

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NAIMA CERWICK,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5047247

REHEARING

DECISION

Head Note Nos: 1108, 1402.40, 1803

FILED

JUN 26 2017

WORKERS' COMPENSATION

Claimant filed an application for rehearing (application). Defendant resists the application. The application is considered.

Claimant alleges three grounds for rehearing. First, claimant contends the deputy commissioner erred in finding claimant lacked credibility. Second, claimant contends the deputy commissioner erred in finding Steven Aviles, M.D.'s opinions more convincing concerning causation of claimant's hip injury. Third, claimant contends the deputy commissioner erred in finding William Jacobson, M.D.'s opinions were more convincing regarding causation of claimant's shoulder injury.

First, claimant contends the decision should be modified or reversed concerning claimant's credibility. The arbitration decision does indicate, in several places, the histories given by claimant to various providers were not consistent and varied over time. (Arbitration Decision, pages 8-11). For example, as noted in the arbitration decision, claimant's initial history of her accident was her fall happened quickly and she fell backwards bracing herself with her hands. (Joint Exhibit 1, page 1) Approximately one year later, claimant first reported that when she fell her legs hyper abducted into a split position. (Jt. Ex. 10, p. 3)

As noted in the appeal decision I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy commissioner who presided at the hearing. The deputy commissioner who presided at the hearing had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. My ability to find the true facts that are affected by witness demeanor and credibility cannot be expected

to be superior to that of the deputy who presided at the hearing. If anything, my ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation.

Claimant's counsel also suggests in the application that because claimant had no difficulty understanding English, the deputy commissioner found claimant "...therefore lacks credibility, for using an interpreter at a legal proceeding." (Application, p. 3) The arbitration decision does note claimant had no difficulty understanding English and it was easier for claimant to testify in English than Arabic. The arbitration decision suggests it was troubling counsel requested an interpreter, given claimant's ability to speak English. The fact claimant had an interpreter has nothing to do with claimant's credibility, but merely questions counsel's decision.

A review of the medical records indicates claimant gave inconsistent accounts of the February of 2013 accident to multiple providers. I defer to the deputy regarding credibility findings of the claimant at hearing. Given this, claimant's application is denied as to this ground.

Second, claimant suggests it was error to find the opinions of Dr. Aviles more convincing regarding claimant's hip injury.

As noted above, and throughout the arbitration decision, medical records show the histories claimant gave to providers were inconsistent and varied over time.

Second, Dr. Avilles, Michael Jackson, M.D. and Charles Mooney, M.D. all opined a traumatic labral tear, as suggested by claimant, would cause immediate pain. (Ex. A, pp. 12 and 17; Ex. B, p. 25; Jt. Ex. 7, p. 27) The record suggests claimant did not even report hip pain from her fall, until July of 2013, approximately five months after the injury. Cassim Igram, M.D. also notes claimant's complaints of pain changed over time from the thoracic area, to the low back, to the right leg, and finally to the right hip (Ex. B, p. 23; Ex. 29, deposition p. 33)

As noted in the arbitration decision, claimant was referred to Dr. Aviles by claimant's personal physician. As documented, 50 percent of Dr. Aviles' orthopedic practice involves hip arthroplasty.

Three experts opine a labral tear, indicated by claimant, would cause immediate pain. Claimant did not report hip pain until approximately five months after the date of injury. Dr. Aviles opined claimant's hip issues were actually caused by a cleft labrum instead of a labral tear. Defendants did not refer claimant to Dr. Aviles. The bulk of Dr. Aviles' practice involves hip surgery. Based on these facts, and others detailed in the arbitration decision, claimant's application is denied as to this ground.

Finally, claimant contends it was error to find the opinions of Dr. Jacobson more persuasive regarding causation of claimant's shoulder condition.

As noted in the arbitration decision, claimant did not seek treatment for a shoulder condition until March 7, 2014, more than a year after the February 2013 incident. (Jt. Ex. 8, p.6) Claimant's original complaints did not involve a shoulder injury. Claimant's original exam, following the February 2013 incident, found full strength and range of motion in the shoulder. Dr. Jacobson also noted claimant had been evaluated on numerous occasions by a number of providers without shoulder complaints. (Ex. 11, p. 3)

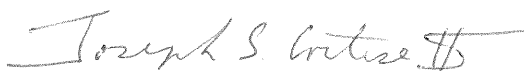
Dr. Mooney also opined claimant's shoulder condition was not related to the February 2013 fall. Like Dr. Jacobson, Dr. Mooney noted a number of medical records show no temporal relationship to support causation of the labral tear by the February 2013 fall. Dr. Mooney also noted a lack of consistency in the history concerning the February 2013 fall and a shoulder condition. (Ex. B, pp. 25 K – L)

Claimant did not complain of a shoulder injury until over one year after her fall. Records indicate claimant had good range of motion and strength in the shoulder at the time of the February 2013 fall. Both Dr. Mooney and Dr. Jacobson note multiple providers examined claimant without reports of shoulder problems. Both Dr. Jacobson and Dr. Mooney note the lack of a temporal relationship between the fall and complaints of shoulder problems. Both Dr. Mooney and Dr. Jacobson opined claimant's shoulder condition was not caused by the February 2013 fall. Based on these facts, and others detailed in the arbitration decision, claimant's application is denied as to this ground.

ORDER

IT IS THEREFORE ORDERED that claimant's application for rehearing is denied.

Signed and filed this 26th day of June, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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