McDaniel, Stephanie-5027801D

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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STEPHANIE MCDANIEL, : File No. 5027801

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Claimant, :

:

vs. : A R B I T R A T I O N

:

SOUTHERN IA HOME HEALTH CARE, : D E C I S I O N

LLC, :

:

Employer, :

Defendant. : Head Note No.: 1803

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STATEMENT OF THE CASE

Stephanie McDaniel, the claimant, seeks workers' compensation benefits from defendant, Southern Iowa Home Health Care, LLC, the alleged employer, as a result of an alleged injury on December 20, 2007. Presiding in this matter is Larry P. Walshire, a Deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced was conducted by telephone on August 27, 2009. Proceedings were recorded with a digital voice recorder. Oral testimonies and written exhibits received into evidence at hearing are set forth in the hearing record.

Defendant did not participate in this proceeding. Due to its lack of any appearance in this proceeding after being duly served with an original notice and even after receiving notice of

an intent to take a default, default was entered and the hearing was scheduled without further notice to defendant.

Received into evidence were claimant's exhibits 1-6. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Exhibit 1-2:4"

ISSUES

At hearing, the parties submitted the following issues for determination:

I. Whether an employer-employee relationship existed between claimant and the alleged defendant employer at the time of the alleged injury:

II. Whether claimant received an injury arising out of and in the course of employment;

III. The extent of claimant's entitlement to weekly temporary total or healing period benefits and permanent disability benefits;

IV. The extent of claimant's entitlement to medical benefits; and,

V. The extent of claimant's entitlement to penalty benefits for an unreasonable delay or denial of weekly benefits pursuant to Iowa Code section 86.13.

FINDINGS OF FACT

In these findings, I will refer to the claimant by her first name, Stephanie, and to the defendant employer as Southern Hills.

Stephanie worked for Southern Hills as a home health aide assisting clients in their personal residences. She began this employment in February 2007.

On December 20, 2007, while attempting to assist a client in the bathroom, she slipped and fell injuring her right knee. She immediately reported a work injury to her superiors at Southern Hills, but was not provided medical care or weekly benefits for her work injury. She was told by the owners that due to their pending divorce, the workers' compensation insurance premiums were not paid and they had no insurance.

Stephanie on her own sought initial care from her family doctor at Chariton Valley Medical Clinic in Centerville, Iowa. After an MRI revealed a meniscus tear, she was referred to the University of Iowa Hospitals and Clinics for surgery. On March 12, 2008, Annunziato Amendola, M.D. performed arthroscopic surgery on Stephanie's right knee. Although the pre-surgery diagnosis was only a medical meniscus tear, during the surgery it was found necessary to not only perform a medial meniscectomy, but to reconstruct the posterior cruciate ligament.

In July 2009, Joseph Chen, M.D., a professor of medicine at the University of Iowa Hospitals and Clinics evaluated Stephanie's knee and found that she suffers from a seven percent permanent partial impairment of her right leg due to her knee injury and surgery.

Stephanie testified that at the time of her injury she was earning $9.00 per hour and typically worked 40 hours a week.

Stephanie testified that Medicaid (Title 19) paid for her medical expenses at the Chariton Valley Clinic, the MRI at the Mercy Medical Center in Centerville, and her care at the University of Iowa Hospitals and Clinics. However, she personally paid $703.00 for the evaluation by Dr. Chen.

I find that on December 20, 2007, Stephanie suffered an injury to her right knee which arose out of and in the course of her employment.

I find that Stephanie was off work for treatment of this work injury from December 20, 2007 until she was released from care on April 28, 2008.

I find that the work injury of December 20, 2007 was a cause of a 7 percent permanent partial loss of use to the right leg.

I find that her above listed expenses constituted reasonable and necessary treatment of the work injury of December 20, 2007.

I find that on December 20, 2007, Stephanie's gross weekly earnings were $360.00 per week. She also was single and entitled to only one exemption for income tax purposes.

CONCLUSIONS OF LAW

I. The claimant has the burden of proving by of preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 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.

In the case sub judice, I found that claimant carried the burden of proof and demonstrated by the greater weight of the evidence that she suffered an injury arising out of and in the course of employment with defendant employer as alleged in her petition.

II. 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).

The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); 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).

I found in this case that the work injury is a cause of a 7 percent permanent loss of use to the right leg, a scheduled member. Such a finding entitles claimant to 15.4 weeks of permanent partial disability benefits as a matter of law under Iowa Code section 85.34(2)(o), which is 7 percent of 220 weeks, the maximum allowable number of weeks for an injury to the leg in that subsection.

Claimant's entitlement to permanent partial disability also entitles her to weekly benefits for healing period under Iowa Code section 85.34 for his absence from work during a recovery period until claimant returns to work; until claimant is medically capable of returning to substantially similar work to the work he/she was performing at the time of injury; or, until it is indicated that significant improvement from the injury is not anticipated, whichever occurs first. In this case, claimant will be compensated for her time off work.

Given gross weekly earnings of $360.00, single status and entitlement to one exemption, claimant's rate of weekly compensation for this date of injury is $233.81 according to the Commissioner's published rate booklet.

III. Pursuant to Iowa Code section 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988)

In the case at bar, all of the expenses were paid by Medicaid, a federal entitlement program. Defendant shall be ordered to reimburse Medicaid.

IV. Claimant seeks additional weekly benefits under Iowa Code section 86.13, unnumbered last paragraph. That provision states that if a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the industrial commissioner shall award extra weekly benefits in an amount not to exceed 50 percent of the amount of benefits that were unreasonably delayed or denied.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."

Christensen, 554 N.W.2d at 260.

The supreme court has stated:

(1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

(2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.

(3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

(4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

(5) For purposes of determining whether there has been a delay, payments are "made" when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235.

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

(7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

In this case, the only reason provided to claimant for not paying benefits was that they had no insurance because they failed to make the premium payments. This is not a valid reason to deny benefits and that reason does not render this claim fairly debatable. The maximum penalty of 50 percent of the weekly benefits awarded shall be imposed.

ORDER

1. Defendant shall pay to claimant fifteen point four (15.4) weeks of permanent partial disability benefits at a rate of two hundred thirty-three and 81/100 dollars ($233.81) per week from April 29, 2008.

2. Defendant shall pay to claimant healing period benefits from December 20, 2007 through April 28, 2008 (18 4/7 weeks) at the rate of two hundred thirty-three and 81/100 dollars ($233.81) per week.

3. Defendant shall reimburse Medicaid for the expenses claimant incurred at the Chariton Valley Medical Clinic in Centerville, the Mercy Medical Center and the University of Iowa Hospitals and Clinics for treating this work injury.

4. As a penalty for an unreasonable denial of benefits, defendant shall additionally pay the sum of three thousand nine hundred seventy-one and 38/100 dollars ($3,971.38).

4. Defendant shall pay accrued weekly benefits in a lump sum.

5. Defendant shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

6. Defendant shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter and reimbursement for the cost of obtaining the rating report from Dr. Chen, in the amount of seven hundred three and no/100 dollars ($703.00).

7. Defendant shall file reports with this agency on the payment of this award pursuant to administrative rule 876 IAC 3.1.

Signed and filed this ___22nd_____ day of September, 2009.

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