

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID KNAEBLE,

Claimant,

vs.

JOHN DEERE DUBUQUE WORKS
OF DEERE & COMPANY,Employer,
Self-Insured,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File Nos. 5066463 and 5066464

A P P E A L

D E C I S I O N

Head Notes: 1800; 1803; 1803.1; 1700;
3200, 2207, 2209

Defendant John Deere Dubuque Works of Deere & Company, self-insured employer (hereinafter "Deere"), appeals from an arbitration decision filed on November 30, 2020, and a ruling on motion for rehearing filed on December 17, 2020. Claimant David Knaeble and defendant Second Injury Fund of Iowa (hereinafter "the Fund") respond to the appeal.¹ The case was heard on August 13, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 3, 2020.

In the arbitration decision, with respect to File No. 5066464, injury date of January 12, 2017, the deputy commissioner found claimant sustained six percent whole body impairment for the combination of his bilateral carpal tunnel syndrome and his right trigger finger. As a result, the deputy commissioner found claimant is entitled to receive 30 weeks of permanent partial disability (PPD) benefits from Deere. Regarding claimant's claim against the Fund, the deputy commissioner found claimant sustained a first qualifying injury to his right foot (which was part of a prior work-related injury sustained at Deere for which claimant was awarded 30 percent industrial disability due to bilateral foot/leg injuries and CRPS that developed from the left foot). More specifically, the deputy commissioner found claimant's first qualifying injury resulted in seven percent right lower extremity impairment. The deputy commissioner found claimant sustained 85 percent industrial loss "due to the combined bilateral CTS and the

¹ On March 26, 2021, I issued a ruling on claimant's motion to dismiss the Fund's appeal in which I struck brief points I and II of the Fund's brief (regarding whether claimant proved his entitlement to Fund benefits) because the Fund failed to preserve the issues by not filing a notice of appeal. Only brief point III of the Fund's brief (regarding credits) is considered herein.

first qualifying injury to the lower right extremity.” (Arbitration Decision, p. 9) Thus, the Fund was ordered to pay 425 weeks of PPD benefits.

In File No 5066463, injury date of March 13, 2017, the deputy commissioner found claimant sustained five percent industrial disability as a result of a left shoulder injury. The deputy commissioner went on to state: “The combined disability of the bilateral CTS, the left lower extremity, the CRPS, the right lower extremity and the left shoulder injury is 92 percent.” (Arb. Dec., p. 11) Thus, John Deere was ordered to pay 460 weeks of PPD benefits less a credit for benefits previously paid.

On December 17, 2020, the deputy commissioner issued a ruling on Deere's motion for rehearing. In the ruling, the deputy commissioner stated: “[T]he combined disability of claimant's lower extremities, CRPS, and his left shoulder resulted in a 92 percent reduction in earning capacity.” (Ruling, p. 4) The deputy commissioner also clarified Deere's credit based on the calculation used in Dunham v. United Parcel Service, File Nos. 5045229 and 5062713 (Arb. Dec, May 11, 2018). The arbitration decision was modified and Deere was ordered to pay 442.85 weeks of PPD benefits.

On appeal, in File No. 5066463, Deere asserts claimant is entitled to no more than 35 percent industrial disability from the combination of claimant's 2014 CRPS injury and his 2017 shoulder injury. Deere asserts it is entitled to a credit for 0.10% industrial disability against a 35 percent award based on the calculation set forth in Dunham. In File No. 5066464, Deere asserts claimant is not entitled to any additional PPD benefits beyond those which have already been paid for his bilateral carpal tunnel syndrome and right trigger finger.

Those portions of the proposed agency decisions pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on November 30, 2020, and the ruling on motion for rehearing filed on December 17, 2020 are affirmed in part, modified in part, and reversed in part.

