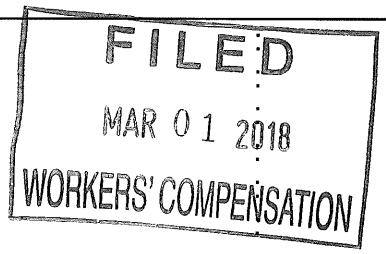
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



KRISTINA DAWSON, Claimant, vs. SECOND INJURY FUND OF IOWA, Defendant.	File No. 5061023 ARBITRATION DECISION Head Note No.: 3200

STATEMENT OF THE CASE

Claimant, Kristina Dawson, filed a petition in arbitration seeking workers' compensation benefits from the Second Injury Fund of Iowa (Fund), as defendant, as a result of a stipulated injury sustained on March 25, 2016. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on June 19, 2017, in Des Moines, Iowa. The record in this case consists of joint exhibits 1 through 6, claimant's exhibits 1 through 4, defendant's exhibits A through B, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on July 14, 2017.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant is entitled to benefits under the Second Injury Compensation Act;
2. The extent of claimant's industrial disability;
3. The extent of credit to the Fund;
4. Specific taxation of costs.

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.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record. Her demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 44 years of age at the time of hearing. She resides in Des Moines, Iowa. She is right hand dominant. Claimant graduated high school in 1991. Since graduation, claimant has taken courses at a community college in accounting, medical studies, and paralegal studies. She did not earn a degree or certification in any of these fields. Claimant's work history consists of 19 years in the mortgage field. In conjunction with her work in the mortgage industry, claimant participated in various employer-sponsored trainings and amassed notable computer skills. (Claimant's testimony; CE3, pp. 15-18)

While claimant's full time employment has generally fallen in the mortgage field, she has often contemporaneously held part-time positions. With some variation, the majority of claimant's part-time work has been in the restaurant industry. Claimant's experience in this industry dates back to age 14. Since 2012, claimant has worked full time at Wells Fargo Home Mortgage (Wells Fargo). In November 2015, claimant began working part-time as a server at Pagliai's Pizza (Pagliai's). Claimant averaged 15 to 20 hours per week at Pagliai's, working 5 nights per week. (Claimant's testimony; CE3, pp. 16-18)

In August 2001, claimant was involved in a motor vehicle accident. During this accident, claimant represented her left hand went through the windshield and the vehicle rolled over her hand. Claimant indicated she suffered with broken bones of her left hand. She received treatment for her injuries with Jeffrey Rodgers, M.D. of DMOS Orthopaedic Centers (DMOS). Claimant indicated pins were placed in her left hand, extending from the wrist and slightly into her fingers. These were designed to assist with healing of the fractures of her hand and were subsequently removed. In addition to the pin-placement, claimant testified she underwent tendon surgery about her thumb and wrist, as well as removal of a cyst from her hand. Claimant testified Dr. Rodgers informed her she would not regain 100 percent use of her hand and she should not lift more than 20 pounds with her left hand. As a result of her injuries, claimant indicated she continues to suffer with difficulty with prolonged gripping and heavy lifting, and an inability to apply pressure to or bear weight on the left hand. Claimant testified she subsequently developed arthritis of her left hand. (Claimant's testimony; CE3, p. 20)

Claimant requested DMOS furnish copies of her medical records from August 1, 2001 through August 1, 2007. A representative indicated DMOS did not possess records for the dates requested. (CE1, pp. 1-2) Claimant testified she was advised the records had been expunged. (Claimant's testimony)

Claimant engaged in recreational running. In 2012, while running a half marathon, claimant testified she began having difficulties with her left knee. (Claimant's testimony)

On February 22, 2016, claimant presented to the Iowa Clinic for evaluation with her primary care physician, Sean Cunningham, M.D. Claimant requested completion of wellness forms for her employer. Dr. Cunningham noted a history of knee pain for approximately three years. He noted claimant suffered with left knee symptoms, which had become more severe during a half marathon. After the race, claimant's knee pain progressively worsened and caused difficulty with kneeling, squatting, walking, and stair use. (JE6, pp. 22a) Dr. Cunningham assessed left knee pain and referred claimant for evaluation with Matthew Weresh, M.D. (JE6, pp. 24a-25a)

