

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CARSON GUDGEON,

Claimant,

vs.

SECOND INJURY FUND
OF IOWA,

Defendant.

File No. 21701350.01

ARBITRATION DECISION

Head Note Nos.: 1402.40, 1803, 3202

Claimant Carson Gudgeon filed a petition in arbitration on December 28, 2021, alleging he sustained an injury to his left ankle while working for Defendant John Deere Waterloo Works ("John Deere") on February 27, 2020. Claimant also averred he was entitled to benefits from Defendant Second Injury Fund of Iowa ("Fund") based on a first qualifying loss to his right leg and a second qualifying injury to his left ankle. John Deere filed an answer on January 7, 2022. The Fund filed an answer on January 18, 2022.

An arbitration hearing was scheduled for January 30, 2023. Prior to the hearing Gudgeon and John Deere entered into an agreement for settlement.

Gudgeon's case against the Fund proceeded to an arbitration hearing on January 30, 2023, *via* Zoom video conference. Attorney Joseph Lyons represented Gudgeon. Assistant Attorney General Jonathan Bergman represented the Fund. Gudgeon appeared and testified. Joint Exhibits ("JE") 1 through 7, Exhibits 1 through 7 and A through E were admitted into the record. The record was held open for the receipt of Exhibit F and post-hearing briefs. Exhibit F was received and admitted into the record. The briefs were received and the record was closed.

The parties submitted a hearing report listing stipulations and issues to be decided. The hearing report order was entered at the conclusion of the hearing. The Fund waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between John Deere and Gudgeon at the time of the alleged injury.

2. Gudgeon sustained an injury, which arose out of and in the course of his employment with John Deere on February 27, 2020.

3. The alleged injury is a cause of temporary disability during a period of recovery.
4. Temporary benefits are no longer in dispute.
5. The disability is a scheduled member disability to the left leg.
6. At the time of the alleged injury Gudgeon's gross earnings were \$1,324.00 per week, he was married and entitled to five exemptions, and the parties believe the weekly rate is \$865.57.
7. Medical benefits are no longer in dispute.
8. Prior to hearing Gudgeon was paid 15.882 weeks of compensation at the rate of \$865.57 per week.
9. Gudgeon sustained a prior qualifying loss to the right leg on July 26, 2012.
10. The functional loss from the prior qualifying loss is two percent of the right leg.
11. The commencement date for Fund benefits, if any, are awarded, is March 8, 2021.
12. If Gudgeon is entitled to Fund benefits, the Fund is entitled to a credit of 24.2 weeks under Iowa Code section 85.64.

ISSUES

1. Is the alleged injury a cause of permanent disability?
2. Did Gudgeon sustain a compensable loss to the left leg on February 27, 2020?
3. If Gudgeon sustained a compensable loss to the left leg on February 27, 2020, what is the extent of functional loss?
4. If Gudgeon sustained a first qualifying loss and second qualifying loss is he entitled to industrial disability benefits from the Fund exceeding the Fund's credit for the combined functional loss?

FINDINGS OF FACT

In 1996, Gudgeon graduated from high school in La Farge, Wisconsin. (Transcript:8-9; Ex. E:21) Gudgeon relayed he had trouble in school and he received extra help. (Ex. E:21) Gudgeon was never diagnosed with a learning disability, but he

worked one-on-one with a teacher in grade school for math and English because he had a hard time writing. (Ex. E:21) Gudgeon reported he had a C average in school. (Ex. E:21)

A year after graduating from high school Gudgeon enlisted in the Air Force. (Tr.:9, 19; Ex. E:21) Gudgeon remained in the Air Force for 12 years until he was honorably discharged. (Tr.:9-10; Ex. E:22) While he was in the Air Force Gudgeon obtained an associate's degree in mechanical and electrical technology. (Tr.:9; Ex. E:22)

Gudgeon was married at the time of his work injury in 2020. (Tr.:37; Ex. E:16) He and his wife were divorced after the work injury. (Tr.:37) At the time of the hearing Gudgeon was 45. (Tr.:8)

