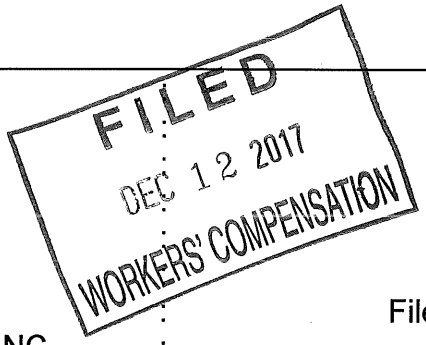
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



REBECCA BENNETT,

Claimant,

vs.

BRIDGESTONE AMERICAS, INC.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5047745

A R B I T R A T I O N

D E C I S I O N

Head Notes.: 1108.20, 1803.1, 1804, 3200

STATEMENT OF THE CASE

Claimant filed a petition for arbitration seeking workers' compensation benefits from Bridgestone Americas, Inc., as the employer and Old Republic Insurance Company, as the insurance carrier. She also filed a claim against the Second Injury Fund of Iowa.

The matter came on for hearing on September 29, 2016, before Deputy Workers' Compensation Commissioner Joseph L. Walsh at Des Moines, Iowa. The record in the case consists of Claimant's Exhibits 1 through 6; Defense Exhibits A through M; Fund Exhibits AA through CC, as well the sworn testimony of claimant, Rebecca Bennett. The parties briefed this case and the matter was fully submitted on November 7, 2016.

ISSUES

1. The nature and extent of claimant's permanent partial disability is disputed by the parties, including whether the injury is scheduled or unscheduled as well as the commencement date for any benefits owed. Employer contends a

commencement date of September 14, 2013 while claimant contends April 27, 2012. Claimant also contends she is permanently and totally disabled and/or odd lot.

2. Whether the claimant qualifies for benefits under the Second injury Fund. The Fund contends the 1979 leg injury is not a qualifying first injury and the current injury is not a qualifying second injury.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.

2. Claimant sustained an injury which arose out of and in the course of employment on April 26, 2012.

3. The stipulated injury is a cause of temporary and permanent disability.

4. Affirmative defenses have been waived.

5. The weekly rate of compensation is $428.21 per week based upon gross wages of $679.00 and being single with one exemption.

6. Defendants have paid and are entitled to a credit for payment of 17.5 weeks of compensation at the stipulated rate of $428.21.

7. Medical benefits and temporary disability benefits are not in dispute.

These stipulations, and all stipulations contained in the hearing report and order are accepted and deemed binding at this time.

FINDINGS OF FACT

Claimant, Rebecca Bennett, was 61 years old as of the date of hearing. She testified in person and under oath at hearing. I find her testimony credible. Her sworn testimony was consistent with the other evidence in the record and there was nothing about her demeanor which gave me any cause for concern regarding her truthfulness.

Ms. Bennett graduated from high school in 1973. (Transcript, page 11) Her only education beyond high school was obtaining a CNA certificate through DMACC. She began working for Bridgestone in 2011. Prior to that, Ms. Bennett had worked for more than 23 years for R.R. Donnelley, working in the bindery and running machines. She also worked as a CNA, a customer service representative (phones) and in the deli at Hy-Vee. Her work history is primarily low-skill factory work and entry level customer service and health care. I find the claimant has a good work history and a strong sense of pride in her work ethic.

For Bridgestone, Ms. Bennett worked in the scrapping department and drove a forklift. Claimant sustained a work-related injury April 26, 2012, to the left upper extremity when she tripped on a wire at work. This is a stipulated fact. Claimant fractured the left distal radius with a large tear of the fibrocartilage and median neuropathy in her left wrist. She was provided appropriate treatment through company-authorized physicians.

Claimant had some pre-existing osteoarthritis which is not of significance in this matter. As a result of the work injury, Delwin Quenzer, M.D., diagnosed a left distal radius fracture and a large tear of the fibrocartilage and median neuropathy in claimant's left wrist. (Defendants' Exhibit C, p. 2) Dr. Quenzer ultimately performed two surgeries with little success. (Def. Ex. E, pp. 1-4) The first surgery performed by Dr. Quenzer in September 2012, caused a bone split due to compression applied during the procedure. Dr. Quenzer retired and handed off care to Jeffrey Rodgers, M.D., who saw claimant just one time.

