

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KATHERYN HARRINGTON,	:	
	:	
Claimant,	:	File No. 5064753
	:	
vs.	:	ARBITRATION
	:	
UNITYPOINT HEALTH-DES MOINES,	:	DECISION
	:	
Employer,	:	
Self-Insured,	:	
Defendant.	:	
	:	Head Notes: 1402.40, 1803

STATEMENT OF THE CASE

Katheryn Harrington, claimant, filed a petition in arbitration seeking workers' compensation benefits from defendant, UnityPoint Health-Des Moines, self-insured employer. Hearing was held on August 27, 2019, in Des Moines, Iowa.

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.

Claimant, Katheryn Harrington, was the only witness to testify live at trial. The evidentiary record also includes joint exhibits 1-10, claimant's exhibits 1-6, and defendant's exhibits A-K. Claimant offered exhibit 7, which was purported to be a photograph of claimant's left arm. Defendant objected to the admission of the photograph because it was not provided to the defendant until the morning of the hearing. Claimant's counsel was unable to demonstrate that the photograph had been produced to the defendant in a timely fashion. The objection to claimant's exhibit 7 is sustained. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on September 13, 2019, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained permanent disability as the result of the stipulated October 4, 2017 work injury? If so, the nature and extent of permanent disability claimant sustained.
2. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant, Katheryn Harrington, was 48 years old at the time of the hearing. At the time of the stipulated work injury, Ms. Harrington was a housekeeper with UnityPoint Health-Des Moines ("UnityPoint"). She was hired by UnityPoint on September 26, 2017. She underwent and passed a pre-employment physical with Richard McCaughey, D.O. The Physical Capacity Profile performed in connection with the pre-employment physical indicated she could perform work in the medium work category. Dr. McCaughey stated that Ms. Harrington was medically qualified to perform the essential functions of the housekeeping job. (Joint Exhibit 2, pages 1-6; Claimant's Ex. 3)

As part of Ms. Harrington's employment she received a tetanus booster shot in her left arm on October 4, 2017. She is right-hand dominant. Within five minutes of receiving the shot, she began to experience numbness, tingling, and pain in her left arm. She had a red blotch at the injection site that grew into a lump. The next time Ms. Harrington went to work she reported her reaction to the injection to her supervisor. Her supervisor advised her that it was not unusual to have a red blotch/lump from an injection. Ms. Harrington testified that as she worked, the size of the lump and her pain increased. When she was still experiencing symptoms a week after the injection she once again reported her ongoing problems to her employer. Ms. Harrington was advised by her employer to simply give it time. On November 6, 2017, Ms. Harrington completed an employee work-related incident report indicating that she had sustained an injury to her left arm when she received a shot in her left arm on October 4, 2017. (Testimony; JE1, p. 1; hearing report)

The first treatment Ms. Harrington received after the injection was on November 7, 2017, when her employer sent her to see Dr. McCaughey. Ms. Harrington reported that her left arm had numbness and a shooting pain. She said that the injury occurred when she was given a shot in her left deltoid area. She reported she was able to continue to perform her usual duties in housekeeping. However, sometimes her left arm was sore at the end of the day if she had to do a lot of overhead or heavy lifting. The doctor noted a small quarter-sized diameter area of slight swelling within the

deltoid. Her active range of motion about the left glenohumeral joint was full and fluid. Dr. McCaughey's assessment was: October 4, 2017 tetanus booster, left deltoid with some ongoing soreness. He felt she might have a small hematoma or seroma. Dr. McCaughey recommended Aleve or ibuprofen and a course of physical therapy. He imposed some work restrictions. (JE2, pp. 7-9)

Ms. Harrington underwent physical therapy at UnityPoint Health. She testified that after a couple of therapy sessions she had pain in her neck and shoulder. The physical therapist pushed on the injection site to move the fluid out of the lump area. Ms. Harrington believes this pushing caused her pain to increase and the painful area to expand. (Testimony; JE3)

Dr. McCaughey referred Ms. Harrington to Kyle Galles, M.D. at Iowa Ortho. Dr. Galles saw Ms. Harrington for left shoulder pain on December 13, 2017. She reported that she began having symptoms after she had one injection in her left shoulder. He noted full and symmetrical range of motion of both shoulders. His assessment included left shoulder pain, unspecified chronicity and pain in unspecified limb. He explained to Ms. Harrington that he had never seen this particular scenario in his practice. He reassured her that clinically and radiographically things looked normal. Dr. Galles did not have any treatment to offer her. He encouraged her to perform daily stretching exercises. He did not assign any work restrictions. (JE4, pp. 28-29)

