BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DARNELL J. RUBA, Claimant, vs. WELLS DAIRY, INC., Employer, Self-Insured, Defendant.	:	File No. 5041691 APPEAL DECISION Head Note No.: 1803

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

Claimant, Darnell Ruba, filed a notice of appeal on March 31, 2014, from an arbitration decision entered on March 19, 2014. The underlying arbitration hearing involved the extent of claimant's entitlement to permanent partial disability benefits. The arbitration decision found claimant had a 40 percent industrial disability. Claimant contends the finding of a 40 percent loss of earning capacity, or industrial disability, is low and that claimant is permanently and totally disabled. Defendants contend the arbitration decision should be affirmed.

Upon consideration of the record and the arguments of the parties, it is concluded that the arbitration decision filed on March 19, 2014, is affirmed without amendment.

Claimant was 55 years old at the time of hearing. She graduated from high school. She has worked as a waitress, cashier and bartender.

Claimant worked for Wells Dairy, Inc. (Wells). Claimant sustained a back injury at work with Wells. This injury resulted in a fusion at the L4-5 levels on May 13, 2010. Surgery was performed by Wade Jensen, M.D. (Exhibit 4) Claimant was evaluated by Dr. Jensen and Dean Wampler, M.D. Both experts opined that claimant had an 18 percent permanent impairment to the body as a whole and a 40 percent lifting restriction. (Ex. 2, pages 10-11; Ex. C, pages 6-8)

Claimant returned to Wells three months after her surgery. Her 40-pound lifting restriction was accommodated by Wells. (Transcript Volume II, pp. 6-11) Claimant worked at Wells until April 10, 2012. Claimant testified that due to a scheduling

misunderstanding, her immediate supervisor told her she was terminated. (Tr. Vol. I, pp. 24-25) Testimony from another supervisor indicated claimant was not terminated, but quit voluntarily. (Tr. Vol. II, pp. 11-13) This testimony was supported by an unemployment insurance ruling, finding claimant qualified for unemployment insurance benefits, that claimant voluntarily left her employment. (Ex. M) In short, claimant returned to work after her surgery for approximately one year and eight months before leaving Wells for a reason not related to the work injury. The record supports the finding that claimant left voluntarily.

In September of 2013, a month before hearing, claimant underwent a functional capacity evaluation (FCE). This FCE found claimant could only work in the sedentary to light physical demand-level job. This FCE was approved by a nurse practitioner who worked with claimant's family doctor. (Ex. 11; Ex. 10, p. 2) This FCE is problematic for at least three reasons. First, there is no explanation how claimant worked for almost two years on her job with Wells with a 40-pound lifting restriction, but yet had far more severe restrictions over a year and a half after she left Wells. Second, neither Dr. Jensen nor Dr. Wampler saw the FCE or opined regarding its validity. Third, the FCE was procured a month before hearing. Given these issues, the deputy was correct in giving the FCE little weight.

Two vocational experts opined regarding claimant's job opportunities. Karen Stricklett, M.S., C.R.C. opined that claimant, given the 40-pound lifting restriction, had a 24 percent loss of access to jobs in the Northwest Iowa nonmetropolitan area. (Ex. G, p. 7)

Kent Jayne, M.A., M.B.A., C.R.C. opined claimant sustained a permanent and total industrial disability. (Ex. 5-9) A review of past agency decisions indicates that in 2014 alone, Mr. Jayne routinely opined in over a dozen cases that claimants were also completely disabled. Bos v. Climate Engineers Inc., File No. 5044761 (Arb. November 12, 2014); Kent v. Diamond Shine Management Services, Inc., File No. 5021501 (Review-Reopening February 18, 2014); Ruiz v. Revstone Casting Industries, LLC, File No. 5041967, 5050063, 5050064 (Arb. September 9, 2014); Hoffman v. Linn County, Iowa, File No. 5038326, 5042802 (Arb. February 28, 2014) ("Mr. Jayne concludes that claimant is completely disabled in large part due to his chronic pain. Mr. Jayne's inclusion of the stock language that goes into nearly every report he provides does little to assist the deputy in ascertaining the claimant's true loss of access to employment"). See also Hoffman v. Care Initiatives, Inc., File No. 5032353 (Arb. July 28, 2011) (". . . Mr. Jayne opined that . . . claimant is unable to perform any services except those which are so limited in quantity, dependability, and/or quality that there is no reasonable stable labor market for them. . .the above is stock language. . . in Mr. Jayne's reports.")

Given that it appears Mr. Jayne routinely opines claimants are completely disabled, the deputy was correct in finding his opinions are less than convincing.

When all factors regarding industrial disability are taken into consideration, the deputy was correct in finding claimant had a 40 percent industrial disability.

ORDER

IT IS THEREFORE ORDERED, that the arbitration decision is affirmed.

Claimant shall pay the costs of this appeal including preparation of the hearing transcript.

Signed and filed this 11th day of March, 2015.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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