

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| JOSHUA BLEIL, Claimant, vs. PRESCOTT & SCHRAMM PLUMBING AND HEATING, Employer, and GENERAL CASUALTY CO., Insurance Carrier, Defendants. | File No. 1570573.01 ARBITRATION DECISION Headnote: 1803 |
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STATEMENT OF THE CASE

Bleil filed a petition in arbitration seeking workers' compensation benefits from the defendants, employer Prescott & Schramm Plumbing and Heating (Prescott & Schramm) and insurance carrier General Casualty Co. (General), as well as the Second Injury Fund of Iowa (Fund). Bleil and the Fund reached an agreement to settle their dispute before the scheduled hearing. The undersigned presided over an arbitration hearing on November 23, 2021, involving Bleil and the defendants, Prescott & Schramm and General. Bleil participated personally and through attorney Dennis McElwain. The defendants participated by and through L. Tyler Laffin.

ISSUES

Under rule 876 IAC 4.149(3)(f), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

- 1) What is the extent of permanent disability, if any, caused by the stipulated injury?
- 2) Is Bleil entitled to recover the cost of an independent medical examination (IME) under Iowa Code section 85.39?

- 3) Is Bleil entitled to taxation of the costs against the defendants?

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

- 1) An employer-employee relationship existed between Bleil and Prescott & Schramm at the time of the alleged injury.
- 2) Bleil sustained an injury on June 6, 2013, which arose out of and in the course of his employment with Prescott & Schramm.
- 3) The stipulated injury is a cause of temporary disability during a period of recovery, but Bleil's entitlement to temporary or healing period benefits is no longer in dispute.
- 4) The stipulated injury is a cause of permanent disability.
- 5) The disability is a scheduled member disability to the left upper extremity.
- 6) The commencement date for permanent partial disability (PPD) benefits, if any are awarded, is July 14, 2016.
- 7) At the time of the stipulated injury:
 - a) Bleil's gross earnings were nine hundred fourteen and 00/100 dollars (\$914.00) per week.
 - b) Bleil was married.
 - c) Bleil was entitled to two exemptions.
- 8) The defendants are entitled to a credit for benefits paid in the amount of 92.5 weeks of compensation at the rate of five hundred ninety-seven and 26/100 (\$597.26) per week.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

FINDINGS OF FACT

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 6;
- Claimant's Exhibits (Cl. Ex.) 1 through 11; and

- Hearing testimony by Bleil.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

Bleil is right-hand dominant. He graduated from Woodberry Central High School and attended Iowa Lakes Community College for a year without obtaining a postsecondary degree or certification. Then he successfully completed an apprenticeship program for plumbers. At all times material hereto, Bleil was a journeyman plumber. (Testimony)

Bleil worked at Total Plumbing from 2006 to 2011. Then Prescott & Schramm hired him. He worked there as a plumber doing primarily residential plumbing service work and remodels on houses. This work requires use of tools such as pipe wrenches, channel lock pliers, crescent wrenches, drills, band saws, hammers, jackhammers, levels, tape measures, and grinders. (Testimony; Cl. Ex. 1, p. 2)

On the stipulated injury date, Bleil was working for Prescott & Schramm. He was drilling holes with a cordless drill while replacing a drain on a remodeling job. The drill kicked back, injuring his left wrist. Bleil reported the injury to Bill Prescott and kept working. (Testimony)

Bleil thought he had a sprained wrist, but his symptoms did not improve. The defendants provided care. He continued to work, and a wrist splint provided pain relief. (Jt. Ex. 1, p. 1–3) Magnetic resonance imaging (MRI) showed a closed lunate fracture, so Bruce Watkins, M.D., put him in a fiberglass cast and ordered a computerized tomography (CT) scan. (Jt. Ex. 1, pp. 1–5) After the CT scan showed a persistent fracture with no evidence of ongoing healing and Bleil's symptoms continued, Dr. Watkins referred him to the Mayo Clinic. (Jt. Ex. 1, p. 8)

