

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RANDY STROMLEY,

Claimant,

vs.

REYES HOLDINGS, LLC,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

FILED

MAR 14 2017

WORKERS COMPENSATION

File No. 5055978

ARBITRATION DECISION

Head Note No.: 1803

Claimant Randy Stromley filed a petition in arbitration on April 29, 2016, alleging he sustained an injury to his lower back while working for the defendant, Reyes Holdings LLC ("Reyes Holdings"), on July 13, 2014. Reyes Holdings, and its insurer, the defendant, Indemnity Insurance Company of North America ("Indemnity Insurance"), filed an answer on June 3, 2016, admitting Stromley had sustained a work injury.

An arbitration hearing was held on January 31, 2016, at the Division of Workers' Compensation in Des Moines, Iowa. Attorney Joseph LaPointe represented Stromley. Stromley appeared and testified. Attorneys Lyndsey Canning and Patrick Sodoro represented Reyes Holdings and Indemnity Insurance. Rene Haigh appeared and testified on behalf of Reyes Holdings and Indemnity Insurance. Exhibits 1 through 6 and A through H were admitted into the record. The record was left open through February 15, 2017, for the receipt of post-hearing briefs. Defendants filed a post-hearing brief. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. Reyes Holdings and Indemnity Insurance waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Stromley and Reyes Holdings at the time of the alleged injury.

2. Stromley sustained an injury on July 13, 2014, which arose out of and in the course of his employment with Reyes Holdings.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The alleged injury is a cause of permanent disability
5. Temporary benefits are no longer in dispute.
6. The commencement date for permanent partial disability benefits, if any are awarded, is August 1, 2014.
7. At the time of the alleged injury, Stromley's gross earnings were \$1,453.85 per week, he was married and entitled to one exemption, and the parties believe the weekly rate is \$876.60.
8. Medical benefits are no longer in dispute.
9. Prior to the hearing Stromley was paid twenty-five weeks of compensation at the rate of \$876.60.

ISSUE

1. What is the nature and extent of Stromley's disability?

FINDINGS OF FACT

Stromley is married and lives in Mason City, Iowa. (Transcript, page 12) Stromley is a high school graduate. (Exhibit E, p. 7) While in high school Stromley worked as a mechanic. (Ex. E, p. 7) After high school he worked on pipelines as a laborer, and then he worked as a laborer and supervisor in general construction and carpentry for approximately ten years. (Ex. E, p. 7) Stromley has been a truck driver for most of his life, and he currently holds a commercial driver's license. (Tr., pp. 42, 50) Stromley is also certified to drive a forklift. (Tr., p. 50) Stromley has a home computer and he is able to use e-mail and to perform internet searches. (Ex. E, p. 8) At the time of the hearing he was fifty-six. (Tr., p. 12)

Reyes Holdings hired Stromley as a truck driver in October 2007. (Tr., p. 12) Stromley drove a truck and physically loaded and unloaded supplies for McDonald's restaurants. (Tr., p. 12) Stromley's maximum range was 400 to 500 miles. (Tr., p. 13) He returned home most evenings.

Reyes Holdings's semitrailers were divided into two halves. (Tr., p. 14) The front half contained a freezer section and the back half contained a cooler section. (Tr., p. 14) Reyes Holdings installed temperature control devices in both halves of the trailer. (Tr., p. 14) The devices were plastic, the size of small lunch boxes, and were hooked to a piece of coaxial wire to monitor the temperature in both areas. (Tr., p. 14) When

Stromley removed the freight, the temperature control devices would hang by the wires or fall. (Tr., p. 14) The devices were getting broken and were expensive, so Reyes Holdings instructed employees to remove the boxes and bring them back in good condition. (Tr., pp. 14-15) Stromley had to climb up on a stack of pallets to reach and remove each device in the trailer. (Tr., p. 15)

In July 2014, Stromley was in Sioux Falls, South Dakota. (Tr., p. 15) He climbed up on a stack of pallets to remove the freezer temperature control device. (Tr., p. 15) It was near the end of the day during the summer and the boxes were soft because of moisture coming into the truck. (Tr., p. 15) When Stromley climbed up on the pallet, the pallet started to give way and when he went to push off and pushed back, his foot became lodged between the pallet jack and the pallet and he fell backward onto his left side and back. (Tr., p. 15)

Stromley called his supervisor, told him about the incident and reported he was in pain. (Tr., p. 15) Stromley drove back to Mason City to the terminal and then he went to the emergency room. (Tr., p. 16) Stromley was diagnosed with a back strain or sprain. (Tr., p. 16)

