

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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MABOOR HOU,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5066327
SMITHFIELD FOODS, INC.,	:	
	:	ARBITRATION
Employer,	:	
	:	DECISION
and	:	
	:	
SAFETY NATIONAL CASUALTY	:	
CORP.,	:	
	:	
Insurance Carrier,	:	
Defendants.	:	Head Note No.: 1803

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STATEMENT OF THE CASE

Maboor Hou, claimant, filed a petition in arbitration seeking workers' compensation benefits from Smithfield Foods, Inc., as a result of an injury he sustained on July 7, 2018 that arose out of and in the course of his employment. This case was heard in Des Moines, Iowa on January 7, 2020 and fully submitted on January 9, 2020. The evidence in this case consists of the testimony of claimant, Joint Exhibits 1 - 3, Defendants Exhibits A - F and Claimant's Exhibit 1. The hearing was interpreted.

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

The extent of claimant's disability.

Assessment of costs.

### FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Maboor Hou, claimant, was 37 years old at the time of the hearing. Claimant was born in South Sudan. His primary language is Dinka. Before coming to the United States of America in 2001, claimant lived in refugee camps in Ethiopia and Kenya. Claimant was able to obtain about an eighth grade education. He has some ability to speak English.

Claimant worked two jobs in California before he started his employment with Smithfield Foods, Inc. (Smithfield). Claimant began working for Smithfield in Denison Iowa on January 30, 2018. (Exhibit A, page 1)

On July 7, 2018, claimant was working trimming loins working on a special cut called the 79. Claimant felt pain in his right shoulder and went to the company nurse. (Ex. 1, p. 1) Claimant was provided ice and over-the-counter medication. (Ex. A, p. 2) Claimant testified that he was initially referred to Todd Woolen, M.D. and then had his care transferred to Bradley Lister, M.D.

Dr. Lister saw claimant on October 15, 2018 for an initial consultation for his right shoulder pain. At that visit, Dr. Lister provided an injection in claimant's right shoulder. (Joint Ex. 1, p. 4) Claimant was provided restrictions of no lifting over five pounds, no overhead work, avoid repetitive pushing/pulling/circulatory activities with right shoulder. Claimant was advised that at that time there was no surgical solution. (JE. 1, p. 7) On December 12, 2018, Dr. Lister continued claimant's restrictions and modified the restriction to be with his right arm, "no overhead work, waist level only, no repetitive push pull lift reach. Lift 5-10 # only with right arm." (Ex. B, p. 4) Claimant testified that Dr. Lister suggested in 2019 that he have surgery of his right arm: right shoulder manipulation under anesthesia. (JE. 1, p. 19) Claimant testified that he does not, at this time, want to undergo surgery.

Dr. Lister provided an impairment rating of the claimant on March 6, 2019. Dr. Lister wrote claimant had a nine percent upper extremity impairment based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (JE 1, p. 17) Dr. Lister's diagnosis was "right shoulder rotator cuff tendonitis/tendinopathy." (JE 1, p. 17)

On September 9, 2019, Sunil Bansal performed an independent medical examination (IME). (Ex. 1, pp. 1 – 8) Dr. Bansal found claimant had "[r]ight shoulder rotator cuff tears" and "[a]dhesive capsulitis." (Ex. 1, p. 5) Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Figures 16-40 through 16-46, Dr. Bansal found;

	<b>RANGE OF MOTION</b>	<b>% UE Impairment</b>
Flexion:	142, 140, and 141 degrees	3

Abduction:	135, 138, and 140 degrees	2
Adduction:	26, 28, and 25 degrees	1
External Rotation:	42, 43 and 43 degrees	1
Extension:	32, 30, and 32 degrees	1
Internal Rotation:	34, 38, and 34 degrees	3

(Ex. 1, p. 5) Dr. Basal wrote claimant had an eleven percent upper extremity impairment. (Ex. 1, p. 6)

The parties have stipulated that defendants have paid 36 weeks of permanent partial benefits at the rate of \$570.35. The parties have stipulated claimant's weekly workers' compensation rate is \$536.11. (Hearing Report, pp. 2, 3) I find that this is claimant's weekly workers' compensation rate.

#### CONCLUSIONS OF LAW

The parties have stipulated claimant has a shoulder injury that arose out of and in the course of his employment at Smithfield. The dispute is entitled to the rating by Dr. Lister of 9 percent to the upper extremity or the rating of Dr. Bansal of 11 percent to the upper extremity.

In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.33 and 85.34 apply to injuries occurring on or after the effective date of the Act.

Claimant's injury occurred in July 2018 and the changes in the law control this case. Prior to the changes in the law a shoulder was considered an injury to the body as a whole. A shoulder injury is now a scheduled member injury. Iowa Code section 85.34(2)(n) (2019) provides, "For the loss of a shoulder, weekly compensation during four hundred weeks." Additionally, the law now provides that the determination of functional disability is based solely on the AMA Guides and lay testimony and agency expertise is not to be considered. See Iowa Code section 85.34(2)(x) (2019);

In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not

be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

A shoulder injury is now considered a functional disability, not an industrial disability. 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 only evidence I can consider are the two ratings. I find that Dr. Bansal's impairment rating is more convincing than Dr. Lister's rating. Dr. Lister does not provide the detail that Dr. Bansal provided. Dr. Bansal provided the measurements he used and the AMA Guides Tables he used to reach his conclusion.

I find claimant has proven by a preponderance of the evidence, an 11 percent functional loss to his right shoulder. Claimant is awarded 44 weeks of permanent partial disability benefits. ( $400 \times 11\% = 44$ )

Claimant has requested costs for the \$100.00 filing fee. As claimant has generally prevailed, I award claimant the filing fee of \$100.00.

#### ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant forty-four (44) weeks of permanent partial disability benefits at the weekly rate of five hundred thirty-six and 11/100 dollars (\$536.11) commencing January 8, 2019.

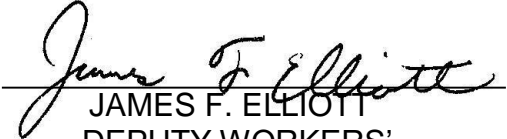
Defendants shall have a credit for benefits previously paid.

Defendants shall pay claimant costs in the amount of one hundred and 00/100 dollars (\$100.00).

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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 file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 13<sup>th</sup> day of January, 2020.

  
JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Michael Joseph Miller (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.