BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CRYSTAL HANSEN,

Claimant,

vs.

ALLENDAN SEED COMPANY,

Employer,

and

WESTERN AGRICULTURAL INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5052893

ARBITRATION DECISION

Head Note Nos.: 1803, 2700

Crystal Hansen, claimant, filed a petition in arbitration seeking workers' compensation benefits against Allendan Seed Company, employer, and Western Agricultural Insurance Company, insurance carrier, both as defendants, for an accepted work injury dated September 16, 2014.

This case was heard on November 21, 2016, in Des Moines, Iowa. The case was considered fully submitted on December 12, 2016, upon the simultaneous filing of briefs.

The record consists of claimant's Exhibits 1-5, defendants' Exhibits A-L, and claimant's testimony.

ISSUES

The extent of claimant's permanent disability;

Whether claimant is entitled to alternate medical care; and,

Whether claimant is entitled to an award 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.

The parties agree the claimant sustained a work-related injury on September 16, 2014. The parties disagree as to the extent of the claimant's permanent disability.

The parties stipulate that at all times relevant to the injury, the claimant's gross earnings were $249.00 per week. She was married and entitled to 7 exemptions. Based on those foregoing numbers, the weekly benefit rate is $202.80. The parties agree that the commencement date for permanent partial disability benefits, if any are awarded, is March 9, 2016.

FINDINGS OF FACT

Claimant was a 36-year-old person at the time of the hearing. She testified she is dyslexic but has a high school diploma.

She prepared for a career in Ford auto repair by taking DMACC mechanic's courses, but became pregnant and left school. Her work history includes taking care of birds at an egg-laying facility, clerking at a gas station, nursing home caregiver and waitressing.

She began working for the defendant employer on June 1, 2012, as a greenhouse worker. Her duties involved planting, harvesting, weeding and transplanting of plants.

Physically, she must lift and carry, bend, stand, kneel, and twist.

On September 16, 2014, claimant was lifting heavy tubs of dirt that weighed between 75 to 100 hundred pounds when she heard a loud pop in her right shoulder. She testified that she immediately lost feeling in her fingers and had severe pain in her right shoulder. She could not finish out her shift.

The following day, she was seen at Madison County Medical Associates. (Exhibit 1) The history that was recorded noted that the pain had been occurring for five days. (Ex. 1, page 1) The diagnosis was right shoulder strain. She was taken off work and began physical therapy.

Stacy M. Cook, PA-C, took claimant off work until October 1, 2014. (Ex. A, p. 5) By October 3, 2014, the notes indicate that she had a 90 percent decrease in symptoms. (Ex. B, p. 12) Claimant testified that physical therapy increased her pain.

On October 14, 2014, Whitney Ceretti, PA-C, found that claimant had pain with palpation on the right shoulder region and right trapezius muscle. (Ex. C, p. 15) She had some decreased range of motion with flexion and abduction. (Ex. C, p. 15) Based on claimant's report of symptoms and pain reports, Ms. Ceretti concluded claimant suffered right thoracic/scapular strain. (Ex. C, p. 15) Ms. Ceretti recommended conservative treatment, including more physical therapy.

She returned to Ms. Ceretti on October 24, 2014. She showed an improvement in range of motion. "The patient's evaluation and exam are much improved" from her last visit. (Ex. E, p. 20) This is somewhat different than what claimant maintained at hearing.

After the remaining three physical therapy appointments, claimant had no tenderness with palpation and increased range of motion, but maintained ongoing pain. (Ex. E, p. 24) However, she reported to Ms. Ceretti that she had aggravated her condition during physical therapy. (Ex. F, p. 27) Ms. Ceretti recommended MRIs, which were conducted on November 29, 2014. Neither examination showed any signs of impingement or injury. Claimant continued to maintain that she had significant ongoing pain. (Ex. F, p. 32) Ms. Ceretti recommended a referral to a pain clinic. Before going to the pain clinic, she returned to Ms. Ceretti on December 8, 2014. (Ex. F, p. 34) At that visit, Ms. Ceretti concluded that claimant had shown little improvement or progress and recommended pain therapy before more physical therapy. (Ex. F, p. 34)

