BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMMY GANOE, Claimant, vs. CARE INITIATIVES d/b/a OAKWOOD NURSING & REHAB CENTER Self-Insured Employer, Defendant.	:	File No. 5042249 A R B I T R A T I O N D E C I S I O N Head Note No.: 1100, 1803

STATEMENT OF THE CASE

Claimant, Tammy Ganoe, has filed a petition in arbitration and seeks workers' compensation benefits from Care Initiatives d/b/a Oakwood Nursing & Rehab Center, self-insured employer, defendant. Deputy Iowa Workers' Compensation Commissioner Stan McElderry heard this matter in Des Moines, Iowa.

ISSUES

1. Whether the injury arising out of and in the course of her employment on May 24, 2012, caused temporary disability;

2. The extent of permanent disability, if any;

3. Scheduled versus industrial; and

4. Gross earnings.

FINDINGS OF FACT

The claimant was 47 years old at the time of hearing. She is not a high school graduate, but has a GED.

On May 24, 2012, while working at Care Initiatives d/b/a Oakwood Nursing and Rehab Center, the claimant reported that she tripped on a patient alarm cord and had fallen. A viewing of the cord (Exhibit G) shows that one could trip over the cord, but not in the manner described by the claimant, as it is not long enough to have been as far into the patient's room as claimant described. That in itself is not enough to prove no

accident resulting in injury occurred, but it is a strike. The claimant, at the time of reporting the incident to her employer, did not report a loss of consciousness with a loss of memory of the incident, or that her head was leaning against a chest of drawers after the fall. (Transcript page 85) All such claims she made were made later. (Ex. M1). The claimant also did not report back pain initially, (Report to employer, also Ex. J1), but that would not be unusual, as back pain can take a while to manifest. (Testimony of Dr. Bahls; Ex. 6, p. 2)

On May 24, 2012, the claimant reported to Gerald Haas, D.O., that she had pain in her distal hamstrings above her left knee. (Ex. J1) On May 25, 2012, Alex Curiel, M.D., notes the incident as "female who yesterday fell and she hurt her knee. She was going to help a resident when she fell on her knee. Says it was just a quick bump down and she came up. She said her knee was not hurting or her low back, but then it started hurting after she saw Dr. Haas." (Ex. J3) On June 12, 2012, the claimant was in a physical altercation with her boyfriend. She received some physical injury or injuries including the left wrist, and reported the incident to Dr. Haas on June 18, 2012. (Ex. J8) Dr. Haas last saw the claimant on July 24, 2012. Dr. Haas transferred the claimant because he could not explain or treat the work injury. (Ex. J12) Dr. Haas, on February 1, 2015, provided an opinion that he would have no opinion as to the claimant's current condition. (Ex. 6, pp. 1-5)

The claimant saw Jon Yankey, M.D., on July 31, 2012. (Ex. L2) On August 22, 2012, the claimant first saw Donna Bahls, M.D., for an evaluation. (Ex. M) Dr. Bahls prescribed some medications, but opined that:

> . . . it is my opinion that her current symptoms as presented today are not consistent with her original work incident report or her original symptoms reported to Dr. Haas on the day of the incident. Her report of the incident to myself today is not consistent with her written report of her accident the day of the incident. Her symptoms have evolved to include multiple areas which were not originally injured in the incident.

(Ex. M5)

Dr. Bahls testified at the hearing as well. Her testimony was convincing that the claimant's current complaints are inconsistent with the original reported injury, and that her version of the incident has also changed.

On September 5, 2012, the claimant was seen by Cassie Parrish, ARNP. (Ex. W2) ARNP Parrish believed that part of the claimant's reported pain could be psychosomatic. (Ex. W4) The claimant saw her long time family doctor, David Fraser, M.D., on September 12, 2012. (Ex. W5) Dr. Fraser recommended a neurosurgical evaluation. The claimant was seen by Chandan Reddy, M.D., on October 22, 2012.

(Ex. N1) Dr. Reddy believed that the claimant was in severe pain but did not believe that the condition was a candidate for surgery. (Ex. N2)

Dr. Fraser referred the claimant to Jeffery Pederson, D.O., who saw the claimant on December 12, 2012. (Ex. O1) Dr. Pederson recommended pain management and pain psychology consults. (Ex. O4) Pain management assessment occurred on December 14, 2012, with Dana Simon, M.D. (Ex. P1) Dr. Simon prescribed medication and did not set up a follow-up appointment. The pain psychological exam occurred with Sam Graham, Ph.D., on January 10, 2013. (Ex. Q1) Dr. Graham offered outpatient psychological pain management, but the claimant did not return to Dr. Graham. (Ex. Q3)

