

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROSA CHAVEZ,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5066270
MS TECHNOLOGY, LLC,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
WESTFIELD INSURANCE COMPANY,	:	
	:	
Insurance Carrier,	:	Head Notes: 1402.40; 1108, 1803, 1803.1
Defendants.	:	

Defendants MS Technology, LLC, employer, and its insurer, Westfield Insurance Company, appeal from an arbitration decision filed on February 5, 2020. Claimant Rosa Chavez cross-appeals. The case was heard on October 1, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 15, 2019.

This case involves the 2017 legislative changes to Iowa Code Chapter 85 - specifically the addition of the shoulder to the list of scheduled members in Iowa Code section 85.34(2). As such, all references to section 85.34 herein are to the post-July 1, 2017, version of the section unless otherwise stated.

In the arbitration decision, the deputy commissioner found claimant sustained injuries that were proximal to her glenohumeral joint and should therefore be compensated as an unscheduled, whole body injury. Though the deputy commissioner determined claimant sustained a whole body injury, the deputy commissioner determined claimant's recovery should be limited to her functional impairment pursuant to section 85.34(2)(v) because claimant was receiving greater earnings at the time of the arbitration hearing than at the time of her injuries. The deputy commissioner determined claimant's functional impairment rating should be converted to the whole person and then applied to the 500-week schedule. Because the deputy commissioner accepted the six percent whole body impairment rating of Sunil Bansal, M.D., the deputy commissioner found claimant was entitled to an award of 30 weeks of

permanent partial disability (PPD) benefits. The deputy commissioner also found claimant was entitled to costs.

On appeal, defendants assert claimant's disability is limited to the shoulder under section 85.34(2)(n).

On cross-appeal, claimant urges affirmance of the deputy commissioner's determination that her injury is compensable as a whole-body injury under section 85.34(2)(v). However, claimant asserts the deputy commissioner erred in her determination that claimant's recovery should be limited to her functional impairment.

An amicus brief was filed by the Iowa Association of Business and Industry.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on February 5, 2020, is affirmed in part, modified in part, and respectfully reversed in part.

I. Whether claimant's injury should be compensated as a "shoulder" under Iowa Code section 85.34(2)(n) or as an unscheduled injury under section 85.34(2)(v).

On September 29, 2020, I issued an appeal decision in Deng v. Farmland Foods, File No. 5061883, in which I addressed for the first time what constitutes a shoulder under the Legislature's 2017 amendments to section 85.34(2). I determined the Legislature's use of the generic term "shoulder" rendered the statute ambiguous. Using principles of statutory interpretation, I ultimately determined "shoulder" under section 85.34(2)(n) is not limited to the glenohumeral joint. I also rejected the deputy commissioner's strict application of the bright line rule that whatever is proximal to the joint should be treated as an unscheduled injury under section 85.34(2)(v).

The injury at issue in Deng was to claimant's rotator cuff - specifically the infraspinatus. Given the entwinement of the glenohumeral joint and the muscles that make up the rotator cuff and the importance of the rotator cuff to the function of the joint, I determined the muscles of the rotator cuff are included within the definition of "shoulder" under section 85.34(2)(n). Thus, I found claimant's injury in Deng should be compensated as a shoulder under section 85.34(2)(n).

All of the findings, analysis, and conclusions in Deng are incorporated herein.

In this case, claimant sustained tears to several of the muscles in her rotator cuff (supraspinatus, infraspinatus, and subscapularis), along with tearing of the biceps tendon and labrum that were discovered during a right shoulder arthroscopy performed by Todd Peterson, D.O. (Joint Exhibit 5) As a result of those injuries, Dr. Peterson repaired claimant's rotator cuff and performed "extensive debridement of the labrum, biceps tendon, and subacromial space with biceps tenotomy, subacromial decompression." (JE 5, p. 69)

Claimant makes no argument that her biceps injury should be compensated as an unscheduled, whole-body injury under section 85.34(2)(v). To the contrary, claimant actually asserts her biceps injury should be compensated as an arm injury under section 85.34(2)(m). That argument is addressed below.

With respect to claimant's rotator cuff tear injury, I rely on my findings, conclusions, and analysis as set forth in Deng. Thus, for the reasons set forth in Deng, I find claimant's rotator cuff injury should be compensated as a shoulder under Iowa Code section 85.34(2)(n).

