

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LORI R. GIDDENS,	:	File No. 5044622
Claimant,	:	A P P E A L
vs.	:	D E C I S I O N
DONALDSON COMPANY,	:	
Employer,	:	FILED
and	:	JAN 20 2016
STANDARD FIRE INSURANCE	:	WORKERS' COMPENSATION
COMPANY,	:	
Insurance Carrier,	:	
Defendants.	:	Head Note No.: 1803

Defendants Donaldson Company, employer, and its insurance carrier, Standard Fire Insurance Company, appeal from an arbitration decision filed on November 3, 2014. The case was heard on August 13, 2014, and it was considered fully submitted on September 9, 2014, in front of the deputy workers' compensation commissioner.

The deputy commissioner found that claimant sustained injuries to her bilateral shoulders on October 11, 2012, which arose out of and in the course of her employment with defendant-employer. The deputy commissioner found that claimant was at MMI and awarded claimant 60 percent industrial disability. The deputy commissioner found that claimant is entitled to payment of medical expenses with David Tearse, M.D., orthopedic surgeon, pursuant to Iowa Code section 85.27. The deputy commissioner also found that claimant is entitled to alternate medical care with Dr. Tearse pursuant to Iowa Code Section 85.27.

Defendants assert on appeal that the deputy commissioner erred in finding that claimant sustained injuries to her bilateral shoulders on October 11, 2012, which arose out of and in the course of her employment. Defendants assert the deputy commissioner erred in finding that claimant was at MMI and in awarding claimant 60 percent industrial disability. Defendants assert the deputy commissioner erred in finding that claimant is entitled to payment of medical expenses with Dr. Tearse pursuant to Iowa Code section 85.27. Defendants also assert the deputy commissioner erred in finding that claimant is entitled to alternate medical care with Dr. Tearse pursuant to Iowa Code Section 85.27.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on November 3, 2014, which relate to issues of whether claimant sustained injuries to her bilateral shoulders on October 11, 2012, which arose out of and in the course of her employment, whether claimant is entitled to payment of medical expenses with Dr. Tearse pursuant to Iowa Code section 85.27, and whether claimant is entitled to alternate medical care with Dr. Tearse pursuant to Iowa Code Section 85.27. The deputy commissioner provided sufficient analysis of these issues and I concur with the deputy commissioner's findings of fact and conclusions of law regarding these issues. Therefore, I adopt the deputy commissioner's findings, conclusions and analysis regarding these issues.

I reverse the award of 60 percent industrial disability because I find that claimant was not at MMI at the time of the hearing and it was premature to award permanent disability benefits. I provide the following analysis with respect to that issue:

Claimant testified at hearing that she experienced pain in her right shoulder in 2007 when she worked on the power core line for defendant-employer. (Transcript, p. 42) She reported this to her employer and was sent to see Kenneth McMains, M.D. She was given an injection and some physical therapy. Claimant's pain gradually resolved within a couple of months. (Tr. pp. 42-44) In late 2010 or early 2011, claimant began to experience symptoms in both of her shoulders. The pain in her shoulders gradually increased. When claimant felt that her pain was not going to improve without medical attention, she reported it to her supervisor on October 11, 2012. (T. pp. 44-46)

Claimant was referred to Winneshiek Medical Center where she was evaluated by Kristen Heffern, ARNP, on October 22, 2012. (Exhibit 3, pp. 1-3) Ms. Heffern diagnosed bilateral shoulder pain and ordered an MRI. In her clinical note dated January 9, 2013, Ms. Heffern noted the following, in pertinent part:

X-rays were reviewed and do show some downsloping acromion, which may predispose her to some impingement. Apparently, the radiologist had recommended MRIs, which have also been done and have also been reviewed. They do not show any rotator cuff tears. There is no evidence of a Hill-Sachs lesion, fractures, capsular edema or labral injury. MRIs, however, did show edema in the proximal humerus that may be consistent with a stress injury.