Claimant believed that her injury was in her shoulder. An MRI of the shoulder conducted on January 12, 2015, was negative for any shoulder injury. (Ex. F, p. 35)

She was seen by Von L. Miller, PA-C, on January 21, 2015. (Ex. F, p. 36) Claimant reported that she was having significant pain without improvement. Mr. Miller wrote:

> P: At this time, I had a long discussion with Crystal and her husband; over 40 minutes was spent in face-to-face counseling on what could be the next step in her treatment plan as we have exhausted many of the normal things we would do for this type of nontraumatic injury. At this time, we decided to send her to physical medicine and rehabilitation to have a physiatrist evaluate her, possibly for barriers to healing. Crystal and her husband agree with the above plan. Therefore, at this time, we will make the referral to physical medicine and rehabilitation. Her follow up with me will be determined after that.

(Ex. F, p. 36)

On March 3, 2015, claimant was seen by Robert Rondinelli, M.D., for right upper extremity pain. She reported difficulty working at or above shoulder level and pain while grabbing, reaching and carrying. He recommended a referral to an orthopedic specialist and psychosocial consult. He also ordered pain medication and a TENS unit. (Ex. G) The psychosocial consult was due to claimant's symptom magnification. (Ex. G, p. 39)

Claimant then began seeing Timothy R. Vinyard, M.D., an orthopedic specialist, on April 2, 2015, for the right shoulder and right upper extremity pain. She had limited active range of motion but excellent passive range of motion. (Ex. H, p. 43) He recommended an injection to address possible impingement syndrome. (Ex. H, p. 43) Claimant reported that this was very painful and wondered if she had an "allergic" reaction to it.

The physical therapy notes that claimant "demonstrates inconsistent AROM during treatment." (Ex. E, p. 25)

She returned to Dr. Vinyard on April 30, 2015. He wrote:

> I had a thorough discussion with the patient. Given her lack of pathology on her magnetic resonance imaging and her lack of response to my treatments thus far, I told the patient that I do not think her symptoms are coming from her shoulder. I do not have a good explanation for why she continues to have the symptoms. I will refer her back to her Work Comp physician. I will place her at MMI and discharge her from my care. I will not put her on any restrictions for her shoulder. We did discuss that she may consider a 2nd opinion if she does not agree with my recommendation. Patient verbalizes understanding and she is in agreement with this plan.

(Ex. H, p. 45)

Claimant was seen by Christian Ledet, M.D. for pain management, on June 22, 2015. (Ex. I, p. 13) Her pain level was reported to be 9. On examination, her range of motion in the shoulder was moderately limited. (Ex, I, p. 9) She had normal range of motion and no pain complaints in the elbow, forearm, wrist and hand. (Ex. I, p. 65) Dr. Ledet recommended a Plasma Rich Protein injection since all other methods of treatment had failed for claimant. (Ex. I, p. 66)

This was performed by Dr. Vinyard.

Claimant returned to Dr. Vinyard on August 25, 2015, and she underwent another injection. He recommended she continue to work without restrictions. (Ex. H, p. 46) He placed her at maximum medical improvement (MMI) on September 24, 2015. (Ex. H, pp. 47-48) Claimant then underwent an functional capacity evaluation (FCE) which was deemed valid. The FCE results placed claimant in the medium demand work category.

> Job Demand Met – The client is **able** to safely perform the following activities on the job.
>
> - Floor to waist lift – 35 lbs., occasionally.
> - Right unilateral lift – 16 lbs., occasionally.
> - Bilateral carry – 15 lbs., occasionally.
> - Waist to crown lift – 12 lbs., occasionally.
> - Forward reaching – Frequently.
> - Overhead reaching – Frequently.

- Sustained elevated work – Occasionally.

