BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ISABEL SANCHEZ CARRERA, Claimant, vs. ANNETT HOLDINGS, INC. d/b/a BAYMONT INN & SUITES, Employer, Self-Insured, Defendant.	: : : : : : : : : :	FILED NOV 20 2015 WORKERS' COMPENSATION File No. 5042836 APPEAL DECISION Head Note Nos.: 1803; 3701

Defendant Annett Holdings, Inc., d/b/a Baymont Inn & Suites, self-insured employer, appeals from an arbitration decision filed on November 13, 2014. The case was heard on February 18, 2014, and it was considered fully submitted on April 5, 2014, in front of the deputy workers' compensation commissioner.

In the arbitration decision, the deputy commissioner found claimant Isabel Sanchez Carrera sustained a compensable injury on May 3, 2012, which resulted in permanent impairment. The deputy commissioner also found claimant was entitled to an award of 50 percent industrial disability.

Defendant asserts on appeal that the deputy commissioner erred in determining claimant sustained permanent injury to her back. Defendant also asserts the deputy commissioner erred in determining claimant was entitled to an award of 50 percent industrial disability. Claimant asserts the decision of the deputy commissioner should be affirmed.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reverse the determination of the deputy commissioner and I find claimant has failed to carry her burden of proof to show she sustained an injury arising out of and in the course of her employment with defendant.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of November 13, 2014, filed in this matter that relate to issues properly raised on intra-agency appeal, that are not otherwise modified, with the following additional analysis:

ISSUES ON APPEAL

1. Did the deputy commissioner err in finding claimant sustained a permanent compensable injury?

2. Did the deputy commissioner err in finding claimant sustained 50 percent industrial disability as a result of the work injury?

FINDINGS OF FACT

Claimant alleges she sustained injury to her back while working for defendant Annett Holdings, Inc. d/b/a Baymont Inn & Suites. Claimant's medical history and treatment are set forth in the arbitration decision and need not be repeated here.

The first issue to be addressed on appeal is whether Ms. Sanchez sustained a compensable injury. A review of the expert opinions in this matter reveals claimant has failed to carry her burden of proof to show she sustained a compensable injury in this case.

Claimant treated with Jose Angel, M.D., at Mercy Jordan Creek Internal Medicine. The evidentiary record contains treatment notes from October 12, 2012, through July 15, 2013. On January 4, 2013, Dr. Angel signed a letter that contained a series of questions posed by claimant's counsel. Dr. Angel handwrote "yes" to all four questions. In doing so, Dr. Angel indicated claimant's back injury was chronic myofascial pain disorder which was at least in part caused by the cumulative effect of her work. Dr. Angel further indicated claimant did require physical restrictions due to the work-related back injury. Additionally, the doctor indicated claimant required additional care. (Exhibit 5, pages 124-27) Dr. Angel also signed a June 28, 2013, letter penned by claimant's counsel. Unfortunately, both letters were written by claimant's counsel and are not in the doctor's own words. (Ex. 5, pp. 175-78) The letters also lack Dr. Angel's rationale for his opinions. Furthermore, it appears Dr. Angel was not provided with all of the information in this matter. For example, it does not appear he was provided Charles Mooney, M.D.'s supplemental report or was given the opportunity to view the surveillance video. Additionally, Dr. Angel is claimant's primary care provider, not a specialist. For these reasons, I do not give Dr. Angel's opinions much, if any, weight.

Claimant was evaluated by several medical providers who offered their opinions in this case. On September 7, 2012, at the request of defendant, claimant was seen by Charles Mooney, M.D. for an independent medical examination. Dr. Mooney reviewed claimant's treatment records as part of his evaluation. A professional interpreter was utilized during Dr. Mooney's exam of the patient. Dr. Mooney opined that the cervical and thoracic components of claimant's complaints were related to myofascial pain and not directly related to any distinct activity of

injury. However, before Dr. Mooney felt comfortable rendering an opinion regarding claimant's lower back complaints he felt additional investigation was required. Specifically, he recommended x-rays of the lumbar spine and sacrum as well as an MRI of the lumbar spine so he could provide a more accurate diagnosis. (Ex. 3, pp. 100-106) On October 16, 2012, after Dr. Mooney reviewed lumbar x-rays and the MRI, he issued a letter to defense counsel. He noted that the images were normal. He opined that the complaints of back pain were predominately myofascial and unrelated to injury. Dr. Mooney felt claimant's symptoms of chronic myofascial pain were most consistent with an underlying medical condition such as fibromyalgia. (Ex. 3, p. 107) Dr. Mooney also stated:

> It is my opinion that although work activities including the reported date of injury of 05/03/12 may have caused intermittent exacerbation of her complaints, however, there is no evidence that she suffered any injury as it relates to her work activities and therefore her current complaints are not considered causally related to work injury or work activities.

(Ex. 3, p. 107)

On February 13, 2014, Dr. Mooney sent a report to defense counsel. He indicated he had reviewed the surveillance footage and Dr. Bansal's report. Dr. Mooney stated, "It is my opinion that the activities demonstrated in the surveillance video would exclude any significant spinal or myofascial pathology which would inhibit Ms. Sanchez Carrera's ability to perform activities of daily living, including those cited by Dr. Bansal." (Ex. B, p. 11) Dr. Mooney further stated it was his opinion claimant did not require any restrictions on her activity. (Id.)