After a valid functional capacity evaluation, the company doctor issued work restrictions September 13, 2013. The restrictions consisted of limits of 20 pounds floor to waist lifting, 15 pounds bilateral carrying, 10 pounds left side carrying, 10-20 pounds waist to crown lifting and significant restrictions with the left hand concerning gripping and pinching. (Def. Ex. D; Def. Ex. E) These causally connected work restrictions eliminated claimant from any work for employer. She was sent home after receiving these restrictions and she had never secured employment elsewhere. (Tr., pp. 28-29) She was initially provided disability benefits through the employer's accident and sickness pay. She eventually secured Social Security Disability benefits.

Claimant sought treatment for anxiety disorder due to the work-related injuries in September 2013. (Cl. Ex. 4, pp. 7-8) Claimant had experienced some depression or mental health issues previously when she was without work. (Tr., p. 29) Her mental health treatment in this case is quite limited. She saw her family physician, Robert Shires, M.D., on a few occasions for depression and anxiety between September 2013 and June 2016. (Cl. Ex. 4, pp. 10-19)

Mark Mittauer, M.D., Psychiatrist performed an independent medical evaluation in April 2014. (Cl. Ex. 2) He diagnosed major depressive disorder and anxiety disorder. (Cl. Ex. 2, p. 9) He opined that the injury at work caused permanent psychiatric impairment in claimant's ability to engage in fulltime, competitive employment.

> Rebecca Bennett does suffer from Major Depressive Disorder and Anxiety Disorder, NOS as a result of her work-related injury as of 4/26/12. She is experiencing depression and anxiety because of her lingering pain and inability to work in her customary job, as well as many other jobs, due to physical restrictions related to the work injury. Her depression and anxiety are also caused or worsened by other factors related to her work injury. These include financial stress, from instability to work her customary job, and inability to engage in usual pleasurable activities at

> home as well as performing household chores and yard work. As a result of her work injuries, she has also lost her job and will soon lose her disability benefits. This will most likely exacerbate or worsen her depression and anxiety.

(Cl. Ex. 2, p. 9) He recommended she be referred for both psychotherapy and psychopharmacologic treatment. (Cl. Ex. 2, pp. 9-10)

Claimant continued mental health treatment with medication, 40 mg Citalopram. Dr. Mittauer also noted the financial stress and inability to engage in pleasurable activities at home such as chores and yard work. He could not say that her depression would last forever. It is possible the condition will improve over time. (Cl. Ex. 2, p. 4)

The defendants sought an independent medical evaluation by Charles Wadle, D.O., on June 27, 2014. (Def. Ex. H) Dr. Wadle performed an evaluation and review of claimant's records. He opined that Ms. Bennett "incurred themes of depression and anxiety, but such did not reach a threshold for psychiatric diagnosis". (Def. Ex. H, p. 5) He opined that claimant was exaggerating and malingering. (Def. Ex. H, pp. 5-6) I reject Dr. Wadle's opinions.

The claimant has continued to use medications for anxiety as diagnosed by her family physician. The assertion of malingering is contrary to the objective evidence of physical injury. The claimant has a well-documented history of a serious physical injury with pain and significant medical limitations. The complications during surgery and inability to recover through physical therapy also weigh heavily toward a credible presence of pain and depression. The functional capacity evaluation was found credible and it follows that claimant's testimony on pain and depressive symptoms is equally credible. The work restrictions and inability to maintain gainful employment demonstrate significant obstacles to vocational activities. The medical findings of impaired concentration, difficulty with remembering, insomnia, fatigue, worrying and panic attacks is a direct consequence of the work injury and inability to work. When viewing claimant's global symptom complex objectively, it is found that claimant suffers from ongoing depression and anxiety caused by the April, 26, 2017 work injury. Claimant has had prior issues with depression during periods of unemployment. On this occasion (regarding the April 26, 2012 injury) she has been unable to return to work due to the employer failing to accommodate her work restrictions. The current inability to work is the direct consequence of the work injury and employer's actions in not accommodating the work injury restrictions.

