

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NATALIE ANWAR,

Claimant,

vs.

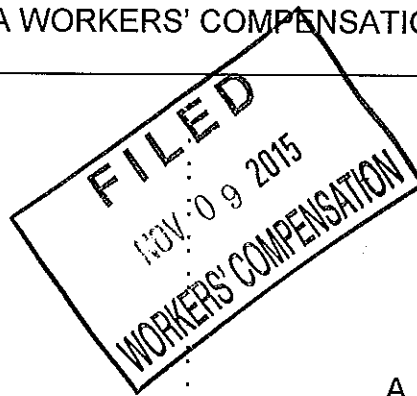
IOWA HOME CARE, LLC,

Employer,

and

ACCIDENT FUND INSURANCE
COMPANY OF AMERICA,

Insurance Carrier,
Defendants.



File No. 5051252.

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Natalie Anwar, the claimant, seeks workers' compensation benefits from defendants, Iowa Home Care, LLC, the alleged employer, and its insurer, Accident Fund Insurance Company of America, as a result of an alleged injury on September 27, 2014. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on September 30, 2015, but the matter was not fully submitted until the receipt of the parties' briefs and arguments on October 6, 2015. Oral testimony and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Claimant's exhibits were received and marked numerically. Defendants' exhibits were received and marked alphabetically. Joint exhibits containing medical treatment records were received and marked with double letters. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Ex 1-2:4."

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. On September 27, 2014, claimant received an injury arising out of and in the course of employment with defendant employer.

2. Claimant is not seeking additional temporary total or healing period benefits.
3. If the injury is found to have caused permanent disability, the type of disability is an industrial disability to the body as a whole.
4. If I award permanent partial disability benefits, they shall begin on September 27, 2014.
5. Claimant's weekly rate of compensation is \$200.05, according to the workers' compensation commissioner's published rate booklet for this injury.

ISSUES

At hearing, the parties submitted the following issues for determination:

- I. The extent of claimant's entitlement to weekly permanent disability benefits; and,
- II. The extent of claimant's entitlement to alternate care.
- III. The extent of claimant's entitlement to reimbursement for an independent medical examination.

FINDINGS OF FACT

In these findings, I will refer to the claimant by her first name, Natalie, and to the defendant employer as Home Care.

Natalie worked for Home Care from July 2014 until a few days after her September 27, 2014 work injury in this case. Home Care is a provider of in-home elderly care. Natalie's duties were to care for elderly persons in their home. She was also required to drive to and from the location of the elder person's home, and Home Care provided a car to Natalie for this purpose. The circumstances surrounding Natalie's termination from Home Care's employment was in dispute. Natalie admitted that she gave notice of her intent to quit Home Care prior to her work injury because her work schedule did not meet her family obligations. However, Natalie contends that she withdrew this after the work injury, but Home Care refused to honor her desire to withdraw the resignation and involuntarily terminated her. For reasons stated below, Natalie is not found credible.

There is no dispute, that Natalie was injured after being rear-ended by another vehicle on September 27, 2014. Natalie contends that she initially did not have any symptoms, but 30 minutes later she began to have neck pain and pain between her shoulders. Initial treatment was provided on the same day as the accident by physicians at a clinic called "Doctors Now." Upon a complaint of constant neck pain at a level of 7/10 since the accident and a diagnosis by William Pettit, D.O. of a sprain with muscle spasms, claimant was provided with muscle relaxer and muscle spasm

medications, and she was taken off work until a re-evaluation scheduled for October 2, 2014. (Ex. AA-1:3)

On October 2, 2014, Natalie was seen by another physician, David Stilley, M.D. Natalie at this time described her neck pain level as 6/10, but now it moved to the mid and lower back. Apparently, representatives of the defendants provided Dr. Stilley with photographs of damage to the car driven by Natalie at the time of the accident. After reviewing these photos, (Ex. A), the doctor opined, "Level of symptoms are not compatible with the very minor paint scratches on the vehicle photos provided to me." (Ex. BB-5) Dr. Stilley then found Natalie's injury to be resolved, and he released her from care and to return to work without restrictions. (Id.)

