

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMANDA HUDSON,

Claimant,

vs.

OAKLAND HEALTHCARE
MANAGEMENT, LLC,

Employer,

and

IOWA LONG TERM CARE RISK
MANAGEMENT ASSOCIATION,Insurance Carrier,
Defendants.

File No. 5064320

ARBITRATION

DECISION

Head Note Nos.: 1402.40, 2206

STATEMENT OF THE CASE

Claimant Amanda Hudson filed a petition in arbitration seeking workers' compensation benefits from defendants Oakland Healthcare Management, LLC, employer, and Iowa Long Term Care Risk Management Association, insurer. The hearing occurred before the undersigned on August 8, 2019, in Council Bluffs, Iowa.

The parties filed a hearing report at the commencement of the arbitration hearing. In 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 evidentiary record consists of: Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 4, and Defendants' Exhibits A through D. Claimant testified on her own behalf. No other witnesses were called to testify. The evidentiary record closed on August 8, 2019, and the case was considered fully submitted upon receipt of post-hearing briefs on September 6, 2019.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained any permanent disability due to her stipulated work injury on February 6, 2018.
2. If claimant sustained a permanent disability, the extent of her industrial disability.
3. The commencement date for any permanent partial disability benefits.
4. Costs.

FINDINGS OF FACT

Claimant sustained a stipulated injury to her back and shoulders on February 6, 2018, when she was working as a certified nursing assistant (CNA) and assisting a resident from the bathroom to his bed. (Hearing Transcript, page 16) While she initially complained of upper back and shoulder symptoms, she acknowledged these symptoms resolved by March of 2018. (See Hrg. Tr., pp. 18-19) Her claim at hearing was for her low back.

The February 6, 2018 incident was not claimant's first work-related back injury. Several months prior, in September of 2017, claimant injured her low back with resulting right-sided symptoms after assisting several patients with a gait belt. (Joint Exhibit 2, p. 7) Claimant underwent weeks of conservative treatment for her right-sided low back complaints, including modified duty, prescription muscle relaxants, and physical therapy. (JE 2, pp. 7-16) By late-November of 2017, however, claimant was released from care and considered herself "fully recovered." (See JE 2, p. 15-16; Hrg. Tr., p. 15)

While the incident in September of 2017 produced right-sided symptoms, claimant's February 6, 2018 work injury caused "left-sided back and shoulder discomfort." (JE 2, p. 17; see Defendants' Ex. D, p. 12) James Kalar, M.D., diagnosed claimant with a "low back injury" and "left shoulder strain" and assigned work restrictions. (JE 2, p. 17)

When claimant returned to Dr. Kalar the following week, she reported her "low back discomfort ha[d] essentially resolved," though she continued to experience discomfort in her upper back and shoulder. (JE 2, p. 19) Dr. Kalar maintained claimant's work restrictions and also recommended six sessions of physical therapy for her ongoing shoulder strain. (JE 2, p. 19)

Claimant's physical therapy records for this period are devoid of any mention of lower back complaints. (See JE 3, pp. 32-37)

At claimant's follow-up appointment on February 23, 2018, D. Kalar indicated claimant's low back injury had "resolved." (JE 2, p. 20) Though Dr. Kalar continued to

follow claimant for her shoulder strain through March 23, 2018, there are no mentions of low back complaints in the notes from claimant's physical therapy sessions or appointments with Dr. Kalar in the month between February 23, 2018 and claimant's release from Dr. Kalar's care on March 23, 2018. (See JE 2, pp. 19-24; JE 3, pp. 37-44)

Claimant then returned to Dr. Kalar on April 16, 2018, with pain in her mid-back after pushing a resident in a wheelchair. (JE 2, p. 25) Claimant was diagnosed with a thoracic sprain, and after a brief stint of modified duty, she was released from Dr. Kalar's care. (JE 2, pp. 25-28) There is no discussion of low back pain in claimant's medical records for her thoracic sprain.

It was not until roughly a month later, on May 21, 2018, that any mention of low back symptoms re-appeared in the medical records. (JE 2, p. 29) Despite this gap in the medical records, claimant testified she never stopped complaining of low back tension to Dr. Kalar. (See Hrg. Tr., pp. 51, 55-57) I do not find claimant's testimony credible in this respect. Claimant's back was examined several times by Dr. Kalar and his staff between February of 2018 and May 21, 2018, and claimant continued working full-duty without restrictions except for the short period of modified duty for her unrelated thoracic sprain.

When claimant returned to Dr. Kalar on May 21, 2018 with low back complaints, Dr. Kalar referred her to a spine specialist. (JE 2, p. 30) Claimant was then evaluated by Eric Phillips, M.D., at Nebraska Spine and Pain Center. Dr. Phillips ordered an MRI, which revealed disc protrusions on the right at L3-4 and at L5-S1. (JE 5, p. 55) He made arrangements for epidural steroid injections (ESIs) at right L4-5 and right L5-S1. (JE 5, p. 55)

Claimant received ESIs in July and September of 2018. (JE 5, pp. 56, 63) When she returned to Dr. Phillips on September 24, 2018 after her second ESI, she reported improvement in her back pain, though she continued to have pain that was "worse on the right side." (JE 5, p. 65) Dr. Phillips recommended physical therapy and also had claimant fitted for a back brace. (JE 5, pp. 68, 70)

Claimant reported significant improvement after the physical therapy. (JE 5, p. 71) As a result, Dr. Phillips placed claimant at maximum medical improvement (MMI).