As noted by the deputy commissioner, claimant sustained a prior work-related injury in 2014 for which he received a 30 percent industrial disability award. (Defendants' Exhibit B, p. 53; Hearing Report, p. 3) Claimant was compensated for this injury industrially because the deputy commissioner found claimant's left foot injury resulted in CRPS. (Def. Ex B, p. 53) Relevant to claimant's current claim against the Fund, the deputy commissioner also found claimant sustained permanent disability of his right lower extremity (seven percent lower extremity impairment or three percent whole person impairment). (Def. Ex. B, p. 50; Claimant's Ex. 4, p. 37) Again, however, the rating for the right lower extremity was not paid separately; claimant was compensated for this right lower extremity impairment as part of the 30 percent industrial disability award.

Claimant then subsequently sustained bilateral carpal tunnel injuries, along with a right trigger finger injury, which is the subject of File No. 5066464. The deputy commissioner adopted the impairment ratings of Mark Taylor, M.D., for these conditions, and I affirm this finding. Dr. Taylor's report was more detailed than the opinions of both Christopher Palmer, M.D., and David Field, M.D. As such, I affirm the deputy commissioner's finding that claimant sustained a combined six percent whole body impairment as a result of the bilateral carpal tunnel and right trigger finger conditions.

For purposes of claimant's Fund claim, also in File No. 5066464, the deputy commissioner found the combined disability of claimant's prior right leg injury and his bilateral carpal tunnel and right trigger finger conditions resulted in 85 percent industrial disability. As noted in my ruling on claimant's motion to dismiss the Fund's appeal, the Fund did not properly appeal this issue and, as such, it will not be disturbed on appeal.

Claimant's final work related injury, which is the subject of File No. 5066463, was a left shoulder injury. In the arbitration decision, the deputy commissioner found this injury resulted in five percent industrial disability. I affirm the deputy commissioner's finding that claimant's left shoulder injury resulted in five percent industrial disability.

I affirm the deputy commissioner's finding that claimant sustained significant industrial disability but is not permanently and totally disabled. However, as explained below, I find the deputy commissioner's award of 85 percent industrial disability against the Fund and 92 percent industrial disability against John Deere results in a double recovery and must be modified.

In the arbitration decision, the deputy commissioner found the combination of all of claimant's injuries ("the combined disability of the bilateral CTS, the left lower extremity, the CRPS, the right lower extremity and the left shoulder") resulted in a 92 percent industrial disability. While the deputy commissioner did not specifically set forth how she arrived at 92 percent, she appears to have used the "Combined Values Chart" in the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition.²

Regardless of the exact calculation used by the deputy commissioner, however, it is clear the 85 percent industrial disability she awarded as a result of the specific combined effect of claimant's qualifying injuries against the Fund (again, his right leg and bilateral carpal tunnel/right trigger finger conditions) was part of the formula the

² It is presumed the deputy commissioner used this or a similar calculation: 85 percent (the industrial disability awarded for the bilateral carpal tunnel/right trigger finger and right leg in claimant's claim against the Fund) + 30 percent (the industrial disability awarded for claimant's CRPS) = 90 percent + 6 percent whole person impairment (for claimant's bilateral carpal tunnel /right trigger finger) = 91 percent + 5 percent whole person impairment (for claimant's left shoulder) = 92 percent + 3 percent whole person impairment (for claimant's right lower extremity) = 92 percent.

deputy considered in arriving at her 92 percent determination. In fact, in her ruling, she acknowledged she merely added claimant's individual disabilities, which she believed was in error. (See Ruling, p. 4)

However, in her ruling on rehearing, the deputy commissioner also stood by her 92 percent finding even though she seemingly removed the specific combined effect of the qualifying injuries from her consideration. She stated: "[T]he combined disability of claimant's lower extremities, CRPS, and his left shoulder resulted in a 92 percent reduction in earning capacity." (Ruling, p. 4) There is no specific mention of the right leg, nor is there any mention of claimant's bilateral carpal tunnel/right trigger finger conditions.

