

ISSUE

The parties submitted the following disputed issue for resolution:

1. The extent of claimant's permanent disability.

FINDINGS OF FACT

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

Carlos Chavez Ochoa was born on November 14, 1966, making him 52 years old at the time of the evidentiary hearing. (See Exhibit 1, page 2) Mr. Chavez Ochoa grew up in Jalisco, Mexico. (Hearing Transcript, page 9) He moved to the United States in approximately 1985. (Id.) On the date of hearing, claimant lived in Tama, Iowa. (Id.) Mr. Chavez Ochoa attended five years of schooling in Mexico. (Hearing Transcript, pages 9-10) This is the extent of claimant's educational background.

Mr. Chavez Ochoa began working for Manatt's as a general laborer in 1999. (Ex. 1, p. 2) He was terminated on July 5, 2016. (See Ex. 4, p. 3) While working for Manatt's, claimant prepped, poured, and finished concrete floors, roads, sidewalks, and curbs. (Hr. Tr., pp. 21-22) This involved breaking up the old concrete with a jackhammer or skid loader, drilling holes in concrete for rebar, cutting and setting rebar, spreading rock, moving concrete, and finishing the concrete to specified textures. (See Ex. 2, p. 1)

As a result of his work activities, claimant developed cumulative bilateral upper extremity injuries with a manifestation date of April 1, 2016. Defendants accepted the injuries and authorized all reasonable and necessary medical treatment. (Hearing Report, pages 1, 2-3)

On April 25, 2016, claimant presented to Central Iowa Healthcare Emergency Department with complaints of right hand pain. (JE1, p. 2) The attending physician diagnosed claimant with right carpal tunnel syndrome, issued a right hand splint, prescribed medications, and recommended claimant follow-up with Yared Vazquez, M.D. for further treatment. (See JE1, p. 6)

When conservative treatment, including corticosteroid injections, failed to alleviate claimant's complaints, Dr. Vazquez referred claimant to orthopedic surgeon, Jeff Zhang, M.D. (See JE1, pp. 26-27)

Electrodiagnostic imaging was eventually completed on November 1, 2016. Claimant's EMG indicated bilateral median neuropathy localized to the level of the wrist. (JE2, p. 2) Dr. Zhang performed a right carpal tunnel release on November 17, 2016. (JE1, p. 50) On April 13, 2017, he performed a left carpal tunnel release. (JE1, p. 76)

Mr. Chavez Ochoa's symptoms improved with surgical intervention. On November 18, 2016, and January 6, 2017, claimant reported to Dr. Zhang that the numbness and tingling in his right wrist had completely resolved. (JE1, pp. 52, 61)

On April 17, 2017, claimant reported that the numbness and tingling in his left wrist had completely resolved. (JE1, p. 83) However, on April 28, 2017, claimant clarified that the numbness and tingling in his left wrist had improved, but was not completely gone. (JE1, p. 88)

Claimant experienced numbness and locking in his right thumb in May 2017. (JE1, p. 91) Following his examination, Dr. Zhang recommended and performed an injection to claimant's right thumb. (JE1, p. 92)

Dr. Zhang released claimant to full-duty work, without restrictions on May 22, 2017. (JE1, p. 93) In a subsequent letter, dated August 8, 2017, Dr. Zhang placed claimant at maximum medical improvement (MMI) as of May 22, 2017, and assigned an impairment rating of 4 percent. (JE1, p. 1) Dr. Zhang did not specify how he calculated his impairment rating, or to which upper extremity the rating applied. For this reason, I do not find Dr. Zhang's impairment rating to be particularly helpful or convincing. Dr. Zhang also opined claimant's conditions did not require permanent restrictions. (Id.)

There is no evidence claimant presented for medical treatment for his work-related conditions between May 2017 and the date of hearing; a period of approximately two years and four months.