(Ex. J, p. 81)

On December 28, 2015, claimant began treating with Allen J. Eckhoff, M.D., a pain specialist, for ongoing right shoulder pain radiating into her right arm and fingers. (Ex. 2A) Her neurologic examination showed normal results in all areas including motor strength, deep tendon reflexes symmetrically responsive. Only the right hand grip was slightly weaker. (Ex. 2A, p. 2) He diagnosed her with right supraspinatus tendinitis and right shoulder pain. (Ex. 2A, p. 2)

He performed a right suprascapular nerve block on January 11, 2016, which provided only temporary relief. (Ex. I, p. 58) She was achieving 70 percent relief from Gralise. (Ex. 2B) He wrote:

> 1. **Right shoulder pain**
> Notes: Gralise is giving 70% reduction in her pain, but she states she has weakness in the right arm and medical 3 fingers on the right side. Without any cervical pathology from MRI. MRI of right shoulder is overall showing no pathology except for supraspinatus tendonopathy for which she has received PRP and ultrasound guided injection without relief. I discussed that from an injection standpoint there is nothing else that I would do and if she is still having weakness, I would recommend a second opinion from Iowa City Ortho or Mayo Ortho.

(Ex. 2B, p. 2)

He reviewed her cervical MRI again and saw a flattening of the spinal canal at C4 and C5 without impingement and thus gave the go-ahead for a C7-T1 CESI. (Ex. 2C) He scheduled her for the CESI on April 4, 2016, but claimant cancelled it because she no longer had those pain symptoms. (Ex. 2D) Claimant testified that she was placing a trampoline against the wall and it began to tip over. She reached out to prevent it from falling and felt a pop in her shoulder. According to the claimant, the pop did not resolve the pain in her back, but it did resolve the finger numbness and arm pain.

She requested a refill of the Gralise, which Dr. Eckhoff ordered along with physical therapy and deep tissue massage. (Ex. 2D) On June 30, 2016, claimant returned with reports that the physical therapy was not helpful. She had muscle tenderness in the right shoulder. (Ex. 2E) He renewed her prescription and recommended she return in three months.

On April 25, 2016, claimant underwent an independent medical evaluation (IME) with Robin Sassman, M.D. (Ex. 3B) At that time, claimant was reporting ongoing pain in the right shoulder, decreased range of motion and numbness in the fingers of the right hand. Dr. Sassman's examination showed full and equal range of motion in the cervical spine, elbow and wrists. She had slight reduction in range of motion, but

according to Dr. Sassman's notations, the reduction was equal on both the right and left shoulders with 170 degrees of flexion, 50 degrees of extension, and 80 degrees on internal and external rotation. (Ex. 3B) She had full strength in her shoulder, elbow, and wrist as well. (Ex. 3B) Based on the examination, history and medical record review, Dr. Sassman believed claimant was not at MMI, recommending she undergo trigger point injections as recommended by Dr. Eckhoff. (Ex. 3B)

Dr. Sassman made the following impairment assessments.

> For the right shoulder, the impairment due to range of motion of the right shoulder was calculated based on Figures 16-40, 16-43 and 16-46 on page 476-479. These are as follows: She can be assigned 1% upper extremity impairment for loss of flexion and 2% upper extremity impairment for loss of internal rotation. I am instructed to add these values together for a total of 3% upper extremity impairment. Using Table 16-3 on page 439, this is converted to 2% whole person impairment.
>
> For the cervicalgia, Using Section 15.2, on page 379, the DRE method is the most appropriate method for assessment of the cervical spine. Using Table 15-5 on page 392, she will be placed into DRE Cervical Category II with 5% impairment of the whole person due to guarding noted on examination.
>
> Using the Combined Values Chart on page 604, 5% whole person impairment (for the cervicalgia) is combined with 2% whole person impairment (for the right shoulder) for a total of 7% whole person impairment relative to the injury that occurred on September 16, 2014.

(Ex. 3B) The shoulder impairment assessments make no allowance for the fact that the shoulder range of motion assessments were the same on both the right and left, despite claimant reporting pain only on the right. Claimant's range of motion in the neck was normal, but Dr. Sassman assessed five percent of the whole person based solely on guarding.

Dr. Sassman recommended that claimant observe the following restrictions:

> **Restrictions**
> Ms. Hansen should limit lifting, pushing, pulling and carrying to 30 pound[s] from floor to waist on an occasional basis. She should limit lifting, pushing, pulling and carrying to 30 pounds occasionally at waist height keeping her elbows at her sides. She should limit lifting, pushing, pulling and carrying to 20 pounds rarely above shoulder height. She should limit the use of vibratory tools or power tools to an occasional basis.