Dr. Wadle's notes regarding claimant's MMPI test seem to contradict his finding of malingering. "The respondent's validity profile is consistent with persons who attempt to present themselves in an overly positive light by denying minor faults and minimizing psychological problems." (Def. Ex. H, p. 5) This notation was made upon reviewing the results of claimant's MMPI testing. I do not understand how Dr. Wadle reached the conclusion that claimant is exaggerating when her testing revealed she minimized her psychological problems. It is unexplained in his report. Moreover, after watching the

claimant testify myself and hearing her story, I do not believe she is, in fact, exaggerating or malingering. Her mental impairment is not terribly severe. She is not traumatized or unable to function at all. But I do believe, having reviewed the entire record of evidence, that she does suffer from some anxiety and depression which resulted from her work injury and the resulting pain and loss of function associated with it.

Dr. Mittauer performed a follow up evaluation of the claimant in August 2016. This evaluation was also credible. He opined claimant "does continue to meet criteria for major depressive disorder." (Cl. Ex. 2, p. 4) "At the present time, this condition is most likely permanent because of the chronic and persistent nature of her depressive symptoms, without significant improvement." (Cl. Ex. 2, p. 4) He noted that with psychotherapy, her condition may improve.

Prior to this injury, Ms. Bennett was generally pretty healthy. She did injure her left leg in 1979. She suffered the injury in 1979 while riding on a motorcycle. Claimant was struck by a car causing injury to the left leg and foot consisting of a bone fracture. The injury was old and claimant was unable to locate medical records associated with this injury. Claimant did present at hearing with a scar on her left ankle area.

Sunil Bansal, M.D., rated the impairment at 2 percent of the left lower extremity. She never really had any significant problems with her foot or leg which impacted her activities of daily living in a significant way. Dr. Bansal performed a thorough examination and review of claimant's medical records in an independent medical evaluation. (Cl. Ex. 1) He rated the left upper extremity at 14 percent and causally connected this impairment to the April 26, 2012 injury. Dr. Bansal generally agreed with the FCE restrictions. However, Dr. Bansal further restricted left hand use to about 5 pounds occasionally. (Cl. Ex. 1, p. 12)

I find the FCE restrictions to be the most accurate assessment of claimant's functional abilities at the time of injury. The FCE restrictions are based on objective testing with a credible result. The best objective analysis of work restrictions is the FCE and as such the FCE restrictions are found correct.

Claimant went off work the day after the injury, April 27, 2012, and has not worked since. Carma Mitchell, a vocational consultant, opined that "there would be no jobs remaining that Ms. Bennett could sustain on a full-time competitive basis." (Cl. Ex. 3, p.8) Ms. Mitchell opined that as a result of the injury claimant has lost 99 percent of her access to the job market and has no reasonable prospects for re-employment. Claimant is currently receiving Social Security Disability and has made no real efforts to secure employment. It follows that claimant's failure to seek employment also detracts from a finding of motivation to return to work. It is noted, however, that claimant has always had a good work ethic.

Claimant, age 61 at hearing, has a high school diploma (with a 3.4 GPA) and no post-high school education. Claimant did receive nurse's aide training at Des Moines

Area Community College (DMACC).

Claimant's work history consists of physical manual labor jobs for the majority of her employment life. Claimant did work as a customer service representative from 2004 through 2007. Claimant did typist work for a while, before going to Tone Spices for a manual labor job. Claimant spent many years at R.R. Donnelly as a machine operator, forklift driver and photo room worker. Claimant also worked as a medical aid for about three years. Claimant did some deli work for Hy-Vee and finally went to Bridgestone where she drove a forklift and did manual labor in the manufacturing of tires.

