

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JULIE MCCAULEY,

Claimant,

vs.

POLK COUNTY, IOWA,

Employer,
Self-Insured,
Defendant.

File No. 22700159.01

ARBITRATION DECISION

Head Notes: 1108.20; 2401

STATEMENT OF THE CASE

Claimant, Julie McCauley, filed a petition in arbitration seeking workers' compensation benefits from Polk County, Iowa, self-insured employer. This matter was heard on November 16, 2022, with a final submission date of December 21, 2022.

The record in this case consists of Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 13, Defendant's Exhibits A through I, and the testimony of claimant.

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.

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.
2. Whether claimant's claim for benefits is barred by application of Iowa Code section 85.23.
3. Whether claimant waived her right to workers' compensation benefits under a global settlement agreement.
4. Whether claimant's injury resulted in a temporary disability.
5. Whether claimant's injury resulted in a permanent disability; and if so,
6. The extent of claimant's entitlement to permanent partial disability benefits.

7. The commencement date of benefits.
8. Whether there is a causal connection between the injury and the claimed medical expenses.
9. Whether claimant is entitled to alternate medical care under Iowa Code section 85.39.
10. Credit.

FINDINGS OF FACT

Claimant was 54 years old at the time of hearing. Claimant graduated from high school. Claimant took a medical terminology and transcription course at a community college. (Hearing Transcript, pages 14-15)

Claimant has worked as a secretary and an administrative assistant. She has worked as a receptionist for a county health facility. Claimant worked as a secretary for the agency director at the Iowa Department of Human Services. (Tr., pp. 17-19)

Claimant began her employment with Polk County on January 6, 2020, as an executive secretary for the Polk County Board of Supervisors. (Tr., p. 21)

Claimant's job duties at Polk County included, but were not limited to, answering phones, scheduling, doing transcription, assisting and reporting directly to supervisors. The supervisors claimant reported to were Matt McCoy and Bob Brownell, and Polk County Administrator, Mark Wandro. Another executive secretary, Heather Ksiazek, reported directly to supervisors Steve Van Oort, Angela Connolly, and Tom Hockensmith. Claimant testified that she also assisted Ms. Ksiazek when required. (Tr., pp. 20-22)

Claimant's prior medical history is relevant. Claimant testified in deposition that she had treated for anxiety since 1999. (Defendant's Exhibit E, page 37, deposition page 65) In 2017 claimant was hospitalized for a bleeding ulcer related to use of NSAIDs. (Joint Exhibit 1, pages 1-2)

Claimant treated for panic attacks three times in 2017. She said that she has had treatment for panic attacks since 2017. (Ex. E, p. 38, depo p. 66)

Claimant testified that the work environment at Polk County was very stressful. Claimant said her job was a "very unpleasant place to work." She said her co-worker, Ms. Ksiazek, told her, in so many words, that if something was missed on a Board of Supervisors' schedule, support staff would get "thrown under the bus." Claimant said the work environment, for the Polk County Board of Supervisors, was very toxic. (Tr., pp. 23-24)

Matt McCoy testified he is a supervisor for the Polk County Board of Supervisors since 2018. (Ex. H, p. 67, depo pp. 6-7) Mr. McCoy testified that since he began his employment in 2018, he has had consistent conflicts with colleagues every day. He

testified that another supervisor, Mr. Hockensmith, did not want his office next to Mr. McCoy's as Mr. McCoy was gay. (Ex. H, p. 67, depo pp. 7-8)

Mr. McCoy testified that prior to Polk County, he had worked at Principal, Ruan Transportation, and the Des Moines Chamber of Commerce. From 1996 through 2018 Mr. McCoy served as a state senator. Mr. McCoy testified that, "everything's unusual at Polk County. And I would say that it has been the -- the most unprofessional, challenging, hostile workplace that I've ever experienced or could even dream of experiencing." (Ex. H, p. 72, depo pp. 26-27)

Mr. McCoy was asked about the relationships at the Board of Supervisors during the period claimant worked as an executive secretary. He responded,

A: I would say that it continued to be caustic. Very adversarial; backbiting, backstabbing, negative in terms of -- you know, the atmosphere, teamwork process. Very gossipy, very cold.

Q: And that -- that same environment, Miss McCauley would have been a part of on a day-to-day basis; correct?