Since October 2, 2015, Natalie has reported continuous neck, mid back and low back pain since her motor vehicle accident to other physicians and sought treatment for these complaints. (Ex. CC, DD)

Defendants have denied further treatment based on the views of Dr. Stilley. (Ex. 4-4)

At the request of her attorney, Natalie was evaluated by Irving Wolfe, D.O. in July 2015. Dr. Wolfe's letterhead describes him as an "Adult Neurologist and "Medical Acupuncturist." Dr. Wolfe reports that he reviewed the records of Natalie's treatments since the accident and that Natalie told him of her constant neck, mid-back and low back pain since the accident. The doctor causally related Natalie's current complaints to the motor vehicle accident on September 27, 2014. Dr. Wolfe also provided a permanent impairment rating and recommended permanent restrictions. He also recommends a course of physical therapy and continued medications. (Ex. 5) Most notably is the doctor's report that Natalie told him that she had none of her current symptoms prior to the accident. (Ex. 5-8) This history is consistent with her answer to an interrogatory submitted to defendants prior to hearing in which she did not set forth any treatment for neck or back pain in the ten years prior to her injury on September 27, 2014. (Ex. B-3)

The problem is that Natalie was treated for constant pain, weakness, a lost range of motion in her neck, mid back, back, arms and legs by Christian Abrams, D.C. on May 8, 2014. At that time Natalie told Dr. Abrams that these problems began two years earlier after a fall in February 2012 and was previously treated for these problems a year earlier. (Ex. AA-1:11) Dr. Abrams stated as follows for a prognosis:

Due to the patient's current amount of deterioration of their [sic] state of health and condition upon examination, at this time I expect a partial recovery of the patient's symptoms and their [sic] functional deficits. Because of this I expect the case to possibly extend longer than usual due to a slower than usual recovery prior to get to MMI.

(Ex. AA-8)

At hearing, Natalie asserts that she did not seek any further treatment after she saw Dr. Abrams until after the work injury and that the work injury increased her prior symptoms. However, Natalie did not provide a good reason for withholding this past treatment from defendants or her own IME physician, Dr. Wolfe.

Defendants provided the records of Dr. Abram's treatment and the views of Dr. Wolfe to Dr. Stillely who opined in September 2015 that his original views are unchanged. (Ex. BB-10)

Natalie asserts that the photos of the car reviewed by Dr. Stillely are not an accurate representation of the damage. She states that the damage was worse and the photos were taken only after the person driving the other car pushed a piece of bent fender back in place. I find this difficult to believe, even if a person could by hand return a piece of body metal back to its original position, there would be evidence of a bent fender in the photos which depict the location of the collision. There is no such evidence of a bent fender in the photos. Only paint scratches are present.

While I have difficulty with a doctor interpreting accident photos to determine causation alone, Natalie's case for permanency rests on the views of Dr. Wolfe. Unfortunately, Dr. Wolfe was not told of her prior neck and back complaints four months before the injury and the history she provided at that time of continuous problems since a fall in 2012. I cannot give any weight to the causation views of a physician who has not been given an accurate medical history.

I am unable to find that the work injury of September 27, 2014 is a cause of permanent impairment, permanent disability or permanent work activity restrictions.

I am unable to find that any of her current neck and back symptoms are related to the September 27, 2014 work injury.

CONCLUSIONS OF LAW

I. 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).

A treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404.408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

In this case, claimant's case for permanent disability benefits was based on the views of Dr. Wolfe. However, that doctor was not given an accurate history of prior complaints and treatment of a similar nature only a few months prior to the injury in this case. Therefore, claimant's case for permanent industrial disability benefits pursuant to Iowa Code section 85.34(2) must fail.

II. Claimant's case for alternate care rests on the causal connection of her current complaints to the work injury. I was unable to find such a connection. Her case for alternate care pursuant to Iowa Code section 85.27 must also fail.

III. Claimant seeks reimbursement for an independent medical examination pursuant to Iowa Code section 85.39. The occurrence of a work injury has been stipulated. There was a prior evaluation of permanent disability by the treating physician in this case by opining that claimant has fully recovered and can return to full-duty work. Therefore, claimant is entitled to reimbursement of the fees of Dr. Wolfe for his independent medical evaluation of her disability.

I find the fee of Dr. Wolfe of \$2,100.00 to be reasonable. No contrary evidence has been submitted.

ORDER

1. Claimant shall take nothing further in disability or medical benefits from these proceedings.

2. Defendants shall reimburse claimant the sum of two thousand one hundred and 00/100 dollars (\$2,100.00) for the cost of Dr. Wolfe's IME.

3. Claimant shall pay the balance of the costs of this proceeding.

Signed and filed this 9th day of November, 2015.



LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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LPW/sam

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.