Claimant was assessed at maximum medical improvement September 24, 2013 by Dr. Rodgers. Claimant had not worked since April 27, 2012.

CONCLUSIONS OF LAW

The primary fighting issue in this case revolves around the nature of the admitted April 26, 2012, injury. Defendant employer contends that, while claimant has some permanent disability, it is limited to her left arm. Defendants deny that claimant suffered a mental injury or that the disability otherwise extends into her body as a whole.

The first issue then, is whether the claimant's depression and anxiety is causally connected to her work injury.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

It is well-settled in Iowa that when physical trauma causes or aggravates a

mental condition which increases or prolongs disability, all disability, including the effects of the nervous disorder, is compensable. Gosek v. Barmer & Stiles Co., 158 N.W.2d 731,733 (Iowa 1968). No special legal causation test showing unusual stress is required in such cases. See generally, Lawyer & Higgs, Iowa Workers' Compensation Law and Practice (2nd (Ed.), section 4-6, p. 31). Also, a permanent psychological condition caused or aggravated by a scheduled injury is to be compensated as an unscheduled injury even if the mental condition does not result in permanent impairment or work restrictions. Mortimer v. Fruehauf Corp., 502 N.W.2d 12 (Iowa 1993); Smith v. Aramark, File No. 1199677 (App. April 30, 2001).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up, or acceleration of any prior condition has been viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961) While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

I find that claimant suffers from a mental impairment which is causally related to her April 2012, work injury. I find the expert opinion of Dr. Mittauer to be the most compelling expert medical opinion in the file. His medical causation opinion is bolstered by the medical notes of Dr. Shires and consistent with the claimant's credible sworn testimony. Claimant's ongoing use of medications to treat her depression and anxiety also support her claim.

For the reasons stated in the findings of fact, I reject the expert opinion of Dr. Wadle. I find the claimant is not a malingerer. Dr. Wadle's expert opinions have been rejected numerous times before this agency. He seems to use the accusation of malingering and symptom exaggeration almost as a boilerplate attack on injured workers. This was recognized in a Commissioner decision.

> Dr. Wadle's opinion in this matter is all too similar to his opinions in other reported cases before this agency in which his opinion states the worker is a malingerer and the opinion is opposed by other medical opinion. This agency has long looked at the opinions of Dr. Wadle as being quite predictable and at odds with the facts of the underlying case - as noted by the long list of cases cited in claimant's appeal brief.

Blocker v. East Marshall High School, File No. 5040747 (App. July 1, 2014).

Such accusations simply do not ring true with the claimant in this case. She has always worked hard and has no history or record of malingering or exaggerating to receive compensation. This is particularly true in this case where the results of the MMPI testing demonstrate that she minimized her psychological symptoms. This appears to contradict Dr. Wadle's own conclusions.

I do find that the claimant's mental impairment is not terribly severe. It does impact her earning ability in the competitive job market. While it is relatively minor, it is real and it is permanent, at least into the foreseeable future. (Cl. Ex. 2, p. 4)

Since the location of the disability is to the claimant's body as a whole, her disability must be evaluated industrially.

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.

Although claimant is close to a normal retirement age, proximity to retirement cannot be considered in assessing the extent of industrial disability. Second Injury Fund v. Nelson, 544 N.W. 2d 258 (Iowa 1995). However, this agency does consider voluntary retirement or withdrawal from the work force unrelated to the injury. Copeland v. Boones Book and Bible Store, File No. 1059319, Appeal Decision (November 6, 1997). Loss of earning capacity due to voluntary choice or lack of motivation is not compensable. Id.

The refusal of defendant-employer to return claimant to work in any capacity is, by itself, significant evidence of a lack of employability. Pierson v. O'Bryan Brothers, File No. 951206 (App. January 20, 1995). Meeks v. Firestone Tire & Rubber Co., File No. 876894, (App. January 22, 1993); See also, 10-84 Larson's Workers' Compensation Law, section 84.01; Sunbeam Corp. v. Bates, 271 Ark. 609 S.W.2d 102

(1980); Army & Air Force Exchange Service v. Neuman, 278 F. Supp. 865 (W.D. La. 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An employer who chooses to preclude an injured worker's re-entry into its workforce likely demonstrates by its own action that the worker has incurred a substantial loss of earning capacity. As has previously been explained in numerous decisions of this agency, if the employer in whose employ the disability occurred is unwilling to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so. Estes v. Exide Technologies, File No. 5013809 (App. December 12, 2006).