On January 16, 2019, Dr. Phillips authored his opinions in response to a request from claimant's counsel. When asked for his "final diagnosis of the injuries that [claimant] sustained to her lower back as a result of this injury at work on February 6, 2018", Dr. Phillips opined that claimant "sustained a lumbar sprain and strain superimposed upon degenerative conditions in her spine." (JE 5, p. 75) He also noted claimant may have disc protrusions at L5-S1 and L4-5 and that it is "certainly possible that these conditions were pre-existing." (JE 5, p. 75) It was Dr. Phillips' opinion that claimant "sustained a 5% permanent partial impairment attributed to the work-related injury of February 6, 2018." (JE 5, p. 75)

Defendants obtained the opinions of Michael Morrison, M.D., after an independent medical examination (IME) of claimant. Like Dr. Phillips, Dr. Morrison diagnosed claimant with a "lumbar sprain," along with degenerative lumbar disc disease at L4-L5 and L5-S1 and bulging discs at the same location. (Def. Ex. A, p. 4) Dr. Morrison, however, opined that claimant's February 6, 2018 work injury represented "a temporary aggravation to a preexisting lower back condition." (Def. Ex. A, p. 4) He went on to explain as follows:

[Claimant] was treated under [Dr. Kalar's] care, was able to be released back to work on March 23, 2018 without restrictions, on April 18, 2018 without restrictions, and finally on April 26, 2018 by Nurse Practitioner Butkus without restrictions. From that information, it would be my opinion that her lower back symptoms improved considerably that she could be released on three different occasions without any restrictions. She also has a pertinent history on September 20, 2017, while working on the job at Oakland Health Care, of lower back symptomatology that required treatment from September 20, 2017 to November 27, 2017 consisting of work restrictions, pain medication in the form of an injection, and oral steroids. It was just a little over two months from those symptoms that she aggravated her lower back again on February 6, 2018, which, in my opinion, represented a temporary aggravation of preexisting lower back symptomatology.

(Def. Ex. A, pp. 4-5) It was Dr. Morrison's opinion that claimant reached MMI for her February 6, 2018 work injury upon her release from Dr. Kalar's care on March 23, 2018. (Def. Ex. A, p. 7)

Even without consideration of Dr. Morrison's opinion, I do not find Dr. Phillips' opinion to be sufficient to establish a causal connection between claimant's work injury and her claimed permanent disability. While Dr. Phillips indicated claimant's lumbar sprain/strain was "superimposed" upon her degenerative conditions, Dr. Phillips failed to explain whether he believed claimant's degenerative conditions were aggravated, accelerated, or worsened by the February 6, 2018 work injury. Furthermore, his only comment on the causation of claimant's disc protrusions was an acknowledgement that the protrusions may have been preexisting.

I also find Dr. Morrison's opinion to be more consistent with the medical records. As noted by Dr. Morrison, there are several gaps in treatment and full-duty releases that do not support claimant's testimony that her lower back pain was consistent after February 6, 2018. To the contrary, claimant reported to Dr. Kalar that her back pain had "essentially resolved" by February 13, 2018, and there are no discussions or mentions of low back pain in claimant's records after that point until May of 2018. This resolution of symptoms followed by a several month gap in treatment is consistent with Dr. Morrison's opinion of a temporary aggravation.

Also significant is the change in the location of claimant's symptoms from the left side in February 6, 2018 to the right side the fall of 2018. Claimant testified, consistent with her medical records and her incident report, that her symptoms after the February 6, 2018 incident were on her left side. (Hrg. Tr., p. 52; JE 2, p. 17; Def. Ex. D, p. 12) As noted, claimant initially reported to Dr. Kalar that these symptoms resolved. By the fall of 2018, however, after the several-month gap in treatment for her low back, claimant reported pain that was worse on her right side. (JE 2, p. 65) Claimant's report of right-sided symptoms in the fall of 2018 is not consistent with the left-sided symptoms she reported immediately after the February 6, 2018 work incident.

Notably, as mentioned above, claimant had right-sided symptoms after her work injury in the fall of 2017, just before the work injury at issue in this case. These symptoms resolved before her February 6, 2018 work injury, as did claimant's mid-back symptoms in April of 2018 after her February 6, 2018 work injury. In other words, claimant has a history of aggravations of her back that resolve with time. This history, combined with the change in the location of claimant's symptoms after the gap in treatment to her low back, is consistent with Dr. Morrison's opinion that claimant sustained only a temporary aggravation of her underlying degenerative condition due to the February 6, 2018 work injury.

In sum, I find Dr. Phillips' opinion to be lacking, and I am most persuaded by the opinion of Dr. Morrison. I therefore find there is insufficient evidence in the record to establish a causal relationship between claimant's February 6, 2018 incident and any permanent impairment sustained by claimant. In other words, I find claimant's February 6, 2018 work injury caused only a temporary aggravation of her pre-existing 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).

In this case, I found the opinions of Dr. Phillips to be insufficient to establish a causal connection between claimant's work injury and her claimed permanent disability. I also found Dr. Morrison's opinion that claimant sustained only a temporary aggravation of a pre-existing condition to be most consistent with the medical records. Based on these findings, I conclude claimant failed to establish her burden to prove she sustained a permanent disability as a result of her February 6, 2018 work injury.

Having determined no permanent disability has been sustained, all remaining issues are moot except costs, which is addressed below. The parties stipulated in the hearing report claimant's entitlement to temporary benefits was not in dispute, so no findings, analysis, or conclusions will be made with respect to that issue.

Claimant seeks costs in the amount of \$950.00 for her filing fee (\$100.00) and Dr. Phillips' report (\$850.00). Assessment of costs is a discretionary function of the agency. Iowa Code § 86.40. Because claimant was not successful in her claim, I decline to tax any costs to defendants.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further.

Signed and filed this 26th day of September, 2019.



STEPHANIE J. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gregory Taylor (via WCES)

Jacob Peters (via WCES)

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.