

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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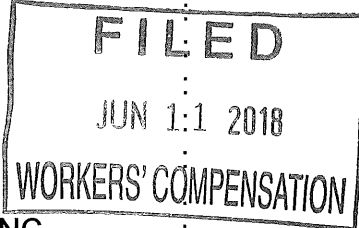
PHILLIP POOL,  
Claimant,

vs.

CRAMER & ASSOCIATES, INC.,  
Employer,

and

TRAVELERS INSURANCE,  
Insurance Carrier,  
Defendants.



File No. 5058377

ARBITRATION

DECISION

Head Note Nos.: 1803; 2907

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STATEMENT OF THE CASE

Claimant, Phillip Pool, filed a petition in arbitration seeking workers' compensation benefits from Cramer & Associates, Inc., (Cramer), employer and Travelers Insurance, insurer, both as defendants. This case was heard in Council Bluffs, Iowa, on April 10, 2018 with a final submission date of May 1, 2018.

The record in this case consists of Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 4, Defendants' Exhibits A through H, and the testimony of claimant and Robert Cramer.

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.

ISSUES

1. The extent of claimant's entitlement to permanent partial disability benefits.
2. Costs.

## FINDINGS OF FACT

Claimant was 42 years old at the time of hearing. Claimant went up to the 11<sup>th</sup> grade. Claimant does not have a GED. Claimant testified he has dyslexia and Attention Deficit Disorder (ADD). Claimant said he believes he can only read at a 4<sup>th</sup> grade level.

Claimant has worked in fast-food restaurants and as a mechanic. Claimant has spent the majority of his work life as a laborer. (Exhibit E, pages 4-9)

Claimant has a Class B CDL. He is certified to operate a man lift, a boom lift, and bulldozer.

Claimant was hired by Cramer in 2012. Robert Cramer testified he is co-president of Cramer. He said Cramer builds and repairs bridges in Iowa and neighboring states. Mr. Cramer said most of the employees hired by Cramer are seasonal laborers.

On March 9, 2016, claimant was carrying large wooden planks for a foot bridge in Des Moines, Iowa. While moving the planks, claimant testified he felt a pop in his shoulder. Claimant said he worked the rest of his work day.

On April 5, 2016, claimant was evaluated at Concentra by Sherman Jew, M.D. Claimant was evaluated as having bicep tendinopathy on the right. He was treated with medication and recommended to have an MRI.

Claimant returned to Concentra on April 21, 2015 with continued complaints of pain. Claimant was assessed as having bicep tendinopathy. He was treated with medication and referred to physical therapy. (Joint Exhibit 1, pp. 10-12)

Claimant was referred to an orthopaedic surgeon on May 4, 2016. (Jt. Ex. 1, p. 13) On May 12, 2016, claimant was evaluated by Charles Rosipal, M.D., an orthopaedist. Claimant complained of right shoulder and arm problems. Claimant was given an injection. An MRI of the right shoulder was recommended. (Jt. Ex. 4, p. 1)

An MRI of the right shoulder showed a partial thickness tear of the supraspinatus and infraspinatus tendons. (Jt. Ex. 4, pp. 3-4)

Claimant returned to Dr. Rosipal on May 26, 2016. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 4, pp. 5-6)

On June 20, 2016, claimant underwent shoulder surgery with Dr. Rosipal consisting of a double row rotator cuff repair. (Jt. Ex. 4, pp. 8-9)

Claimant returned in follow up with Dr. Rosipal from June 28, 2016 through September 20, 2016. Records indicate claimant had a slow recovery. Claimant was

given an injection in the right shoulder for pain on August 18, 2016. He also underwent numerous physical therapy sessions. (Jt. Ex. 4, pp. 10-20)

On October 18, 2016, claimant saw Dr. Rosipal. Claimant was returned to work on October 12, 2016. He was advised to have continued physical therapy, but claimant did not want any more physical therapy. Claimant was returned to work full duty. He was found to be at maximum medical improvement (MMI) and released from care. Claimant was found to have a 15 percent permanent impairment to the right shoulder, converting to a 9 percent permanent impairment to the body as a whole. He was returned to work without restrictions. (Jt. Ex. 4, pp. 21-22)

Claimant returned to work at Cramer at full duty with no restrictions. On or about December 21, 2016, claimant was terminated due to absenteeism. (Ex. E, Deposition pp. 39-40; Transcript p. 81)

After leaving Cramer, claimant began work at Hawkins Construction. Claimant passed a physical fitness test. Claimant was paid \$24.00 per hour as a form setter with Hawkins. (Ex. B, p. 1) Claimant was terminated from Hawkins for an alleged safety violation. (Tr. p. 35; Ex. B)

Claimant next went to work at Menards assembling hinges on doors. Claimant earned between \$13.00-\$14.00 at Menards. Claimant testified he quit Menards to work for the Shelby County Roads Department. (Ex. E, p. 11)