At the Mayo Clinic, Richard Berger, M.D., examined Bleil. (Jt. Ex. 2, p. 13) Because a radioscapulohumeral arthrodesis could be performed at any point in the future, Dr. Berger recommended a neurectomy. (Jt. Ex. 2, p. 14) Instead of authorizing Dr. Berger to perform the surgery, the defendants sent Bleil to see David Jones, M.D., at the Orthopedic Institute of South Dakota. (Jt. Ex. 3, p. 16)

Dr. Jones felt that radioscapulohumeral arthrodesis was "certainly the definitive treatment" for Bleil. (Jt. Ex. 3, p. 16) Nonetheless, the procedure could be performed at that time or in the future, so Dr. Jones recommended first trying corticosteroid injections to relieve Bleil's pain. (Jt. Ex. 3, p. 16) Bleil agreed and Dr. Jones administered an injection. (Jt. Ex. 3, p. 16) It provided only minimal pain relief. (Jt. Ex. 3, p. 16)

Because the injection did not relieve Bleil's pain, Dr. Jones performed left wrist lunate excision and scaphocapitate arthrodesis with distal radius cancellous bone grafting on February 12, 2014. (Jt. Ex. 3, pp. 18–22) Bleil developed a pin tract infection in the radial aspect of his left wrist after the surgery. (Jt. Ex. 3, p. 23) This necessitated removing the pins inserted into Bleil's wrist during the surgery and casting the wrist. (Jt.

Ex. 3, pp. 23–25) Dr. Jones ultimately released him to return to work with “pain as his guide” with respect to activities. (Jt. Ex. 3, p. 28)

Bleil experienced ulnar-sided wrist pain after the surgery that worsened with time. (Jt. Ex. 3, p. 29) Dr. Jones opined the surgery relieved pain in the central aspect of his wrist, which “unmasked” the pain in the ulnar aspect of the joint. (Jt. Ex. 3, p. 30) Dr. Jones administered injections to address the pain, which provided some relief. (Jt. Ex. 3, pp. 30–31) However, Bleil’s pain worsened with use. (Jt. Ex. 3, pp. 30–31) An MRI did not reveal any issues that required surgery. (Jt. Ex. 3, pp. 31–33)

In spring of 2015, Bleil’s pain worsened in the dorsal and ulnar aspect of his left wrist. (Jt. Ex. 3, p. 35) It bothered him when using his left wrist at work and when driving. (Jt. Ex. 3, p. 35) Dr. Jones observed diffuse pain and ordered a bone scan, which showed inflammation over the radial carpal aspect and ulnocarpal aspect of his wrist. (Jt. Ex. 3, pp. 35–37)

Bleil transferred care to Russell DeGroote, M.D. (Jt. Ex. 4; Jt. Ex. 3, pp. 53–54) On May 21, 2015, Dr. DeGroote performed a wrist arthroscopy and triangular fibrocartilage complex (TFCC) debridement. (Jt. Ex. 4, p. 67; Jt. Ex. 3, p. 53) Bleil developed a staph infection postoperatively that required hospitalization. (Jt. Ex. 3, p. 54) He recovered from the infection with the help of antibiotics. (Jt. Ex. 3, p. 54)

Bleil saw Dr. Jones on February 16, 2016, because of ongoing pain in his left wrist such that it gave him trouble sleeping and limited his daily activities. (Jt. Ex. 3, p. 41) Dr. Jones ordered an MRI which showed evidence of fairly significant interval progression of radiocarpal arthritis and lunotriquetral impingement as well as thinning of the triangular fibrocartilage complex (TFCC). (Jt. Ex. 3, pp. 41–43) Dr. Jones recommended a total wrist fusion as the best option for lasting relief. (Jt. Ex. 3, p. 42)

