BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ASHLEY LORD, Claimant, vs. AMERICAN BAPTIST HOMES OF THE MIDWEST, Employer, and ACCIDENT FUND GENERAL INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 5064714 ARBITRATION DECISION Head Note Nos.: 1803, 2500

STATEMENT OF THE CASE

Ashley Lord filed a petition for arbitration seeking workers' compensation benefits from American Baptist Homes of the Midwest a/k/a Crest Services, the employer and Accident Fund General Insurance Company, the insurance carrier.

The matter came on for hearing on December 3, 2019, before deputy workers' compensation commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of Claimant's Exhibits 1 through 2; Defense Exhibits A through E; Joint Exhibits 1 through 3; as well the sworn testimony of claimant, Ashley Lord. Amy Pedersen was appointed as the court reporter for the proceedings.

ISSUES AND STIPULATIONS

The following issues and stipulations were submitted.

The parties have stipulated to most matters in this case and have done a good job of narrowing the issues for determination. The stipulations presented in the hearing report are accepted and are binding upon the parties.

The parties have stipulated that claimant suffered an injury which arose out of

and in the course of employment. The injury is a cause of some temporary and permanent disability. Temporary benefits are no longer in dispute. The fighting issue in the case is the extent of claimant's functional loss in her right leg. The parties have stipulated that the disability is limited to the right leg, however, the parties do not agree to a commencement date for benefits. Issues regarding rate, affirmative defenses, credits and past medical expenses are not in dispute. The claimant is seeking alternate medical care, which defendants deny.

FINDINGS OF FACT

Ashley Lord worked for American Baptist Homes of the Midwest, a/k/a Crest Services (hereinafter, "Crest"). She was born in February 1988. She testified live and under oath at hearing. I find her testimony to be generally credible. Her testimony was generally consistent with the medical documentation in the file. While she appeared nervous at hearing, there was nothing about her demeanor which caused me any concern about her truthfulness.

Ms. Lord worked for Crest as a direct support specialist. She provided assistance to individuals with disabilities in a home-type setting. She sustained an injury which arose out of and in the course of her employment on September 8, 2016. On that date, she slipped on some stairs and fell on her right knee. (Claimant's Exhibit 2) She testified her right knee popped and she experienced immediate pain and swelling.

Importantly, Ms. Lord had experienced a previous injury to her right knee. In August 2015, medical notes from Pella Regional Health Center documented the following. "Pt. states she fell down stairs on her right leg about 30 minutes ago. Pt. states she also hit her mouth." (Joint Exhibit 1, page 1) Her knee was x-rayed. She was diagnosed with a right knee and right hip contusion and provided some medications. (Jt. Ex. 1, p. 4) In a follow up note August 4, 2015, the Pella Regional Health Center Ottumwa Occupational Clinic documented that Ms. Lord was at work when this injury occurred. (Jt. Ex. 1, p. 5) Her main symptom was a feeling of "muscle tension." (Jt. Ex. 1, p. 5) She continued to follow up with the clinic and underwent some physical therapy. (Jt. Ex. 1, p. 11) On October 6, 2015, the working diagnosis was right "knee pain/sprain, resolving" (Jt. Ex. 1, p. 11) There is documentation that while her knee was stronger, she still had occasional symptoms, including swelling if she was on her feet for a long time. (Jt. Ex. 1, p. 13) She no-showed an appointment on October 20, 2015, and the clinic documented the following. "Due to her noncompliance and no return of calls, I am left to assume patient is back to baseline. We will discharge her from care effective today, 11/11/2015, full duty and no restrictions." (Jt. Ex. 1, p. 15) There is no record of any treatment between October 6, 2015, through the date of her work injury which is the subject of this litigation. Ms. Lord testified that her right knee symptoms resolved. I believe her.

When Ms. Lord was injured on September 8, 2016, she returned to the same

clinic, Pella Regional Health Center Ottumwa Occupational Clinic. The injury itself is well-documented in the reports. (Jt. Ex. 1, p. 16) Her previous injury and treatment at the clinic was also documented. "At that time, an MRI was done, and it was normal. She did physical therapy and symptoms resolved." (Jt. Ex. 1, p. 16) X-rays were taken, she was placed on restrictions, ice, conservative therapy and medications. She continued to follow up with Matthew Doty, M.D., until November 2016, when he referred her to an orthopedist due to worsening pain. (Jt. Ex. 1, p. 34)

Ms. Lord treated with Bradley Scott, D.O., beginning in October 2016. He apparently provided an injection and in December 2016, reviewed her MRI, which showed some abnormalities under the knee cap. (Jt. Ex. 2, p. 17; Jt. Ex. 3) On January 23, 2017, surgery was performed which was described as right "knee scope with partial medial meniscectomy." (Jt. Ex. 2, p. 21) In May 2017, Dr. Scott signed off on an impairment rating that claimant sustained a two percent loss of function of her right lower extremity as a result of the work injury. (Jt. Ex. 2, p. 25) There are no medical notes of follow up treatment in the record.

Ms. Lord testified that she quit working for Crest in March 2017. After leaving Crest, she moved to Oklahoma and waited tables. She testified she worked for Golden Corral and Native Lights waiting tables full-time. She testified that while she was living in Oklahoma she attempted to receive further medical care and had a negative interaction with the insurance carrier. She eventually moved back to the Ottumwa area and worked for a time at a sports bar, Benchwarmers. She later became employed with Milestone's in Ottumwa. (Def. Exs. D and E) She testified that her knee symptoms have continued and that she experiences daily, ongoing pain in her right knee.