A: She would have been -- she would have been ground zero, center of all that.

(Ex. H, p. 68, depo p. 12)

Mr. McCoy has been involved with two ongoing lawsuits regarding Polk County. (Ex. H, p. 77, depo pp. 47-48)

Sarah Boese testified, in deposition, she began employment with Polk County in 2008. (Claimant's Exhibit 11, page 58, deposition page 7) She testified that in 2020 she was director of communications for the Board of Supervisors. (Ex. 11, p. 58, depo pp. 7-8) She testified that in January of 2020 she supervised claimant and Ms. Ksiazek. (Ex. 11, p. 59, depo p. 10)

Ms. Boese testified that from January of 2020 through June of 2020 the work environment at Polk County was "great." (Ex. 11, p. 60, depo pp. 13-14; Ex. 11, p. 62, depo p. 24)

Ms. Boese testified that from March of 2020 through June 2020 claimant never expressed any concerns regarding her work environment. (Ex. 11, pp. 62-63, depo pp. 24-25) She testified that during that period of time claimant never gave any notice of an injury. (Ex. 11, p. 63, depo p. 25) Ms. Boese testified that claimant never reported a hostile work environment while working at Polk County. (Ex. 11, p. 64, depo p. 29)

The record indicates Ms. Boese has filed a lawsuit against Mr. McCoy and Polk County. (Ex. H, p. 77, depo p. 47)

Jim Nahas, the former HR director for Polk County, also has sued Polk County regarding alleged wrongful termination. (Ex. 5)

Claimant said that within the first 2-3 weeks she began working at Polk County, she felt increasing anxiety and stress. She said she also began experiencing increased heartburn, acid reflux, and nausea. (Tr., pp. 22-24, 33)

Claimant testified that on February 28, 2020, she felt nauseous and sick. She said she did not believe she could leave the area in front of the Board of Supervisors' office based on what Ms. Ksiazek had told her. Claimant said she eventually vomited in a garbage can and lost control of her bladder. She said she finished her work that day. (Tr., pp. 29-31)

Claimant said she went home after work on February 28, 2020. She said her symptoms worsened and she eventually went to the emergency room. (Tr., pp. 33-34)

On March 1, 2020, claimant was evaluated at UnityPoint Emergency Department. Claimant reported that she had nausea, was dizzy, and had rectal bleeding. Claimant had abdominal pain that began one week prior. Claimant indicated she had GI bleeding two years prior. (JE 2, p. 28) Claimant was assessed as having an acute upper GI bleed and acute blood loss anemia. (JE 2, p. 32)

Claimant was hospitalized until March 4, 2020. (JE 2, p. 41) During that time she was given a blood transfusion and given omeprazole intravenously. (JE 2, p. 41) Claimant underwent upper GI endoscopy. Claimant was diagnosed with having two bleeding duodenal ulcers, esophagus narrowing, reflux and acute blood loss with a generalized anxiety disorder. (JE 2, pp. 39-40)

Claimant testified that when she was in the hospital, she was seen by her primary care physician, Louis Schneider, D.O. Claimant testified she told Dr. Schneider her job was very stressful. She said Dr. Schneider told her, at that time, that the bleeding ulcers were caused by her job stress and that she needed to get a new job. (Tr., pp. 35-36) There are no notations in the medical records from Dr. Schneider's visit indicating that claimant's bleeding ulcers were caused by her job stress.

Medical records indicate Dr. Schneider wrote a discharge summary for claimant's hospital stay. There is no indication in those records claimant's ulcers were caused by her stress at work. (JE 2, pp. 40-41; Tr., p. 79)

Claimant testified that when she was hospitalized, she texted Mr. McCoy and notified Ms. Ksiazek and Mr. Wandro. (Tr., pp. 36-37)

Claimant returned to work following her hospitalization. She testified on her first day back she told Mr. McCoy she had bleeding ulcers and that her doctor told her that her bleeding ulcers were related to work. (Tr., pp. 37-38)

In deposition, Mr. McCoy was asked when claimant told him her ulcers were work related. Mr. McCoy responded, "I don't think I ever received that kind of notice from Miss McCauley." (Ex. 10, p. 42, depo p. 35) Later in his deposition, Mr. McCoy confirmed that claimant did not provide him with notice of a work injury regarding her ulcers. (Ex. 10, p. 42, depo p. 36) He reiterated in deposition that claimant never reported a work injury to him. (Ex. 10, p. 44, depo p. 41)

