

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA E. JORDAN,

FILED

Claimant,

FEB 27 2019

File No. 5044403

vs.

WORKERS COMPENSATION

ARBITRATION

SECOND INJURY FUND OF IOWA,

DECISION

Defendant.

Head Note No.: 3202

STATEMENT OF THE CASE

Claimant, Teresa Jordan, filed a petition in arbitration seeking workers' compensation benefits from the Second Injury Fund of Iowa (Fund). This matter was heard in Des Moines, Iowa on February 6, 2019.

The record in this case consists of Joint Exhibits 1-8, the Fund's Exhibits A-B, and the testimony of claimant.

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

Does claimant have qualifying first and second injuries entitling him to Fund benefits; and if so,

The extent of claimant's entitlement to Fund benefits.

FINDINGS OF FACT

Claimant was 60 years old at the time of hearing. Claimant graduated from high school. Claimant has worked as a waitress and in factories. She worked for a school district as a study hall supervisor. Claimant worked at a Hy-Vee decorating cakes. From 2007 to 2014, she worked at Terrible's Lakeside Casino as a server and a hostess. (Exhibit A3)

Claimant testified that approximately 30 years ago, she was in a car accident.

She said that in approximately October 2009 she was carrying wood on the farm when she stepped into a hole and fractured her right ankle. (Ex. A, page 5)

On October 26, 2009, claimant was evaluated at Mercy Clinics. Claimant complained of right ankle pain after falling. Claimant was assessed as having right ankle pain. She was told to use ice, elevate and compression for her right ankle pain. (Joint Ex. 1, pp. 1-2)

An October 26, 2009 radiology report from Mercy, which appears to be for an x-ray of the right ankle, indicates there was no evidence of an acute fracture, subluxation or lesion on the right ankle. (Ex. 2)

Claimant returned to Mercy Clinic on November 4, 2009 with continued complaints of right ankle pain. Claimant was again assessed as having right ankle pain. (Jt. Ex. 1, pp. 3-4)

Claimant testified she has not had any treatment for the right ankle since 2009.

As detailed in the December 11, 2015 arbitration decision, claimant was working as a hostess at Terrible's when she slipped and fell. Claimant eventually underwent surgery to her right thumb. (Ex. 4, Arbitration Decision, page 2) Claimant was found to have a 15 percent permanent impairment to her right upper extremity. She was found to be entitled to 37.5 weeks of permanent partial disability benefits. (Arb. Dec., pp. 9, 13)

Claimant worked at Terrible's until approximately August of 2014. After she left Terrible's, she worked a few weeks at a Casey's convenience store between October and November of 2014. (Ex. A, p. 3) Claimant testified she quit her job at Casey's because of pain in her hand. (Ex. A, p. 3)

Claimant testified she is not had a job since leaving Casey's in 2014. She testified she has not looked or applied for work since leaving Casey's. She says she helps her fiancée with chores on the farm. She said she drives an ATV while her fiancée feeds cattle and livestock.

Claimant testified she does not believe she could return to work as a server or waitress at Terrible's as she cannot lift much with her right hand. Claimant said she has a five to ten pound lifting restriction on her right from Mayo Clinic. (Jt. Ex. 8, p. 9)

Claimant wore a soft brace on her right wrist at hearing. Claimant testified she wears the brace all the time. Claimant testified she wears soft braces on both ankles.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant has a first and second injury that would entitle her to Fund benefits.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

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 handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

For the purposes of Fund benefits, claimant has pled a first injury of October 26, 2009 to her right lower extremity, and a second injury of January 27, 2012 to her right upper extremity.

Regarding her October 2009 injury to her right ankle, claimant alleges she fractured her ankle when he fell in a hole.

Medical records from October 26, 2009 and November 4, 2009 indicate that claimant was seen for ankle pain after falling. She was assessed at that time as having right ankle pain. (Jt. Ex. 1) An x-ray of the right ankle indicates no evidence of a fracture or subluxation of the right ankle. (Ex. 2)

No expert has opined that claimant has a permanent impairment to her right ankle.

Claimant testified at hearing that she fractured her right ankle from a fall in October 2009. Medical records indicate that claimant did not sustain a fracture of the right ankle at that time. Claimant has not had any treatment for the right ankle since 2009. No expert has opined that claimant has a permanent impairment to the right ankle. Given this record, claimant has failed to carry her burden of proof that she has a qualifying first injury for the purposes of Fund benefits.

As a result, claimant has failed to carry her burden of proof that she is entitled to Fund benefits.

As claimant has failed to carry her burden of proof she is entitled to Fund benefits, the issue of the extent of claimant's entitlement to Fund benefits is moot.

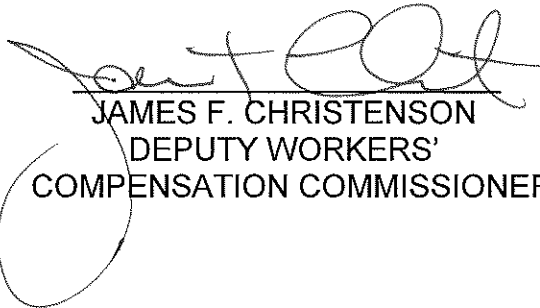
ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 27th day of February, 2019.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFC/srs

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.