On February 29, 2016, claimant presented to DMOS for evaluation by Dr. Weresh. Dr. Weresh noted complaints of left knee pain at a level of 3 to 4 on a 10-point scale. Claimant described the pain as minor in severity, but constant and worsening since she participated in a half marathon 2 ½ years prior. Claimant complained of instances of the kneecap jumping out of place, popping with walking, and a sensation of hyperextension. She relayed difficulty with use of stairs and rising from a hands and knees position. Dr. Weresh's record also notes a history of "left hand pins" in 2001. (JE1, p. 1)

Dr. Weresh performed a physical examination and ordered x-rays of claimant's knees. The radiologist opined the left knee x-rays revealed well preserved joint space in the medial and lateral compartments, but approximately 2 millimeters of narrowing in the patellofemoral joint of the left knee compared with 1 millimeter on the right. (JE1, p. 2) Dr. Weresh assessed mild to moderate patellofemoral arthritis and chondromalacia of the left knee. Due to moderate tenderness to palpation of the medial joint line, Dr. Weresh noted a suspicion of medial meniscus tear. However, due to the remainder of claimant's examination findings, Dr. Weresh opined the majority of claimant's pain was coming from arthritis of the patellofemoral joint. Dr. Weresh recommended continued monitoring with respect to the potential tear. With respect to the arthritis and chondromalacia, Dr. Weresh identified treatment options, including: conservative therapy, anti-inflammatories, corticosteroid injections, and viscosupplementation injections. He recommended use of a home exercise program and an anti-inflammatory with flare ups; claimant declined a prescription-level anti-inflammatory. Dr. Weresh also raised the possibility of a need for arthroscopic intervention in the future; claimant expressed desire to avoid such steps, if possible. (JE1, pp. 2-3)

On March 25, 2016, claimant was finishing her shift at Pagliai's when she slipped on a wet floor and fell onto her left knee. Claimant reported the incident and was referred for medical attention. (Claimant's testimony; CE3, pp. 20-21)

On March 26, 2016, claimant presented to Unity Point Urgent Care and was evaluated by Brett Stewart, PA-C. Claimant reported she had fallen and landed directly upon her left kneecap. She also disclosed her prior evaluation with Dr. Weresh. (JE2, p. 4) On examination, Mr. Stewart noted decreased range of motion, swelling, effusion, abnormal patellar mobility, and bony tenderness of the left knee. (JE2, p. 5) X-rays of the left knee revealed a large joint effusion and/or synovitis of the suprapatellar bursa, and mild patellofemoral and medial compartment arthritis. (JE2, p. 5; JE3, p. 7) Mr.

Stewart assessed a left knee injury and referred claimant for orthopedic evaluation. In the interim, Mr. Stewart issued a prescription for hydrocodone-acetaminophen, placed claimant in a knee immobilizer, and provided crutches. Mr. Stewart cleared claimant for seated work at Wells Fargo, but removed claimant from her work as a server at Pagliai's. (JE2, pp. 5-6)

Pursuant to Mr. Stewart's referral, on March 31, 2016, claimant presented to DMOS for evaluation with Kary Schulte, M.D. Dr. Schulte noted claimant had struck her knee in a fall and complained of pain, swelling, and stiffness with prolonged sitting. Dr. Schulte noted claimant's prior evaluation by Dr. Weresh for baseline left knee pain. He also noted a history of surgical placement of left hand pins in 2001. (JE4, p. 10) On examination, Dr. Schulte noted decreased range of motion and 15 to 20 ccs of effusion. X-rays revealed marked left patellofemoral joint space narrowing. (JE4, p. 11) Dr. Schulte assessed a left knee contusion/sprain. He advised discontinuation of the immobilizer and weaning from crutches. Dr. Schulte ordered a course of physical therapy and imposed work restrictions of seated-only work with limited walking and standing. (JE4, pp. 11, 13-14)

