

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHAINÉ SCHELLHORN,

Claimant,

VS.

SECOND INJURY FUND OF IOWA,

Defendant.

File No. 22700307.01

ARBITRATION DECISION

Headnote Nos.: 1402.40; 3202; 3203

STATEMENT OF THE CASE

Claimant Shaine Schellhorn filed a petition in arbitration seeking workers' compensation benefits against John Deere Waterloo Works, self-insured employer, and the Second Injury Fund of Iowa (the Fund). Claimant reached a settlement agreement with John Deere, which was approved by the Commissioner. Her remaining claim against the Fund proceeded to hearing before the undersigned on June 7, 2023. Pursuant to an order of the Iowa Workers' Compensation Commissioner, this case proceeded to a live video hearing via Zoom, with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 5, and the Fund's Exhibits AA through HH.

Claimant testified on her own behalf. The evidentiary record closed at the conclusion of the evidentiary hearing on June 7, 2023. The parties submitted post-hearing briefs on August 25, 2023, and the case was considered fully submitted on that date.

ISSUES

1. Whether claimant sustained a first qualifying loss for Second Injury Fund purposes;
2. Whether claimant sustained a second qualifying loss for Second Injury Fund purposes;

3. If so, the extent of industrial disability.

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, and her demeanor at the time of hearing gave the undersigned no reason to doubt her veracity. Claimant is found credible.

At the time of hearing, claimant was a 46-year-old person. (Hearing Transcript, page 8) Claimant is a high school graduate, and also has a two-year degree in CNC machining from Hawkeye Community College. Claimant is married and has three children. (Claimant's Exhibit 2, page 19) During and after high school, claimant worked as a cashier and a stocker at various stores, including K-Mart, a video store, and a supermarket. (Cl. Ex. 2, p. 20) She has also worked as a certified nursing assistant (CNA), a pharmacy technician, a waitress, a housekeeper, and in meat processing. (Cl. Ex. 2, pp. 21-22) After spending some time as a stay-at-home parent, claimant started working for John Deere in 2005. (Cl. Ex. 2, p. 22)

Claimant first worked as an assembler at Deere, which required a lot of standing, repetitive motions, kneeling, bending, and standing on tip-toes. (Tr., p. 22) The majority of her career at Deere has been spent working in machining positions, however. (Tr., p. 21) At the time of her injury, she was working as a CNC machinist. (Tr., p. 13) Her job involved picking up parts, placing it in fixtures and clamping it down, and then putting it in the CNC machine. (Tr., p. 20) The machine would then drill a hole or complete whatever process was needed, after which the part would come out, and claimant was responsible for gauging it, unloading it, washing it, racking it, and making sure it was used on the line.

Claimant has made a claim for benefits against the Fund, alleging a prior qualifying loss to the right eye in 2015, and a second qualifying loss to the right leg on September 13, 2020. (Hearing Report) With respect to her alleged first loss, claimant testified that she has worn glasses to correct her vision since the fourth grade. (Tr., p. 9) She needs her glasses all the time, and said if she takes them off, she cannot see "two feet in front of my face. I can't see anything." She used to wear contact lenses, but said that she cannot wear them anymore because her vision is too bad. At times she has difficulties with her vision even while wearing her glasses. (Tr., p. 10) She testified that depending on the lighting in a room, there are times she has to move what she is trying to read back and forth, and she still squints to see the television. She testified that as the day goes on, her eyes get tired and cause more problems. When driving at night, she sees halos around streetlights, traffic lights, and oncoming headlights. (Tr., pp. 10-11)

Claimant also testified that there have been times that her vision has been a problem at work. She said that in her job as a machinist, she had to deal with tooling, and if she had to change certain tools, she would need to take her glasses off and use a flashlight to see what she is doing. (Tr., p. 11) She provided some examples, first of a tool that has a triangle insert, with which one corner is used to cut metal, and then turned to use a different corner. She said that with the darker colored inserts it is difficult for her to distinguish which corner had been used. She also noted that her parts have about 75 different holes in them, and she had to use a flashlight to make sure there is no dirt in the holes. Finally, she said that some of the gauges are very hard to read without the right light. (Tr., pp. 11-12) She said that other employees at Deere did not have to use a flashlight to complete those tasks. She said that her vision problems slowed her down as a machinist. (Tr., p. 26) She said that it takes her longer to flip her inserts and decide which to use, to measure her tools, and to gauge her parts than it does someone without glasses.

