

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CATHY EICHMEYER,

Claimant,

vs.

NORDSTROM, INC.,

Self-Insured Employer,
Defendant.

File No. 21700779.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1803; 1803.1; 2907;
5-9999

Defendant Nordstrom, Inc., self-insured employer, appeals from an arbitration decision filed on June 2, 2023. Claimant Cathy Eichmeyer responds to the appeal. This case was heard on November 16, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 20, 2022.

In the arbitration decision, the deputy commissioner found claimant sustained permanent impairment of both her left shoulder and her left arm as a result of the stipulated February 10, 2021, work injury. The deputy commissioner found claimant's injuries should be compensated with industrial disability benefits as an unscheduled injury pursuant to Iowa Code section 85.34(2)(v). The deputy commissioner found claimant proved she sustained 20 percent industrial disability and awarded 100 weeks of permanent partial disability benefits. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant proved permanent disability of both her left shoulder and her left arm as a result of the work injury. Defendant further asserts the deputy commissioner erred in finding the injury should be compensated with industrial disability benefits pursuant to Iowa Code section 85.34(2)(v). Defendant asserts the injury involved, and the surgery performed on claimant's left shoulder in this case are the same as the injury and surgery performed in Chavez v. MS Technology, L.L.C., 972 N.W.2d 662 (Iowa 2022). Therefore, defendant argues claimant's injury should be limited to, and compensated as, a scheduled member left shoulder injury pursuant to Iowa Code section 85.34(2)(n).

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision 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 17A.5 and 86.24, the arbitration decision filed on June 2, 2023, is affirmed in its entirety with the following additional analysis.

Defendant accurately points out that the injury and surgery performed in this case are similar to those involved in the Chavez case. However, defendant's logic is erroneous because it fails to acknowledge the entirety of the Iowa Supreme Court's analysis in the Chavez case. The Iowa Supreme Court held that Chavez's injury was limited to a scheduled member shoulder injury because "nothing in the record indicates Chavez suffered a permanent impairment to her right arm apart from the shoulder injury." Id. at 671. In this case, claimant presented evidence from Dr. Taylor providing a thorough explanation of claimant's left shoulder and left arm impairments. Dr. Taylor explained:

Some reports and studies have revealed a mild loss of supination strength with injury to the long-head biceps tendon. In this circumstance, Ms. Eichmeyer was found to have slight weakness of supination on the left side compared to the right side, and for which I recommended 1% left upper extremity impairment (supination is a forearm/elbow movement). Given this information, it appears that there as a mild functional impact on her arm strength (supination) as result of the biceps injury and subsequent need for treatment (tenotomy).

(Claimant's Exhibit 1, p. 12)

Dr. Taylor's opinion differentiates this case from Chavez. Unlike Chavez, this record contains specific, credible evidence that claimant sustained permanent impairment of her left arm in addition to the permanent impairment she suffered in her left shoulder as a result of the work injury. Defendant in this case did not rebut Dr. Taylor's opinion that claimant sustained permanent impairment of the left arm in addition to the left shoulder impairment. Defendant could have asked the treating surgeon to comment on this issue. Moreover, defendant obtained an independent medical evaluation (IME) after Dr. Taylor rendered his opinion but did not solicit an evaluation or comment on whether claimant sustained permanent impairment of the left arm as a result of a loss of supination strength or the cause of the loss of supination strength.

Dr. Taylor's opinion relative to claimant's left forearm supination and the cause of the loss of strength in the left forearm is unrebutted in this record. Therefore, I concur with the deputy commissioner's findings and reliance upon Dr. Taylor's opinion. I specifically accept Dr. Taylor's opinion that claimant suffered permanent impairment of the left arm as well as the left shoulder as a result of the February 10, 2021, work injury. I affirm the deputy commissioner's findings in this respect.

In the alternative, defendant asserts claimant's injuries should be compensated as separate scheduled member injuries. Defendant asserts the shoulder injury should be compensated as a percentage of 400 weeks pursuant to Iowa Code section 85.34(2)(n). Defendant then contends the separate left arm injury and impairment should be calculated as a percentage of 250 weeks pursuant to Iowa Code section 85.34(2)(m). Defendant essentially asks this agency to adopt a modified version of Iowa Code section 85.34(2)(t) and "combine" the scheduled member injuries. Defendant's interpretation does not consider the entirety of Iowa Code section 85.34(2) or the long line of precedent which interprets that statutory section. In fact, defendant offers no specific statutory authority and no precedent that holds these injuries should be compensated as separate scheduled member injuries and then combined.

The Iowa legislature elected not to include the shoulder in Iowa Code section 85.34(2)(t). Instead, the legislature enacted a "catch-all" provision that provides compensation for any injury not otherwise specifically defined as scheduled in the statutory framework. Iowa Code section 85.34(2)(v) provides:

In all cases of permanent partial disability other than those described or referred to in paragraphs 'a' through 'u' the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred.

The injuries involved in this case include both the left shoulder and the left arm. That injury scenario or combination is not described in Iowa Code section 85.34(2)(a) through (u). Accordingly, claimant's injury falls within the "catch-all" provision of Iowa Code section 85.34(2)(v) and is compensated with industrial disability. I affirm the deputy commissioner's finding that permanent impairment of the left arm as well as the left shoulder moves this case from a scheduled member shoulder injury to an unscheduled injury that should be compensated pursuant to Iowa Code section 85.34(2)(v). See Anderson v. Bridgestone Americas, Inc., File No 5067475 (Appeal Jan. 2022). Therefore, I affirm the deputy commissioner's award of 20 percent industrial disability, or 100 weeks of permanent partial disability benefits.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed June 2, 2023, is affirmed in its entirety.

Defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the weekly rate of four hundred twenty-nine and 52/100 (\$429.52) commencing on December 27, 2021.

Defendant shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits 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).

Defendant shall receive credit for 20 weeks of benefits previously paid.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and 00/100 dollars (\$100.00), and defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 4th day of October, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

Thomas Wolle (via WCES)