Claimant participated in the course of physical therapy ordered by Dr. Schulte. Claimant was ultimately discharged from physical therapy with a notation claimant had achieved all goals and could continue with a home exercise program. The physical therapist noted claimant reported approximately 85 percent improvement since the work injury, with progressive improvement, and no pain. (JE5, pp. 19, 21)

Claimant returned to Dr. Schulte in follow up on May 9, 2016. Dr. Schulte noted marked improvement in claimant's left knee range of motion, strength, and pain level. He released claimant from care, with a recommendation to perform a home exercise program. Dr. Schulte released claimant to full duty work, without restrictions. (JE4, pp. 15-16) Dr. Schulte subsequently opined claimant reached maximum medical improvement for her left knee on May 9, 2016 and indicated he did not anticipate further medical care would be needed for the work-related injury. Dr. Schulte opined claimant did not require permanent work restrictions and due to full range of motion and normal motor strength, did not sustain any measurable permanent impairment. (JE4, p. 17)

Following Dr. Schulte's release, claimant returned to work at Pagliai's. (Claimant's testimony)

On June 6, 2016, claimant returned to Dr. Cunningham for a personal health issue. Dr. Cunningham noted claimant's prior care for her left knee underlying condition and work-related injury. He did not offer a course of care for claimant's left knee. (JE6, pp. 22-23, 25-26)

Post-injury, claimant returned to an exercise program and participated in a six-week weight loss challenge requiring her to work out five days per week. Claimant successfully completed the challenge and continues to work out regularly. (Claimant's testimony)

At the referral of claimant's counsel, on April 21, 2017, claimant presented to board certified occupational medicine physician, Sunil Bansal, M.D., for independent medical examination (IME). Dr. Bansal authored a report containing his findings and opinions dated May 2, 2017. As elements of his evaluation, Dr. Bansal performed a records review and interviewed claimant. (CE2, pp. 3-8) During interview, Dr. Bansal noted claimant had injured her left hand in August 2001, at which time claimant's left hand went through a windshield and her car rolled over the hand during a motor vehicle accident. He noted claimant underwent surgery to place three pins into her second, third, and fourth fingers; these pins were removed six to eight weeks later. Claimant also reported she underwent tendon repair in her left hand. (CE2, p. 7)

During interview, claimant expressed complaints of constant left knee pain, locking and instability of the knee, cracking and popping of the knee, as well as nighttime numbness and impacted sleep. (CE2, pp. 7-8) Claimant also complained of occasional left hand pain, decreased range of motion of the hand, difficulty with gripping, an inability to bear weight on the hand or wrist, nighttime numbness and tingling, and swelling of the left digits. Claimant indicated she also suffered with right hand numbness and tingling; she had received a diagnosis of carpal tunnel syndrome and utilized bilateral wrist braces. Claimant expressed belief she was capable of lifting 25 pounds occasionally. (CE2, p. 8)

Dr. Bansal performed a physical examination. On examination of claimant's left knee, Dr. Bansal noted anterior and medial joint line tenderness, pes anserine bursal swelling, and crepitus. (CE2, p. 9) On examination of claimant's left hand, Dr. Bansal performed various tests, including grip strength and range of motion of claimant's digits of the left hand. Dr. Bansal noted decreased range of motion at the proximal interphalangeal (PIP) joints of the second, third, and fourth digits of claimant's left hand. (CE2, p. 10)

Following records review, interview, and examination, Dr. Bansal assessed aggravation of chondromalacia of the left knee, and fractures of the left second, third, and fourth fingers. (CE2, pp. 10-11) Dr. Bansal opined the mechanism of direct impact to claimant's left knee and clinical presentation were consistent with aggravation of patellofemoral arthritis and chondromalacia. (CE2, p. 11) Dr. Bansal recommended claimant undergo a left knee MRI due to concern of cartilage or ligament injury. (CE2, p. 13) Dr. Bansal offered opinions with respect to the extent of claimant's permanent impairment. With respect to claimant's left knee, Dr. Bansal opined claimant sustained a permanent impairment of 5 percent lower extremity for a history of direct impact to the knee with complaints of patellofemoral pain and crepitus on examination. (CE2, p. 11) Dr. Bansal opined claimant sustained permanent impairments of 5 percent of the index finger, 12 percent of the long finger, and 9 percent of the ring finger, each for decreased range of motion at the PIP joint of the respective finger. Dr. Bansal cited to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Figures 16-28, 16-31, and 16-37, as the bases of his ratings. Dr. Bansal converted these individual impairments into a combined 4 percent of the left hand or 4 percent of the left upper extremity. Dr. Bansal recommended permanent restrictions for the left hand, consisting