Claimant also testified that in 2015 while working, she got a metal chip in her right eye. (Tr., pp. 26-27) She said she has had metal chips in her eyes multiple times, and has been treated at Deere's in-house medical clinic, as well as the emergency room at Allen Hospital. (Tr., p. 27) She thought that the 2015 incident involved treatment at the in-house medical clinic. (Tr., pp. 27-28) She is not aware of any specific diagnoses related to a foreign body in either eye, however. (Tr., p. 28) Her regular eye examinations take place at Augustin Eye Care. A record dated March 20, 2015, indicates that claimant's uncorrected vision in each eye alone was 20/200, and with both eyes it was 20/150. (Joint Exhibit 1, page 1) However, with her prescription, her corrected vision in both eyes individually and together was 20/20.

The next record from Augustin Eye Care is dated July 18, 2017. (Jt. Ex. 1, p. 2) That record notes no problems with eyes and vision. It again notes her vision as 20/20 with her glasses. The diagnoses on that date are presbyopia, and myopia with regular astigmatism. (Jt. Ex. 1, p. 3)¹ Claimant testified that she disputes the statement on the record that she had no problem with her eyes and vision, because she needs glasses to see far away. (Tr., pp. 28-29) She testified that for the most part, her glasses correct her problems with distance, and make it so she can function. (Tr., p. 29) She said that her eyes seem to get worse with age, but that the halos she described did not start until after she had the metal chips in her eye. She said she has had foreign bodies in her eye three or four times over the last seventeen years. (Tr., pp. 29-30) She does wear prescription eye protection at work, which is replaced every two years. (Tr., p. 30) She did not file workers' compensation claims related to any of the incidents regarding metal chips in her eyes, and has never been assigned any permanent restrictions related to her eyes. (Tr., pp. 30-31) She does have a restriction on her drivers' license requiring her to wear glasses, which has always been on her license.

¹ According to www.mayoclinic.org, presbyopia is the gradual loss of the eyes' ability to focus on nearby objects, which is a natural part of aging. Myopia is near-sightedness, and astigmatism occurs when the cornea or lens is curved more steeply in one direction than the other, making vision distorted or blurred at all distances.

With respect to the second alleged loss, claimant sustained a work-related injury at Deere on September 13, 2020. (Tr., p. 13) Claimant testified that at the time the parts she was running included a transition cover for the 8000 series tractor. She testified that cover weighs about 400 pounds. When she picked the part up out of her fixture, the hook came apart, and the part fell out and landed on her right foot. A coworker had to help her pull it off, and she said she “kind of went into shock” at first, and did not realize the extent of what happened. (Tr., p. 14) She was taken by ambulance to the Allen Hospital emergency room.

The emergency room record notes that claimant presented with right ankle and leg abrasions and abrasions to the left upper arm. (Jt. Ex. 2, p. 4) Claimant reported the large piece of metal was on a hook and a clamp came off, causing it to swing and hit her in the face and left arm, and then land on her right leg. Her only complaint at that time was pain in the right lower leg. After x-rays, claimant was diagnosed with distal fibula, fifth metatarsal, and navicular fractures, all non-displaced. (Jt. Ex. 2, p. 8) A short leg splint was applied, and she was given pain medication and crutches and told to follow up with occupational health and orthopedics. She was also placed on work restrictions of seated duty only, with crutches required to ambulate. (Jt. Ex. 2, p. 11)

