

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

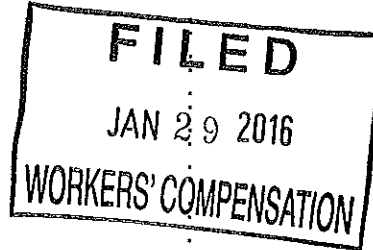
RITA YOUNG,
Claimant,

vs.

ALCOA,
Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,
Insurance Carrier,
Defendants.



1108

File No. 5049315

ARBITRATION

DECISION

Head Note No.: 1108

STATEMENT OF THE CASE

Rita Young, the claimant, seeks workers' compensation benefits from defendants, ALCOA, and its insurer for workers' compensation liability as a result of an alleged injury on June 12, 2013. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on December 14, 2015, but the matter was not fully submitted until the receipt of the parties' briefs and argument on December 22, 2015. Oral testimony and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Only joint exhibits were submitted and they are marked numerically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Ex. 1-2:4".

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. An employee-employer relationship existed between claimant and ALCOA at the time of the alleged injury.

2. On June 13, 2013, claimant received a bilateral hand injury arising out of and in the course of employment with ALCOA, but ALCOA denies a left shoulder condition from that injury.

3. Claimant is seeking temporary total or healing period benefits only from February 2, 2015 through April 29, 2015, and defendants agree that she is entitled to such benefits if they are liable for the claimed shoulder injury.

5. If the injury is found to have caused permanent disability, the type of disability is an industrial disability to the body as a whole.

ISSUES

At hearing, the only issues submitted by the parties for determination was the extent of claimant's entitlement to weekly temporary total or healing period benefits and permanent disability benefits and claimant's entitlement to reimbursement for a disability evaluation by David Tearse, M.D.

FINDINGS OF FACT

In these findings, I will refer to the claimant by her first name, Rita, and to the defendant employer as ALCOA.

Rita has worked for ALCOA as a production worker/assembler since May 2011 in various jobs such as logistics, saw bed, stretchers, heat treat and trucker. She continues working in production jobs at ALCOA today. There is no dispute that Rita passed a pre-employment physical testing and had no permanent restrictions on her activities when she began working for ALCOA. (Ex. 5-4)

Rita testified that she had no problems performing her jobs at ALCOA until she was assigned to heat treat in May 2013. She explains that in this job she was required to repetitively lift pieces of metal over her head to hang them on a rack using clamps with her left hand and then repetitively force the clamps to close using a hammer in her right hand. She testified that this work initially precipitated bilateral hand pain and later on this developed into left shoulder pain. There is no dispute that Rita only reported hand pain to her employer in June 2013. (Ex. 5-7) Rita admitted at hearing that she was only in the heat treat job for about one month before she was assigned to another job.

Rita states that she sought treatment on her own for her hand and left shoulder pain from a chiropractor for the rest of 2013 and the first part of 2014. She then sought care from her family doctor Dawn Bode, M.D., who subsequently referred her to an orthopedic surgeon, Andrew Bries, M.D. (Ex. 1 & 2) Initial conservative care by Drs. Bode and Bries with NSAID medications, injections and physical therapy during the balance of 2013 and early 2014 did not improve her condition and she underwent arthroscopic surgery of her left shoulder by Dr. Bries on February 2, 2015. (Ex. 3-2:3,

Ex. 4-1) Rita still had symptoms after the surgery, but these subsided after another injection and Dr. Bries released Rita back to work without restrictions. (Ex. 4-18:19)

Defense counsel contacted Dr. Bries in April 2015 about the work relatedness of his treatment. The doctor responded that Rita denied the work relatedness of her left shoulder condition on a form Rita completed at her first appointment in May 2014. (Ex. 4-1) Dr. Bries' office never considered this a workers' compensation injury "per my office," and all of the bills were submitted to the group health insurance carrier at ALCOA. (Ex. 4-15:17) ALCOA subsequently denied Rita's workers' compensation claim.

In addition to the views of Dr. Bries, ALCOA's denial of the compensability of Rita's claim is based on treatment records showing medical treatment for a left shoulder condition before her alleged injury at ALCOA and even before her ALCOA employment. In November 2005, Rita was diagnosed by James McCabe, M.D., another family doctor, with left shoulder adhesive capsulitis (frozen shoulder) after reporting left shoulder problems for the past year and after seeing a number of other doctors. She received an injection at that time and was prescribed a NSAID medication. (Ex. 11-1) In August 2005, Rita was seen by Jason Stecker, M.D., who noted a complaint of left shoulder pain and chronic right shoulder pain. (Ex. 10-1:2) Rita at that time expressed concern that she had a rotator cuff tear. Dr. Stecker prescribed NSAID medication and physical therapy. (Id.) In January 2006, Dr. McCabe referred Rita to an orthopedist, Jerry Jochims, M.D., who provided another injection which then resolved her pain. (Ex. 11-2:3) An MRI taken in December 2005 was unremarkable with no evidence of a rotator cuff tear. (Ex. 9-1) In February 2007, Rita was again treated for bilateral shoulder pain. (Ex. 11-4) Rita received chiropractic treatment for neck and shoulder pain in the later part of 2011 and early 2012 reporting shoulder pain for the last 10 years. (Ex. 12-1:2)

Rita admitted that she checked a box on an intake form at the office of Dr. Bries indicating that her left shoulder condition was not work related. She admits that she did not seek workers' compensation treatment of her left shoulder problems from ALCOA until early 2015. Rita explains that she was told that if she could not perform her job she would be sent home and she was fearful of losing her job if she reported a work injury so she sought care on her own, hoping to resolve the problem without ALCOA's involvement.