This leaves claimant's labral tear and subacromial decompression for consideration.

The record is devoid of evidence from either party regarding how claimant's labral tear should be classified.¹ Claimant's expert, Sunil Bansal, M.D., opined only that claimant's "rotator cuff tendons . . . are all proximal to the glenohumeral joint." (Claimant's Ex. 1, p. 10) Dr. Bansal did not address the anatomical location or function of the shoulder labrum.

Regardless, per Merriam-Webster's Medical Dictionary, "glenoid labrum" is defined as "a fibrocartilaginous ligament forming the margin of the glenoid cavity of the shoulder joint that serves to broaden and deepen the cavity and gives attachment to the long head of the biceps brachii." "Glenoid labrum," *Merriam-Webster.com Medical Dictionary*, <https://www.merriam-webster.com/medical/glenoid%20labrum> (last visited Sept. 29, 2020); see Johns Hopkins Medicine, Orthopaedic Surgery Sports Medicine, "Labral Tear of the Shoulder," <https://www.hopkinsmedicine.org/orthopaedic-surgery/specialty-areas/sports-medicine/conditions-we-treat/labral-tear-shoulder.html>

¹ Notably, the claimant in Deng conceded her labrum injury should be compensated under section 85.34(2)(n) based on a physician's testimony that the labrum is located entirely within the space of the glenohumeral joint space.

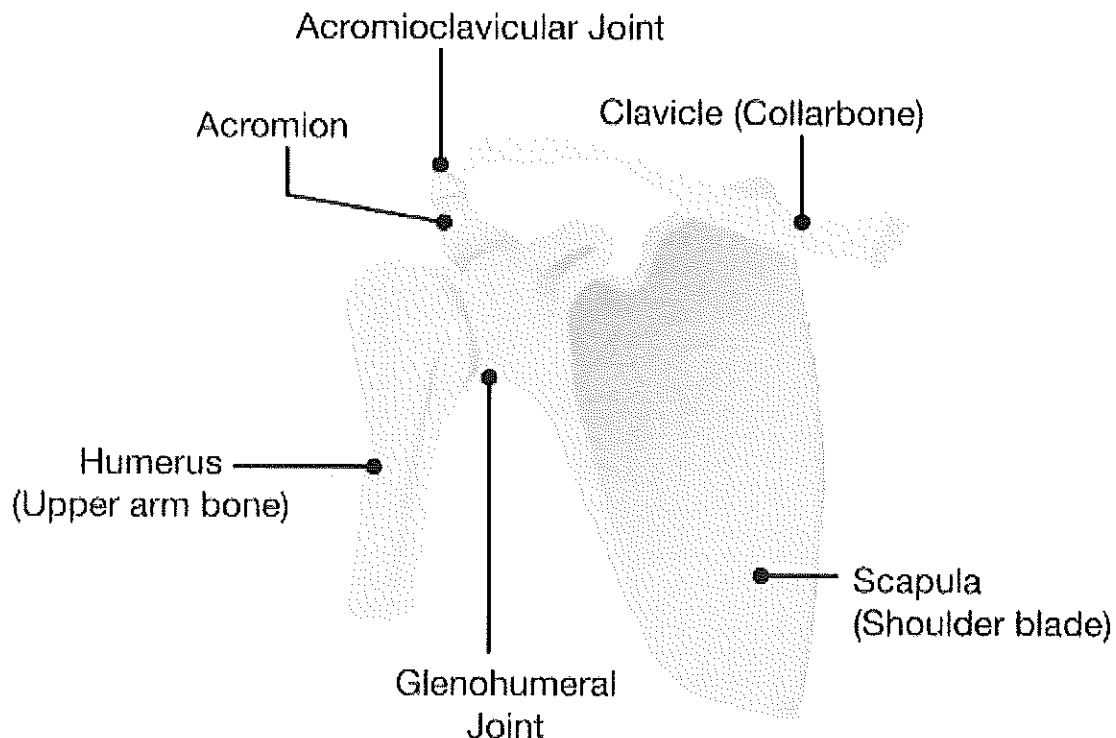
(last visited Sept. 29, 2020) (“The labrum is a piece of fibrocartilage (rubbery tissue) attached to the rim of the shoulder socket that helps keep the ball of the joint in place.”); see also Deng, File No. 5061883 (App. Dec., September 29, 2020) (noting explanation of Douglas Bolda, M.D., that the labrum is located within the joint space); Smidt v. JKB Restaurants, LC, File No. 5067766 (Arb. Dec., May 6, 2020) (noting explanation by John Kuhnlein, D.O., that the labrum “is a fibrocartilaginous rim-shaped structure around the margin of the glenoid (part of the scapula) on the torso side of the body where the humerus fits” that “serves to make the cavity in which the humerus operates deeper, effectively making the joint larger, and making it harder for the humerus to dislocate”). Thus, based on its definition, the labrum is part of the cavity in which the joint sits.