Claimant followed up with Robert Bartelt, M.D., on September 14, 2020. (Jt. Ex. 3, p. 12) Dr. Bartelt determined her fractures should be treated non-surgically, and continued her current splint to control swelling. (Jt. Ex. 3, p. 13) He told her to elevate and ice her leg, refilled her pain medication, and asked her to follow up in ten to fourteen days. He also provided restrictions of seated work only with the leg elevated. (Jt. Ex. 3, p. 13) At her follow up on September 23, 2020, claimant saw Stephanie Smith, ARNP. (Jt. Ex. 3, p. 15) X-rays taken that day showed the fractures had maintained reduction and were acceptable for closed treatment. She was transitioned to a boot in order to work on some gentle range of motion, and told she could start to progress to weightbearing as tolerated. Her work restrictions were not changed. (Jt. Ex. 3, p. 17)

At claimant’s next follow up on October 14, 2020, she continued to report pain and swelling. (Jt. Ex. 3, p. 18) She was not yet able to tolerate weight bearing, but the record notes she showed some improvement since her last visit. On November 11, 2020, she returned and saw Dr. Bartelt, who noted she had progressed very slowly, and was still “barely weightbearing” in the boot and was hesitant to move or touch the ankle. (Jt. Ex. 3, p. 21) X-rays showed normal alignment in the fractures, and Dr. Bartelt advised that they “need to get things moving,” “need to get her progressing to weightbearing,” and “need to get her into physical therapy.” He advised she could wean from the boot into shoes as soon as she was comfortable, and continued restrictions of seated work only. (Jt. Ex. 3, pp. 21-22)

By her next visit on December 9, 2020, claimant had made improvements with physical therapy, and her pain and swelling had improved. (Jt. Ex. 3, p. 23) She was back to normal footwear. X-rays showed healing of the fractures without evidence of complication. She was told to continue with physical therapy, and her work restriction was kept in place.

The records from claimant's physical therapy indicate improvement over the course of her treatments, consistent with the records from Dr. Bartelt's office. (Jt. Ex. 4, pp. 32-36) At her visit on November 17, 2020, she reported a pain level at three out of ten. (Jt. Ex. 4, p. 31) The therapist noted impaired right foot and ankle range of motion and strength. (Jt. Ex. 4, p. 32) By December 28, 2020, she reported doing well, and said her pain was minimal. (Jt. Ex. 4, p. 33) On January 8, 2021, she reported that she was walking better, and had no pain. (Jt. Ex. 4, p. 34) By January 19, 2021, she reported that the foot was doing good, she had no pain, and she felt things were going well with her daily activities. (Jt. Ex. 4, p. 36) The therapist noted that she was passively close to 100 percent range of motion in all planes and actively she was around 90 percent.

Claimant saw ARNP Smith on February 3, 2021. (Jt. Ex. 3, p. 28) By that time she had been discharged from physical therapy and reported no concerns. She was released to return to work full duty, and was told she could return in two months for an impairment rating performed by Dr. Bartelt if desired.

On February 5, 2021, claimant had a phone visit with Rick Garrels, M.D., through the John Deere health clinic. (Jt. Ex. 5, p. 37) They discussed her injury and treatment, including her activities in physical therapy. She advised that she had no concerns about returning to regular work. Dr. Garrels advised she could return to regular work effective February 8, 2021, and should follow up in the clinic as directed by nursing staff. Claimant saw Dr. Garrels in the clinic on March 16, 2021, and reported she had been doing her regular work and denied any specific problems. (Jt. Ex. 5, p. 38) Dr. Garrels noted minimal tenderness in the foot, and noted he could "definitely feel the bony healing formation." He noted claimant's gait pattern was normal. He concluded that claimant could continue regular work, and placed her at maximum medical improvement (MMI) as of March 16, 2021. Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, he provided a zero percent right foot impairment based on Table 17-14 on page 537.