Ms. Harrington continued to see Dr. McCaughey. On December 19, 2017, she reported excruciating pain in her left arm. By this point she had attended six sessions of therapy; she felt the therapy may have helped some, but not vastly. Dr. McCaughey stated that her subjective complaints seemed out of proportion to the objective findings. Dr. McCaughey explained to Ms. Harrington that neither he, nor Dr. Galles could find any serious pathology. She wanted to continue with physical therapy and Dr. McCaughey recommended another nine sessions. He continued her restrictions. (JE2, p. 14)

Dr. McCaughey saw Ms. Harrington again on January 4, 2018. He again felt that her subjective complaints were out of proportion to the objective findings. He noted that the physical therapist wondered whether an MRI was indicated. Dr. McCaughey ordered an MRI of the left shoulder. (JE2, p. 15)

On January 16, 2018, Ms. Harrington reported to Dr. McCaughey that the thirteen sessions of therapy she had attended were not really helpful. She did not feel that she could handle regular duty work because 50-pound lifting was expected. Dr. McCaughey noted that the left shoulder MRI was unremarkable. He kept her restrictions the same and referred her to physiatry. He felt he had nothing else to offer from an occupational medicine standpoint. (JE2, p. 16)

Ms. Harrington returned to Dr. McCaughey on February 20, 2018 while the referral to physiatry was still pending. She had scraped ice off her windshield that morning and had increased left shoulder pain. She wanted an excuse to go home from

work. Dr. McCaughey could not support the notion that she could not perform any work. He felt inactivity of her left arm was not in her best interest. (JE2, pp. 17-18)

Daphney Myrtil, M.D. saw Ms. Harrington at UnityPoint Occupational Health on March 16, 2018. Ms. Harrington reported that the pain in her left shoulder and left upper extremity was a 10 out of 10. She was also experiencing numbness and tingling of her entire left upper extremity. Due to her work restrictions, Ms. Harrington was working in the HR department performing office work. She reported that she was not able to see a physiatrist because no physiatrist wanted to take her case. Ms. Harrington was angry that her medical condition was not being taken seriously. Dr. Myrtil noted, that despite extensive conservative management, Ms. Harrington experienced no improvement. Dr. Myrtil stated:

[a]fter an extensive literature search I have not been able to identify any data supporting the diagnosis of nonspecific paresthesias to an upper extremity after administration of a tetanus [sic] booster. I suspect that she has psychosocial factors that are contributing to the severity of her symptoms to include possibly the dissatisfaction of her current position. She requested to be placed off work on several occasions during the encounter and I have informed her that I think it is [sic] helpful for her condition to continue to work under her current restrictions. I suspect an ulterior motive for her continued symptoms. Her exam today is nonspecific for a specific diagnosis and demonstrates poor range of motion despite normal MRI findings. Her prognosis is poor at this time due to such a poor response to prior therapies. I have referred her for an EMG/NCS due to her complaint of paresthesias to rule out ulnar or median nerve neuropathy. She will follow up after NCS.

(JE2, p. 21)

On April 2, 2018, Ms. Harrington saw Anthony Kopp, D.O. at Mercy Physical Medicine and Rehabilitation. The notes indicate she was referred there by Dr. McCaughey. Based on the doctor's examination and the EMG, he did not see any evidence of nerve damage such as to the axillary nerve or any pinched nerves in the neck. The osteopathic doctor performed manual medicine. He noted that she tolerated the procedure and reported improved range of motion and decreased pain. Dr. Kopp's assessment included: myofascial pain syndrome, neck pain, rib cage region somatic dysfunction, segmental and somatic dysfunction of the upper extremity, and thoracic, cervical, and head regions. Dr. Kopp encouraged Ms. Harrington to continue her restrictions and follow-up in two weeks. The doctor discussed that there may be an anxiety component to her pain. (JE8, pp. 35-39)

Ms. Harrington returned to Dr. Kopp's office on April 30, 2018. She reported significant bruising in her left upper extremity after the treatment. She did receive about 60 percent improvement in her symptoms. Ms. Harrington still had some dysfunction with reaching over her head and behind her. She rated her pain as 3 out of 10. Dr.

Kopp noted that her pain seemed consistent with somatic dysfunctions. He felt she had made significant gains in range of motion following the treatments. She had essentially full range of motion in her left upper extremity. (JE8, pp. 40-44)

Ms. Harrington saw Dr. Kopp on several other occasions. Dr. Kopp placed her at maximum medical improvement (MMI) on October 8, 2019. He did not see any objective findings of dysfunction on examination. He cleared her to go back to work without restrictions. She was to follow-up on an as-needed basis. (JE8, pp. 45-62)

On May 2, 2019 Ms. Harrington returned to see Dr. Kopp for follow-up of her left upper extremity pain. She reported that her pain increased since her last appointment. The doctor noted full range of motion for her upper extremities along with great scapular motion. Dr. Kopp recommended that she perform the home exercise program she had been taught at physical therapy. He had a long discussion with her regarding the lack of objective findings to support her reports of pain. (JE8, pp. 63-65)