(Ex. 3B)

Claimant's hobbies include hunting, fishing, and boating. She testified she no longer bow hunts. She has been active all her life.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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).

Since 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 has had consistent, if exaggerated, complaints of pain in her right shoulder since her accepted work injury. The valid FCE places claimant in the medium work category. Her past work history includes unskilled manual labor at an egg laying facility along with store clerk, restaurant work, and nursing home work.

There are jobs available to her within her skill set and within the restrictions set forth by the FCE. Claimant does not appear motivated to return to work. She has conducted little serious inquiry into other jobs.

Claimant argues that she has a high tolerance for pain and points to the birth of five children without epidurals as proof of this. Yet, her medical records portray a slightly different characterization. Her reduced range of motion is slight. She has had physical therapy that has resulted in significant improvements of 70 to 80 percent, but denies this during testimony.

The FCE reveals that she is capable of doing many tasks under a certain weight limit. The story of her pain in her arm and fingers alleviated by something "popping" into place is not supported by any medical evidence. There is no sign of actual injury in her right shoulder and her medical providers are even skeptical that it is a shoulder injury as opposed to a cervical issue.

Claimant agreed with Dr. Sassman's restrictions, which are not significantly different than the FCE. While claimant testified that she did not believe that she could return to her position within the egg laying facility, store clerk, or waitressing, those positions do not appear to be within the heavy duty work category. Making donuts or pizza crusts are not the same as lifting 75 to 100 pounds of soil on a daily basis.

Further, claimant testified that she could not lift a coffee pot, a bag of sugar, sweep the house or mow the lawn, yet she was able to assist in putting up her family trampoline for the winter. Her self-imposed restrictions around the house do not align

with either Dr. Sassman's restrictions or those set forth in the FCE. In sum, claimant's credibility is low. Her actions do not match her testimony.

However, claimant did attempt to return to work and the defendant employer was not able to accommodate her restrictions. She was not provided her existing job back and they did not have a new position for her. Heavy manual labor positions are foreclosed to claimant because of her physical restrictions.

Taking into consideration the recommendation of Dr. Sassman and that of the FCE along with claimant's age, educational background, and low motivation to return to work, it is determined that claimant has sustained a 33 percent loss of industrial disability.

Dr. Eckhoff recommended claimant be seen either in the UIHC or the Mayo Clinic. This care has not been offered to her and claimant wishes to follow through with Dr. Eckhoff's recommendation.

Dr. Eckhoff was an authorized treating physician at all relevant times. He twice recommended claimant receive a second evaluation.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, I Iowa Industrial Commissioner Reports 207 (1981).

Based on the referral of Dr. Eckhoff, it is found that claimant is entitled to a second opinion at either UIHC or Mayo Clinic.

Claimant seeks assessment of costs including the conference fee of $300.00 with Dr. Eckhoff. Reports are covered in rule 876 IAC 4.33, wherein the claimant can request that costs be taxed by the deputy to a prevailing party.

Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested.

Rule IAC 876 4.33. Under Des Moines Area Regional Transit Authority v. Young, 4.33 reports are allowed in lieu of testimony. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839. The conference with Dr. Eckhoff is not a report in lieu of testimony and therefore cannot be awarded as a cost.

ORDER

THEREFORE, IT IS ORDERED:

File No. 5054967

That defendants are to pay unto claimant one hundred sixty-five (165) weeks of permanent partial disability benefits at the rate of two hundred two and 80/100 dollars ($202.80) per week from March 9, 2016.

That defendants shall pay accrued weekly benefits in a lump sum.

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

That defendants are to be given credit for benefits previously paid.

That defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

That claimant is entitled to be seen at Mayo Clinic or UIHC according to the referral and recommendation of authorized treating physician, Dr. Eckhoff.

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33, excluding the conference fee with Dr. Eckhoff.

Signed and filed this 17th day of February, 2017.

JENNIFER S. GERRISH-LAMPE
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.