Mr. McCoy also testified later in the deposition in March of 2020 claimant alerted him to her bleeding ulcers and that they “. . . could potentially be related to the stress at -- at Polk County.” (Ex. 10, p. 46, depo p. 50)

Claimant testified that she continued to receive treatment for bleeding ulcers after her return to work. (Tr., pp. 38-39) Claimant testified that when she returned to work, her panic attacks at work increased. She said she had increased stress at Polk County, due in part to Covid and other tensions in the office. (Tr., pp. 50-51) She said her anxiety was helped, somewhat, in that she was allowed to work some days from home during the pandemic. (Tr., pp. 50-52)

On March 11, 2020, claimant was evaluated by Dr. Schneider in follow-up. Claimant was assessed as having a duodenal ulcer and anemia due to blood loss. Claimant was told to use her same medications for anxiety and was given tips on how to deal with gastric reflux. (JE 3, pp. 46-50)

On May 20, 2020, claimant filed a resignation letter to Polk County. Claimant indicated she accepted another job more suited to her skillset. Claimant indicated her last day in the office was to be June 3, 2020. (Ex. A, p. 1)

Claimant said that Mr. McCoy asked her to have an exit interview upon leaving Polk County. She said she had an exit interview with Mr. McCoy and Mr. Nahas. She said she later typed up notes from that interview. (Tr., p. 57) These notes are found in Exhibit 2.

Claimant indicated in the exit interview profanity was routinely used in the Polk County Supervisors' office. She indicated she routinely heard supervisors talking disparagingly and cursing other supervisors and staff. (Ex. 2, p. 4) Claimant said she was told by a co-worker that staff was not to take breaks, vacations, or personal days. (Ex. 2, p. 4)

Claimant indicated she was micromanaged by Ms. Ksiazek. She said that the Polk County Board of Supervisors' office was a very stressful place to work. (Ex. 2, p. 4)

Claimant indicated Mr. McCoy told her Sarah Boese was concerned about her performance. Mr. McCoy indicated Ms. Boese also expressed concerns that claimant had prior employment litigation and was concerned about her employment with Polk County. (Ex. 2, p. 6) Claimant said she had a very negative and stressful experience in working at the Polk County Supervisors' office. (Ex. 2, p. 7)

Ms. Boese testified in deposition that exit interviews were not conducted during the time that claimant worked at Polk County. She also indicated it was very unusual that an exit interview was conducted without her presence. (Ex. 11, p. 64, depo p. 32)

Claimant left Polk County officially on June 4, 2020. On June 4, 2020, claimant made a request to be paid for unused sick leave or vacation. The application appears to indicate that claimant's request was untimely as claimant worked at Polk County for less than six months. (Ex. 3)

In July of 2020 e-mails to Mr. McCoy, claimant indicated that she was aware of the policy requiring an employee to be employed for six months in order to be paid for unused vacation. She asked Mr. McCoy that the requirement be waived given the "hostile work environment" she worked in. (Ex. C)

On August 3, 2020, claimant was evaluated by Dr. Schneider. Claimant had anxiety and rib pain. Claimant had a history of anxiety. Claimant's anxiety was high. Claimant was kept on the same medication and was counseled to lose weight. An x-ray was requested regarding claimant's rib pain. (JE 3, pp. 53-56)

Claimant returned to Dr. Schneider on August 11, 2020. Claimant had increased fatigue. Claimant's anxiety again was noted to be high. Claimant was kept on the same medication and again was counseled to lose weight. (JE 3, pp. 57-60)

On June 1, 2020, Jeffrey Edgar, an attorney for Polk County, sent a release via email to claimant. The email indicated that ". . . we will need you to sign off on the attached release in order to process your vacation payout." (Ex. 4)

On September 4, 2020, claimant had a psychotherapy counseling session with Emily Poss, M.A., L.M.H.C. Claimant had anxiety over being alone, worrying about being sick and worrying about having panic attacks. Claimant also reported getting sick at work and being hospitalized for bleeding ulcers. (JE 4, pp. 81-82) Claimant also indicated she was working as an assistant to the director at DHS and was happy at her job. (JE 4, p. 84)