of no lifting over 25 pounds occasionally or 10 pounds frequently. He also recommended restrictions relative to the left knee, consisting of no frequent kneeling, squatting, or twisting; no prolonged standing over 60 minutes; and avoidance of uneven surfaces. (CE2, p. 12)

Claimant expressed agreement with the restrictions outlined by Dr. Bansal. (Claimant's testimony)

Claimant testified she returned to Dr. Schulte in May 2017 due to continued left knee problems. Claimant distinguished her ongoing symptoms from the preexisting arthritis of the left knee, noting the pain was located in a different location, she continued to experience swelling, and suffered with ongoing limitations. Claimant testified she inquired into further care, but Dr. Schulte advised her no further care was warranted and her condition was preexisting in nature. (Claimant's testimony) No corresponding medical record was offered into evidence.

Claimant entered into an agreement for settlement with Pagliai's and its insurance carrier, approved by this agency on May 26, 2017. By that agreement, claimant and her employer stipulated claimant sustained a permanent impairment of 2.5 percent of her left leg as a result of the work injury of March 25, 2016. Such an agreement entitled claimant to 5.5 weeks of permanent partial disability benefits, commencing on the stipulated date of May 10, 2016. (Agency file)

Claimant remains employed full time at Wells Fargo; she received a promotion and pay raise contemporaneous to the work injury. Claimant testified she stretches her left knee every hour and utilizes a custom computer tray which allows her to keep her wrists straight. Claimant also remains employed at Pagliai's as a server. However, since the work injury, claimant testified Pagliai's only schedules her for shifts three nights per week, as compared to the pre-injury five shifts. Claimant testified shifts of three to five hours cause left knee pain and swelling, prompting her to use over-the-counter medication. Claimant testified she remains unable to carry drinks, certain pizzas, or buckets of ice in her left hand. Claimant testified she regularly relies more upon her right than left arm. She also receives assistance from coworkers at Pagliai's and no longer changes kegs of beer in the restaurant. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is whether claimant is entitled to benefits under the Second Injury Compensation Act.

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 R. App. P. 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 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

The first requirement claimant must prove is that she suffered a first qualifying loss. Specifically, claimant must prove she lost the use of a hand, arm, foot, leg, or eye. Claimant argues, and the Fund disputes, that she sustained such a qualifying first loss to her left hand in August 2001.

Claimant credibly testified she suffered significant injury to her left hand in a motor vehicle accident in August 2001. Claimant testified her course of care involved three surgeries, all involving incisions about her hand and wrist and all seeking to treat conditions found within claimant's hand. Unfortunately, claimant was unable to obtain any contemporaneous medical records detailing and substantiating her testimony.

Instead, claimant relies upon the opinions of Dr. Bansal. Dr. Bansal opined claimant sustained permanent impairment to her left hand; however, review of his rating methodology demonstrates he located the situs of claimant's impairments to her second, third, and fourth digits. Specifically, Dr. Bansal rated claimant for decreased range of motion of the PIP joints of these digits. The PIP joint is contained within the individual digit and does not join the digit to the hand itself. Dr. Bansal then converted and combined these digit ratings into an impairment rating to claimant's hand. This method of combining impairment ratings does not change the fact that the underlying impairment ratings were based upon objective findings of the digits themselves, with the situs of impairment remaining contained within those digits.