Claimant testified that prior to the work injury, she did not have any problems with her right leg or right foot. (Tr., p. 12) At the time of hearing, she reported that she continues to have pain in her right foot since the injury. (Tr., p. 15) She said at time it is numb, but for the most part, it is constant pain. She rated her pain level at about 6 on a scale of 1 to 10. (Tr., pp. 15-16) If she does a lot of walking, her pain worsens. (Tr., p. 16) She said she has to crack her ankle constantly or it will lock up and she cannot move it. She also has trouble lifting, as her strength is in her legs and she worries her ankle will give out on her, and feels weakness in her ankle. (Tr., pp. 16; 18) She also has trouble standing in one place for an extended time, and difficulty walking on uneven ground. (Tr., pp. 16-17) She has some diminished range of motion as well, and has trouble with stairs. (Tr., p. 18) She notices that cold weather and changes in the barometric pressure make her symptoms worse. (Tr., p. 19) At home, she no longer shovels snow, and has problems with cooking and other chores that require her to stand for very long. She wakes up from pain almost every night.

She uses ice and elevation to help her symptoms, and still does her physical therapy exercises three times per week. (Tr., p. 17) She also takes over-the-counter

ibuprofen to help the pain and swelling. After the injury, claimant did return to work at John Deere. (Tr., pp. 19-20) She initially returned to her regular job as a machinist in February of 2021. (Tr., p. 33) However, in July of 2021, claimant took a different position. She now works in a “nontraditional” assignment. (Tr., p. 21) She testified that she basically works in the office and the shop floor. When new employees start, she provides the basics on how to run the CNC machine. Claimant testified that she took the nontraditional job because she did not feel she could perform to the same level as before the work injury. (Tr., p. 20) She did not believe she was going fast enough or running as many parts. Claimant testified that her department at Deere was incentive-based, and employees have to keep a certain pace, which she could no longer do. She did not want to “drag down” the incentive pay, so she changed to the nontraditional position. (Tr., pp. 20-21)

Claimant testified that the move from a machinist to a nontraditional position has affected her earnings. (Tr., p.21) She is no longer tied to the CIPP plan, so she does not receive incentive checks every quarter. She also only works 40-hours per week, whereas she used to work 60 hours and receive overtime pay. However, her hourly rate has actually increased. (Tr., p. 35) At the time of the injury, she was making about \$21.79 per hour. (Fund Exhibit HH, page 55) As of December 5, 2022, she was making \$33.05 per hour. She testified, however, that if she was still on the floor, with what the CIPP plan is making, her earnings would be closer to \$37.00 per hour. (Tr., p. 36) She also noted that since her injury, Deere entered into a new labor agreement with the union, which resulted in significant across-the-board pay raises. (Tr., p. 37) Claimant has not applied for any jobs outside of Deere since her injury, and does not have any intention of looking for outside jobs in the next year. (Tr., p. 36)

Claimant attended an independent medical evaluation (IME) with Sunil Bansal, M.D., on July 30, 2021. (Claimant’s Exhibit 1, p. 5) Dr. Bansal’s report is dated April 26, 2022. (Cl. Ex. 1, p. 13) He reviewed medical records, including the record of claimant’s John Deere employment physical from May 5, 2004. (Cl. Ex. 1, p. 6) He noted that record shows claimant to have 20/20 vision bilaterally, corrected. There is also a summary of an additional record from Dr. Garrels, dated February 16, 2021, in which claimant reported some soreness since returning to work, but that she “knows it is going to probably take a while to get used to the physical nature of being up on her feet as much.” The remainder of the records he reviewed are in evidence. (Cl. Ex. 1, pp. 5-9)