On or about September 10, 2020, claimant signed a document titled "Settlement Agreement, Release, Indemnity, and Covenant Not to Sue." Claimant said she contacted two attorneys before she signed the release and returned it to Polk County. In her email returning the release, claimant indicated: "Thank you for this exception to policy and agreeing to pay me out my accrued vacation hours. It is much appreciated." (Ex. B, p. 2)

The release at issue reads in relevant part:

McCauley was an employee with Polk County and has requested payout of vacation she accrued. Polk County policy requires an employee to be employed with Polk County six months or more in order to be eligible for vacation payout upon termination. Because McCauley was employed less than six months with Polk County, she was not entitled to a vacation payout. However, in a good faith attempt to resolve any claim(s) McCauley may have with respect to her short period of employment at Polk County, the parties have agreed to enter into this Settlement Agreement, Release, Indemnity and Covenant Not to Sue.

The parties have agreed to compromise and settle all of McCauley's claims related to her employment with Polk County. Based on the mutual promises and covenants exchanged and for other good and valuable consideration, the adequacy and receipt of which are acknowledged, the parties agree:

1. Releases.

(a) Releasing Party and Released Parties: McCauley, on behalf of herself, her heirs, executors, successors, assigns (collectively "Releasing Party"), does hereby declare the full and complete settlement of any claim of any kind or nature whatsoever that she may now have or may have in the future against Polk County, Iowa, its elected officials, employees, agents, successors and assigns (collectively "Released Parties") arising out her employment with Polk County.

(b) Claims Released. That claims released through this Settlement Agreement, Release, Indemnity and Covenant Not to Sue shall include and extend to any and all claims, demands, causes of action, and/or liabilities of or against the Released Parties, whether known or unknown, that McCauley may have against the Released Parties, including, but not limited to, any action(s) arising under the federal Fair Labor Standards Act, Americans with Disabilities Act of 1990 (and any amendments), Civil Rights Act of 1964 (and any amendments), Iowa Code chapter 216, Iowa Code chapter 85, 85A and 86, Iowa Code chapter 91A, and any other kind of claims; attorney fees; interest and court costs.

(Ex. B, p. 3)

On September 15, 2020, claimant returned to Ms. Poss for counseling. Claimant had issues with relationships. Claimant was assessed as having a generalized anxiety disorder. (JE 4, pp. 85-86)

On September 25, 2020, claimant returned in follow up to Ms. Poss. Claimant indicated difficulty again with relationships. She was assessed as having a generalized anxiety disorder. (JE 4, pp. 87-88)

Claimant returned two more times for counseling with Ms. Poss in October 2020 regarding issues with relationships. Claimant discussed things that triggered her anxiety. She was also worried about getting sick and dying. (JE 4, pp. 89-92)

In November and December claimant had three more counseling sessions with Ms. Poss. Claimant was worried about getting sick and dying. Claimant had stress at work. Claimant wanted to end a relationship with a friend who was "toxic." Claimant was assessed as having a generalized anxiety disorder. (JE 4, pp. 93-98)

In January, February and March of 2021 claimant saw Ms. Poss four more times for counseling. Claimant had relationship issues with a friend and with her ex-husband. Claimant was worried about being alone. Claimant was assessed as having a generalized anxiety disorder. (JE 4, pp. 99-106)

On April 28, 2021, claimant was evaluated by Angela Veenstra, ARNP. Claimant had reflux problems and trouble swallowing. (JE 3, p. 66)

On May 3, 2021, claimant had a telephone visit with Dr. Schneider. Dr. Schneider changed claimant's mental health medications. Claimant had dizziness. Claimant was treated with medication. (JE 3, pp. 69-70)

On July 23, 2021, claimant underwent an esophagogastroduodenoscopy (EGD). (JE 3, pp. 71-72) Records indicate claimant had improved symptoms with reflux following the EGD. (JE 3, pp. 73-74)

In a May 22, 2022, letter written by claimant's counsel, Dr. Schneider opined that the work environment claimant was subject to at Polk County was a substantial contributing factor in the development of claimant's two bleeding duodenal ulcers on or around March 1, 2020. (Ex. 7, p. 22)