Dr. Fraser then referred the claimant for additional pain management and neurosurgical evaluations. The pain management evaluation was with Esther Benedetti, M.D., on April 25, 2013. (Ex. S1) Suggestions included muscle relaxers, a TENS unit and pain psychology. (Ex. S2) No follow-up with Dr. Benedetti was scheduled. Mary Hlavin, M.D., provided the neurosurgical evaluation on April 24, 2013. Dr. Hlavin noted that lower extremity pain and hyperreflexia were discordant to the upper extremities. (Ex. R2)

Dr. Fraser prescribed a TENS unit, medications, and continued physical therapy. By August 5, 2013, the claimant had reported that none were helping. (Ex. W12) Dr. Fraser then referred the claimant to David Hatfield, M.D., an orthopedic surgeon. Dr. Hatfield opined that the MRI showed some L4-5 changes but that he did not recommend surgery. (Ex. 12, p. 2) On February 19, 2014, Dr. Fraser wrote, "Tammy Ganoe has been a patient of mine for several years. Due to Tammy (sic) condition she is disabled and unable to work." (Ex. 7, p. 15) On March 11, 2015, Dr. Fraser opined that the claimant did not have back pain before May 24, 2012, and has consistently complained of it since. (Ex. 7, p. 26) He also believes that the claimant is being truthful. (Ex. 7, p. 26)

The claimant had two independent medical evaluations (IME) with Sunil Bansal, M.D. The first Dr. Bansal IME occurred on March 22, 2013. (Ex. 1) Dr. Bansal opined a 10% permanent body as a whole impairment. (Ex. 1, p. 14) He opined a 35 pound lifting restriction, no frequent bending, squatting, climbing, twisting and sit/stand/walk as tolerated. (Ex. 1, p. 14) Dr. Bansal performed the second IME on January 13, 2015. (Ex. 2) He opined that the claimant's condition had worsened since his first evaluation and opined a 10% permanent body as a whole impairment. (Ex. 2, p. 8) He also opined restrictions of 15 pounds maximum lift, 5 pounds frequently, and no frequent bending, squatting, climbing, twisting, and sitting, standing, walking as tolerated. (Ex. 2, p. 10) In both IMEs he connected the current complaints to the work incident of May 24, 2012. (Ex. 1 and 2) The restrictions are based on claimant's subjective complaints and not any objective findings.

The claimant met with Kent Jayne, vocational expert, on February 14, 2015. (Ex. 4) Kent Jayne opined that the claimant is unlikely to be able to find work in the competitive work market. (Ex. 4, p. 20) Yet, on the day of the visit with Mr. Jayne, the claimant drove from Moravia, Iowa, to North Liberty, Iowa (between Iowa City and Cedar Rapids), met with Mr. Jayne for approximately 3-1/2 hours and then drove to Des Moines to pick up her husband at the hospital. She was then in an automobile accident in Des Moines for which she was ticketed. She admitted to at least 4-5 hours of driving on that date. First this would violate the restrictions of Dr. Bansal. It also conflicts with claimant's report to doctors and testimony about sitting more than 5 to 15 minutes causing a great deal of pain. She led Mr. Jayne to believe that her mother was driving on the date of the meeting. (Ex. 4, p.11) She even told Mr. Jayne in their meeting that getting in and out of a car, driving a car, and opening a car door caused significant pain. (Ex. 4, p. 7) She told Mr. Jayne that she can only concentrate on thinking tasks for 10-15 minutes and physical tasks for 10-15 minutes. (Ex. 4, p. 8)

There are just too many problems with the claimant's report of the work incident, varying reports to doctors, lack of objective findings, and general lack of credibility, including contradictions in testimony, to believe the claimant. The incident, if one occurred, did not occur as the claimant testified. The claimant clearly has more physical abilities than she claims. She cannot establish a work injury causing temporary or permanent disability on these facts.

REASONING AND CONCLUSIONS OF LAW);

The first issue is the whether there was a compensable work injury, and if so, the extent of the claimant's entitlement to permanent partial disability.

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. of App. P. 6.14(6).

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. Ciha v. Quaker Oats Co., 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 Electric 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. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 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. Cedar Rapids Community School v. Pease, 807 N.W.2d 839, 845 (Iowa 2011). 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). The finder of fact, must determine the credibility of the witnesses, weigh the evidence, and decide the facts at issue in a case. See Arndt v. City of LeClair, 728 N.W.2d 389, 394-95 (Iowa 2007). One factor the commissioner considers is whether an expert's opinion is based upon an incomplete medical history. Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)

No evidence in the record is convincing enough to establish that it is probable that the claimant suffered a compensable injury at work. Her continuing complaints are subjective without objective findings. Her story of the mechanism of injury is at best improbable. Her description of the work injury has changed and gotten more specific over time. All other issues are therefore moot.

ORDER

IT IS THEREFORE ORDERED:

That the claimant shall take nothing.

Defendants shall receive credit for all benefits previously paid.

Costs are taxed to the claimant pursuant to 876 IAC 4.33.

Defendants shall file subsequent reports of injury as required by the agency.

Signed and filed this 24th day of November, 2015.

STAN R. MCELDERRY
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.