With respect to claimant’s eyes, Dr. Bansal’s report states that for Second Injury Fund purposes, claimant “is nearsighted and wears corrective lenses.” (Cl. Ex. 1, p. 9) His report makes no mention of any foreign bodies in either eye. On physical examination, he notes that fundoscopic examination was within normal limits, and extraocular movements were intact. (Cl. Ex. 1, p. 10) Her pupils were equal, round, and reactive to light and accommodation. Using the Snellen Eye Chart, claimant’s uncorrected vision is noted to be 20/200 in each eye individually, and 20/200 with both eyes together. (Cl. Ex. 1, p. 11) His diagnosis was presbyopia, myopia, and regular astigmatism bilaterally. Using the AMA Guides, Chapter 12, Table 12-3, Dr. Bansal

assigned a 50 percent vision impairment of the right eye for vision of 20/200. (Cl. Ex. 1, p. 12)²

With respect to claimant's right foot and ankle, Dr. Bansal noted claimant reported continued soreness in her right foot, with occasional numbness across the top of her foot. (Cl. Ex. 1, p. 9) She reported her foot was usually swollen by the end of the day, depending on her activity level. (Cl. Ex. 1, pp. 9-10) She said she does not stand on both feet equally, placing most of her weight on her left foot, and reported she can walk comfortably most of the time, but is slow going down stairs. (Cl. Ex. 1, p. 10) She reported no difficulty going up stairs. Finally, she noted trouble walking on uneven ground, which causes her to limp.

On physical examination, Dr. Bansal noted tenderness to palpation over the lateral malleolus and swelling over the distal foot. (Cl. Ex. 1, p. 10) He also noted tenderness to palpation over the fifth metatarsal base, fifth metatarsal metatarsophalangeal joint extension of 7 degrees, and lateral malleolar swelling. Dr. Bansal took measurements of claimant's range of motion in both feet and ankles, and recorded deficits in the right ankle and foot. The left ankle and foot had full range of motion, and no tenderness to palpation. Dr. Bansal's diagnoses were right distal fibula fracture; nondisplaced fracture of the right fifth metatarsal; and nondisplaced fracture of the right navicular bone. (Cl. Ex. 1, p. 11) He agreed with Dr. Garrels that claimant reached MMI on March 16, 2021. (Cl. Ex. 1, p. 12)

Dr. Bansal provided an impairment rating using the Fifth Edition of the AMA Guides. Specifically, he noted claimant has compromise of her ankle range of motion, including ankle dorsiflexion and plantar flexion. Using Tables 17-11 and 17-12, Dr. Bansal applied his range of motion measurements to calculate 4 percent lower extremity impairment. He also assigned 2 percent impairment per Table 17-14, based on 7 degrees of fifth metatarsophalangeal joint extension. Combined, total impairment came to 6 percent of the lower extremity. He was not asked to comment on permanent restrictions or limitations, due to claimant's concern about her ongoing employment at Deere. (Cl. Ex. 1, p. 2) He did, however, indicate that no further treatment was anticipated. (Cl. Ex. 1, p. 13) Dr. Bansal issued an addendum on June 17, 2022, to correct a scrivener's error in his original impairment rating. (Cl. Ex. 1, p. 14) The corrections did not change the overall impairment rating, which remained at 6 percent of the lower extremity. (Cl. Ex. 1, p. 15)

On March 20, 2023, Dr. Garrels authored a letter in response to questions posed by John Deere's attorney. (Fund Ex. AA, p. 1) First, he clarified that in issuing his impairment rating, he considered all three fractures, despite the diagnoses not being listed in his note. Second, he explained the differences between his rating and Dr. Bansal's. He noted that all if the documentation he reviewed from Dr. Bartelt, ARNP Smith, physical therapy, and Deere Medical indicated that claimant had full functional recovery. The therapy notes documented claimant with 100 percent of expected plantar

² Dr. Bansal was asked to only provide a rating for one eye or the other, not both eyes. (Cl. Ex. 1, p. 1)

flexion and 90 percent of dorsiflexion of the right foot/ankle. Therefore, he stated Dr. Bansal's examination findings were not consistent with all prior clinical documentation. As such, he stood by his original zero percent rating.³

Finally, Dr. Garrels was asked to evaluate all three fractures and assign a rating using the fifth edition of the AMA Guides. He assigned zero percent for each of the three individual fractures, using Table 17-8 on page 532, and Tables 17-11, 17-12, and 17-14 on page 537.

