BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ENOCH LOGAN,

Claimant,

vs.

ABF FREIGHT SYSTEM, INC.,

Employer,

and

ACE AMERICAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5047979

APPEAL

DECISION

Head Note Nos.: 1100, 1802, 1803, 2700, 5-999

Defendants, ABF Freight System, Inc., employer, and its insurer, Ace American Insurance Company, timely appeal from an arbitration decision filed on August 10, 2016. Claimant, Enoch Logan, timely cross-appeals. On February 2, 2018, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

Defendants contend the presiding deputy erred in seven respects:

(1) Awarding permanent disability for claimant's right shoulder injury of April 11, 2013.

(2) Concluding that claimant's left shoulder condition represents a compensable sequela injury of the April 11, 2013 right shoulder injury.

(3) Awarding an excessive industrial disability.

(4) Awarding temporary total disability, or healing period, benefits from June 18, 2013 through July 8, 2013 during treatment of a cardiac condition.

(5) Excluding one week of earnings from calculation of claimant's gross weekly earnings and awarding weekly benefits at the rate of $733.20.

(6) Awarding past medical expenses and medical mileage contained in Claimant's Exhibits 8 and 9.

(7) Awarding alternate medical care to claimant.

Claimant cross-appeals and contends that the arbitration decision should be affirmed in all respects, except that the industrial disability award should be increased.

Pursuant to Iowa Code section 17A.15 and Iowa Code section 86.24, I have performed a de novo review of the evidentiary record before the presiding deputy workers' compensation commissioner. I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on August 10, 2016 that relate to issues properly raised on intra-agency appeal.

The preponderance of the evidence supports the well-reasoned decision of the presiding deputy commissioner that claimant sustained permanent disability equivalent to a 15 percent industrial disability, that the left shoulder condition is a sequela of the right shoulder work injury, and that the itemized medical expenses and mileage in Claimant's Exhibits 8 and 9 were reasonable, necessary, and causally related to the April 11, 2013 work injury.

I also concur with and adopt the presiding deputy's analysis of the wage rate issue, including exclusion of the disputed week's earnings as nonrepresentative of claimant's typical earnings before the date of injury. I also concur with the presiding deputy commissioner's analysis of and award of healing period benefits during claimant's treatment for a cardiac condition, which arose as a result of and required treatment as a result of the recommendation for right shoulder arthroscopy. I reach the same findings, conclusions, and award on the healing period issue as those of the presiding deputy commissioner on this issue.

I reach the same findings and conclusions as the presiding deputy with respect to the issue of alternate medical care. In addition to the presiding deputy's findings and conclusions on this issue, I find that defendants denied liability for the ongoing right shoulder condition and offered claimant no additional medical care at the time of hearing. Claimant continued to have symptoms in his right shoulder and desired additional care for the right shoulder. I find that the care provided by defendants, essentially none at the time of hearing, had not been effective and that the lack of ongoing treatment for the right shoulder was not reasonable.

Claimant's IME physician proposed additional medical care for the right shoulder. Obtaining medical care from a different orthopaedic surgeon constitutes superior and more extensive medical care than was being offered by defendants at the time of hearing. In essence, defendants disputed liability, offered no care, yet disputed any award of additional care.

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Defendants offer no additional treatment for claimant's right shoulder. Having found that claimant proved additional and superior care is available and reasonable, I conclude, in addition to the reason outlined by the presiding deputy commissioner, that claimant has established entitlement to the presiding deputy commissioner's award of alternate medical care.

With respect to the issues of permanent disability, I concur with the presiding deputy commissioner's analysis of the competing medical expert opinions. John Kuhnlein, D.O., offered the most convincing and credible medical opinion in this case. His causation opinion, impairment rating and work restrictions were all accepted by the presiding deputy commissioner. I concur with those findings and the conclusion that claimant is entitled to permanent disability.

Both parties contend that the industrial disability award is inaccurate. However, the presiding deputy commissioner did a good job of explaining his rationale in this respect. The presiding deputy commissioner weighed the appropriate and competing industrial disability factors.

There are no weighting guidelines that indicate how each of the industrial disability factors is to be considered. There are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W. 2d 614, 617 (Iowa 1995).

There is a challenge by defendants that the industrial disability award is too high. Claimant contends the award is too low. Claimant contends that the presiding deputy commissioner reduced the industrial disability award because the employer accommodated claimant's restrictions and injury. The arbitration decision findings contradict this assertion. The presiding deputy commissioner specifically noted that claimant was receiving help after returning to work at ABF Freight System, Inc., but noted, "most jobs do not have coworkers willing to chip in and help." (Arbitration

Decision, page 8) The presiding deputy commissioner was not reducing the award due to accommodation by this employer and clearly was considering the claimant's ability to compete in the general labor market.

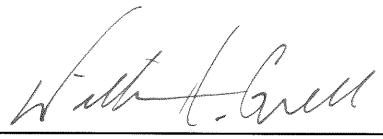
I find no error in the presiding deputy commissioner's analysis. He appropriately weighed the competing industrial disability factors and reached a reasonable industrial disability award. I concur with his analysis, findings, and ultimate industrial disability award. I concur with all other factual findings, conclusions and awards contained in the arbitration decision.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of August 10, 2016, is affirmed in its entirety.

The parties shall equally share the costs of this appeal, including the cost of the hearing transcript, pursuant to rule 876 IAC 4.33.

Signed and filed this 25th day of April, 2018.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Nicholas W. Platt
Attorney at Law
2900 100th Street, Ste. 304
Urbandale, IA 50322
plattlawpc@outlook.com

Stephen W. Spencer
Adam P. Bates
Attorneys at Law
6800 Lake Drive, Suite 125
West Des Moines, IA 50266
Steve.spencer@peddicord-law.com
Adam.bates@peddicord-law.com