After leaving the Air Force in 2009, Gudgeon accepted a position with John Deere, as a maintenance electrician. (Tr.:10, 19) Gudgeon installs and maintains electrical systems. (Tr.:19-20) At the time of the hearing Gudgeon continued to work for John Deere as a maintenance electrician, full-time. (Tr.:10, 32) Gudgeon has received regular pay raises since his work injury in 2020. (Tr.:32-33) Gudgeon intends to continue working for John Deere for the foreseeable future. (Tr.:34)

In 2012 Gudgeon sustained a right knee torn medial meniscus while pushing off the sidewall of a pool. (Tr.:10-11; JE 1:1; JE 2:16-17) Gudgeon underwent a partial medial menisectomy, chondroplasty of the patella, and limited synovectomy and he received physical therapy for one month. (Tr.:11, 27; JE 1:4-6) Gudgeon missed six weeks of work following his right knee injury. (Tr.:27) Following his treatment Gudgeon returned to fully duty at John Deere as a maintenance electrician without restrictions. (Tr.:27-28; JE 4:26) Gudgeon has not received any additional treatment for his right knee since 2012 and he does not take any medication for his right knee. (Tr.:28)

On February 27, 2020, Gudgeon stepped down into a divot in the concrete at John Deere while getting down from a fork truck. (Tr.:11) Gudgeon twisted his left ankle and fell down. (Tr.:11-12) Gudgeon notified his supervisor, Andrew Luna. (Tr.:12) Luna told Gudgeon to go to the emergency room. (Tr.:12) Gudgeon sought treatment at Allen Hospital, complaining of throbbing left ankle pain localized in the medial aspect of his ankle. (JE 3:20-21) An x-ray taken at the hospital did not show any fractures. (Tr.:12; JE 1:7; JE 3:23-24) Gudgeon was assessed with an ankle strain, sprain, and contusion and advised to rest his ankle, elevate his ankle, apply ice packs, and take analgesics. (JE 3:25)

Gudgeon sought treatment with Christopher Considine, D.P.M.'s office before the work injury for foot pain in 2014 and 2017. (Tr.:25-26; JE 6:58-61) Gudgeon testified the pain in his foot from his work injury at John Deere is different from the pain he experienced in 2014 and 2017. (Tr.:26)

On March 6, 2020, Gudgeon underwent left lower extremity magnetic resonance imaging. (JE 1:9) The reviewing radiologist listed an impression of a partial-thickness tear of the anterior talofibular ligament, a contusion pattern of bone marrow edema in the mid talus and medial navicular, and small tibiotalar joint effusion. (JE 1:9) John Deere referred Gudgeon to Dr. Considine. (JE 4:33)

Dr. Considine immobilized Gudgeon's ankle in a Cam boot on March 10, 2020. (JE 6:63) Gudgeon also received an injection, but pain did not improve. (JE 6:64-70) Dr. Considine discontinued the CAM boot and prescribed a lace up ankle brace. (JE 6:71)

On May 22, 2020, Gudgeon underwent additional left lower extremity magnetic resonance imaging. (JE 1:10) The reviewing radiologist compared the imaging with his imaging from March 2020, and listed an impression of partial-thickness tear of the anterior talofibular ligament, and noted the edema in the ligament fibers had decreased, the bone marrow edema in the medial malleolus, mid talus and medial navicular had decreased, and the tibiotalar joint effusion had decreased. (JE 1:11)

Dr. Considine assessed Gudgeon with left ankle sprain of calcaneofibular ligament, sprain of other ligament, other specified injuries of the left ankle, and left ankle and foot joint pain. (JE 6:77) Dr. Considine noted the imaging showed improvement and healing and that he wanted to see how Gudgeon's left lower extremity responded to physical therapy. (JE 6:77)

During a follow-up appointment on June 19, 2020, Gudgeon reported the physical therapy was making his ankle hurt more. (JE 6:78) Dr. Considine found Gudgeon had exhausted conservative therapy and he recommended surgery. (JE 6:79)

On July 15, 2020, Dr. Considine performed a left ankle arthroscopy with extensive debridement and a repair of the anterior talofibular ligament. (JE 1:12; JE 6:80, 103)