Considering this definition, unlike in other cases wherein the Supreme Court found the injured body parts in question to be clearly distinct from their corresponding scheduled members, I find the labrum is closely interconnected both in location and function to the glenohumeral joint. See Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 270 (Iowa 1995), as amended on denial of reh'g (Feb. 14, 1996) (quoting Lauhoff Grain Co., 395 N.W.2d at 839). In fact, like the rotator cuff, the labrum is not only extremely close in proximity to the glenohumeral joint (if not wholly contained within the joint space), but it is crucial to the proper functioning of the joint. I therefore find claimant’s labral tear should be compensated as a shoulder under section 85.34(2)(n).

Lastly, claimant argues her subacromial decompression “involves changes to the body as a whole” and should be compensated as an unscheduled injury under section 85.34(2)(v). Again, both parties failed to provide expert testimony or reports to explain the process or purposes of a subacromial decompression. The best evidence in the record is Dr. Peterson’s operative report, which provides that a shaver was used “on the underside to remove the areas of scar tissue and fraying that was seen between the anterior aspect of the supraspinatus and the undersurface of the anterior acromion.” (JE 5, p. 70).

Turning first to the “acromion,” it is defined per Merriam-Webster’s Medical Dictionary as “the outer end of the spine of the scapula that protects the glenoid cavity, forms the outer angle of the shoulder, and articulates with the clavicle.” “Acromion,” Merriam-Webster.com Medical Dictionary, <https://www.merriam-webster.com/medical/acromion> (last visited Sept. 29, 2020); see “Scapula,” Britannica, <https://www.britannica.com/science/scapula#ref99250> (last visited Sept. 29, 2020) (defining acromion as “a process that articulates with the clavicle, or collarbone, in front and helps form the upper part of the shoulder socket”). Because it both forms

part of the shoulder socket and protects the glenoid cavity, I find the acromion is closely entwined with the glenohumeral joint both in location and function.



Johns Hopkins Medicine, "Shoulder Pain and Problems,"
<https://www.hopkinsmedicine.org/health/conditions-and-diseases/shoulder-pain-and-problems> (last visited Sept. 29, 2020).

Several of the rotator cuff muscles run under the acromion. See Bernard Wood, "Human muscle system," <https://www.britannica.com/science/human-muscle-system/The-shoulder> (last visited Sept. 29, 2020). Thus, to relieve pressure on these muscles, a subacromial decompression may be performed. See Mayo Clinic, "Video: Removing excess bone near rotator cuff," <https://www.mayoclinic.org/diseases-conditions/rotator-cuff-injury/multimedia/rotator-cuff-decompression-video/vid-20086837> (last visited Sept. 29, 2020) ("Subacromial' refers to the space beneath this bone. . . To relieve pressure on the [rotator cuff] tendon, a 'decompression' procedure may be performed."); see also "Acromioplasty," *Merriam-Webster.com Medical Dictionary*, <https://www.merriam-webster.com/medical/acromioplasty> (last visited Sept. 29, 2020) (defining "acromioplasty" as "surgical cutting, shaping, and smoothing of the front or

lower surface of the acromion to relieve compression of the rotator cuff between the acromion and head of the humerus when the arm is raised overhead”).

Again, as explained in Dr. Peterson’s operative note, claimant’s subacromial decompression was performed to remove scar tissue and fraying between the supraspinatus and the underside of the acromion. As discussed above, the acromion forms part of the socket and helps protect the glenoid cavity, and as such, I found it is closely interconnected with the glenohumeral joint in both location and function. And as discussed in Deng, I found the supraspinatus - a muscle that forms the rotator cuff - to be similarly entwined with the glenohumeral joint. Thus, claimant’s subacromial decompression impacted two anatomical parts that are essential to the functioning of the glenohumeral joint; in fact, the procedure was actually performed to improve the function of the joint. As such, I find any disability resulting from her subacromial decompression should be compensated as a shoulder under section 85.34(2)(n).