It is clear, however, based on the deputy commissioner's own findings, that it was the combination of claimant's right leg and bilateral carpal tunnel/right trigger finger conditions that resulted in the majority of claimant's reduction in earning capacity. The deputy commissioner specifically found that the combined loss of the bilateral carpal tunnel and right leg resulted in an industrial loss of 85 percent, but the left shoulder only caused five percent industrial impairment. (Arb. Dec., pp. 9, 11) As stated by the deputy commissioner: "Alone, the left shoulder does not provide significant impairment." (Ruling, p. 4)

Iowa Code section 85.34(7)(a) provides that "[an] employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer." Subpart (b) of the same subsection then provides methods for giving credit to employers for disability that has been previously compensated to prevent claimants from receiving a double recovery. However, the wrinkle in this case is what should occur when a claim against the Fund for two work-related qualifying injuries is sandwiched between successive disabilities compensable under section 85.34(2)(u).

For illustrative purposes, let us consider what would have occurred had claimant not made a claim against the Fund. In such a scenario, the industrial disability resulting from the specific combination of claimant's right leg disability and his bilateral carpal tunnel/right trigger finger conditions never would have been separately considered and would not have resulted in a separate industrial disability award. Instead, claimant's right leg disability would have been compensated by Deere through his 30 percent industrial disability award for the 2014 injury under Iowa Code section 85.34(2)(u), and the subsequent 2017 bilateral carpal tunnel/right trigger finger condition would have been compensated by Deere as a scheduled member.

Then, upon claimant's subsequent injury to his left shoulder later in 2017, claimant's loss of earning capacity after the left shoulder injury would have been assessed. See Iowa Code §§ 85.34(2)(u); 85.34(7)(b). Iowa Code section 85.34(2)(u) provides that unscheduled injuries are to be compensated based on "the reduction in the employee's earning capacity caused by the disability . . . in relation to the earning capacity that the employee possessed when the injury occurred." In this case, the earning capacity claimant possessed when he injured his left shoulder had already been

affected by his bilateral carpal tunnel/right trigger finger conditions, along with this CRPS; in other words, the limitations caused by these conditions would be considered in the analysis regarding claimant's loss of earnings after his left shoulder injury.

To prevent a double recovery for the loss of earning capacity that was already considered and compensated, however, Deere would have been awarded a credit to account for the reduction in earning capacity lost due to the CRPS and not regained before the left shoulder injury. See Iowa Code §85.34(7)(b).

Thus, the full extent of the loss of claimant's earning capacity would have been considered, including his prior work-related injuries, but claimant would not have acquired a double recovery. In other words, claimant was made "whole" by Deere without a double recovery or a double reduction. See 2004 Iowa Acts 1st Extraordinary Sess. ch. 1001, § 20 ("It is the intent of the general assembly that this division of this Act will prevent all double recoveries and all double reductions in workers' compensation benefits for permanent partial disability.")

In this case, however, claimant was also awarded 85 percent industrial disability from the Fund based strictly on the loss resulting from the combination of claimant's right leg and bilateral carpal tunnel/right trigger finger conditions. Because this award was paid by the Fund under the Second Injury Compensation Act and because Deere compensated the bilateral carpal tunnel/right trigger finger conditions as a scheduled member, Deere is not entitled to a credit for the 85 percent award under Iowa Code section 85.34(7)(b). This is despite the fact that the earning capacity claimant possessed when the injury occurred was reduced to just 15 percent by the combined effect of the right leg and bilateral carpal tunnel/right trigger finger conditions and the left shoulder caused only an additional five percent industrial loss. See Iowa Code § 85.34(2)(u) (providing unscheduled injuries are to be compensated based on "the reduction in the employee's earning capacity caused by the disability . . . in relation to the earning capacity that the employee possessed when the injury occurred").

In other words, though claimant's combined industrial disability may have been 92 percent after his left shoulder injury, claimant's left shoulder injury only caused an additional five percent loss of earning capacity. Thus, without a credit or accounting for the 85 percent industrial disability caused by the two qualifying members, claimant is receiving the 85 percent industrial disability award twice - once from the Fund in the 85 percent award and once from Deere in the 92 percent award. As such, an award of 85 percent industrial disability from the Fund and an award of 92 percent industrial disability from John Deere results in a double recovery. This is contrary to the legislature's intent in adopting Iowa Code section 85.34(7)(2)(b). 2004 Iowa Acts 1st Extraordinary Sess. ch. 1001, § 20 ("The general assembly intends that an employer shall fully compensate all of an injured employee's disability that is caused by work-related injuries with the employer without compensating the same disability more than once.").