On February 26, 2016, Dr. Jones performed left wrist triquetrum excision and total left wrist arthrodesis to address Bleil’s symptoms from left wrist radiocarpal arthritis and ulnocarpal abutment syndrome. (Jt. Ex. 3, pp. 44–47) After surgery, Bleil experienced pain that improved with time. (Jt. Ex. 3, pp. 48–53) He also experienced decreased dexterity in the joint. (Jt. Ex. 3, pp. 51–53)

Dr. Jones found Bleil to have reached maximum medical improvement (MMI) on November 3, 2016. (Jt. Ex. 3, p. 53) On physical exam,

He did not have any range of motion for flexion, extension, radial and ulnar deviation. Alternating grip strengths were assessed utilizing a dynamometer. On the left side, he has an average 23 kg of pressure generated. This is comparable to his assessment in July, at which time, he was noted to have 26 kg of grip strength on the left. In July, the patient’s grip strength on the right was 40 kg; on today’s assessment, it is closer to 30 kg. I’m not sure how to explain the change in strength values other than perhaps there is possibly fatigue with the rapidly alternating measurements rather than the single grip strength measurements

obtained in July. His gross neurological function is intact. He is able to make fully closed fist. Pinch strength is adequate, but it is equal bilaterally.

(Jt. Ex. 3, p. 54)

Dr. Jones used the Fifth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (Guides) to assess Bleil's permanent functional impairment to the left wrist. (Jt. Ex. 3, p. 54) He reviewed pages 467 and 469 for the impairment values for ankylosis. (Jt. Ex. 3, p. 54) Dr. Jones found Bleil to be "ankylosed at 0 degrees in each of these tables." (Jt. Ex. 3, p. 54) He stated:

On page 467, this equates to a 21% upper extremity impairment. On page 469, this is a 9% impairment. The patient has also had a loss of grip power. When we used the value of his right wrist grip strength as his normal strength and compute the strength loss index, this comes to a strength loss of 18%. When we put this value into table 16-34, it equates to a 10% upper extremity impairment. To determine total impairment, we added the values for motion loss for total of 30%. We then combined that with 10% for strength loss, utilizing the combined values chart on page 604 for a total of 37% upper extremity impairment. If administrative purposes dictate 37% of the upper extremity converted to 41% of the hand or 22% of the whole person per page 439.

(Jt. Ex. 3, p. 54)

Dr. Jones assigned no permanent work restrictions. (Jt. Ex. 3, p. 54) He opined he did not anticipate any future surgery for Bleil. (Jt. Ex. 3, p. 54) Dr. Jones also stated future arthritic changes were unlikely. (Jt. Ex. 3, p. 54)

Bleil experienced inflammation that caused pain in his shoulder, neck, elbows, feet, and hands. (Testimony) He sought care from Robert Chad Wisco, M.D., who diagnosed him with rheumatoid arthritis. (Jt. Ex. 6, pp. 75–83; Testimony) Treatment has reduced his pain and inflammation, though he still experiences some symptoms. (Testimony)

Claimant's counsel arranged for Bleil to undergo an IME with Sunil Bansal, M.D. (Cl. Ex. 6, pp. 12–15) Before the IME, claimant's counsel sent Dr. Bansal a letter summarizing Bleil's care and posing a series of questions regarding his injury, potential permanent disability, and work restrictions. (Cl. Ex. 6, pp. 12–15) Dr. Bansal performed an examination of Bleil on September 17, 2021, and reviewed records relating to his injury and care before issuing a report with his opinions dated October 24, 2021. (Cl. Ex. 6, pp. 16–31)

On the question of permanent functional impairment to Bleil's left wrist, Dr. Bansal used the Guides to opine:

[P]er Figures 16-28 and 16-31, he is assigned 21% upper extremity impairment for his ankylosis in flexion/extension, and a 9% upper extremity impairment for his ankylosis for radial/ulnar deviation. Combined, this is a 28% upper extremity impairment.

Furthermore, a 24% upper extremity impairment per Table 16-27 is assigned for the wrist fusion itself. The procedure and range of motion impairments are additive, as explained in the example following Table 16-27, Example 16-69, on page 506.