On December 19, 2018, at the request of the defendant, Kurt A. Smith, D.O. of Iowa Ortho performed an IME. He found that she had normal neurological and musculoskeletal examinations. Dr. Smith noted components of symptom magnification and inconsistencies with an IM injection. Based on his experience, he felt the patient's described symptoms were out of proportion to the type of injury that she described. He opined that she was able to work full duty, had no limitations, and was at MMI. Additionally, Dr. Smith assigned zero percent impairment based on 5th edition of the AMA Guides. (Def. Ex. A)

On February 4, 2019, at the request of her attorney, Ms. Harrington underwent an IME with Sunil Bansal, M.D. Dr. Bansal's diagnoses included left shoulder injury related to vaccine administration (SIRVA) and cervical myofascial pain syndrome. He noted that she continued to have pain in her left upper arm in the area of the injection site as well as some bruising. The site was still painful to touch. Ms. Harrington reported she could not lie on her left arm and could not lift much without increased pain. Reaching also caused pain. She also reported occasional numbness and tingling affecting her third and fourth fingers; however, normally it was mostly in her palm. She also reported constant shooting pain from her neck all the way down her arm, sometimes into the index finger, but usually into the middle two fingers. She noted a lot of muscle spasms from her neck to her left upper arm. Dr. Bansal opined that "Ms. Harrington developed a frozen shoulder from [sic] secondary to her tetanus injection." (Cl. Ex. 1, p. 7) He then stated that this is a known entity in the medical literature and cites a 2010 article. Dr. Bansal assigned five percent impairment of the upper extremity. With regard to her neck, Dr. Bansal opined that she developed cervical myofascial pain syndrome characterized from trigger points from the spasm that developed in her trapezius area. Dr. Bansal assigned three percent whole person impairment. (Cl. Ex. 1)

The first issue that must be addressed is whether Ms. Harrington sustained permanent disability as a result of the stipulated October 4, 2017 work injury. Claimant

relies on the opinion of Dr. Bansal. Defendants rely on the opinions of Dr. Galles, Dr. Smith, and Dr. Kopp.

Dr. Bansal is the only doctor to assign permanent impairment or restrictions for Ms. Harrington's left shoulder. Unfortunately, it appears that Dr. Bansal did not have a complete medical history at the time he authored his report. There is no mention in his report of any treatment from Dr. Kopp. Dr. Bansal did not have the benefit of the treatment notes from April 2, 2018 through May 2, 2019 with Dr. Kopp. It appears that Dr. Bansal was not given the opportunity to review Dr. McCaughey's notes from November 7, 2017 through February 20, 2018. Additionally, he did not have the benefit of Dr. Myrttil's March 16, 2018 records. I find that Dr. Bansal's opinions are based on an incomplete and inaccurate history and therefore, cannot be relied upon.

I find the opinions of Dr. Galles, Dr. Smith, and Dr. Kopp to be more persuasive than that of Dr. Bansal. Dr. Bansal's diagnoses and physical findings with regard to Ms. Harrington's left shoulder are not consistent with the opinions of the other experts in this case or with the treatment records as a whole. Despite the fact that Ms. Harrington saw a number of providers between October of 2017 and the date of her IME with Dr. Bansal, no doctor found she had a frozen shoulder. Numerous doctors have noted full range of motion and there is an overall lack of objective findings throughout the medical evidence in this case. I find Ms. Harrington did not sustain any permanent impairment to her left upper extremity or left shoulder as the result of the stipulated October 4, 2017 work injury.

Ms. Harrington contends that she sustained permanent impairment to her neck. The only doctor to assign any permanent impairment or restrictions for her neck is Dr. Bansal. For the reasons set forth above, I find Dr. Bansal's opinions are based on an incomplete and inaccurate history and therefore cannot be relied upon. The records of Dr. Kopp and Dr. Smith do not support a finding of permanent impairment. Dr. Smith noted she had full range of cervical motion. Dr. Kopp found no abnormalities involving Ms. Harrington's neck. He indicated in April of 2019 that Ms. Harrington did not have any permanent impairment to her neck due to the October 4, 2017 work injury. (Def. Ex. B) Dr. Bansal's diagnoses and physical findings with regard to Ms. Harrington's neck are not consistent with the opinions of the other experts in this case or with the treatment records as a whole. I find Ms. Harrington did not sustain any permanent impairment to her neck as the result of the stipulated October 4, 2017 work injury.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Based on the above findings of fact, I conclude Ms. Harrington failed to carry her burden of proof to show by a preponderance of the evidence that she sustained any permanent impairment as the result of the stipulated October 4, 2017 incident.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. I conclude that claimant was not successful with her claim and I exercise my discretion and do not assess costs against the defendant. Each party shall bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 4th day of November, 2019.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jennifer Clendenin (via WCES)
Eric Loney (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.