BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTINE FUNK, Claimant, vs. FAMILY DOLLAR, Employer, and INDEMNITY INSURANCE COMPANY OF AMERICA, Insurance Carrier, Defendants.	File No. 5065352 ARBITRATION DECISION Head Note Nos.: 1803, 2501

STATEMENT OF THE CASE

Claimant, Christine Funk, filed a petition in arbitration seeking workers' compensation benefits from Family Dollar, employer and Indemnity Insurance Company of America, insurer, both as defendants. This matter was heard in Des Moines, Iowa on September 9, 2019.

The record in this case consists of Joint Exhibits 1 – 8, Claimant's Exhibits 1-4, Defendants' Exhibits A through C, 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. The extent of claimant's entitlement to permanent partial disability benefits.
2. Whether there is a causal connection between the injury and the claimed medical expenses.

FINDINGS OF FACT

Claimant was 52 years old at the time of hearing. Claimant began working for Family Dollar in 1999. Claimant has worked for a number of different Family Dollar stores in the Midwest. Claimant worked as a manager for Family Dollar for 15 years. Claimant was a manager at the time of injury.

Claimant's prior medical history is relevant. Claimant had a left leg injury on a bike in 1978. Claimant had a work injury to her right foot. Claimant had no permanent impairment or permanent restrictions from either injury.

On May 8, 2016 claimant fell over a chair at work. Claimant fell on her left knee. Claimant testified she felt immediate pain from the injury. Claimant was evaluated at Jenny Edmundson Emergency Department. Claimant was assessed as having a left knee contusion. Claimant was told to follow up with her workers' compensation insurer. (Joint Exhibit 1)

On May 12, 2016 claimant was evaluated by Art West, M.D. Claimant was initially assessed as having a contusion of the knee and treated with conservative care. (Jt. Ex. 2, pp. 8-11)

Claimant had follow up appointments with Dr. West in May and June of 2016. (Jt. Ex. 2, pp. 12-25) Claimant testified she was ultimately sent home from work on May 24, 2016, as her employer could not meet her restrictions from Dr. West. (Jt. Ex. 2, pp. 15, 21)

Claimant underwent an MRI of the left knee on June 3, 2016. Claimant was assessed as having a fracture of the patella on the left. (Jt. Ex. 3, p. 26) Claimant returned to Dr. West on June 6, 2016. She was assessed as having a nondisplaced fracture of the patella on the left and referred to an orthopedic specialist. (Jt. Ex. 2, pp. 20-25)

On June 14, 2016 claimant was evaluated by Kimberly, Turman, M.D., an orthopedic surgeon. Claimant had popping and swelling on the left knee. Dr. Turman considered the fracture to be healed, although still symptomatic. Claimant was kept off work. (Jt. Ex. 4, pp. 30-31)

Claimant returned to Dr. Turman on August 11, 2016. Claimant had significant pain in the left knee. Claimant was limping with an antalgic gait. Claimant was returned to physical therapy. (Jt. Ex. 4, p. 32)

Claimant returned to Dr. Turman in September, October and December of 2016 with significant symptoms in the left knee. (Jt. Ex. 4, pp. 33-35) On December 1, 2016 Dr. Turman returned claimant to work with restrictions of no kneeling or squatting, and to be allowed to sit as necessary. Claimant was prescribed work hardening. (Jt. Ex. 4, p. 35)

Claimant testified she retired from Family Dollar on or about December 17, 2016, as she could no longer do her work as a manager. Claimant testified she applied for a job with a company called One Distribution. Claimant testified she was not given a job at this company because she was unable to pass a physical due to her knee.

Claimant returned to Dr. Turman on January 12, 2017 with continued significant symptoms. Claimant was recommended to have a functional capacity evaluation (FCE). Claimant's restrictions were continued. (Jt. Ex. 4, p. 36)

On February 9, 2017 claimant underwent an FCE. Claimant was found to give valid effort. Claimant was found to be able to work in the medium demand level category of work. Claimant was limited to no kneeling or crawling on the left and only occasionally squatting or use of stairs. (Jt. Ex. 5, pp. 44-48)

In an undated letter, following the FCE, Dr. Turman found claimant was at maximum medical improvement (MMI) as of February 16, 2017. Dr. Turman opined claimant had a 7 percent permanent impairment to her lower extremity. She had permanent restrictions based upon her FCE. (Jt. Ex. 4, p. 37) Dr. Turman also limited claimant to occasionally carrying 30-40 pounds and frequently carrying 20 pounds. Claimant was released from care as of February 16, 2017. (Jt. Ex. 4, p. 38)

Claimant testified she had continued left knee pain. She said she returned to Dr. Turman in July of 2017 to see if she could offer relief for the pain.