The Iowa Supreme Court considered the importance of the situs of an injury in the case of Stumpff v. Second Injury Fund of Iowa, 543 N.W.2d 904 (February 1996). The Court specifically addressed the question of whether an injury to a person's finger qualified as an injury to the hand for purposes of the Second Injury Compensation Act. Stumpff argued the common definition of the word hand included the fingers and noted that the treating physician converted the rating to Stumpff's index finger into a rating to Stumpff's hand. Following consideration of Stumpff's argument, the Court held:

> Under our workers' compensation law, all scheduled injuries to specific members of the body are listed in Iowa Code section 85.34(2)(a)-(t). A specific scheduled disability is evaluated by the functional method. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993). "Functional disability is assessed solely by determining the impairment of the body function ... [and] is limited to the loss of physiological capacity of the body or body part." Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983).
>
> The injury to an index finger and the injury to a hand are separately identified scheduled injuries. Iowa Code § 85.34(2)(b), (l). Obviously, the loss of a finger or thumb does, to some extent, affect the hand. Likewise, the injury to the hand would affect the arm, and even the body as a whole. Where the Iowa legislature has explicitly provided for workers' compensation benefits based on the loss of a finger, there is no merit in arguing the schedule for loss of a hand should apply.

Stumpff v. Second Injury Fund of Iowa, 543 N.W.2d 904, 906 (Iowa 1996).

Dr. Bansal issued impairment ratings to three digits, digits which the legislature identified as separate scheduled injuries in section 85.34(c), (d), and (e). These scheduled injuries are also separate from hand injuries identified in section 85.34(l). As claimant's ratable permanent impairments are localized to the PIP joints within the digits, the impairment ratings and conversion to a hand impairment cannot properly be used as the basis for a first qualifying loss for Second Injury Compensation Act purposes.

Claimant argues she underwent multiple surgeries upon and suffers with residual symptomatology of her hand, thus forming the basis of a determination of a first qualifying loss. No physician, including claimant's own expert, Dr. Bansal, rated any permanent functional impairment to claimant's hand itself. It cannot be determined that claimant sustained ratable permanent impairment to her hand under these facts. While Dr. Bansal did recommend permanent restrictions for claimant's left hand, it is unclear from the text of Dr. Bansal's report if these restrictions are related to a specific condition of the hand or are instead tied to the conditions of claimant's three digits. Dr. Bansal's report is unclear on this issue and thus, is not properly relied upon with respect to claimant's need for permanent restrictions as a result of the August 2001 injury.

Furthermore, I have reservations regarding the accuracy of Dr. Bansal's report generally. Due to a lack of DMOS records, Dr. Bansal presumably relied solely upon claimant's oral history regarding the 2001 injury. The text of his report notes fractures of three digits of claimant's left hand. The report is silent regarding claimant's reports of fractures of the bones of her hand, and claimant did not testify at hearing to sustaining any fractures of her fingers specifically. At best, I cannot find Dr. Bansal possessed an accurate history of claimant's 2001 injury, as his report is lacking or inconsistent with claimant's credible testimony. I am also troubled by Dr. Bansal's rating methodology, as the AMA Guides Figures referenced in his report refer to rating of motion of the elbow and wrist, as opposed to joints of the digits, as specifically noted in his report.

On these facts, I find claimant has failed to prove a first qualifying loss for purposes of the Second Injury Compensation Act. As claimant has failed to carry her burden of proving a first qualifying loss for purposes of the Second Injury Compensation Act, claimant is not entitled to benefits from the Fund. Consideration of the issues of extent of industrial disability and extent of credit to the Fund are, therefore, unnecessary. As claimant failed to prevail on the merits of her claim, costs of this action shall be borne by claimant.

ORDER

THEREFORE, IT IS ORDERED:

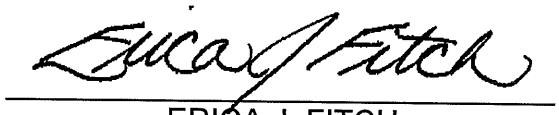
The parties are ordered to comply with all stipulations that have been accepted by this agency.

Claimant shall take nothing from these proceedings.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to claimant pursuant to 876 IAC 4.33.

Signed and filed this 1ST day of March, 2018.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Randall Schueller
Attorney at Law
1311 – 50th ST
West Des Moines, IA 50266
randy@loneylaw.com

Sarah Brandt
Assistant Attorney General
Special Litigation
Hoover State Office Bldg.
Des Moines, IA 50319-0106
Sarah.brandt@iowa.gov

EJF/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.