

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARLON JACKMAN,

Claimant,

vs.

BRIDGESTONE/FIRESTONE,

Employer,

and

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Insurance Carrier,
Defendants.

File No. 5023393

A P P E A L
D E C I S I O N

FILED

JUL 31 2009

WORKERS' COMPENSATION

Head Note Nos.: 1803

Upon written delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa workers' compensation commissioner.

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 of November 26, 2008 filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis:

A showing that claimant had no loss of his job or actual earnings does not preclude a finding of industrial disability. Loss of access to the labor market is often of paramount importance in determining loss of earning capacity, although income from continued employment should not be overlooked in assessing overall disability. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Bearce v. FMC Corp., 465 N.W.2d 531 (Iowa 1991); Collier v. Sioux City Comm. Sch. Dist., File No. 953453 (App. February 25, 1994); Michael v. Harrison County, Thirty-fourth Biennial Rep. of the Industrial Comm'r, 218, 220 (App. January 30, 1979).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present 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).

I agree with the finding of a 15 percent loss of earning capacity despite his return to work without formal restrictions by the treating physician. The hearing deputy correctly found Dr. Kuhnlein's views more convincing as they were consistent with claimant's credible testimony at hearing concerning his current limitations from this

injury and that the employer is accommodating for this injury by allowing his co-workers to assist him in performing the heavier tasks.

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing. The deputy who presided at the hearing had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. My ability to find the true facts that are affected by witness demeanor and credibility cannot be expected to be superior to that of the deputy who presided at the hearing. If anything, my ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation.

Defendants shall pay the costs of the appeal including transcription of the hearing.

Signed and filed this 31ST day of July, 2009.


LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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