During a return visit on August 11, 2020, Gudgeon continued to complain of left ankle pain. (JE 6:84) Dr. Considine noted Gudgeon should not be having as much pain as he was having. (JE 6:84) Dr. Considine performed eight laser treatments on the wound. (JE 6:84-92) Gudgeon reported his swelling and pain had improved. (JE 6:92). Dr. Considine ordered physical therapy and additional laser therapy and recommended he transition to a shoe. (JE 6:93-94)

Dr. Considine prescribed a Medrol DosePak, which did not relieve Gudgeon's pain and noted physical therapy made Gudgeon's pain worse. (JE 6:95-96) During an appointment November 3, 2020, Dr. Considine administered a cortisone injection. (JE 6:97) Dr. Considine noted Gudgeon may have some deep scar tissue around the surgical site or nerve impingement. (JE 6:99) Dr. Considine wrote Gudgeon could return to work, but he was concerned returning full time could result in a setback. (JE 6:99)

During an appointment on November 16, 2020, Gudgeon requested to return to work without restrictions and Dr. Considine released him without restrictions. (JE 6:100-02)

On November 17, 2020, Rick Garrels, M.D., an occupational medicine physician, examined Gudgeon at the John Deere Clinic. (JE 4:51) Dr. Garrels assessed Gudgeon with a left ankle sprain status post ligament repair and found Gudgeon had full range of motion and full strength in his ankle. (JE 4:51) Dr. Garrels documented Gudgeon's gait was normal and he was able to tiptoe and walk without difficulty. (JE 4:51) Dr. Garrels opined "[he] will continue regular work. I consider him to be at MMI today 11/17/2020. No follow up is planned. Using the AMA Guides, Chapter 17, Table 17-4, 17-11 and 17-13 on pages 532 and 537, a 0% impairment is assessed." (JE 4:51) Dr. Garrels did not note which version of the AMA Guides he used in reaching his conclusions.

In January 2021, Gudgeon aggravated his left ankle while using a ladder. (Tr.:15; JE 5:55; JE 6:103) After the incident Dr. Considine administered a cortisone shot and ordered a second round of physical therapy. (Tr.:15; JE 6:103-04; JE 7:125) Dr. Considine told Gudgeon to use caution while using ladders in the future because ladders are known to cause foot and ankle issues. (Tr.:15; JE 6:104)

During a physical therapy session on February 5, 2021, the physical therapist documented Gudgeon had a shortened step length with his left stance phase with noted limp/antalgic gait pattern. (JE 7:127)

On February 16, 2021, John Deere found Gudgeon reached maximum medical improvement and released him to full duty without any restrictions. (JE 4:54)

During his last physical therapy session on February 17, 2021, Gudgeon reported his ankle was feeling "pretty good with less pain overall." (JE 7:139) The physical therapist documented Gudgeon reported he had continued stiffness in his ankle, but he believed his condition had improved and he had returned to full duty without increased pain or swelling. (JE 7:141-42)

Gudgeon has not seen Dr. Considine for his left ankle since February 2021. (Tr.:29) At that time Dr. Considine ordered some additional physical therapy, which Gudgeon completed near the end of February 2021. (Tr.:29) Since that time Gudgeon has not received any additional treatment for his left ankle. (Tr.:29) He does not take any prescription medication for his ankle. (Tr.:30)

Gudgeon testified he is able to perform all of his required job duties at John Deere and he limits his time on ladders. (Tr.:30) No physician has restricted Gudgeon from working on his hands and knees. (Tr.:30-31) No physician has restricted the amount of time Gudgeon can be on his feet. (Tr.:31)

Farid Manshadi, M.D., a physiatrist, conducted an independent medical examination ("IME") for Gudgeon on April 23, 2021, and issued his report on May 10,

2021. (Ex. 1) Dr. Manshadi reviewed Gudgeon's medical records and examined him. (Ex. 1) Using a goniometer, Dr. Manshadi documented Gudgeon's left range of motion was limited in comparison to his right ankle, as follows:

Left ankle dorsiflexion was at 1 degree
Left ankle plantar flexion was 45 degrees.
Left ankle inversion was full.
Left ankle eversion was 5 degrees.

Right ankle dorsiflexion was +11 degrees.
Right ankle plantar flexion was 67 degrees.
Right eversion and inversion were full active range of motion.

