BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| COURTNEY N. ADAIR,<br><br>Claimant,<br><br>vs.<br><br>LENNOX INDUSTRIES,<br><br>Employer,<br><br>and<br><br>ACE AMERICAN INSURANCE COMPANY,<br><br>Insurance Carrier,<br>Defendants. | FILED<br>JUL 20 2017<br>WORKERS' COMPENSATION<br><br>File No. 5056125<br><br>ARBITRATION<br><br>DECISION<br><br>Head Note Nos.: 1402.40, 1803 |

## STATEMENT OF THE CASE

Courtney N. Adair, claimant, filed a petition in arbitration seeking workers' compensation benefits from Lennox Industries, Inc., employer and Ace American Insurance Company, insurance carrier, both as defendants. Hearing was held on March 22, 2017 in Des Moines, Iowa.

Claimant testified live at trial. The evidentiary record also includes claimant's exhibits 1-6 and defendant's exhibit A.

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.

The defendants submitted a post-hearing brief on April 12, 2017. Claimant requested to rely on her statement of disputes in lieu of a post-hearing brief.

## ISSUES

The parties submitted the following issues for resolution:

1. The extent of claimant's entitled to permanent partial disability benefits for the March 19, 2012, injury to her arms.
2. Assessment of costs.

## FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Ms. Adair began working for Lennox in 2001. She mainly worked on the heating side of the company where she built furnaces. In 2005, she developed numbness and tingling in her fingers, swelling in her hands, and problems bending her wrists. She was diagnosed with carpal tunnel syndrome. Teri Formanek, M.D., performed bilateral carpal tunnel and ulnar tunnel release. On February 21, 2006, Dr. Formanek placed Ms. Adair at maximum medical improvement (MMI). He measured her grip strength at 21 kg on the right and 18 kg on the left. He assigned 3 percent permanent functional impairment to each upper extremity. (Testimony; Exhibit 2)

Ms. Adair continued to work at Lennox. Her symptoms returned in March of 2012. Initially she treated with Charles Mooney, M.D., an occupational medicine physician. Following EMG studies which suggested bilateral carpal tunnel syndrome, Dr. Mooney referred her to Benjamin Paulson, M.D. Dr. Paulson is an orthopedic surgeon with a specialty in hand and upper extremity conditions. Dr. Paulson diagnosed Ms. Adair with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. He performed a right carpal tunnel release on September 5, 2012. On February 15, 2013, he performed a left carpal tunnel and left cubital tunnel release. A right cubital tunnel release was performed on May 2, 2014. (Exhibits 1, 3, 4, and Testimony)

Ms. Adair's symptoms improved after each procedure. On September 19, 2012, she reported to Dr. Paulson that her numbness and tingling had greatly improved in her thumb, index, and long fingers of her right hand. She also reported she was performing a lot of activity at work without much problem. By October of 2012, Ms. Adair reported that her right wrist was doing very well. By March of 2013, Dr. Paulson stated that Ms. Adair's left hand was completely resolved. She had no complaints of numbness or tingling in her left arm. (Testimony; Exs. 3 and 5)

At hearing, claimant testified that her symptoms improved with each procedure. Following each surgery, Dr. Paulson returned Ms. Adair to her normal job at Lennox without permanent restrictions. (Ex. 3, pp. 14, 16, 24) Ms. Adair testified that she did return to her normal, pre-injury job at Lennox after her first surgery in September of 2012. She continued performing this job until her second surgery. The job she was performing involved using a screw gun to assemble different parts of a furnace. She had been performing this job since 2011. Ms. Adair testified that this job required fine manipulation of her fingers, gripping activities, and pinching activities. She was able to successfully perform this job following her surgery. (Testimony)

After the first two surgeries, Ms. Adair had some personal events that prevented her from performing her pre-injury job at Lennox. In August of 2014, she voluntarily quit her job with Lennox because she wanted to move away from Marshalltown. She also had some disagreements with Lennox about how her return to work was handled. However, the reason she quit was not related to her ability to perform her job. (Testimony)

Dr. Paulson last saw Ms. Adair on October 24, 2014. He placed her at MMI and assigned a functional impairment rating of 5 percent to each upper extremity. His rating was based on range of motion and sensory loss. (Ex. 3, p. 26) Since this appointment Ms. Paulson has not sought any additional treatment or taken any prescription medications for her injury. (Testimony)

At the request of her attorney, Ms. Adair underwent an IME with Jacqueline Stoken, D.O., on December 21, 2016. Dr. Stoken assigned impairment based on range of motion and grip strength. Dr. Stoken assigned 10 percent functional impairment to each upper extremity. (Ex. 5, p. 46)