Dr. Schneider also opined the work environment at Polk County was a substantial contributing factor regarding claimant's increasing mental-psychological symptoms. He opined that since leaving Polk County, claimant's GI condition had resolved, and her mental and psychologic condition had improved. Dr. Schneider indicated that since claimant had left Polk County, claimant has not had further GI issues. Dr. Schneider recommended claimant continue to see him for medical management of mental health issues. (Ex. 7, p. 23)

In a September 24, 2022 report, Paul Conte, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Dr. Conte opined that claimant had a 9 percent permanent impairment to the body as a whole regarding her GI problems. He opined the stress involved at claimant's work was a substantial causal factor for the development of her ulcer. Dr. Conte opined that the care claimant received was reasonable and necessary. (Ex. 8, pp. 27-28)

Dr. Conte opined that claimant needed continued therapy with omeprazole. Claimant had reached maximal medical improvement (MMI) for her condition as of July 23, 2021.

Dr. Conte opined that claimant's job at Polk County was a significant contributing factor or aggravating factor to increase symptoms of anxiety. Dr. Conte could not opine whether claimant sustained a permanent disability in regard to her mental health condition. He did not place any permanent restrictions on claimant regarding her mental health. (Ex. 8, pp. 29-30)

In an October 13, 2022 letter, Joseph Chen, M.D., gave his opinions of claimant's condition following an IME. Dr. Chen opined that claimant's work environment was only a minor factor leading to her peptic ulcer disease. (Ex. G, p. 61)

Dr. Chen indicated claimant had a long history of personal stressors that could contribute to her peptic ulcer disease. Claimant had a long history of anxiety. He noted that none of the treatment notes for claimant's ulcer or anxiety, following the alleged work injury, indicated claimant's work at Polk County was a factor in causing her ulcer or mental health issues. Based on this, he opined that claimant had several personal medical conditions contributing to the development of her peptic ulcer. These conditions included her prior use of NSAIDs, anxiety disorder, panic attacks, and other

personal stressors. (Ex. G, pp. 60-63) He opined that claimant's work environment was only a minor contributing factor that led to a temporary exacerbation of her ulcer. (Ex. G, pp. 63-64)

Dr. Chen indicated claimant was at MMI as of June 1, 2020. He indicated claimant did not require additional medical treatment. He opined that claimant had no permanent impairment regarding her alleged work injury at Polk County. (Ex. G, pp. 64-65)

CONCLUSION OF LAW

The first issue to be determined is if claimant sustained an injury that arose out of and in the course of employment. Claimant alleges she sustained a mental/mental injury caused by the work-related incident.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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); Dunlavy 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).

Nontraumatically caused mental injuries are compensable under Iowa Code section 85.3(1). Dunlavy v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995).

Mental injury cases that do not include a physical injury are referred to as "mental/mental" injuries. "Mental /mental" injuries require a somewhat higher standard to show causation than physical injury or a "physical/mental" injury. The Iowa Supreme Court has held this difference does not violate equal protection. Asmus v. Waterloo Community School Dist., 722 N.W.2d 653 (Iowa 2006).

Under Dunlavey, mental injuries caused by work-related stress are compensable if, after demonstrating medical causation, the employee shows that the mental injury was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer. Id. at 857.

Both medical and legal causation must be resolved in claimant's favor before an injury arising out of and in the course of the employment can be established. To establish medical causation, the employee must show that the stresses and tensions arising from the work environment are a proximate cause of the employee's mental difficulties. If the medical causation issue is resolved in favor of the employee, legal causation is examined. Legal causation involves a determination of whether the work stresses and tensions the employee experienced, when viewed objectively and not as the employee perceived them, were of greater magnitude than the day-to-day mental stresses workers employed in the same or similar jobs experience routinely regardless of their employer.

The employee has the burden to establish the requisite legal causation. Evidence of stresses experienced by workers with similar jobs employed by a different employer is relevant; evidence of the stresses of other workers employed by the same employer in the same or similar jobs will usually be most persuasive and determinative on the issue. Id. at 858.