Therefore, the 28% upper extremity impairment is added to the 24% upper extremity impairment. The combined value is a 45% upper extremity impairment, or a 27% whole person impairment.

(Cl. Ex. 7, p. 33)

Section 16.7b of the Guides, “Arthroplasty,” states:

Resection arthroplasty of a joint may be carried out with or without implant replacement. Impairment ratings for the upper extremity following arthroplasty of specific joints are listed in Table 16-27 and reflect upgraded information.

In the presence of *decreased motion*, motion impairments are derived separately (Section 16.4), and *combined* with the arthroplasty impairment (Combined Values Chart, p. 604). If the same joint presents other findings, the rules outlined on page 499 must be followed to avoid duplication of impairments. However, impairment due to arthroplasty *cannot be combined* with impairments due to instability, subluxation, or dislocation.

After *arthrodesis*, procedures, the impairment is based on the *ankylosis impairment* (A%) for the corresponding angle of fusion (V) according to the guidelines in Section 16.4.

Guides, § 16.7b, p. 505.

Example 16-69 on page 506 uses a hypothetical of, “An individual with a total wrist (radiocarpal and distal radioulnar joints) replacements has 30° flexion and 20° extension, 0° radial deviation, and 30° ulnar deviation. Id. at 506. The analysis the Guides provide requires a twenty-four percent impairment of the upper extremity for the procedure using Table 16-27 that is combined with impairments of the upper extremity using Figures 16-28 and 16-31. Id. The combined impairment is determined using the Combined Values Chart on page 604. Id. Consequently, Dr. Bansal’s impairment under the Guides is most persuasive and is adopted.

Dr. Bansal also reviewed medical records regarding Bleil’s left knee and examined it. (Cl. Ex. 1, pp. 16–31) In the IME report, he provided opinions regarding

Bleil's permanent impairment to the left leg. (Cl. Ex. 1, pp. 31–32) Dr. Bansal did this as part of the IME for Bleil's claim against the Fund, which the parties settled before hearing. (Cl. Ex. 8, p. 35) Dr. Bansal broke down his time for the respective claims as eighty percent for the work injury (\$2,785) and twenty percent for the Fund claim (\$696). (Cl. Ex. 8, p. 35) Based on the medical records regarding each injury and the contents of this report, Dr. Bansal's itemization is reasonable.

CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred before July 1, 2017, the Iowa Workers' Compensation Act in effect before the 2017 amendments applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

1. Permanent Disability.

"In this state, the right to workers' compensation is purely statutory." Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992) (citing Caylor v. Employers Mut. Casualty Co., 337 N.W.2d 890, 893 (Iowa App. 1983)). The "broad purpose of workers' compensation" is "to award compensation (apart from medical benefits), not for the injury itself, but the disability produced by a physical injury." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, (Iowa 2010) (citing 4 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 80.02, at 80–2 (2009)). Iowa Code section 85.34(2)(m) (2013) governs Bleil's entitlement to workers' compensation in this case.

As found above, Dr. Bansal's opinion on Bleil's permanent impairment is most persuasive. Bleil has met his burden of proof. He has established he sustained a forty-five percent permanent functional impairment to his left upper extremity. Forty-five percent times two hundred and fifty equals one hundred twelve and one-half. Bleil is entitled to one hundred twelve and one-half weeks of benefits.

2. Rate.

The parties stipulated Bleil's gross earnings on the stipulated injury date were nine hundred fourteen and 00/100 dollars (\$914.00) per week. They also stipulated he was married and entitled to two exemptions at the time. Based on the parties' stipulations, Bleil's workers' compensation rate is five hundred ninety-seven and 26/100 dollars (\$597.26) per week.

3. IME.

Under Iowa Code section 85.39, an injured employee is entitled to reimbursement for the cost of an IME if the defendants first obtain a disability rating from a doctor of their choice that the claimant thinks is too low. Here, the defendants

obtained a disability rating. Bleil thought it was too low and obtained an IME with Dr. Bansal that addressed not only his work injury but also his alleged first qualifying loss for Fund benefits.