Stromley received follow-up care through HealthWorks the next day, and was prescribed Lortab. (Tr., p. 16) After the accident Stromley was off work for a few days. (Ex. A, p. 13)

Stromley's supervisor contacted him and told him he needed to return to work. (Tr., p. 16) When Stromley returned to work he was placed on light duty where he sat on a chair and counted products on pallets to make sure all of the products were on the pallets. (Tr., p. 16) Stromley worked light duty for approximately two months. (Tr., p. 16) After approximately two months Reyes Holdings had Stromley train the newer drivers and ride with them for approximately one month, until he returned to full duty. (Tr., p. 17)

Stromley testified that when he returned to full duty he was able to perform his job duties, but he was slower and he had pain every day. (Tr., p. 17) Stromley was prescribed Relafen and 800 milligrams of ibuprofen, and he received two rounds of trigger point injections. (Tr., p. 17) For the next year Stromley received medical treatment, including physical therapy. (Tr., pp. 17-18) Stromley eventually discontinued his pain medication, he administered a compounding cream for his back, and he took ibuprofen. (Tr., pp. 18-19)

Stromley received treatment from D.W. Beck, M.D. following his work injury. (Ex. 5; Tr., p. 36) On June 3, 2015, Dr. Beck issued an unsigned letter, which provides:

Randy Stromley returned for follow-up. He still has an ache in his left lower back. He continues to work full duty.

At this point I think he has reached MMI. According to the Guidelines for Permanent Impairment 5th edition, Randy has a 5% total body impairment.

(Ex. 5) No other medical records were submitted by either party. Stromley testified that he has not received treatment for his back from any medical providers since June 2015. (Tr., pp. 36-37)

Stromley reported that when he worked for Reyes Holdings he earned \$1,483.75 per week, or approximately \$77,000.00 per year. (Tr., p. 24) Stromley received component pay for his actual work, layover pay for staying in a hotel, and paid time off. (Tr., pp. 29-31)

Stromley reported he terminated his employment with Reyes Holdings on December 31, 2015, because he could not take the pain from his work, and the pain was interfering with his sleep. (Ex. A, p. 12; Tr., p. 22) While working for Reyes Holdings Stromley applied for a truck driver position with YRC Freight. (Ex. E, p. 8) Stromley applied for the position online with assistance from a friend. (Ex. E, p. 8)

Stromley began working for YRC Freight on January 4, 2016, and he was still employed by YRC Freight at the time of the hearing. (Ex. A, p. 11)¹ Stromley reported he works full-time and he normally works ten hours of overtime per week for YRC Freight. (Ex. A, p. 11) Stromley receives time and a half pay for overtime work. (Ex. A, p. 11) Stromley drives a truck. (Tr., p. 20) Stromley does not have to physically load and unload the truck. (Tr., p. 20) Stromley drives a 125 mile route each day and he returns home in the evening. (Tr., p. 21) Stromley drives fewer miles than he did for Reyes Holdings. (Tr., p. 21)

As of December 17, 2016, Stromley had earned \$51,216.28 from YRC Freight. (Tr., p. 24) Stromley reported he earns an average of \$1,371.00 per week. (Tr., p. 25) Stromley's 2015 W-2 shows he earned \$79,121.84 in gross wages from Reyes Holdings. (Tr., p. 25) In 2014, he earned gross wages of \$66,000 for Reyes Holdings. (Tr., pp. 26-27) Stromley testified that at the time of the hearing he was earning \$19.27 per hour. (Tr., p. 35)

Haigh has been a vocational rehabilitation counselor for seventeen years. (Tr., p. 55) Haigh reviewed Stromley's medical records and did not find he had any permanent restrictions. (Tr., pp. 57-58) Haigh completed a labor market survey within Stromley's geographic location and found ten trucking jobs she believed he could engage in. (Tr., pp. 58-59) Four of the ten jobs were no touch freight jobs, that did not require any lifting. (Tr., p. 59)

¹ After the hearing, I discovered Exhibit A contains multiple documents and the individual page numbers were not listed on each page. I numbered the individual pages, 1 through 20. The same is true with respect to Exhibit B. I numbered the individual pages, 1 through 17. Defendants should number the individual pages of each exhibit when filing exhibits with this agency.

