BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANGEL SIEFKIN,

Claimant,

vs.

U.S. SECURITIES ASSOCIATES,

Employer,

and

ZURICH AMERICAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5046351

ARBITRATION DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Angel Siefken, has filed a petition in arbitration and seeks workers' compensation benefits from U.S. Securities Associates, employer, and Zurich, insurance carrier, defendants.

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

ISSUE

The parties have submitted the following issue for determination:

1. Whether the injury of December 1, 2011 resulted in any permanency and if so, the extent.

FINDINGS OF FACT

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

The claimant was 28 years old at the time of hearing. She is a high school graduate and recently received an associate's degree. She has a CNA certificate and

plans to enroll in a nursing program. She is a veteran who served in Afghanistan, and has continued as a member of the U.S. Army Reserves.

On December 1, 2011, the claimant suffered a stipulated injury arising out of and in the course of her employment with U.S. Securities Associates while working security at the Emerson Plant in Marshalltown, Iowa when she was exposed to and inhaled unknown chemicals. Shortly thereafter she presented at the Marshalltown emergency room due to chest tightness, difficulty breathing, burning, and coughing. (Exhibit 1, pages 1-2)

Follow-up care was initially provided by her family physician, Greg Selenke, M.D. (Ex. 3) He prescribed a steroid and a rescue inhaler and referred claimant to a pulmonologist. The claimant first saw Udaya Shreesha, M.D., on March 6, 2012. (Ex. 4) Claimant reported a ten-year history of smoking before having quit approximately one year previous. She also reported no history of asthma. Dr. Shreesha diagnosed asthma and prescribed Dulera and Proventil. (Ex. 4, p. 13) The claimant began smoking shortly thereafter and has continued to do so.

The claimant's respiratory issues continued to improve under Dr. Shreesha's care. Dr. Shreesha left the country, so care was transferred to David Visokey, D.O., in January of 2014. (Ex. 4) The claimant was referred by Dr. Selenke to Patrick Hartley, M.D., for a second opinion. Although he found pre-existing lung disease, with particular concern on the smoking history, he believed claimant's airflow obstruction currently was the result of the industrial exposure to the Emerson Plant. (Ex. 5, p. 27) On October 1, 2014, Dr. Hartley opined a 14 percent body as a whole (BAW) impairment from the industrial exposure herein. (Ex. 5, p. 31)

The claimant was nearly removed from the Army Reserve due to her limitations from the asthma. After multiple levels of appeals she was allowed to remain, but restricted to her current Military Occupational Specialty code (MOS), and with physical and environment restrictions. This greatly reduces her opportunity for further advancement in the military. The claimant quit her employment with the employer herein on March 10, 2012, citing other work. The claimant quit her employment with Lennox to pursue additional schooling.

David Visokey, D.O., authored a letter for the defendants. (Ex. C) Since a copy of what he was asked in not in the record, his responses are not very useful other than as an acknowledgement that the claimant has asthma and that smoking plays a role in claimant's health. (Ex. C, p. 1)

The claimant's military career is now very restricted. The asthma causes some limitations for outside the military as well. She is motivated and continues to improve herself through education. Given the claimant's pain, claimant's medical impairment, training, permanent restrictions, lack of motivation to return to work, as well as all other factors of industrial disability, the claimant has suffered a 30 percent loss of earning capacity.

On the date of injury, based on the claimant's gross earnings, single status, and entitlement to 1 exemption, her weekly benefit rate is $415.84. The parties stipulated that the commencement date for permanency benefits is December 2, 2013.

REASONING AND CONCLUSIONS OF LAW

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.

The claimant has a BAW rating and restrictions from the work injury; that is the definition of permanency.

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 30 percent loss of earning capacity, she has sustained a 30 percent permanent partial industrial disability, entitling her to 150 weeks of permanent partial disability pursuant to Iowa Code section 85.34(2)(u).

ORDER

THEREFORE IT IS ORDERED:

That the defendants pay the claimant one hundred fifty (150) weeks of permanent partial disability commencing December 2, 2013 at the weekly rate of four hundred fifteen and 84/100 dollars ($415.84).

Defendants shall receive credit for all benefits previously paid.

Costs are taxed to the defendants pursuant to rule 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 12th day of March, 2015.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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SRM/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.