After being placed at MMI, claimant attempted to return to work as a concrete finisher for two different companies. From approximately October 2017 to February 2018, claimant worked for Central Concrete. (Ex. 1, p. 3) Claimant then worked as a concrete finisher for Jasper Construction for approximately one month in the spring of 2018. (See Ex. 1, p. 3) Claimant testified he quit working for both employers because of the symptoms he was experiencing in his hands. (Hr. Tr., p. 25) Claimant was unemployed between April 2018 and the date of the evidentiary hearing. (Hr. Tr., p. 27)

At hearing, claimant testified he continues to experience pain and numbness in his bilateral upper extremities. (Hr. Tr., pp. 24-25) He testified he does not feel fit to work. (Hr. Tr., p. 24) He further testified his hands, "don't work anymore[.]" (Hr. Tr., p. 27) Claimant relayed that he has received job offers from friends; however, he turns them down, as he does not believe he is capable of working. (Id.)

At the request of his attorney, claimant presented for an independent medical examination with Ronald Bergman, D.O., on October 23, 2017. (Ex. 4, p. 1) Claimant presented with subjective complaints of continued bilateral hand pain, pain and locking of the right thumb, and numbness in his hands. (Ex. 4, p. 3) Dr. Bergman causally related claimant's ongoing bilateral carpal tunnel symptoms, right trigger thumb, and left ganglion cyst to claimant's April 1, 2016, work injury. (Ex. 4, p. 6) He did not feel as though claimant had reached maximum medical improvement due to the fact he

continued to demonstrate clinical symptoms of bilateral carpal tunnel syndrome. (Ex. 4, p. 5) Nevertheless, Dr. Bergman assessed claimant's permanent impairment.

Dr. Bergman assigned 12 percent impairment to the right upper extremity, and 8 percent impairment to the left upper extremity, for abnormal motion in the elbows, wrists, and thumbs. (Ex. 4, p. 6) With respect to the right upper extremity, Dr. Bergman assigned 1 percent impairment for loss in flexion in the elbow, 2 percent impairment for loss of extension in the wrist, 4 percent impairment for loss of flexion in the wrist, and a total of 5 percent impairment for loss of range of motion in the right thumb. (See Ex. 4, pp. 3-4) With respect to the left upper extremity, Dr. Bergman assigned 1 percent impairment for loss in pronation in the elbow, 2 percent impairment for loss of flexion in the wrist, and a total of 5 percent impairment for loss of range of motion in the left thumb. (See Ex. 4, pp. 3-4)

Dr. Bergman assigned an additional 12 percent impairment to the right upper extremity, and 9 percent impairment to the left upper extremity, for abnormal sensation of the median nerve and pain. (Id.) After using the Combined Values Chart, Dr. Bergman assigned total impairment ratings of 23 percent to the right upper extremity, and 16 percent to the left upper extremity. (Ex. 4, p. 7)

Defendants referred claimant to Gregory Yanish, M.D. for an independent medical examination in August 2019. (Ex. A) Like Dr. Bergman, Dr. Yanish assessed claimant with ongoing pain and paresthesia in the bilateral wrists, right trigger thumb, and left ganglion cyst. (Ex. A, p. 2) Dr. Yanish assigned 2 percent impairment to the right upper extremity for range of motion deficits in claimant's wrist extension and flexion. (Ex. A, p. 3) He assigned 2 percent impairment to the left upper extremity for range of motion deficits in claimant's wrist flexion. (Id.) He assigned a combined impairment rating of 4 percent to the bilateral upper extremities. (Id.)

All of the medical opinions in this file are from well-qualified experts; however, I find the impairment ratings provided by Dr. Bergman to be most convincing in this matter. That being said, I do not accept Dr. Bergman's impairment ratings as they relate to claimant's left thumb and bilateral elbows. No physician, including Dr. Bergman, diagnosed claimant with injuries to the left thumb or bilateral elbows. Dr. Zhang originally believed claimant suffered from both carpal and cubital tunnel syndrome; however, diagnostic imaging limited his diagnoses to bilateral carpal tunnel syndrome. (See JE2, p. 2) Similarly, claimant complained of, and was diagnosed with, right, not bilateral, trigger thumb.