On July 18, 2017 claimant returned to Dr. Turman with complaints of continued left knee pain. Claimant had early degenerative changes. Claimant was given an injection in the left knee. Claimant's permanent restrictions were kept as they were in February of 2017. (Jt. Ex. 4, p. 39)

In July of 2017 claimant started working at a grocery store called Family Fare. Claimant said she got the job, as she knows a friend who works with Family Fare. Claimant works the night shift. Claimant said she is able to do the job at Family Fare, as she is allowed to use a grocery cart to lean on for support while performing job duties. Claimant says she is accommodated by the use of the grocery cart. Claimant earns approximately $10.30 an hour at Family Fare. Claimant says she uses a grocery cart approximately seven hours in an eight-hour shift.

Claimant returned in follow up with Dr. Turman on August 23, 2017. Claimant had no significant relief from the injection. Claimant was wearing a knee brace. Claimant was assessed as having right knee patellofemoral pain with stiffness and early arthritis. Dr. Turman kept claimant on her current work restrictions. (Jt. Ex. 4, p. 41)

In a November 15, 2017 note Dr. Turman indicated she still believed claimant had a 7 percent permanent impairment to the lower extremity and that claimant was at MMI as of February 16, 2017. (Jt. Ex. 4, p. 42)

Claimant testified Dr. Turman never took measurements of her legs when examining her. She testified Dr. Turman told her she had no further treatment for claimant. She said Dr. Turman referred her to a pain management specialist. (Jt. Ex. 4, p. 43)

On December 6, 2017 claimant was seen by Wesley Smeal, M.D. Dr. Smeal specializes in physical medicine and rehabilitation. Claimant was prescribed medication and told to get the treatment of Dr. Smeal approved by workers' compensation. (Jt. Ex. 6, pp. 62-65)

Claimant continued to treat with Dr. Smeal from January through August of 2018. During that time claimant was prescribed medications and a TENS unit. During that time claimant continued to use a knee brace on her left knee. Claimant was assessed as having chronic knee pain and abnormality of gait. (Jt. Ex. 6, pp. 71, 80, 92) Claimant testified the TENS unit did not provide relief of symptoms. (Jt. Ex. 6, pp. 71-93)

On August 16, 2018 claimant was evaluated by Christopher Criscuolo, M.D. Claimant had reactions to Lyrica and nortriptyline. Because claimant had reactions to these medications, Dr. Criscuolo had few options to provide pain relief. (Jt. Ex. 7)

On December 17, 2018 claimant was evaluated by James Devney, D.O. Dr. Devney indicated he examined claimant. He opined claimant had symptom magnification. He offered no additional treatment. (Jt. Ex. 8, pp. 96-98)

Claimant testified Dr. Devney did not examine her left leg and that Dr. Devney did not take any measurements of claimant's knee. She said Dr. Devney did have claimant walk.

Claimant underwent an IME on January 14, 2019 with Neal Wachholtz, PT. Claimant was allegedly found to have given invalid effort in the FCE. Physical Therapist Wachholtz recommended claimant's permanent restrictions continue to be used. (Jt. Ex. 5, pp. 52-58)

In an April 14, 2019 note Dr. Devney found claimant was at MMI as of December 17, 2018. He found claimant had nonspecific left knee pain and symptom magnification. He agreed claimant had a 7 percent permanent impairment to the lower extremity. (Jt. Ex. A, pp. 100-101)

In an April 18, 2019 report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant continued to have knee pain and swelling. Claimant had difficulty flexing her knee. (Ex. 1, p. 12)

Dr. Bansal found claimant had a 37 percent permanent impairment to the lower extremity. He recommended claimant would benefit from steroid injections and other injections. (Ex. 1, pp. 12-15)

Claimant testified Dr. Bansal measured and tested her knee. She testified Dr. Bansal watched her walk. She testified Dr. Bansal evaluated and tested her for approximately 40 minutes.