(Ex. 3, pp. 12-13)

Claimant was referred to Bruce Wulfsberg, M.D., orthopedic surgeon. Dr. Wulfsberg saw the claimant on January 28, 2013. Dr. Wulfsberg's impression was

shoulder pain probably secondary to bone edema, which appeared to be from repetitive stress injuries, as it was bilateral and symmetrical. (Ex. 3, p. 15) Dr. Wulfsberg ordered physical therapy, which did not resolve claimant's pain. On May 16, 2011, Dr. Wulfsberg restricted claimant from overhead work, with no lifting greater than 20 pounds indefinitely. (Ex. 3, p. 19)

Claimant had an independent medical evaluation on January 13, 2014, with Richard F. Neiman, M.D., neurologist. Dr. Neiman opined that claimant should not use her right arm above shoulder level and should avoid excessive flexion, extension, abduction, adduction, internal and external rotation with the right shoulder. Dr. Neiman also imposed a 20-pound weight restriction. He opined that claimant had a 14 percent permanent impairment of the whole person as a result of her shoulder problems, which Dr. Neiman attributed to claimant's work. (Ex. 1, pp. 3-4)

In his report, Dr. Neiman stated the following, in pertinent part:

RECOMMENDATIONS: She certainly has permanency related to the shoulders; but more importantly, I believe further studies should be done. The MRI scan of the shoulders without injection of gadolinium into the joint space is an inferior examination and can certainly not provide the full information. I believe she has an encroachment syndrome bilaterally. I suggest that she see various orthopedic doctors who specialize in shoulders. I suggested Dr. David Tearse in Cedar Rapids, Dr. John Langland, Dr. Ed Law here at Steindler Clinic, or Dr. Jim Nepola at the University.

(Ex. 1, pp. 3-4)

After detailing his impairment rating in his report, Dr. Neiman added: "I believe this accurately reflects her current level of impairment. Again, further evaluation is strongly advised." (Ex. 1, p. 4)

In March 2014 claimant's symptoms had become worse, and she attempted to return to Dr. Wulfsberg but was not allowed to do so by defendants so, on her own, claimant was evaluated by Dr. Tearse on May 2, 2014. (Tr. pp. 62-65) Dr. Tearse prescribed medication and physical therapy. (Ex. 2, pp. 4-5)

When claimant returned to Dr. Tearse on May 30, 2014, she reported her pain was "about the same". Dr. Tearse injected both of claimant's shoulders with Betadine, Lidocaine and Depo Medrol, and he instructed claimant to return if her pain was not improved. (Ex. 2, p. 5)

On June 24, 2014, Dr. Tearse checked off opinion statements and provided additional hand-written information on a letter dated June 16, 2014, which was drafted by claimant's counsel. (Ex. 2, pp. 1-2) On that letter, Dr. Tearse indicated his ongoing medical treatment of claimant was reasonable and necessary based on claimant's

bilateral shoulder impingement and he also indicated claimant was not at maximum medical improvement (MMI) for her shoulders. (Ex. 2, p.2)

At hearing, claimant testified she was scheduled for a follow-up appointment with Dr. Tearse on September 5, 2014, which was after the August 13, 2014, arbitration hearing. Claimant testified she expected to discuss her treatment options with Dr. Tearse at the September 5, 2014, appointment. (Tr. pp. 67-68)

No physician in this case has opined that claimant has reached MMI. Despite providing a permanent impairment rating, Dr. Neiman stated "further evaluation is strongly advised." Dr. Tearse, who evaluated claimant most recently prior to the arbitration hearing, specifically stated claimant is not at MMI. Therefore, the greater weight of the evidence supports a reversal of the award of industrial disability as premature. Whenever claimant is determined to be at MMI, it will be appropriate to address the extent of claimant's permanent disability, if any.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of November 3, 2014, is MODIFIED as follows:

1) The award of 60 percent industrial disability is reversed, with the issue of the extent of claimant's permanent disability, if any, to be determined when claimant reaches MMI.

2) Defendants shall pay claimant's medical expenses with Dr. Tearse directly and shall reimburse claimant for those medical expenses with Dr. Tearse which claimant has personally paid pursuant to Iowa Code section 85.27.

3) Defendants shall provide care and medical treatment with Dr. Tearse including any referrals he may make.

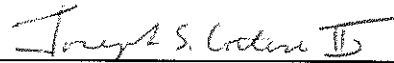
4) Defendants shall reimburse claimant for the independent medical evaluation with Dr. Neiman in the amount of eight-hundred fifty and 00/100 dollars (\$850.00) pursuant to Iowa Code section 85.39.

5) Defendants shall reimburse claimant three-hundred ninety-nine and 30/100 dollars (\$399.30) for medical mileage pursuant to Iowa Code section 85.27.

6) Costs of the arbitration action in the amount of five-hundred thirty-four and 40/100 dollars (\$534.40) are taxed to defendants pursuant to rule 876 IAC 4.33.

7) Each party shall pay their own costs of the appeal.

Signed and filed this 20th day of January, 2016



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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