On May 4, 2023, Dr. Bartelt authored a letter to John Deere's attorney in response to her questions. (Fund Ex. BB, p. 2) He noted that claimant was last seen in his office on February 3, 2021, and saw ARNP Smith. He opined that claimant reached MMI on February 3, 2021, and has no permanent work restrictions. He noted that his office did not obtain formal measurements of claimant's ankle and foot motion at the last visit, but her physical therapy records indicated 90 to 100 percent of normal motion in all planes consistently. As such, he did not feel she had a ratable impairment. Finally, he noted that claimant may have a "slight (10%) loss of inversion." He noted these measurements can be subjective and discrepancies can exist regarding measurements by different examiners on different days.

On May 7, 2023, Mark Wilkinson, O.D., provided a report after reviewing Dr. Bansal's IME and impairment rating for claimant's visual system. (Fund Ex. EE, pp. 34-35) Dr. Wilkinson is a clinical professor of ophthalmology and director of Vision Rehabilitation Service at the University of Iowa Carver College of Medicine. (Fund Ex. EE, p. 35) Dr. Wilkinson noted that claimant has been documented as having best corrected visual acuity of 20/20 in both the right and left eye at evaluations on March 20, 2015 and July 18, 2017. (Fund Ex. EE, p. 34) He noted prescriptive lenses for the correction of myopia, astigmatism, and presbyopia were needed to achieve those normal visual acuity findings.

Dr. Wilkinson noted that Dr. Bansal assigned a 50 percent rating for claimant's right eye, based on the uncorrected visual acuity measurement. He was not clear as to why Dr. Bansal only rated the right eye, but noted that his rating incorrectly assigned impairment based on claimant's uncorrected visual acuity. Dr. Wilkinson stated that the AMA Guides, according to Chapter 12, Section 12.2b.3, page 282, require the impairment rating to be based on the "best-corrected visual acuity." Therefore, Dr. Bansal incorrectly applied the Guides in assigning his rating. Additionally, he noted that Dr. Bansal incorrectly quoted Table 12-3, which is used to calculate the acuity-related impairment rating for the visual system as a whole. He stated that Table 12-2, the correct table to use for an impairment rating of visual acuity, rates claimant's right eye at zero percent, left eye at zero percent, and both eyes together at zero percent. In summary, he concluded that claimant has sustained no impairment of her visual system, based on best-corrected vision in each eye.

³ Dr. Garrels also noted Dr. Bansal's report contained incorrect calculations, which were presumably corrected with his June 17, 2022 addendum and did not change the ultimate rating.

I find Dr. Wilkinson's opinions with respect to claimant's visual impairment to be more convincing. First, Dr. Wilkinson is a doctor of optometry, with extensive experience in the field. (See Fund Ex. DD, pp. 7-33) Second, his report explains in detail the deficiencies in Dr. Bansal's rating with respect to claimant's vision. It is clear from the Guides and Dr. Wilkinson's report that best-corrected vision is the basis on which to determine the extent of permanent disability under Chapter 12 of the Guides. (Fund Ex., EE, p. 43; Fund Ex. FF, pp. 36-45) In this case, claimant's vision is fully correctable with prescription lenses. In addition, she has no work restrictions related to her vision, and is able to maintain a drivers' license. There is no evidence in the record to indicate claimant's need for glasses has ever impacted her employability or earning capacity. As such, she has not proven permanent impairment from the alleged first injury, and is not entitled to benefits from the Fund.

CONCLUSIONS OF LAW

Claimant seeks benefits through the Fund, and alleges significant industrial disability from the combination of her qualifying losses. The Fund argues that claimant has failed to prove a qualifying first injury, qualifying second injury, or, in the alternative, that she has not shown industrial disability in excess of the Fund's credits.