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

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).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987);

Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

I find the claimant has sustained a significant permanent functional impairment of her left upper extremity which has resulted in some less significant depression and anxiety. She has at least a 14 percent functional impairment to the left upper extremity causally connected to the work injury of April 26, 2012. I find the restrictions assigned pursuant to the functional capacity evaluation are the best evidence of her work abilities. The restrictions include limits of 20 pounds floor to waist lifting, 15 pounds bilateral carrying, 10 pounds left side carrying, 10-20 pounds waist to crown lifting and significant restrictions with the left hand concerning gripping and pinching. (Def. Ex. D; Def. Ex. E) These restrictions prevent claimant from returning to most of her past jobs in manufacturing and nursing. Claimant's mental impairment is not severe. She has depression and anxiety which undoubtedly interfere with her daily activities and impact her ability to concentrate and focus. Her depression and anxiety have a minimal impact on her employability.

Claimant is unable to engage in many of her past activities of daily living, including enjoyable recreational activities.

Claimant has not sought work. She clearly believes she is not capable of any gainful employment and, instead sought and received Social Security Disability. I do not find that claimant has met her burden of proof to demonstrate permanent total disability. The failure to conduct a work search or attempt any employment makes it impossible to assess that she is permanently and totally disabled. While there are certainly some cases where an injured worker is clearly too disabled to require a work search, this is not such a case. Claimant's primary disability is to her arm. She also has depression and anxiety which came about as a sequala of this injury. While the mental conditions are permanent, they impact her employability in a fairly limited way. Her primary limitations are physical. In all likelihood, however, claimant could secure some type of employment, albeit at a lower rate of pay.

I have thoroughly reviewed and reject the opinion of claimant's vocational expert, Carma Mitchell. (Cl. Ex. 3) Her opinion would carry more weight if claimant had attempted to secure employment.

Claimant is 61 years old with a high school diploma. She presented well at hearing and appears to be bright, well-spoken and professional. When considering all of the factors of industrial disability, I find that claimant has suffered a 50 percent loss of earning capacity. This is primarily based upon claimant's significant permanent restrictions which caused her to lose her job. This finding entitles claimant to two hundred fifty weeks of benefits at the stipulated rate of compensation commencing on the date she reached maximum medical improvement, September 14, 2013.

Claimant is at maximum medical improvement at this time. The parties dispute the proper commencement date for permanent partial disability benefits. Permanent

partial disability benefits commence upon the termination of the healing period. Iowa Code section 85.34(1). As the Iowa Supreme Court explained, the healing period terminates and permanent partial disability benefits commence at the earliest of claimant's return to work, medical ability to return to substantially similar employment, or the point at which the claimant achieves maximum medical improvement. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360, 374 (Iowa 2016). In this case, permanency benefits shall commence at the point that healing period benefits were terminated.

Iowa Code section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of workers with disabilities by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978).

The Fund is responsible only for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Iowa Code section 85.64 (2015). Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

I find that since claimant has suffered a body as a whole injury against the employer, it is unnecessary to determine any issues concerning the Second Injury Fund. The claimant is not entitled to any benefits against the Fund.

ORDER

THEREFORE IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of compensation, four hundred twenty-eight and 21/100 dollars ($428.21) per week.

Defendants shall pay the claimant two hundred fifty (250) weeks of permanent partial disability, commencing at the completion of claimant's healing period.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall receive a credit of seventeen and a half (17 ½) weeks of benefits at the stipulated rate.

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

Costs are taxed to the defendant employer.

The claimant shall take nothing from the Second Injury Fund.

Signed and filed this 12th day of December, 2017.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JLW/sam

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.