Claimant worked at Shelby County Roads. He was required to lift up to 60 pounds, dig and use hand tools. Claimant was terminated from this job as he was unable to obtain a Class A CDL. Claimant testified he was unable to pass the test for the CDL due to his issues with reading. (Ex. C)

Claimant next was hired by A.M. Cohron & Sons in June and July of 2017. Claimant was hired as a laborer to build bridges. Claimant worked 40-50 hours per week. He was required to lift up to 75 pounds. Claimant was terminated from this job. (Ex. D)

Claimant then worked for Carry-On Trailers. Claimant did welding. He earned \$14.00 for every trailer assembled. Claimant testified he quit Carry-On to work as a maintenance person for Monogram Foods. Claimant testified his job with Monogram was full time and he was paid \$19.00 per hour. At the time of hearing, claimant was still employed at Monogram. (Tr. pp. 44-46)

On June 27, 2017, claimant underwent an independent medical examination (IME) with Nicholas Bruggeman, M.D. Claimant still had pain in his shoulder. Dr. Bruggeman opined that claimant had a 15 percent permanent impairment to the right upper extremity. He limited claimant to no overhead lifting on the right. (Cl. Ex. 1)

In a March 6, 2018 report, David Schremmer, PT, gave his opinions of claimant's ability following a functional capacity evaluation (FCE). Physical Therapist Schremmer

found claimant gave consistent effort in testing. He found claimant could lift up to 35 pounds occasionally and 15 pounds frequently. He found that claimant could work in the light to medium physical demand level of work. He recommend claimant avoid overhead work on the right. (Cl. Ex. 2)

Claimant testified he has driven a few demolition derbies since his shoulder accident. He testified he has since sold all his equipment for competing in demolition derbies. (Ex. F)

Claimant said he cannot raise his right arm overhead. He said he would not be able to return to work to most of his prior jobs, including his job at Cramer, due to loss of range of motion. Claimant said he has pain all the time in his right shoulder. He testified he lied to all of his employers, since leaving Cramer, regarding having no limitations in his right shoulder.

#### CONCLUSIONS OF LAW

Claimant was 42 years old at the time of hearing. He does not have a GED. Claimant has worked in fast-food restaurants and as a mechanic. Claimant has spent the majority of his work life as a laborer.

Both experts opined that claimant has a 15 percent permanent impairment to the right upper extremity, converting to a 9 percent permanent impairment to the body as whole. (Jt. Ex. 4, pp. 21-22; Cl. Ex. 1)

Dr. Bruggeman suggested claimant limit himself to no overhead work on the right. An FCE indicates that claimant should only lift up to 35 pounds occasionally, and should be limited in overhead work. Claimant testified he is unable to lift his right arm above his shoulder. Based on the number of jobs claimant has had since leaving Cramer, it does not appear any of these restrictions have been applied to any of claimant's jobs. It also appears that claimant has been required to work above shoulder level in a number of his jobs since leaving Cramer.

Since leaving Cramer, claimant has worked for six different employers. A number of claimant's jobs have required him to do heavy manual labor.

When all relevant factors are considered, it is determined claimant has a 10 percent loss of earning capacity or industrial disability.

The next issue to be determined is costs. Specifically, claimant seeks reimbursement for a FCE.

Rule 876 IAC 4.33 indicates, in relevant part:

Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2)

transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

Rule 4.33 allows for the taxation of reasonable costs associated with obtaining two reports of medical providers. The relevant inquiry with regard to taxation of the FCE costs in question is whether the FCE was required by a medical provider as necessary for the completion of a medical report. In this instance, if the FCE was ordered by a physician to evaluate claimant's permanent disability and need for restrictions, the cost is a reasonable cost under Rule 876 IAC 4.33. If it is not, taxation of costs of the FCE is inappropriate.

No doctor ordered the FCE's at issue. The FCE does not fall under a reimbursable cost under Rule 876 IAC 4.33. Given this, claimant is not due reimbursement for the FCE.

ORDER

THEREFORE, IT IS ORDERED:

That defendants shall pay claimant fifty (50) weeks of permanent partial disability benefits at the rate of eight hundred sixty-eight and 26/100 dollars (\$868.26) per week commencing on October 10, 2016.

That defendants shall pay accrued weekly benefits in a lump sum.

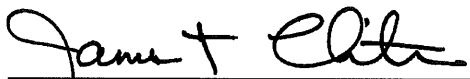
That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall receive a credit for benefits previously paid.

That defendants shall pay costs. Defendants shall not be liable for costs associated with claimant's FCE.

That defendants shall file subsequent reports of injury as required by this Agency under 876 IAC 3.1(2).

Signed and filed this 11<sup>th</sup> day of June, 2018.

  
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JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JFC/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.