I therefore find none of claimant’s injuries are compensable as unscheduled, whole body injuries under section 85.34(2)(v). The deputy commissioner’s finding that claimant sustained an injury to her body as a whole is therefore respectfully reversed.

In the alternative, claimant makes an argument that her biceps injury was an injury to her arm and the combination of an arm injury and a shoulder injury should be compensated under the “catch-all” provision in section 85.34(2)(v). She asserts that subsection 85.34(2)(t) was not amended to include the shoulder, so the combination of a simultaneous arm and a shoulder injury does not fall under its provisions and would instead fall under the provisions of section 85.34(2)(v).

It is unnecessary to address the merits of this argument, however, because I find claimant failed to prove she sustained an injury to her arm under section 85.34(2)(m). All of the measurements used by Dr. Bansal and all but one of the measurements used by Dr. Peterson to determine claimant’s impairment pertain to range of motion deficits in the shoulder joint. (JE 2, p. 57; Cl. Ex. 1, p. 8) The only measurement not involving range of motion deficits was for strength deficits, presumably relating to claimant’s shoulder as well - though Dr. Peterson did not specify. (JE 2, p. 57 (citing AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 16-35, p. 510)).

Further, I affirm the deputy commissioner’s finding that Dr. Bansal’s ratings are more persuasive than those offered by Dr. Peterson. Because Dr. Bansal’s impairment rating is based solely on range of motion deficits in the shoulder, I find claimant failed to carry her burden to prove her biceps tear resulted in any permanent disability to her arm under section 85.34(2)(m). As a result, I find claimant’s permanent disability in this case is compensable only as a shoulder under section 85.34(2)(n).

Having determined claimant is not entitled to benefits under section 85.34(2)(v), claimant's cross-appeal regarding whether she returned to work earning the same or greater wages is moot.

II. Extent of claimant's permanent partial disability under Iowa Code section 85.34(2)(n).

Having found claimant's injuries must be compensated as a shoulder under section 85.34(2), the next question on appeal is the extent of her disability. I affirmed the deputy commissioner's finding that Dr. Bansal's impairment rating is the most convincing and accurate. I therefore affirm the deputy commissioner's finding that claimant sustained a ten percent impairment of the upper extremity, which equates to a six percent impairment of the body as a whole. (Cl. Ex. 1, p. 8)

The question then becomes whether to apply the upper extremity rating or the whole person rating to the 400-week schedule set forth in section 85.34(2)(n). As explained in Deng:

The plain language of the statute is silent on which rating is to be utilized. Neither side presented any argument on whether the upper extremity or whole person rating should be applied. The figures that Dr. Bansal relies on to assign impairment (figures 16-40 through 16-46) are contained in Chapter 16 of the Guides. Chapter 16 is entitled, "The Upper Extremities." Additionally, for a single scheduled member injury, this agency has historically not utilized a whole person impairment rating.

(Deng v. Farmland Foods, File No. 5061883, App Dec, September 29, 2020, pp. 11-12)

Thus, as in Deng, I conclude it is appropriate in this case to apply the upper extremity impairment rating for this shoulder injury.

Permanent partial disability compensation for the shoulder shall be paid based on a maximum of 400 weeks. Iowa Code section 85.34(2)(n). Having adopted Dr. Bansal's ten percent upper extremity impairment rating, I find claimant has shown by a preponderance of the evidence that she is entitled to receive 40 weeks of PPD benefits. The deputy commissioner's award of 30 weeks of PPD benefits is therefore modified.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 5, 2019, is affirmed in part, modified in part, and reversed in part.

Defendants shall pay claimant forty (40) weeks of permanent partial disability benefits commencing on April 16, 2019, payable at the weekly rate of four hundred fifty-nine and 27/100 dollars (\$459.27).

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

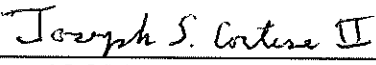
Defendants shall receive credit for all benefits paid prior to the date of the arbitration hearing.

Defendants shall pay the costs of claimant's independent medical examination as agreed prior to the commencement of the arbitration hearing.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant's costs as detailed in the body of the arbitration decision. The parties shall split the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 30th day of September, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Erin Tucker (via WCES)

Lori Scardina Utsinger (via WCES)

Sarah Kleber (via WCES)