(Ex. 1:7) With respect to Gudgeon's right knee, Dr. Manshadi found there was no edema, but "McMurray's was strongly positive," he was nontender to palpation on the right side, and "PCL, ACL and collaterals were all supple and gait was antalgic on the left side." (Ex. 1:7) Dr. Manshadi documented Gudgeon continued to complain of right knee pain, left ankle pain, and reduced range of motion of his left ankle. (Ex. 1:7)

Dr. Manshadi opined Gudgeon's left ankle injury was causally related to his work activities on February 27, 2020. (Ex. 1:7) While Gudgeon was initially released to return to work without restrictions on October 26, 2020, he had another incident when he was standing on a ladder and injured his left ankle on January 28, 2021. (Ex. 1:7) Dr. Manshadi found the second maximum medical improvement date was February 8, 2021. (Ex. 1:8) Dr. Manshadi found Gudgeon sustained permanent impairments to his right knee and left foot and ankle. (Ex. 1:8)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Manshadi assigned Gudgeon two percent impairment of the right lower extremity for his knee injury under Table 17-33. (Ex. 1:8) With respect to his left ankle injury, using Tables 17-11 and 17-12, for the left lower extremity, Dr. Manshadi assigned Gudgeon seven percent impairment due to lack of extension, two percent due to lack of eversion, for a total left lower extremity impairment of nine percent using the Combined Values Chart. (Ex. 1:8) Dr. Manshadi noted Gudgeon's left ankle will periodically require injections for pain management and he will need to use a Suedo brace. (JE 1:8)

Dr. Manshadi sent Gudgeon's counsel a letter on May 13, 2021, clarifying his report. (Ex. 1:9) Dr. Manshadi relayed he believed the January 28, 2021, incident caused an aggravation of Gudgeon's left ankle condition and he believed there was no new injury. (Ex 1:9)

Gudgeon's attorney sent Dr. Manshadi additional records from Dr. Considine's office from May 18, 2012, through November 9, 2017, to review. (Ex. 1:10) Dr.

Manshadi sent a response letter stating the additional records did not change his report of May 10, 2021. (Ex. 1:11)

Gudgeon testified he has sharp pain in his left ankle when he tries to use a ladder and while standing for long periods of time or when walking. (Tr.:15) Gudgeon reported he wears an ankle brace at all times while working. (Tr.:15, 22) Gudgeon limits his ladder use by using a scissors lift at work. (Tr.:15-16) Gudgeon testified since the work injury he cannot turn his foot to the outside and he cannot lift his foot toward his body. (Tr.:16, 24) Gudgeon can stand for 10 minutes before he develops symptoms. (Tr.:23) Gudgeon relayed he has cracking in his knee and pain in his knee when trying to walk or climb a ladder. (Tr.:16, 23) Gudgeon's work on ladders can vary as little as one day a week. (Tr.:34-35) While John Deere is aware Gudgeon is supposed to limit his use of ladders, Gudgeon has not requested an accommodation for ladder use from John Deere. (Tr.:35)

Gudgeon worked as an electrician in the Air Force where he installed, maintained and worked on electrical symptoms, which required him to use ladders and lifts. (Tr.:17) When he worked on electrical panels he had to work in small spaces near the ground on his hands and knees for an hour at a time. (Tr.:17-18) Gudgeon reported he can only work on his hands and knees for 10 minutes before the pain becomes unbearable. (Tr.:17)

Gudgeon also had to climb poles in the Air Force. (Tr.:18) He would put gaffs on his feet with two straps around his lower leg and stab them into the pole and climb the pole, which put a lot of pressure on his lower extremities. (Tr.:18) Gudgeon does not believe he could climb poles today. (Tr.:18)

Gudgeon worked as a facilities manager in Montana where he ensured the workers kept the area clean. (Tr.:18-19) Gudgeon believes he could perform that job today. (Tr.:18-19)

Gudgeon's maintenance electrician position with John Deere requires him to get down on his hands and knees to work on electrical panels at ground level. (Tr.:20) Gudgeon testified when he works on his hands and knees he has to take breaks more often and he tries to limit the amount of time he spends on his hands and knees. (Tr.:20)