As stated by the Iowa Supreme Court, "[w]hen a successive injury increases a preexisting permanent disability to the body as a whole, the benefits provided for the

successive injury must not include a double recovery for the first disability or a double reduction for the first disability.” Warren Properties v. Stewart, 864 N.W.2d 307, 315-16 (Iowa 2015). To avoid such a double recovery in this case, I find Deere is responsible only for a five percent loss of earning capacity as a result of the left shoulder injury in File No. 5066463.

In further support of this finding, Iowa Code section 85.34(7)(b)(2), which the parties agree applies in this case, refers to credits against a “combined disability that is payable under subsection ‘u,’” for which “an employer is liable.” In this case, the 85 percent industrial disability resulting from the combined effect of claimant’s qualifying injuries against the Fund was not payable under subsection (u) of section 85.34(2); to the contrary, it was paid under the Second Injury Compensation Act pursuant to section 85.64, and it was the Fund - not Deere - which was liable. The combined disability for which Deere was liable under subsection (u) in this case was only 35 percent (30 percent for the prior 2014 injury and an additional five percent for the left shoulder injury in 2017). Thus, I find Deere is responsible for a combined disability of 35 percent. The deputy commissioner’s finding that Deere is responsible for a combined 92 percent disability is therefore modified.

Iowa Code section 85.34(7)(b)(2) provides that Deere’s liability is to be considered “already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee’s earnings are less at the time of the present injury than if the prior injury had not occurred.” Iowa Code §85.34(7)(b)(2).

Various methods have been employed by this agency in an attempt to correctly interpret the legislature’s instructions in this section, and both claimant and Deere assert different methods for calculating Deere’s credits. However, in Ditsworth v. ICON Ag, I applied Iowa Code section 85.34(7)(b)(2) by subtracting claimant’s prior award from the combined disability that existed after claimant’s successive injury:

Apportionment in this case is straight forward. As noted, the deputy found claimant had 20 percent industrial disability from the April 29, 2013, work injury. This finding of fact was not disputed or appealed by either party. The appeal decision finds claimant has 50 percent industrial disability due to the combined effects of both the April 29, 2013, and the October 10, 2014, dates of injury. Based on the apportionment under Iowa Code section 85.34(7)(b), claimant is due 30 percent industrial disability from the effects of the October 10, 2014, injury.

File No. 5054080 (App. Dec., Nov. 5, 2018) This decision was affirmed both by the district court and the court of appeals:

Our supreme court has stated section 85.34(7)(b) “explains exactly how the offset is to be calculated when an employee suffers successive injuries while working for the same employer.” Roberts Dairy, 861 N.W.2d at 822 (emphasis omitted).

...

The district court noted this process was followed precisely by the commissioner. The district court summarized the calculation as follows: "He subtracted the percentage of industrial disability attributable to the first back injury, which Petitioner settled, from the total industrial disability of Petitioner, which the Commissioner found was 50 percent."

We agree with the district court that the calculation of the commissioner gave effect to the statute. See id. The overall goal of the Act was achieved in part by the settlement with Nationwide for the 2013 back injury. See Jiminez, 839 N.W.2d at 650. Furthermore, Ditsworth will be compensated by the award for his 2014 injury through the present litigation. He will receive 150 weeks of benefits, among the other reimbursements and payments not a part of this appeal, as compensation for the injury of October 10, 2014.

947 N.W.2d 233 (Iowa Ct. App. 2020) (table).

Applied to this case, subtracting the percentage of industrial disability attributable to the first CRPS injury (30 percent) from claimant's combined industrial disability after his left shoulder injury (35 percent), claimant is due an additional five percent of industrial disability.