In April 2019, Ms. Lord was evaluated by Mark Taylor, M.D. He performed a thorough evaluation and review of the medical file before preparing a report dated May 2, 2019. (Cl. Ex. 1) He described her condition at that time as follows:

> **Current symptoms** - Ms. Lord described constant knee pain that fluctuates between 6 and 7/10. With stairs and other activities, or toward the end of a shift, the pain may be closer to 9 or 10/10. The knee still swells but because she has curtailed her activity and she tries to protect the knee and uses a brace and/or wrap, the swelling has been a bit more controlled. The pain still occurs in an area above the kneecap as well as along the edge of the kneecap and down along the medial and posterior knee. The knee still clicks and pops and it still gives out. This was one of the biggest concerns of Ms. Lord as well as her husband. The knee giving out has led to her falling. Stairs are particularly difficult and she has to take her time and exercise caution. She avoids kneeling on the knee whenever possible.

(Cl. Ex. 1, p. 4) Dr. Taylor diagnosed the repaired meniscus tear and "[p]ersistent right knee arthralgia with element of patellofemoral pain." (Cl. Ex. 1, p. 6) He assigned a five percent right lower extremity impairment and recommended a return visit to another

orthopedist. He also assigned permanent restrictions which are significantly limiting to a person Ms. Lord's age. (Cl. Ex. 1, pp. 7-8)

The defendants had Ms. Lord evaluated by Brian Crites, M.D. He prepared an expert report dated August 21, 2019. He thoroughly reviewed the records and examined Ms. Lord, noting her complaints of her knee giving out and the sharp pain. (Def. Ex. A, p. 2) He opined that her "current right knee pain and symptoms are not related to her September 8, 2016, work injury." (Def. Ex. A, p. 3) "This is based on the fact that she had no further follow-up and no further treatment in the interval between her last visit with Dr. Scott and the current date. Her exam today is benign with only nonlocalized diffuse tenderness." (Def. Ex. A, p. 3) He concurred with Dr. Scott's impairment rating. (Def. Ex. A, p. 4)

Having reviewed all of the evidence in the record, I find the medical opinions of Dr. Taylor to be the most credible assessment of claimant's medical condition at the time of hearing.

CONCLUSIONS OF LAW

The fighting issue in this case is the extent of functional loss in claimant's right leg. The claimant alleges she has sustained a 5 percent functional loss while the defendants assert her loss, if any, is 2 percent of the leg.

Where an injury is limited to a scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a)-(t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> The Legislature has definitely fixed the amount of compensation that shall be paid for the specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v.

Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Thus, when the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921).

The parties have stipulated that any disability is calculated to the right leg under Iowa Code section 85.34(2)(o) (2015).

The disability in question is to Ms. Lord's right leg. It does not, in any way, extend into her body as a whole.

The expert opinions as to the medical impairment in this case are conflicted. Dr. Taylor opined a rating of 5 percent, while Dr. Scott and Dr. Crites, concurred that the disability was only 2 percent of the leg. I find the rating of Dr. Taylor to be the most convincing. Unfortunately, Ms. Lord never returned to Dr. Scott for follow up treatment. She moved rather suddenly to Oklahoma for personal reasons and made no effort to follow up with him. This was extremely significant to Dr. Crites who used this fact to assume that she must have fully healed up from the injury to take such an action. Having reviewed the entire record of evidence and listened to Ms. Lord's live, sworn testimony, I disagree with this assessment. Ms. Lord had valid personal reasons for moving to Oklahoma and her knee was secondary. Dr. Crites' conclusion that none of her ongoing symptoms are related to her stipulated work injury, merely because she did not follow up with the treating surgeon is not believable. In fact, his causation opinion is contrary to the parties' stipulation in the Hearing Order. Dr. Scott never had an opportunity, however, to evaluate the success of his meniscus surgery. I find his impairment rating is flawed in that he never fully examined her after the surgery. This, of course, is not Dr. Scott's fault. He did the best with what information he had. Nevertheless, Dr. Taylor's opinion is the most consistent with the facts of this case. As such, I find claimant has sustained a 5 percent loss of function to her right leg, which entitles her to 11 weeks of benefits commencing May 15, 2017.

The next issue is the claimant's need for alternate medical care.

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. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See

Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Dr. Crites recommended no further care. Dr. Taylor recommended further orthopedic evaluation due to claimant's ongoing pain and instability. I find that a refusal to offer claimant further care based upon the opinion of Dr. Crites is unreasonable. For the reasons set forth above, his opinion is rejected. The defendants shall authorize an orthopedic evaluation for claimant's ongoing right knee complaints.

ORDER

THEREFORE, IT IS ORDERED

Defendants shall pay the claimant eleven (11) weeks of permanent partial disability benefits at the rate of three hundred ninety-four and 69/100 dollars ($394.69) per week from May 15, 2017.

Defendants shall pay accrued weekly benefits in a lump sum.

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).

Defendants shall be given credit for the four and four-tenths (4.4) weeks previously paid.

Defendants shall authorize an orthopedist as recommended in Claimant's Exhibit 1, page 7, consistent with this decision.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants.

Signed and filed this 30th day of July, 2020.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Michael O. Carpenter (via WCES)

Andrew Portis (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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.