BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JERI LYNN BAKER,

Claimant,

vs.

HENNIGES AUTOMOTIVE,

Employer,

and

TRAVELERS INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5054847

ARBITRATION DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Jeri Lynn Baker, has filed a petition in arbitration and seeks workers' compensation benefits from, Henniges Automotive, employer, and Travelers Insurance Co., insurance carrier, defendants.

Deputy workers' compensation commissioner, Stan McElderry, heard this matter in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUE

The parties have submitted the following issue for determination:

1. The extent of permanent disability from the injury arising out of and in the course of employment on December 3, 2013.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

The claimant was 49 years old at the time of hearing. She has previous work experience as a bartender, payroll (one year in 2000), and production work.

On December 3, 2013, the claimant suffered an injury to her low back which the parties stipulated arose out of and in the course of her employment with Henniges. The job at Henniges was production and required the claimant to stand throughout the day.

Following the work injury the claimant was provided medical treatment including with Joseph J. Chen, M.D. (Exhibits E-F) The care was extensive including therapy, injections, and medications. But no surgery was performed. As of the date of hearing the claimant was taking 2-4 Vicodin per day for pain relief, constant pain of 6-10 on a ten scale, and use of a TENS unit in the winter months. The claimant also testified that working over 8 hours per day increased her pain and that she limits overtime as a result. The records do show that the claimant still works overtime.

Dr. Chen has imposed restrictions of lifting 15 pounds on an occasional basis (less than 1/3 of a workday); 8 pounds repetitively (1/3-2/3rds of a work day); push or pull limited to 30 pounds, limited to occasional twisting, bending, reaching, stopping, squatting, kneeling, pushing and pulling; and rotate sitting and standing every 30 minutes. (Ex. E, page 1) Dr. Chen also opined a 5 percent impairment rating based at least in part on no surgical intervention. Defendants argue that this is a minor injury. The restrictions of Dr. Chen contradict that argument. Those restrictions are significant and very limiting.

The claimant had an independent medical evaluation by Theron Jameson, D.O. (Ex. 5) Dr. Jameson opined that based on the L4-5 disc herniation that the claimant should not lift more than 20 pounds and not repetitively bend or twist at the waist. (Ex. 5, p. 6) He also opined a 13 percent permanent impairment and believed that a second opinion with a spine surgeon for a potential discectomy should be sought. (Ex. 5, p. 7)

The employer is accommodating the claimant's restrictions and allows her to float as opposed to stay at one production station. She could not be newly hired with her restrictions, or hired to be a floater. She is prevented from to a return to any past employment (absent perhaps her nearly two decades ago experience with payroll) by her restrictions. The restrictions imposed by the employer-selected treating physician are very significant and limiting. Absent accommodation she would not be working for the employer herein. Considering the claimant's medical impairment, training, lack of trainability, age, permanent restrictions and limitations, as well as all other factors of industrial disability, the claimant has suffered a 50 percent loss of earning capacity.

On the date of injury the claimant had gross weekly earnings of $689.52, was single, and entitled to 3 exemptions. As such, her weekly benefit rate is $445.12. The commencement date for permanent disability was stipulated as December 1, 2014.

REASONING AND CONCLUSIONS OF LAW

The only issue is the extent of permanent disability.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense.

Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961). Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

Based on the finding that the claimant has suffered a 50 percent loss of earning capacity, she has sustained a 50 percent permanent partial industrial disability entitling her to 250 weeks of permanent partial disability pursuant to Iowa Code section 85.34(2)(u).

ORDER

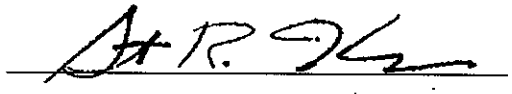
THEREFORE, IT IS ORDERED:

That the defendants pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing June 4, 2015 at the weekly rate of four hundred forty-five and 12/100 dollars ($445.12).

Costs are taxed to the defendants pursuant to 876 IAC 4.33.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Signed and filed this 17th day of May, 2017.



STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Nicholas G. Pothitakis
Attorney at Law
PO Box 337
Burlington, IA 52601-0337
niko@pothitakislaw.com

Patrick O'Connell
Attorney at Law
PO Box 2457
Cedar Rapids, IA 52406-2457
poconnell@lynchdallas.com

SRM/srs/kjw

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.