Both the deputy commissioner in her ruling on rehearing and claimant rely on the method as set forth in Dunham v. United Parcel Service, File Nos. 5045229 and 5062713 (Arb. Dec., May 11, 2018) to calculate the proper apportionment in this case. The Dunham decision was affirmed on appeal by a deputy commissioner via delegation on June 3, 2019 - after my appeal decision in Ditsworth. Importantly, however, the method for calculating claimant's credits under section 85.34(7)(b)(2) was not raised on appeal. I therefore elect to follow the method affirmed by the court of appeals.

The deputy commissioner's determination that Deere is responsible for 88.57 percent industrial disability (442.85 weeks of PPD) after apportionment is therefore modified, and I find John Deere is responsible for an additional five percent industrial disability (25 weeks of PPD).

Both claimant and the Fund raise arguments regarding the Fund's credits against the 85 percent industrial disability award. As discussed above, I affirmed the deputy commissioner's finding that claimant's bilateral carpal tunnel/right trigger finger conditions resulted in a six percent whole body impairment. As a result, the Fund is entitled to a credit of 30 weeks for this injury.

Claimant's first qualifying injury to his right leg resulted in a seven percent right lower extremity impairment. Thus, the Fund is entitled to an additional credit of 15.4 weeks for this injury. However, in the arbitration decision, the deputy commissioner mistakenly indicated the compensable value for claimant's first qualifying injury was

15.75 weeks. This finding is modified. The Fund is therefore entitled to a total credit of 45.4 weeks.

The Fund argues it is entitled to a credit of 150 weeks, which is what claimant was awarded after his 2014 injury to his legs that resulted in CRPS in the left leg. Iowa Code section 85.64, however, only provides a credit for "the compensable value of the previously lost member or organ," which in this case is seven percent of the right lower extremity. Iowa Code § 85.64(1); see Gregory v. Second Injury Fund of Iowa; 777 N.W.2d 395 (Iowa 2010).

Lastly, the deputy commissioner assessed claimant's costs equally against Deere and the Fund, but taxation of costs against the Fund is contrary to statute. See Iowa Code §§ 85.64, 85.66; Hannan v. Second Injury Fund of Iowa, File No. 5052402 (App. Dec., July 25, 2018). The deputy commissioner's costs assessment against the Fund is therefore reversed, and the entirety of claimant's costs in File No. 5066464 are assessed against Deere.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 30, 2020, and the ruling on motion for rehearing filed on December 17, 2020, are affirmed in part, and reversed in part.

File No. 5066463 (Date of injury March 13, 2017):

Deere shall pay claimant twenty-five (25) weeks of permanent partial disability benefits at the weekly rate of six hundred sixty-five and 09/100 dollars (\$665.09) from March 13, 2017.

Deere 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).

Pursuant to rule 876 IAC 4.33, Deere shall reimburse claimant's costs as set forth in the arbitration decision, and Deere shall bear the cost of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), Deere shall file subsequent reports of injury (SROI) as required by this agency.

File No. 5066464 (Date of Injury January 12, 2017):

Deere shall pay claimant thirty (30) weeks of permanent partial disability benefits at the weekly rate of eight hundred sixty-seven and 36/100 dollars (\$867.36) from January 12, 2017.

The Fund shall pay claimant four hundred twenty-five (425) weeks of permanent partial disability benefits at the weekly rate of eight hundred sixty-seven and 36/100 dollars (\$867.36) commencing upon the end of Deere's responsibility for the above compensation.

Deere 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).

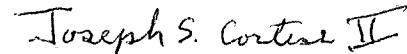
Deere shall receive credit for all benefits previously paid.

The Fund shall receive credit for forty-five point four (45.4) weeks of permanent partial disability compensation.

Pursuant to rule 876 IAC 4.33, Deere shall reimburse claimant's costs as set forth in the arbitration decision, and Deere shall bear the cost of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), Deere and the Fund shall file subsequent reports of injury (SROI) as required by this agency.

Signed and filed on this 10th day of May, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mark Sullivan (via WCES)

Dirk Hamel (via WCES)

Tonya Oetken (via WCES)