Claimant's credible testimony at hearing and at deposition was that the workplace at Polk County was a toxic work environment. Claimant credibly testified the environment in the office at Polk County was dysfunctional. She credibly testified that profanity was routinely used in the workplace. She credibly testified supervisors routinely gossiped and mocked other supervisors and Polk County employees. (Tr., pp. 23-27, 50-51, 68-69)

Claimant's testimony was corroborated by the testimony of Mr. McCoy who indicated that from 2018 to 2022 Polk County offices were subject to ongoing conflict. Mr. McCoy testified that the work environment at Polk County was unprofessional, challenging and a hostile workplace. (Ex. 10, p. 40)

As noted, at the time of hearing, there are at least two lawsuits filed against Polk County regarding the workplace environment. It is true that allegations in both legal actions have yet to be proven. However, this litigation, along with claimant's credible testimony at hearing and in deposition, the deposition of Mr. McCoy, and the exit interview of claimant, all suggest that the office where claimant worked at Polk County, from January of 2020 through May of 2020, was a hostile work environment. Given this record, claimant has carried her burden of proof that the work stressors and tension she experienced at Polk County from January 2020 through June of 2020, were of a greater magnitude than the day-to-day stressors of a worker employed in a similar job. Claimant has carried her burden of proof regarding legal causation.

Regarding medical causation of her bleeding ulcers, three experts have opined on whether or not the stressors and tension at Polk County were the proximate cause of claimant's bleeding ulcers.

Dr. Schneider is claimant's family physician and has treated claimant for an extended period of time. In a letter written by claimant's counsel, Dr. Schneider opined claimant's work environment at Polk County was a substantial contributing factor to the development of claimant's bleeding ulcers. He based this opinion, in part, that while claimant did have bleeding ulcers in 2017, she had not received treatment for her ulcers from June of 2017 until approximately the date of injury. (Ex. 7)

Dr. Conte evaluated claimant once for an IME. Dr. Conte also opined that the stress involved with claimant's work was a substantial causal factor for the development of her bleeding ulcer. (Ex. 8, p. 28)

Dr. Chen saw claimant once for an IME. He opined that "while it is possible that her reportedly 'toxic' work environment may have led to a temporary worsening of her peptic ulcer disease that developed over the initial 7 weeks of her employment with the Polk County Board of Supervisors from January to February of 2020, it is my medical opinion that her work environment was only a minor factor that led to her peptic ulcer disease." (Ex. G, p. 61)

I respect the opinions of Dr. Chen. However, as noted in the record, claimant's last bleeding ulcer had resolved in June of 2017. There is no record claimant had bleeding ulcers until the time of her date of injury. Records indicate claimant worked in a very stressful and toxic work environment. Even Dr. Chen acknowledges that claimant's work environment may have resulted in a temporary worsening of her peptic ulcer disease. Dr. Chen offers little rationale, given the temporal relationship between the toxic work environment and the bleeding ulcers, why the work environment was only a "minor factor" that led to claimant's hospitalization. Given this discrepancy, it is found that Dr. Chen's opinion, that the work environment was only a "minor factor" in causing claimant's bleeding ulcers, is not convincing.

Dr. Schneider and Dr. Conte both opine claimant's bleeding ulcer was caused by her hostile work environment. Dr. Chen's opinion regarding causation is found not convincing. Given this record, claimant has carried her burden of proof regarding medical causation of her ulcers in regard to her work environment.

Regarding the medical causation of claimant's anxiety and depression, Dr. Chen opined that claimant's work environment was only a minor factor in her anxiety. (Ex. G, p. 61)

Dr. Conte opined that claimant's work environment aggravated claimant's anxiety disorder, but could not give an opinion regarding permanent impairment regarding claimant's mental health condition. (Ex. 8, p. 29) Dr. Conte based his opinion of

causation to anxiety, in part, on an understanding that claimant was on an elevated dose of an anxiety medication during her time at Polk County. (Ex. 8, p. 29) There is no evidence in the record that the dosage of claimant's anxiety medication increased during her employment with Polk County. As noted, claimant sought mental health counseling from September 2020 through March of 2021 on approximately 12 occasions. Claimant's work at Polk County is not mentioned in any of these visits. (JE 4) Dr. Conte offers no explanation, if claimant's work at Polk County aggravated her anxiety, why this is not expressed in any mental health treatment records. Given this discrepancy, Dr. Conte's opinions regarding medical causation of claimant's anxiety disorder are found not convincing.

Dr. Schneider, in a letter written by claimant's counsel, also opined that claimant's work environment was a substantial factor in the increase in claimant's mental health problem. (Ex. 7, p. 23) Dr. Schneider's opinion also fails to address the discrepancy between mental health treatment records, found in Exhibit 4, and his causation opinion. For this reason, Dr. Schneider's opinion regarding medical causation of claimant's anxiety disorder, is found not convincing.