Haigh opined because Stromley has twenty-seven years of experience, he would not be considered an entry level truck driver and his pay should be higher than an entry level truck driver. (Tr., p. 60) Haigh relayed she believed Stromley is highly employable as a truck driver. (Tr., p. 61) Haigh believes he is capable of earning a higher salary than he does with YRC Freight. (Tr., p. 63)

Stromley testified that after his injury he looked for jobs with similar pay in the Mason City area, and he found a position with Meadowbrook Meats, which delivers supplies for Hardee's, and requires manual loading and unloading, but requires a longer driving route to Wyoming and Montana. (Tr., p. 31) Stromley reported that position would be harder because he would be lifting, stooping, and carrying freight, and working as a long haul trucker. (Tr., p. 31) Stromley has not found any other jobs with similar pay to Reyes Holdings and Meadowbrook Meats in the Mason City area. (Tr., p. 32)

Stromley has not applied for any jobs since he started at YRC Freight. (Tr., p. 42) Stromley prefers to be home at night and he has not applied for any no touch freight jobs because he does not want to be on the road for a week to ten days at a time. (Tr., p. 43)

Stromley testified he continues to have back pain, but he is sleeping better. (Tr., pp. 33-34) Stromley enjoys riding his motorcycle, which weighs 800 pounds. (Tr., pp. 37-38) Last year Stromley drove his motorcycle approximately 300 miles. (Tr., p. 37)

Stromley enjoyed lifting weights before his injury. (Tr., p. 23) Stromley reported his weight lifting has changed and he cannot perform back exercises. (Tr., p. 23) Stromley told Haigh that on one occasion he tried to carry his granddaughter who weighed sixty-seven pounds up the stairs, but he could not, due to her weight. (Ex. E, p. 4)

CONCLUSIONS OF LAW

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held an injury occurs "in the course of employment" when:

[I]t is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's

premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of the employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979). The parties stipulated Stromley sustained a permanent injury to his back, due to his July 13, 2014 work injury.

Stromley received medical care for his back condition through June 3, 2015, with Dr. Beck. Dr. Beck opined Stromley reached maximum medical improvement on June 3, 2015. (Ex. 5) Using Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Beck opined Stromley had sustained a five percent permanent impairment based on his low back injury. (Ex. 5) Dr. Beck did not impose any permanent restrictions. (Ex. 5)

Stromley contends he has sustained a significant industrial disability. Reyes Holdings and Indemnity Insurance aver he has sustained no industrial disability. The injury in this case is not to a scheduled member, thus the industrial disability analysis is the appropriate analysis for determining the extent of disability.

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Indus., Inc., 818 N.W.2d 360, 370 (Iowa 2016).

At the time of the hearing Stromley was fifty-six. (Tr., p. 12) He has worked as a truck driver most of his life and he currently works as a truck driver for YRC Freight. Stromley is certified to drive a forklift and he holds a commercial driver's license. (Tr., p. 50)

After his work injury Stromley worked light duty for approximately two months. (Tr., p. 16) Stromley then trained newer drivers and rode with them for approximately one month, until he returned to full duty. (Tr., p. 17) Stromley did not present evidence that he has any permanent restrictions.

Stromley testified that when he returned to full duty he was able to perform his job duties, but he was slower and he had pain every day. (Tr., p. 17) Stromley's position with Reyes Holdings required him to manually load and unload trucks. In late December 2015, Stromley resigned from Reyes Holdings and accepted a position with YRC Freight that he started in January 2016. Stromley's position with YRC Freight does not require him to manually load and unload trucks, but he is paid a lower salary.

Haigh testified Stromley is capable of earning a higher salary given his experience as a truck driver. Haigh identified ten jobs she believed Stromley is qualified for. She noted he also has experience training new drivers, which he did for a period of time when he worked for Reyes Holdings. Haigh did not contact any of the employers or recommend any employers to Stromley. Stromley testified he has looked for work in the area, but he has not been able to find a higher paying job.

Stromley has not applied for any positions since he started with YRC Freight. Stromley has experienced a permanent impairment as a result of his work injury. He testified that he continues to have back pain on a daily basis. Considering all of the industrial disability factors, I conclude Stromley has sustained a ten percent industrial disability.

ORDER

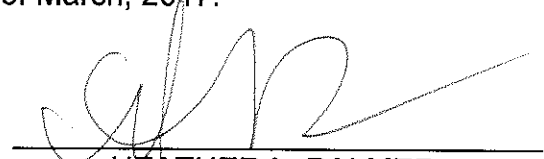
IT IS THEREFORE ORDERED, that:

Defendants shall pay the claimant fifty (50) weeks of permanent partial disability benefits at the rate of eight hundred seventy-six and 60/100 dollars (\$876.60), commencing on August 1, 2014.

Defendants shall pay accrued benefits in a lump sum, with interest on all accrued weekly benefits pursuant to Iowa Code section 85.30.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 14th day of March, 2017.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HLP/srs

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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.