

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON HILLS,
Claimant,

vs.

JOHN DEERE DES MOINES WORKS,
Employer,
Self-Insured,
Defendant.

File No. 5052067

A P P E A L

D E C I S I O N WORKERS' COMPENSATION

FILED

MAR 15 2018

Head Note Nos: 1100; 1108, 1801; 1803

Defendant John Deere Des Moines Works, self-insured employer, appeals from an arbitration decision filed on October 26, 2016. Claimant Jason Hills responds to the appeal. The case was heard on December 16, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the arbitration hearing.

The deputy commissioner found claimant carried his burden of proof that he sustained cumulative trauma bilateral carpal tunnel injuries with a manifestation date of February 28, 2014, which arose out of and in the course of claimant's employment with defendant. The deputy commissioner found claimant is entitled to receive healing period benefits from March 12, 2014, through June 3, 2014. The deputy commissioner found that pursuant to Iowa Code section 85.34(2)(s), claimant sustained permanent scheduled member functional disability of 12 percent of the body as a whole, which entitles claimant to receive 60 weeks of permanent partial disability (PPD) benefits commencing on June 4, 2014. The deputy commissioner found defendant is entitled to receive a credit for 11.86 weeks of weekly indemnity benefits paid to claimant at the rate of \$443.00 per week. The deputy commissioner found defendant is responsible for reasonable and necessary medical expenses associated with this claim. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant carried his burden of proof that he sustained work-related cumulative trauma bilateral carpal tunnel injuries. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive healing period benefits from March 12, 2014, through June 3, 2014. Defendant asserts the deputy commissioner erred in finding claimant sustained permanent scheduled member functional disability of 12 percent of the body as a whole. Defendant asserts the deputy commissioner erred in finding defendant is responsible for the medical expenses claimed to be associated with this claim.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having 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, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on October 26, 2016, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant sustained work-related cumulative trauma bilateral carpal tunnel injuries with a manifestation date of February 28, 2014. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from March 12, 2014, through June 3, 2014. I affirm the deputy commissioner's finding that defendant is entitled to receive a credit for 11.86 weeks of weekly indemnity benefits paid to claimant at the rate of \$443.00 per week. I affirm the deputy commissioner's finding that defendant is responsible for the reasonable and necessary medical expenses associated with this claim. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I reverse the deputy commissioner's finding that claimant sustained permanent scheduled member functional disability of 12 percent of the body as a whole based on the impairment rating of Eugene Cherny, M.D., dated November 14, 2014. (Exhibit 5). Based on the permanent impairment rating of Joshua Kimelman, D.O., dated November 6, 2015 (Ex. E), I find claimant sustained permanent scheduled member functional disability of two percent of the body as a whole, which entitles claimant to ten weeks of PPD benefits. I provide the following additional analysis for my decision:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Since the location of the disability is the bilateral hands and arms, the compensation is dictated by Iowa Code section 85.34(2)(s) (2015).

Dr. Cherny evaluated claimant on November 13, 2014, which was seven months after claimant's left carpal tunnel surgery and six months after claimant's right carpal tunnel surgery. Dr. Cherny concluded claimant sustained 12 percent permanent impairment of the left upper extremity. (Ex. 5, p. 41) Pursuant to Table 16-3 of the AMA Guides, Fifth Edition, at p. 439, 12 percent upper extremity impairment converts to seven percent impairment of the body as a whole. Dr. Cherny concluded claimant sustained nine percent permanent impairment of the right upper extremity. (Id.) Pursuant to Table 16-3 of the AMA Guides, Fifth Edition, nine percent upper extremity impairment converts to five percent impairment of the body as a whole. When the whole-body impairment ratings of seven percent for the left side and five percent for the right side are combined pursuant to the Combined Values Chart found on page 604 of the AMA Guides, Fifth Edition, the result is a single whole-body impairment rating of 12 percent, which is 60 weeks of PPD benefits pursuant to Iowa Code section 85.34(2)(s).

Dr. Cherny's impairment ratings for claimant's upper extremities included impairment ratings for claimant's elbows. (Ex. 5, p. 41) No alleged injuries to claimant's elbows were ever reported, diagnosed or treated in this matter. (Ex. E, p. 35; Hearing Transcript, p. 60) During his testimony at hearing, claimant himself confirmed that no doctor has told him he has any problems with his elbows and claimant confirmed he has had no treatment for any injuries to his elbows. (Tr. p. 60) Dr. Kimelman indicated it was improper for Dr. Cherny to factor claimant's elbows into his impairment rating. (Ex. E, p. 35)

Dr. Cherny rated claimant's impairment six months after claimant's second carpal tunnel surgery. When Dr. Cherny provided his impairment rating, he noted claimant had continued to improve over time and was currently working with little difficulty. (Ex. 5, p. 42) At hearing, claimant himself confirmed his condition continued to improve during the year that transpired between his evaluation with Dr. Cherny on November 13, 2014, and his evaluation with Dr. Kimelman on November 5, 2015. (Tr. p. 60)

Because claimant's elbows were never part of his alleged injuries in this matter, I find it was improper for Dr. Cherny to include alleged impairments of claimant's elbows in his impairment ratings for claimant's carpal tunnel syndrome. Also, because claimant admitted his condition continued to improve during the year following his evaluation with Dr. Cherny on November 13, 2014, I find Dr. Cherny's impairment rating no longer had any applicability by the time of the hearing, which took place on December 16, 2015. I therefore find Dr. Cherny's impairment rating to be unconvincing and I find his impairment rating does not provide a proper basis to determine claimant's award for permanent partial disability for his work-related carpal tunnel injuries.

Dr. Kimelman evaluated claimant on November 5, 2015, which was 19 months after claimant's left carpal tunnel surgery and 18 months after claimant's right carpal tunnel surgery. Dr. Kimelman concluded claimant sustained two percent permanent impairment of both upper extremities. (Ex. E, p. 35) Pursuant to Table 16-3 of the AMA Guides, Fifth Edition, at p. 439, two percent upper extremity impairment converts to one percent impairment of the body as a whole. When the whole-body impairment ratings of

one percent for the left side and one percent for the right side are combined pursuant to the Combined Values Chart found on page 604 of the AMA Guides, Fifth Edition, the result is a single whole-body impairment rating of two percent, which is ten weeks of PPD benefits pursuant to Iowa Code section 85.34(2)(s). I find Dr. Kimelman's rating is entitled to greater weight because it does not include irrelevant factors such as claimant's elbows and because it was provided a year after Dr. Cherny's impairment rating and claimant himself admitted his condition continued to improve during that year. (Tr. p. 60) I therefore find claimant is entitled to ten weeks of PPD benefits under Iowa Code Section 85.34(2)(s) for the permanent scheduled member functional disability of his bilateral upper extremities resulting from the work injury of February 28, 2014.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 26, 2016, is MODIFIED as follows:

Defendant shall pay healing period benefits to claimant commencing March 12, 2014, and ending June 3, 2014, at the stipulated weekly benefit rate of six hundred forty-four and 28/100 dollars (\$644.28).

Defendant shall pay claimant ten (10) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of six hundred forty-four and 28/100 dollars (\$644.28) commencing on June 4, 2014.

Defendant shall be given credit as stipulated for eleven point eighty-six (11.86) weeks paid at four hundred forty-three and 00/100 dollars (\$443.00) per week.

Defendant shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendant is responsible for the reasonable and necessary medical expenses associated with this claim.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding, and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed this 15th day of March, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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