Iowa Code section 85.39 does not require an employer to pay for the portion of an IME that addresses an injury relating to an injured employee's claim against the Fund. See Pesicka v. Snap-On Logistics Company, 965 N.W.2d 638, *7 (Iowa Ct. App. 2021) (Table). Consequently, the agency has discretion to reduce the cost of an IME that an employer must pay under the statute. See id. The agency will reduce the amount an employer must reimburse the claimant for an IME if the record shows:

- 1) The IME served the dual purpose of assessing the claimant for disability relating to a claim against the employer and the Fund; and
- 2) The amount of the reduction fairly approximates the reality that the IME was used for two purposes. Id.

Here, Dr. Bansal's IME served a dual purpose. The weight of the evidence establishes Dr. Bansal spent more than half of the time he spent on Bleil's IME focused on his work injury. Reducing the amount which the defendants must pay to Bleil for the IME by twenty percent fairly approximates the time Dr. Bansal spent on each of its dual purposes.

4. Costs.

"All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Iowa Code § 86.40. "Fee-shifting statutes using 'all costs' language have been construed 'to limit reimbursement for litigation expenses to those allowed as taxable court costs.'" Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (quoting City of Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Statutes and administrative rules providing for recovery of costs are strictly construed. Id. (quoting Hughes v. Burlington N. R.R. Co., 545 N.W.2d 318, 321 (Iowa 1996)).

Because Bleil prevailed, the following costs are taxed against the defendants:

- Attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, 876 IAC 4.33(1);
- Transcription costs when appropriate, 876 IAC 4.33(2);
- Costs of service of the original notice and subpoenas, 876 IAC 4.33(3);
- Witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, 876 IAC 4.33(4);

- 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, 876 IAC 4.33(5);
- Reasonable costs of obtaining no more than two doctors' or practitioners' reports, 876 IAC 4.33(6);
- Filing fees when appropriate, including convenience fees incurred by using the payment gateway on the Workers' Compensation Electronic System (WCES), 876 IAC 4.33(7); and
- Costs of persons reviewing health service disputes, 876 IAC 4.33(8).

Bleil has prevailed on the disputed issues of permanent disability and IME reimbursement. Therefore, he is entitled to taxation of costs against the defendants. Bleil has submitted an itemized list of costs he prays be taxed against the defendants, including the filing fee for the original notice and petition and bills from healthcare providers. (Cl. Ex. 11, p. 39)

The Iowa Supreme Court has held the statutory and administrative rule provisions governing taxation of costs must be strictly construed. Young, 867 N.W.2d at 846 (quoting Hughes v. Burlington N. R.R. Co., 545 N.W.2d 318, 321 (Iowa 1996)). Bleil is entitled to taxation of the cost of the filing fee against the defendants because agency rules expressly allow it. However, the other costs he prays be taxed do not clearly fit under one of the categories itemized in the governing rule. Because the rule is strictly construed, taxation of those costs would be inappropriate.

ORDER

Based on the above findings of fact and conclusions of law, it is ordered:

- 1) Bleil shall take nothing more from this case.
- 2) The defendants shall pay to Bleil one hundred twelve and one-half (112.5) weeks of permanent partial disability benefits at the rate of five hundred ninety-seven and 26/100 dollars (\$597.26) per week from the commencement date of July 14, 2016.
- 3) The defendants shall pay accrued weekly benefits in a lump sum.
- 4) The defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.
- 5) The defendants shall be given a credit for benefits previously paid for the stipulated amount of 92.5 weeks of compensation at the rate of five hundred ninety-seven and 26/100 (\$597.26) per week.

- 6) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).
- 7) The defendants shall pay to Bleil one hundred and 00/100 dollars (\$100.00) for the cost of the filing fee.

Signed and filed this 18th day of May, 2022.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Dennis McElwain (via WCES)

L. Tyler Laflin (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.