

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ZACH FAIRHURST,

Claimant,

vs.

JENDRO, INC.,

Employer,

and

ACCIDENT FUND GENERAL  
INSURANCE COMPANY,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 1641986.01

A P P E A L  
D E C I S I O N: Head Notes: 1108.50; 1402.40; 1803; 2907;  
: 3202; 4000.2

Claimant Zach Fairhurst appeals from an arbitration decision filed on May 21, 2021. Defendants Jendro, Inc., employer, and its insurer, Accident Fund General Insurance Company (hereinafter "defendants"), respond to the appeal, as does defendant Second Injury Fund of Iowa (hereinafter "the Fund"). The case was heard on November 6, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 11, 2020.

In the arbitration decision, the deputy commissioner found claimant sustained four percent permanent functional disability of his right hand as a result of a work-related injury which occurred on March 31, 2017. The deputy commissioner found claimant sustained additional permanent disability of his right hand as a result of a work-related injury which occurred on October 19, 2017. More specifically, the deputy commissioner found claimant sustained five percent permanent functional disability of his right hand due to the October 17, 2017, injury, but the deputy commissioner found claimant failed to prove he sustained any permanent disability of his left upper extremity. The deputy commissioner found claimant was not entitled to penalty benefits for defendants' delay in issuing permanent partial disability (PPD) benefits for the October 19, 2017, date of injury. Lastly, the deputy commissioner found claimant failed to establish entitlement to receive benefits from the Fund because claimant did not prove a loss of use of two separate body parts.

On appeal, claimant asserts he sustained permanent disability of his bilateral upper extremities as a result of the October 19, 2017, work injury. Claimant asserts he therefore is entitled to receive benefits from the Fund for the combined loss of use of his right hand and left arm. Claimant asserts he sustained a substantial industrial disability as a result of the combination of the alleged injuries. Lastly, claimant asserts he is entitled to receive penalty benefits based on defendants' delay in issuing PPD benefits.

Defendants and the Fund assert 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 86.24 and 17A.15, the arbitration decision is affirmed in part and it is reversed in part.

Regarding claimant's March 31, 2017, injury, I affirm the deputy commissioner's finding that claimant sustained four percent permanent functional disability of his right hand. I likewise affirm the deputy commissioner's finding that claimant's October 19, 2017, injury resulted in an additional five percent permanent functional disability of his right hand. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues in their entirety.

With respect to whether claimant sustained any permanent disability of his left arm due to the October 19, 2017, work injury, I affirm the deputy commissioner's finding that claimant did not, with the following additional analysis:

In his opinion letter regarding claimant's permanent impairment, Dr. Potthoff specifically stated claimant had no impairment due to the active extension, active flexion, active supination, or active pronation of his elbow. (Joint Exhibit 2, p. 55) Dr. Potthoff likewise cited the figure of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (hereinafter "the Guides") on which he relied.

Dr. Manshadi, on the other hand, cited the pages of the Guides on which he relied to determine claimant's impairment rating, but he offered no other details, such as whether the rating was based on deficits in extension, flexion, supination, or pronation. (Claimant's Ex. 1, p. 4) It can be inferred, based on the measurements taken by Dr. Manshadi, that his rating was for deficits in extension and/or flexion. (Cl. Ex. 1, p. 3) Even assuming this to be true, however, there are uncertainties stemming from Dr. Manshadi's rating.

For example, claimant was measured at 135 degrees for flexion, which falls between no impairment and one percent impairment per Figure 16-34 of the Guides. The Guides state on page 471 that “[i]mpairment values for angles falling between those listed in Figure 16-34 may be adjusted or interpolated proportionally in the corresponding interval.” Dr. Manshadi provided no explanation as to why or how he adjusted or interpolated claimant’s impairment value.

Dr. Manshadi likewise indicated claimant’s left elbow extension was “at -10 degrees.” (Cl. Ex. 1, p. 3) As pointed out in claimant’s brief, the Guides do provide that “extension lag” can be indicated by a minus sign. However, this explanation is noted on page 450 of the Guides, and Dr. Manshadi makes no reference to this page, nor does he ever refer to “extension lag” or “hyperextension” in his report.

Comparing these uncertainties against the clarity of Dr. Potthoff’s opinion, I affirm the deputy commissioner’s finding that Dr. Potthoff’s opinion should be afforded greater weight. As a result, I affirm the deputy commissioner’s finding that claimant did not sustain any permanent disability of his left arm as a result of the October 19, 2017, work injury.

Because I affirmed the deputy commissioner’s finding that claimant’s permanent disability did not extend beyond his right hand, I likewise affirm the deputy commissioner’s finding that claimant failed to prove entitlement to receive any benefits from the Fund.

The last issue on appeal is claimant’s entitlement to penalty benefits. There was a more than seven-week delay between when claimant was placed at MMI for his hand injury and when defendants requested an impairment rating, and there was an additional delay between the receipt of that rating and the payment of benefits. The deputy commissioner found this delay was not unreasonable because “[t]here is an inherent administrative delay from the time a physician dictates his notes until the time those notes are available to the parties.” (Arbitration Decision, p. 6)

While this may be true, Iowa Code section 86.13 requires an employer to prove a reasonable cause or excuse for the delay in benefits. See Iowa Code section 86.13(4); Christensen v. Snap-on Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996). In this case, there is no evidence in the record that defendants were battling an administrative delay in trying to obtain treatment notes from Mason City Clinic or in trying to obtain an impairment rating. For example, there is no evidence of repeated requests to the clinic for the notes. Instead, there is simply no evidence that anything was done by defendants in the timeframe between when claimant was placed at MMI in February of 2018 through when defendants requested the impairment rating in April of 2018.

Likewise, there is no evidence that defendants were battling an administrative delay between April of 2018 when they requested the rating from Richard Rattay, M.D., and when it was finally issued in July of 2018. Again, there is simply no evidence that anything was done by defendants during this time.

As a result, I find defendants failed to prove a reasonable cause or excuse for this roughly five-month delay in the payment of PPD benefits. The deputy commissioner's finding to the contrary is therefore respectfully reversed.

Roughly 20 weeks passed between claimant being placed at MMI for his right hand and when defendants issued a check for PPD benefits. Because defendants offered no evidence to explain this delay, I find a penalty in the amount of \$2,000.00 is appropriate. This is roughly 50 percent of the 9.5 weeks of benefits that claimant was owed but not paid during this delay.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 21, 2021, is affirmed in in part and it is reversed in part.

Claimant shall take nothing from the Second Injury Fund of Iowa.

All weekly benefits shall be paid at the stipulated rate of five hundred fourteen and 42/100 dollars (\$514.42).

With regard to the March 31, 2017, work injury, defendants shall pay claimant seven point six (7.6) weeks of permanent partial disability benefits commencing on June 29, 2017.

With regard to the October 19, 2017, work injury, defendants shall pay claimant nine point five (9.5) weeks of permanent partial disability benefits commencing on February 21, 2018.

Defendants shall receive credit for all benefits paid to date.

Defendants 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).

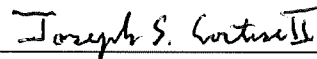
With regard to the October 19, 2017, work injury, defendants shall pay claimant penalty benefits in the amount of two thousand and 00/100 dollars (\$2,000.00).

Defendants shall reimburse claimant for the full amount of claimant's IME.

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

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

Signed and filed on this 8<sup>th</sup> day of November, 2021.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Charles Showalter (via WCES)

Benjamin Roth (via WCES)

Laura Ostrander (via WCES)

Amanda Rutherford (via WCES)