At her attorney's request, claimant underwent an IME with Sunil Bansal, M.D., on August 30, 2013. A professional interpreter was present for the IME. In addition to the examination, Dr. Bansal also reviewed claimant's medical records. Dr. Bansal felt claimant reached MMI at her last appointment with Dr. Angel on May 20, 2013. Dr. Bansal opined that claimant's "constellation of complaints fit a pattern sometimes seen in the workplace known as 'overuse syndrome.'" (Ex. 6, p. 191) He noted that his exam did not indicate a diagnosis of myofascial pain syndrome. Dr. Bansal assigned claimant five percent impairment of her whole body. Based on Table 15-5 of the AMA Guides, Dr. Bansal felt claimant qualified for a DRE category II impairment. Dr. Bansal based this opinion on claimant having palpable tenderness, decreased range of motion, and spasms. Dr. Bansal also noted claimant had radicular complaints and multiple trigger points. Dr. Bansal restricted claimant to no lifting greater than 20 pounds occasionally, 5 pounds frequently to reduce the chances of further damage to the back and to keep pain levels in check. Additionally, Dr. Bansal restricted claimant from frequent bending, twisting, squatting, and kneeling. On December 24, 2013, after Dr. Bansal had an opportunity to review

additional records, including Dr. Boarini's IME report, he issued a supplemental report. Dr. Bansal's supplemental report reaffirmed his prior opinions. (Ex. 6)

Dr. Bansal is the only medical expert in this case who has assigned permanent impairment to claimant as a result of her work. Defendant argues that Dr. Bansal's opinions are flawed for several reasons. Defendant contends Dr. Bansal used the wrong table in the AMA Guides. Dr. Bansal's report focuses on low back pain complaints but when he performed his rating he utilized Table 15-5 "Criteria for Rating Impairment Due to Cervical Disorders." AMA Guides to the Evaluation of Permanent Impairment, 5th ed., p. 392. Defendant notes that the incorrect reference to Table 15-5 could be a typographical error and perhaps Dr. Bansal meant to refer to Table 15-3, "Criteria for Rating Impairment Due to Lumbar Spine Injury." AMA Guides to the Evaluation of Permanent Impairment, 5th ed., p. 384. However, even if it is a typographical error, Dr. Bansal's rating still is not reliable because Table 15-3 requires a traumatic injury at work. Yet, in this case, Dr. Bansal opined that claimant suffered overuse syndrome which is not a traumatic injury. Thus, defendant argues that Dr. Bansal's permanent impairment rating, under both Table 15-5 or 15-3, is incorrect and should not be adopted by the agency.

Furthermore, defendant argues that Dr. Bansal's assessment of claimant's low back complaints is not consistent with her treatment records. Dr. Angel, who saw claimant over a period of several months, noted that her pain was greater on the left than the right side and it was also migratory to the mid-right back and upper left shoulder. (Ex. 5, p. 165) However, Dr. Bansal's report indicates claimant's pain was primarily on the right with numbness and tingling down both legs, down to her feet and toes. (Ex. 6, p. 189) Additionally, Dr. Bansal indicates claimant's pain was a 5 to 7. However, the therapy notes indicate claimant's pain was generally at a 1-2 level, and at most was a level 3. (Ex. 5, pp. 141-56) Because Dr. Bansal's opinions and findings are not consistent with the record as a whole and are not well supported, I find his reports and opinions to be unpersuasive.

At the request of defense counsel, claimant was also seen for an IME by David Boarini, M.D., on November 27, 2013. Dr. Boarini is certified by the American Board of Neurological Surgery and the National Board of Medical Examiners. (Ex. A, pp. 4-5) Dr. Boarini felt claimant had chronic myofascial axial pain. He stated, "While anything can aggravate this temporarily, the cause of this problem is not the patient's work that occurred on or about May 2012." Dr. Boarini opined that claimant reached MMI and did not have any indications of permanent impairment. (Ex. 7, pp. 204-05; Ex. A, pp. 1-2) He felt it may be appropriate to restrict claimant from heavy work but stated that this restriction would not be related to anything that occurred in May 2012. (Id.) Dr. Boarini issued a supplemental letter to defense counsel after he had the chance to review Dr. Bansal's critique of his report. Dr. Boarini stood by his original opinions. (Ex. A, p. 3)

Given the lack of objective findings and the lack of reliable expert medical opinions to support claimant's contentions, I find claimant has failed to show by a preponderance of the evidence that she sustained permanent injury as the result of her work for the defendant.

Because claimant has failed to carry her burden of proof to show that she sustained a compensable injury all other issues are moot.

CONCLUSIONS OF LAW

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. 6.14(6).

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).

Based on the above findings, I conclude claimant failed to carry her burden of proof to show she sustained a permanent compensable injury.

ORDER

IT IS THEREFORE ORDERED that the proposed arbitration decision of November 13, 2014, is reversed and claimant shall take nothing in this matter.

Claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 20th day of November, 2015.

Joseph S. Cortese II

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WORKERS' COMPENSATION
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