Dr. Paulson had the opportunity to review Dr. Stoken's report. The differences in the range of motion findings between the two doctors were noted. Dr. Paulson did not have any explanation as to why Ms. Adair's range of motion worsened over time. He explained that having carpal tunnel surgery and cubital tunnel surgery and those symptoms did not usually affect range of motion. Dr. Paulson felt that his findings on October 24, 2014 were accurate. Additionally, Dr. Paulson did not agree with several of Dr. Stoken's opinions. Dr. Paulson stated that under the Guides it was completely inappropriate for Dr. Stoken to assign impairment based on grip strength. He explained that because Ms. Adair had decreased range of motion she should not have been given a separate impairment for decreased strength, as Dr. Stoken had done. Dr. Paulson noted that this was double dipping and artificially inflating Ms. Adair's impairment rating. Further, Dr. Paulson disagreed with Dr. Stoken's opinions regarding restrictions. He noted Ms. Adair did not require any restrictions. He noted that she had returned to regular employment and demonstrated good ability to perform her job. (Ex. 3, pp. 28-29)

After Ms. Adair voluntarily left her employment with Lennox she worked for World Class Industries (WCI). She worked at WCI from September of 2014 to November of 2015. She usually worked 40 hours per week; occasionally she would work overtime. She worked as a full-time kit assembler, putting small parts for machines into bags. Ms. Adair described the tasks involved in performing her WCI job and admitted that she was able to perform the job. Unfortunately, she was terminated from WCI for attendance issues due to personal reasons unrelated to her work injury. (Testimony)

At the time of the hearing, Ms. Adair was employed with Heartland Retirement Group selling health and life insurance. She began working there in March of 2016. She is able to perform everything that is required of her in that job. (Testimony)

I find the opinions of Board Certified Orthopedic specialist, Dr. Paulson to carry the greater weight. I further find that Dr. Paulson's impairment rating is likely the most accurate impairment rating. Given claimant's ability to return to work without restrictions, I find that Dr. Paulson's impairment rating is a fair and accurate estimate of claimant's permanent functional loss of her arms. Furthermore, I find Dr. Paulson's argument as to why Dr. Stoken's rating is flawed under the Guides to be persuasive.

According to table 16-3 on page 439 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, a 5 percent upper extremity impairment rating would convert to a 3 percent impairment of the body as a whole. Utilizing the Combined Values Chart on page 604 of the AMA Guides, the 3 percent and 3 percent whole person ratings would combine for a 6 percent impairment rating of the whole person. Therefore, I find that Dr. Paulson's October 24, 2014 impairment rating is equivalent to a 6 percent functional loss of the body as a whole.

The parties have stipulated that Ms. Adair sustained scheduled member disability to her bilateral arms under Iowa Code section 85.34(2)(s). I find that while the work injury did cause Ms. Adair to sustain permanent disability, I further find that the work injury did not result in permanent total disability.

Ms. Adair is seeking an assessment of costs. However, because claimant was generally not successful in her claim, I exercise my discretion and do not assess costs against the defendants.

## CONCLUSIONS OF LAW

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).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

Having found that the medical opinions of Dr. Paulson are the most convincing opinions in this file and having found that the permanent impairment rating totaling 6 percent of the body as a whole accurately reflects claimant's functional loss as a result

of her bilateral arm injuries, I conclude that claimant has proven entitlement to permanent partial disability benefits. I further conclude that while the work injury has permanently disabled Ms. Adair, the work injury has not rendered her permanently and totally disabled. Therefore, using the 500 weeks schedule pursuant to Iowa Code section 85.34(2)(s), claimant has proven entitlement to 30 weeks of permanent partial disability for her 6 percent permanent functional loss resulting from the bilateral arm injuries. The parties stipulated that prior to hearing, defendants had paid claimant 30 weeks of permanent partial disability benefits at the stipulated rate. Therefore, defendants do not owe any additional permanent partial disability benefits as a result of this proceeding.

Costs are to be assessed at the discretion of the deputy workers' compensation commissioner hearing the case. Because claimant was generally not successful in her claim I exercise my discretion and do not assess costs against the defendants. Each party shall bear their own costs.

ORDER

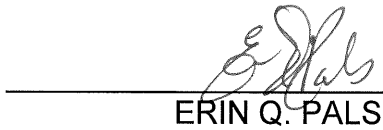
THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

Each party shall bear their own costs.

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

Signed and filed this 20th day of July, 2017.



ERIN Q. PALS
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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**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.