Claimant limped at hearing. Claimant uses a brace on her left knee. Claimant testified she needs to replace her brace every several months.

Claimant said she is limited at work due to her knee and that coworkers accommodate her lifting on the job. Claimant said she takes a lot of over-the-counter medication for pain. She testified she could not return to work at Family Dollar given her current pain and restrictions.

CONCLUSIONS OF LAW

The first issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Claimant had a traumatic injury to her left knee in May of 2016. The injury was later assessed as a fractured patella. The record indicates the fracture healed. The record also indicates claimant has continued problems with the knee injury. Claimant has permanent restrictions allowing her to only occasionally carry 30-40 pounds. Claimant limped at hearing. Claimant's credible testimony is she would not be able to return to work at Family Dollar given her current pain and restrictions. At the time of hearing claimant worked the evening shift at a grocery store. Claimant uses a grocery cart for seven of the eight hours at work to help her with her left knee.

Three experts have opined regarding the permanent impairment of claimant's injury.

Dr. Turman found claimant had a 7 percent permanent impairment to the lower extremity. Claimant credibly testified Dr. Turman did not measure her left leg. There is not a great deal of detail in Dr. Turman's rating. I have no idea from the opinion found

at Joint Exhibit 4, pages 37 through 42 how Dr. Turman arrived at claimant's rating for permanent impairment. Given these problems with her rating, it is found Dr. Turman's opinion regarding permanent impairment is not convincing.

Dr. Devney agreed with Dr. Turman's rating. Dr. Devney also gave no rationale as to why he agreed with the 7 percent rating. Dr. Devney opined claimant had symptom magnification. A review of prior decisions with this agency indicates it is not uncommon for Dr. Devney to assess claimants with symptom magnification. See Bomer v. Glenwood Resource Center, File No. 5047508/5047509 (Arb. Dec., April 12, 2016); Coltrin v. Bethany Lutheran Home, File No. 5036914 (Arb. Dec., May 18, 2012); Kool v. Brouillette Body Shop, File No. 5044327 (Arb. Dec., June 27, 2017); Altschaffl v. Three Rivers Aluminum Window Co., File No. 5014841 (Arb. Dec., Nov. 16, 2006); Violeta v. Anderson Painting, Inc., File No. 5014574 (Arb. Dec., Oct. 30, 2007; Hernandez v. Natural Milk Production, LLP, File No. 5028660 (Arb. Dec., May 11, 2010).

Claimant credibly testified that Dr. Devney did not examine or measure her knee. Based upon this record, it is found the opinions of Dr. Devney regarding permanent impairment are found not convincing.

Dr. Bansal evaluated claimant once for an IME. Dr. Bansal found claimant had a 37 percent permanent impairment to the lower extremity. (Ex. 1) Dr. Bansal's opinions regarding permanent impairment are far more detailed than those of Dr. Turman and Dr. Devney. I am able to follow how he arrived at his findings of permanent impairment using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Ex. 1, p. 15) Given these facts, it is found Dr. Bansal's opinions regarding permanent impairment are found to be more convincing than those of Dr. Turman and Dr. Devney. Claimant is due 81.4 weeks of permanent partial disability benefits (220 weeks x 37%).

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Records indicate claimant went to Jenny Edmundson Hospital due to a rash on the left knee and lower leg. Records suggest the rash may be caused by a knee brace or topical treatments claimant received regarding her knee pain. Given this record, defendants are liable for the May 28, 2018 charges associated with the visit to the emergency room. (Jt. Ex. 6, p. 81)

ORDER

Therefore, it is ordered:

That defendants shall pay claimant eighty-one point four (81.4) weeks of permanent partial disability benefits at the rate of six hundred forty-four and 00/100 dollars ($644.00) per week commencing on October 17, 2017.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

That defendants shall pay medical charges found at Claimant's Exhibit 2.

That defendants shall receive credit for benefits previously paid.

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 14th day of November, 2019.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jacob Peters (via WCES)
Kelsey Paumer (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.