During a strike at John Deere in 2022, Gudgeon worked for Bertch Cabinets full-time as an electrician, mechanic, and plumber for one month. (Tr.:20-21, 31) The job required him to get in confined spaces and work in pits with sawdust to work on the equipment. (Tr.:21) Gudgeon relayed the job put a lot of pressure on his ankle when he went down into the pits and he does not believe he could perform the job on a full-time basis. (Tr.:21) Gudgeon testified when he worked for Bertch Cabinets he was able to perform all of his required duties. (Tr.:31-32)

Before his work injury Gudgeon enjoyed hiking on dirt paths at Hartman Reserve for an hour at a time. (Tr.:21-22) Since his work injury he can only hike for 10 minutes. (Tr.:22)

Gudgeon testified it is more difficult for him to mow the yard and shovel snow since his work injury because of his ankle pain. (Tr.:23) Gudgeon's son mows the lawn at his home. (Tr.:23, 35) No physician has restricted Gudgeon from mowing the yard or removing snow. (Tr.:35)

Cold weather causes Gudgeon's ankle to become more sore and he experiences more pain. (Tr.:23) Gudgeon relayed he has a difficult time maneuvering obstacles with his ankle. (Tr.:24)

Before his work injury Gudgeon used to use a treadmill every day after his knee injury. (Tr.:24, 36) Since his ankle surgery he is not able to use a treadmill. (Tr.:24, 36-37) No physician has restricted Gudgeon from running. (Tr.:38) Gudgeon also used to lift weights and now he cannot lift weights because of the pain in his ankle and knee. (Tr.:24)

The Division of Workers' Compensation approved an agreement for settlement between Gudgeon and John Deere on January 31, 2023. (Ex. F) In the agreement for settlement, Gudgeon and John Deere agreed Gudgeon sustained a 7.2 percent loss of his left lower extremity, entitling him to 15.882 weeks of compensation at the weekly rate of \$865.57. (Ex. F:31) The agreement for settlement provided, in part, that the settlement waived a hearing, decision, and resulting statutory benefits. (Ex. F:32)

CONCLUSIONS OF LAW

Gudgeon contends he is entitled to benefits from the Fund. The parties stipulated Gudgeon sustained a first qualifying loss to his right lower extremity, resulting in two percent permanent impairment. The parties also stipulated Gudgeon sustained an injury to his left lower extremity on February 27, 2020, but the Fund disputes Gudgeon's contention that the injury resulted in permanent disability. If Gudgeon has sustained a first and a second qualifying loss, the parties dispute the extent of industrial disability due to the combined effect of the asserted injuries.

Iowa Code section 85.64 states:

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "Second

Injury Fund” created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

Thus, an employee is entitled to Fund benefits if the employee establishes: (1) the employee sustained a permanent disability to a hand, arm, foot, leg, or eye, a first qualifying injury; (2) the employee subsequently sustained a permanent disability to another hand, arm, foot, leg, or eye, through a work-related injury, a second qualifying injury; and (3) the employee has sustained permanent disability resulting from the first and second qualifying injuries exceeding the compensable value of the “previously lost member.” Gregory v. Second Injury Fund of Iowa, 777 N.W.2d 395, 398-99 (Iowa 2010).

The Fund first avers Gudgeon has failed to prove a second qualifying injury, relying on the opinion of Dr. Garrels, who assigned zero percent permanent impairment to Gudgeon’s left lower extremity. Dr. Manshadi assigned nine percent permanent impairment. The Fund notes Dr. Considine found Gudgeon had normal subtalar joint range of motion on November 16, 2020, the day before Dr. Garrels’ report and on February 8, 2021, the last date of his treatment, and Gudgeon met all established long-term goals as of his last physical therapy session on February 19, 2021.

Dr. Garrels did not indicated he used the AMA Guides 5th Edition, as required by this agency. 876 IAC 2.4. Dr. Manshadi indicated he used the AMA Guides 5th Edition in preparing his opinion, in compliance with the administrative rules.