I also do not accept Dr. Bergman's impairment ratings for abnormal sensation and pain. Dr. Bergman provides no explanation as to how he reached the 9 and 12 percent impairment ratings. He does not provide the severity of sensory deficits used in his calculations, nor does he explain how his clinical judgment lead to the same. (See Guides, pp. 481, 482, 492-495)

Defendants assert Dr. Yanish's impairment rating should be accepted, as it is the most recent, and most objective, assessment of permanent impairment in the evidentiary record. This was a close call. Ultimately, I find Dr. Bergman's opinions to be more convincing, as he personally conducted a thorough examination of claimant, and he was the only physician to provide an impairment rating for claimant's trigger thumb. Dr. Yanish diagnosed claimant with right trigger thumb, and remarked that claimant continues to suffer from symptoms, but he did not provide an impairment rating for the same. This is possibly due to the fact Dr. Yanish did not personally conduct claimant's range of motion testing. There is no indication the independent certified hand specialist considered claimant's trigger thumb when evaluating claimant's bilateral upper extremities. It is important to note that while Dr. Yanish's impairment rating appears to be in line with the impairment rating of Dr. Zhang, Dr. Zhang did not provide an explanation of his impairment rating to bolster the apparent connection. Defendants acknowledge the same in their post-hearing brief. (Def. Post-Hearing Brief, p. 4)

Defendants briefly argue that claimant's ongoing symptoms are not related to the original injury. Rather, defendants assert claimant likely sustained a re-aggravation of his condition while working as a concrete finisher for either Central Concrete or Jasper Concrete. Defendants offer no objective medical evidence to support such a contention. Defendants' argument is purely speculative. As such, I do not find their argument to be persuasive.

For the above stated reasons, I find claimant sustained 11 percent regional right upper extremity impairment and 2 percent regional left upper extremity impairment (5% right thumb, 4% right wrist flexion, 2% right wrist extension, 2% left wrist flexion). (See Ex. 4, pp. 3-4, 6)

According to the Combined Values Chart on page 604 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, claimant's 11 percent right upper extremity impairment combines with the 2 percent left upper extremity impairment for a combined impairment rating of 13 percent upper extremity impairment. According to table 16-3 on page 439 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, a 13 percent upper extremity impairment rating converts to an 8 percent impairment of the body as a whole. Therefore, I find Dr. Bergman's impairment rating to the bilateral upper extremities is equivalent to an 8 percent functional loss of the body as a whole.

Claimant's functional impairment is determined solely by utilizing the AMA Guides. I find claimant has sustained 8 percent impairment of the whole person as a result of his injuries. Neither party presented evidence to establish what, if any, portion of claimant's current impairment is attributable to pre-existing injuries or conditions.

REASONING AND CONCLUSIONS OF LAW

Chavez Ochoa is seeking permanent disability benefits for his bilateral upper extremity injury. The parties stipulated that prior to hearing, defendants paid 20 weeks of compensation to claimant at the rate of \$620.18 per week. (Hearing Report, p. 3)

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

Having weighed the competing medical evidence, and accepted select impairment ratings from Dr. Bergman, I found Chavez Ochoa proved a functional loss equivalent to 8 percent of the whole person as a result of the injuries to his bilateral upper extremities. Iowa Code section 85.34(2)(x) prohibits consideration of lay testimony or the use of agency expertise in assessing whether the impairment rating assigned is a reasonable estimate of the functional disability sustained by claimant. In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Iowa Code section 85.34(2)(x) As such, I conclude claimant is entitled to a permanent partial disability award equivalent to 8 percent of the body as a whole.

Therefore, pursuant to Iowa Code section 85.34(2)(t), claimant is entitled to a proportional award equivalent to 8 percent of 500 weeks. Iowa Code section 85.34(2)(v). Therefore, I conclude claimant is entitled to an award of 40 weeks of permanent partial disability benefits. These benefits shall commence on the stipulated date of January 6, 2017.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant forty (40) weeks of permanent partial disability benefits commencing on January 6, 2017, at the weekly rate of six hundred twenty and 18/100 dollars (\$620.18).

Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall pay all accrued benefits in a lump sum.

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

Signed and filed this 30th day of March, 2020.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Brian Marty (via WCES)
James Bryan (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.