Rita was evaluated by another orthopedist, David Tearse, M.D., at the request of her attorney. Dr. Tearse reports a history of the onset of left shoulder problems in May 2013 while Rita was performing her job in heat treat at ALCOA. The doctor reports that Rita was required to reach overhead to put clamps on metal and to hold tie bars overhead. The onset of symptoms occurred after this repetitive lifting and reaching overhead. The doctor reports that she was then seen by Absolute Balance Chiropractic in May 2013. The doctor stated that Rita's symptoms waxed and waned until she was seen by Dr. Bode who then referred her to Dr. Bries. Based on this history, Dr. Tearse opines that within a reasonable degree of medical certainty that her described work activities were a substantial cause of her left shoulder condition requiring her treatment,

including surgery. The doctor provided a permanent impairment rating of 11 percent to the whole person under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition and recommended various permanent restrictions against overhead work and reaching. (Ex. 6)

Rita's attorney argues in the post hearing brief that the opinion of Dr. Bries is actually not a causation opinion, but simply a statement that he and his office did not treat Rita under workers' compensation because she did not report it as work related. I would have to agree or at least agree that the opinion is ambiguous at best. I also believe Rita's excuse for delaying making a claim for the shoulder component of her injury.

The problem with Rita's case, however, is her reliance on the opinion of Dr. Tearse. He claims to have reviewed the chiropractic records at Absolute Balance Chiropractic, but clearly mistakes the chronology of events. He does reject the 2005/2006 shoulder problems as previously resolved which I must agree with. However, he states that the onset of left shoulder problems coincided with her work in the heat treat job and she then sought chiropractic treatment on May 20, 2013. My review of the chiropractic record on May 20, 2013 shows a primary complaint of neck pain and adjustments to the neck, mid-back and right shoulder. (Ex. 7-1:2) She was seen later that month and received similar treatment or similar complaints. In June there was a complaint involving both shoulders as well as a similar complaint in July 2013. Then there was no record of chiropractic treatment at Absolute Balance until March 31, 2014 when the treatment specifically focused on neck and left shoulder complaints over the following 4-5 weeks and thereafter the treatment by Dr. Bode and Dr. Bries. Some bilateral shoulder complaints did begin in June 2013 while she was still in heat treat, but chiropractic treatments dealing specifically with significant left shoulder problems did not begin until late March 2014. Rita reported to Dr. Bode on April 29, 2014 that her left shoulder problems ten years earlier had gotten better, but now the left shoulder was an issue. (Ex. 2-1) When Rita saw Dr. Bries on May 23, 2014 she told him that her initial left shoulder problems nine years earlier resolved, but they began again six months ago. (Ex. 4-4) This record shows that the left shoulder problems that lead to her surgery began in early 2014 when she was no longer performing the heat treat job. Possibly, the left shoulder condition could have been caused by her work tasks in the jobs she was performing in early 2014, but there is no physician opinion in evidence causally relating that kind of work to the left shoulder condition treated by Drs. Bode and Bries.

Therefore, although the views of Dr. Bries were not convincing on the causation issue, neither were the views of Dr. Tearse. I am unable to find that the left shoulder condition treated by Drs. Bode and Bries was causally related to a work injury in 2013 or a work injury in 2014.

With reference to the issue of the reimbursement for Dr. Tearse's IME, there were no prior disability evaluations by an employer retained physician. Whether or not one could conclude that Dr. Bries' opinion was a disability evaluation, ALCOA did not

retain Dr. Bries, he was a medical provider chosen by Rita based on referral by Dr. Bode who was also a medical provider chosen by Rita.

Further findings are unnecessary as the benefits sought were based on the work relatedness of the left shoulder condition.

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 treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

In this case, claimant failed to carry her burden to show that the left shoulder condition was caused by a work injury. As the only benefits sought were based on the work relatedness of the left shoulder condition, claimant takes nothing from these proceedings.


Iowa Code section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. In this case, claimant failed to show that there was a disability evaluation by an employer retained physician before Dr. Tearse was

retained to provide an opinion. Therefore, claimant is not entitled to such reimbursement for the fees of Dr. Tearse.

ORDER

1. Claimant shall take nothing from these proceedings.
2. Claimant shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33.

Signed and filed this 29th day of January, 2016.


LARRY WALSHIRE
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.