable nerve impingement or severe or high-grade central canal or neural foraminal stenosis at any level, as described above.

(JE. 2, p. 2)

Claimant was referred to Michael Dolphin D.O., by Dr. Clem and had a one-time evaluation on September 18, 2014. (Tr. p. 12; JE 3, p. 1) Dr. Dolphin noted that claimant had symptoms of low back pain with radiation down her leg and up her back for about 6 months. (JE 3, p. 1) Claimant reported to Dr. Dolphin her condition had gotten worse and she could not bend or lift more than 5 pounds. (JE. 3, p. 1) Examination of the lower extremities showed diminished sensation in the entire left leg from L1 down to the S1 distribution subjectively to light touch. Dr. Dolphin's assessment was, "1. Low back pain 2. Left leg radiculopathy." (JE 3, p. 2) Dr. Dolphin noted that there was lack of objective findings and inconsistencies in her examination. He recommended she return to work without restrictions and if she could not do her current job that another might be found for her. (JE 3, p. 2) Claimant was released to return to work without restrictions on November 10, 2014. (JE 6, p. 1) Claimant testified that she did not believe that Dr. Dolphin let her explain her symptoms to him and he told her that she had nothing wrong. (Tr. pp 12, 13)

Claimant transferred to another position at Tyson, trimming bones, with a lower pay grade. (Tr. p. 14) Claimant said that she could not perform her prior job due to standing and walking. Claimant made the request to change jobs. (Tr. pp. 14, 24)

Claimant's family physician recommended claimant be seen by Joseph Chen, M.D., at the UIHC for her lower back problem. (Tr. p. 24) Dr. Chen examined claimant on January 30, 2015. Dr. Chen's report include:

> Notable findings:
>
> Single leg stance reproduces ipsilateral gluteal attachment pain.
>
> Palpation and stretch of the piriformis muscles reproduces the patient's pain.
>
> Atrophy, weakness, and reproduction of pain when testing gluteal attachment muscles.

(JE 4, p. 3) Dr. Chen's diagnosis was chronic back pain and that the encounter was related to a workers' compensation claim. (JE 4, p. 1) Dr. Chen noted claimant did not have any sinister or neurological condition causing her pain. He stated that the majority

of her pain was myofascial. (JE 4, p. 4) In response to a letter from defendants, Dr. Chen on April 6, 2017, stated his primary diagnosis was "predominantly chronic mechanical and myofascial low back pain." Dr. Chen agreed with Dr. Dolphin that there was no anatomic abnormality that could explain the numbness in her left leg and that there was a lack of objective finding and inconsistencies in her examination. He agreed claimant could return to work. (JE. 4, p. 5) I find that claimant has chronic back pain based upon Dr. Chen's diagnosis and supported by the medical reports of Drs. Kreiter, Dolphin and Chen.

Claimant was examined by Richard Kreiter, M.D., on May 2, 2017. He noted lumbar disc syndrome, carpel tunnel syndrome for the left wrist, painful upper thoracic, left shoulder pain and chronic cervical neck pain. (JE 5, p. 1) Dr. Kreiter recommended further work up and additional conservative care. (JE. 5, p. 1) Dr. Kreiter wrote, "Certainly the repetitive work over long hours at Tyson for several years can aggravate any condition." (JE. 5, p. 2) Dr. Kreiter's impression was:

IMPRESSION:

1. Lumbar disc syndrome with facet and degenerative disc disease at multiple levels, with chronic pain, neurologically intact, with sensory deficit complaints on the left.

2. Carpal tunnel syndrome, left wrist.

3. Upper thoracic back pain with myositis, deconditioned upper back with tension headaches.

4. Left shoulder pain with possible degenerative changes in the AC joint, with impingement, doubt significant cuff tear.

5. Chronic cervical neck pain with probable degenerative disc; no obvious radiculopathy.

(JE. 5, p. 5)

Claimants Exhibit 2 was excluded as being filed late. Had it been admitted it would not have changed the decision. This exhibit provides a rating for claimant's lumbar spine but does not provide a causation opinion.

David Duncan, Human Resource director for Tyson's Columbus Junction plant testified. Mr. Duncan said that claimant requested of him that she be allowed to change jobs at Tyson and after talking to her about her contract rights claimant indicated she wanted a different job. (Tr. p. 36) Mr. Duncan said that claimant was currently working a job and had no restrictions. (Tr. 40)

Claimant testified that she currently has chronic pain and she takes an over-the-counter drug and naproxen. (Tr. p. 15) Claimant was working 10 hours a day at the time of her injury and at the time of her testimony at the hearing.

CONCLUSIONS OF LAW

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.

Defendant characterizes the condition as subjective pain and not compensable under Waller v. Chamberlain, Mfg., II Iowa Industrial Commissioner Reports, p. 419 (1981). The Waller decision relied in part on Goodwin , Jr. v. Hickman G.M. Power (August 7, 1981 Appeal Decision). The Goodwin decision did state that industrial disability could not be awarded for just subjective pain. The Goodwin case referenced the original AMA Guides for the Evaluation of Permanent Impairment. In this version of the AMA Guides there was no section for evaluating pain. Subsequent editions of the Guides do have provisions for evaluating pain not otherwise provided for in other chapters of the Guides. Given the evolution of the Guides and pain treatment since 1981 when Waller and Goodwin were issued I am not sure there is an absolute prohibition on relying on subjective symptoms so long as claimant meets her or his burden of proof. However, absent confirmatory medical opinions supporting the subjective complaints, it is very difficult for a claimant to meet the burden of proof.

Claimant has proven she has chronic low back pain. What she has failed to prove is that her current low back condition is related to her work at Tyson. Other than Dr. Kreiter's brief comment that long hours and years of work could aggravate medical conditions, there are no credible medical causation opinions. The MRI in July 2014 showed a degenerative spine condition. There was no traumatic incident at work causing injury and no credible medical opinion that the work at Tyson caused cumulative trauma to her back condition. What is lacking in the evidence is a medical opinion and other convincing evidence that claimant's work at Tyson has caused a permanent impairment.

Claimant has failed to prove that her work at Tyson has caused a permanent injury.

Claimant has requested the cost of Dr. Kreiter's IME. Dr. Dolphin's examination and opinion that claimant had no impairment is the equivalent to a zero impairment rating. I would award the reasonable costs of Dr. Kreiter's IME; however, there is no exhibit or attachment to the hearing report with any listing of costs. As such, I cannot make any award.

ORDER

THEREFORE, IT IS ORDERED:

The claimant takes nothing further.

Each party shall pay their own costs.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 12th day of March, 2018.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.