Dr. Chen opined that claimant's work environment was at most a minor factor in claimant's anxiety. The causation opinion of Dr. Schneider and Dr. Conte regarding claimant's anxiety and her work environment are found not convincing. Given this record, claimant has failed to carry her burden of proof her mental health condition was causally or materially aggravated by her work at Polk County.

In summation, claimant has carried her burden of proof regarding medical and legal causation her ulcers were materially aggravated or caused by her work at Polk County.

The next issue to be determined is whether claimant's claim for benefits is barred by application of Iowa Code section 85.23.

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Iowa State Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

Claimant said she told Mr. McCoy she had a bleeding ulcer and told him the likelihood was that it was related to her work at Polk County. (Tr., pp. 31, 36-38)

Defendant did not dispute that they were aware of claimant's bleeding ulcer. (Defendant's Post-Hearing Brief, page 16) However, defendant contends that claimant failed to notify Polk County her bleeding ulcers were caused by her work.

Claimant did not file an injury report with Polk County. She did not request medical treatment from Polk County. When she returned to work after her illness, claimant did not contact the Risk Management department of Polk County for further medical treatment. (Ex. E, p. 31, depo p. 40)

Claimant testified that Polk County was unaware in September 2020 that she might have a workers' compensation claim. (Tr., p. 106)

Claimant's supervisor, Ms. Boese, testified that claimant never reported an injury to her. (Ex. I, p. 95, depo p. 25)

Mr. McCoy was asked when claimant told him her ulcers were work related. Mr. McCoy responded, "I don't think I ever received that kind of notice from Miss McCauley." (Ex. 10, p. 42, depo p. 35) Later in his deposition, Mr. McCoy confirmed claimant did not provide him with notice of a work injury regarding her ulcers. (Ex. 10, p. 42, depo p. 36) He reiterated in deposition that claimant never reported a work-related injury to him. (Ex. 10, p. 44, depo p. 41)

Later in his deposition, Mr. McCoy also testified that in March of 2020 claimant alerted him to her bleeding ulcers and that they "... could potentially be related to the stress ..." at Polk County. (Ex. 10, p. 46, depo p. 50)

Claimant testified that when she had her exit interview, she told Mr. Nahas that the toxic work environment at Polk County had made her sick. (Tr., pp. 57-58) Claimant composed and typed the exit interview notes in early June of 2020. There is nothing in the exit interview notes indicating that claimant had a work-related injury regarding her ulcers. There is nothing in the notes indicating that claimant gave notice to Mr. Nahas of a work-related injury regarding her ulcer condition. (Ex. 2)

Claimant did not complete an injury report. She did not notify her supervisor, Ms. Boese, of a work injury. She did not request treatment from Polk County. She did not contact Risk Management at Polk County regarding further medical treatment. At hearing, claimant admitted Polk County was not aware of her work injury as of September 2020. Claimant testified she told Mr. McCoy her ulcers were a work injury caused by stress at Polk County. On at least three occasions, Mr. McCoy testified that claimant never reported a work injury. Mr. McCoy also testified that claimant told him her bleeding ulcers "... could potentially be related to the stress ..." at Polk County. Claimant contends she told Mr. Nahas in her exit interview she had a work-related injury regarding her ulcers. There is nothing in the exit interview notes, which were composed and typed by claimant, indicating that she gave notice of a work injury to Polk County.

Given this record, defendant, Polk County, has carried its burden of proof that claimant failed to give notice of her injury as required under Iowa Code section 85.23.

As claimant failed to give timely notice of her injury under Iowa Code section 85.23, claimant's claim for benefits is barred.

Having found claimant's claim for benefits is barred by application of Iowa Code section 85.23, all other issues are moot.

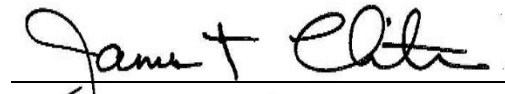
ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from the proceedings.

That both parties shall pay their own costs.

Signed and filed this 17th day of March, 2023.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

MaKayla Augustine (via WCES)

Julie Bussanmas (via WCES)

Meghan Gavin (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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.