

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THOMAS STEWART,

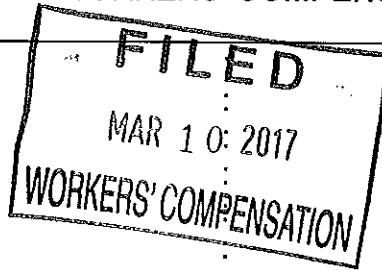
Claimant,

vs.

ANAMOSA STATE PENITENTIARY,

STATE OF IOWA,

Self-Insured,  
Employer,  
Defendant.



File No. 5054814

ARBITRATION DECISION

Head Note Nos. 1402.40; 1803

STATEMENT OF THE CASE

Thomas Stewart, claimant, filed a petition in arbitration seeking workers' compensation benefits from defendants, Anamosa State Penitentiary/State of Iowa, a self-insured employer. The arbitration hearing was held on March 2, 2017, in Des Moines, Iowa.

The evidentiary record includes only Claimant's Exhibits 1 and 2, consisting of 11 pages, which were admitted without objection. Defendant offered no exhibits. No testimony was provided. Claimant was not present at the time of the hearing. Claimant's counsel advised that claimant's whereabouts were unknown, and had been unknown for quite some time. Claimant's last contact with his attorney was reported to be in March, 2016, after his discharge from prison. I note that on November 21, 2016, this matter was previously continued upon claimant's motion due to the same lack of contact from claimant with his attorney. Claimant's counsel described on the record his reasonable efforts to locate claimant, which proved unfruitful.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

No post-hearing briefs were filed. The file was considered fully submitted on March 2, 2017.

## ISSUE

The parties submitted the following disputed issue for resolution:

1. The extent of permanent partial disability, if any.

## FINDINGS OF FACT

I find that claimant was 25 years old at the time of the hearing. (Ex. 1, p. 1) The parties stipulated that claimant sustained a work injury involving his thumb on September 19, 2015. (Hearing Report, page 1)

On September 23, 2015, claimant, who was incarcerated at the time, sought treatment at the Department of Corrections Health Services with the complaint that he "jammed thumb on cart." (Ex. 1, p. 1) Claimant was sent to the University of Iowa Hospitals and Clinics (UIHC) where an x-ray was obtained that revealed a "transverse fracture proximal first metacarpal with slight angulation." (Ex. 1, p. 3)

On October 9, 2015, claimant was seen by the UIHC Orthopedics department, and was given restrictions to refrain from "all sports" and was told to have "no use of left hand." (Ex. 1, p. 5) The restrictions were noted to expire on January 7, 2016. (Id.) It is recorded that claimant had been placed in a cast. (Id.)

On October 23, 2015, claimant described to a nurse at the Department of Corrections Health Center, that he had been sprayed with mace and took a shower, at which time his cast got wet and fell off. It was supposed to have stayed on for an additional week. It is noted that claimant's left thumb had "slight swelling at MCP joint." (Ex. 1, p. 7) A physician, Dr. Richter, recommended that claimant should have a splint placed on his left hand. (Id.) Claimant had the splint applied with an ace wrap and was instructed to keep it on until he was seen by the physician at the UIHC. (Id.) No additional treatment records were presented.

On March 17, 2016, John Albright, M.D., an orthopedic physician at the UIHC, wrote a letter to Michael Spellman of Sedgwick CMS. (Ex. 2, pp. 10-11) Dr. Albright stated that he "reviewed records" concerning claimant's medical care regarding his injury to his left thumb that occurred on or about September 19, 2015, when he jammed it on a cart. (Id.) Dr. Albright confirms that claimant sustained a "transverse fracture proximal first metacarpal with slight angulation." (Ex. 2, p. 10) He also notes that on November 3, 2015, x-rays showed "progression of healing" and the plan for care indicated that "[n]o further immobilization is necessary," and claimant was to increase activity as tolerated. (Ex. 2, p. 11) Dr. Albright indicates that claimant was discharged from care to follow-up as needed. (Id.) He then states his opinion that claimant sustained zero percent permanent impairment according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition and that no additional treatment was recommended.

There is no evidence that claimant sought or obtained any further medical care.

The only expert medical opinion concerning permanent impairment presented to the undersigned is the March 17, 2016 letter of Dr. Albright described above, who stated that claimant sustained zero permanent impairment. I accept Dr. Albright's opinion and find that claimant has sustained zero percent permanent impairment concerning his September 19, 2015 injury to his left thumb.

I find that claimant has failed to carry his burden of proof that he sustained a permanent impairment concerning his work injury and find that he is entitled to no permanent partial disability benefits.

### CONCLUSIONS OF LAW

The disputed issue in this case is the extent of industrial 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).

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).

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

As stated above and for the reasons there given, I conclude that claimant has sustained zero percent industrial disability and has failed to carry his burden of proof that he sustained a permanent impairment.

### ORDER

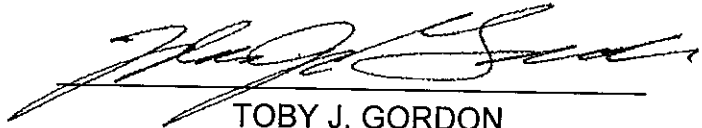
THEREFORE, IT IS ORDERED:

Claimant shall take nothing.

The parties shall pay their own costs.

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

Signed and filed this 10<sup>th</sup> day of March, 2017.



TOBY J. GORDON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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TJG/kjw

**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.