Gudgeon testified Dr. Manshadi used a tool to determine his ankle range of motion and Dr. Garrels did not use any tools to determine his ankle range of motion. (Tr.:25) Dr. Manshadi documented he used a goniometer, a device to obtain objective range of motion measurements for Gudgeon’s left and right ankles. Dr. Garrels and Dr. Considine did not record any range of motion findings or indicate they used a goniometer in reaching their conclusions. The Fund also avers the fact Dr. Considine did not assign permanent impairment should be afforded significant weight. I find the Fund’s argument misplaced. There was no evidence any party requested Dr. Considine issue an impairment rating in this case. I also find Dr. Garrels’ opinion less persuasive than Dr. Manshadi’s opinion because he did not indicate he used the AMA Guides 5th Edition and he did not record any range of motion findings using objective evidence obtained using a goniometer. For these reasons I do not find his opinion persuasive.

Gudgeon testified at hearing he has ongoing pain and difficulty walking and standing as a result of his left ankle injury. I found his testimony at hearing reasonable and consistent with the other evidence I believe. Gudgeon testified with direct eye contact, he did not provide inconsistent statements, and he did not engage in furtive movements. I found Gudgeon to be a credible witness. Considering all of the evidence, I find Gudgeon has established he sustained a second qualifying injury.

The parties stipulated if Gudgeon is entitled to Fund benefits, the Fund is entitled to a credit under Iowa Code section 85.64 of 24.2 weeks, based on two percent permanent impairment to the right lower extremity and nine percent permanent impairment to the left lower extremity, multiplied by 220 weeks for each extremity. See Iowa Code § 85.34(2)(p) (for loss of a leg, weekly compensation is 220 weeks). Given Gudgeon has sustained a first and a second qualifying loss, it is necessary to determine his extent of industrial 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, 137-138 (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)(v). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360, 370 (Iowa 2016).

At the time of the hearing Gudgeon was 45. (Tr.:8) Gudgeon works for John Deere in the urban city of Waterloo. While he was in the Air Force Gudgeon obtained an associate’s degree in mechanical and electrical technology. (Tr.:9; Ex. E:22) Gudgeon is middle-aged. During the hearing I found him articulate. I believe he is capable of retraining.

Gudgeon has worked for John Deere as a maintenance electrician since 1997. Since the work injury he has received regular raises. He returned to work without restrictions following his first and second qualifying injuries. Gudgeon was also able to secure full-time employment through Bertch Cabinets during the strike in 2022. (Tr.:20-21, 31)

Gudgeon credibly testified he struggles to work on his hands and knees and when using ladders. He also experiences increased pain with walking and standing for extended periods. Dr. Considine told Gudgeon to use caution while using ladders in the future because ladders are known to cause foot and ankle issues. (Tr.:15; JE 6:104) Considering all of the factors of industrial disability, I find Gudgeon has sustained 10 percent industrial disability, entitling him to 50 weeks of permanent partial disability benefits, commencing on the stipulated commencement date of March 8, 2021.

The Fund is responsible only for the amount of the industrial disability from which the employee suffers, reduced by the compensable value of the first and second injuries. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 269 (Iowa 1995). In the event the credits due to the Fund exceed the industrial disability resulting from the qualifying injuries, the fund has no liability. Crudo v. Second Injury Fund of Iowa, Case No. 98-828 (Iowa App. July 23, 1999). The parties stipulated the combined disability of the first and second qualifying losses is 24.2 weeks. 50 weeks minus 24.2 weeks is 25.8 weeks. Gudgeon is entitled to 25.8 weeks of permanent partial disability benefits from the Fund commencing on the stipulated commencement date of March 8, 2021.

ORDER

IT IS THEREFORE ORDERED, THAT:

The Fund shall pay Gudgeon 25.8 weeks of permanent partial disability benefits at the stipulated weekly rate of eight hundred sixty-five and 57/100 dollars (\$865.57), commencing on the stipulated commencement date of March 8, 2021.

The Fund shall pay interest on all accrued weekly benefits pursuant to Iowa Code section 85.30. Interest accrues on unpaid Second Injury Fund benefits from the date of this decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990).

Signed and filed this 11th day of May, 2023.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Joseph G. Lyons (via WCES)

Jonathan Bergman (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.