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. 6.904(3). In this case, the claimant carries the burden to prove by a preponderance of the evidence that she is entitled to Fund benefits.

Iowa Code 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); Iowa Practice, Workers' Compensation, Lawyer and Higgs, section 17-1 (2006).

In order to state a valid claim against the Fund, an employee must demonstrate that he or she has previously either lost or lost the use of a hand, arm, foot, leg or eye. Iowa Code section 85.64; Second Injury Fund v. Shank, 516 N.W.2d 808, 812 (Iowa 1994). The loss need not be total, merely permanent. Irish v. McCreary Saw Mill, 175 N.W.2d 364, 369 (1970). The employee must prove permanent impairment resulted from the first injury, whether by a permanency rating, work restrictions, or other credible evidence. Haynes v. Second Injury Fund, 547 N.W.2d 11, 14 (Iowa App. 1996).

The initial dispute between the parties is whether the claimant has proven a qualifying first injury. Claimant alleged, on her petition and the hearing report, a prior qualifying loss to the right eye in 2015. She further claims the functional loss from the prior qualifying loss is 50 percent of the right eye, based on Dr. Bansal's impairment rating.

Claimant testified that she got a metal chip in her right eye while working at Deere in 2015. She further testified that she has experienced metal chips in her eyes multiple times. That being said, there is insufficient evidence in the record to support the conclusion that any incident in which claimant got metal chips or any foreign bodies in either eye resulted in permanent impairment. Claimant testified that she did not have the issues with halos until after getting metal chips in her eyes, but there is no objective medical evidence to corroborate her testimony. Claimant has a valid Iowa drivers' license and is not restricted from driving at night. Claimant has not met her burden to prove a permanent loss of use of either eye due to metal chips in her eye(s) in 2015.

Claimant also testified about her poor vision, and Dr. Bansal's 50 percent impairment rating is based on her uncorrected visual acuity. Claimant argues that uncorrected visual acuity is the proper basis on which to determine "loss of use" in the context of section 85.64, based on the Commissioner's decision in Samaniego v. JTV Mfg, Inc., File No. 5049712 (App., July 16, 2018). In that case, the Commissioner found it was appropriate to use the claimant's uncorrected vision in determining the threshold question of whether a permanent injury had been sustained. However, when determining the extent of permanent disability, the Commissioner still relied on the impairment rating that used claimant's best corrected visual acuity with his glasses, as that was a more accurate representation of his actual functional impairment.

In this case, Dr. Wilkinson provided a zero percent impairment rating based on claimant's corrected vision in each eye. I found his rating to be more reliable and accurate based on claimant's 20/20 corrected vision. Additionally, claimant does not have any work restrictions related to her vision. She must wear corrective lenses while driving, but is able to pass the vision test in order to maintain a drivers' license. Her vision can be corrected to 20/20 with glasses. While she testified that she had to use a flashlight to assist in certain tasks while working as a machinist, there is no indication that put her at any disadvantage. Therefore, I find that claimant's diagnosed conditions of presbyopia, myopia, and regular astigmatism do not qualify as a first injury under the statute, because claimant has not "lost the use" of either eye within the meaning of the statute. As claimant has not lost the use of an eye, she does not have a first qualifying injury. As such, claimant cannot recover from the Fund.

As claimant has not met her burden to prove a qualifying first injury for Fund benefits, the remaining issues are moot.

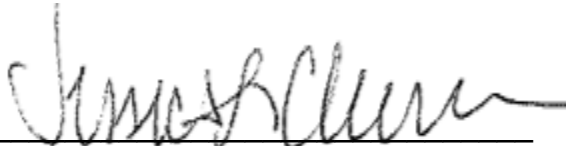
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing in the way of Fund benefits from this proceeding.

The parties shall bear their own costs.

Signed and filed this 1st day of November, 2023.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Benjamin Roth (via WCES)

Meredith Cooney (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, 10A) 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.