

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DALE PAHL,

Claimant,

vs.

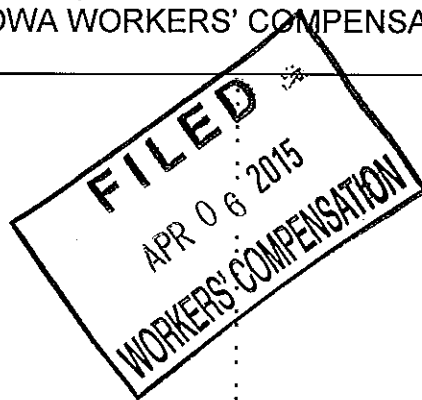
J C BUILDERS INC.,

Employer,

and

GRINNELL MUTUAL REINSURANCE
CO.,

Insurance Carrier,
Defendants.



File No. 5046608

ARBITRATION

DECISION

Head Note Nos.: 1803, 1803.1

STATEMENT OF THE CASE

Claimant, Dale Pahl, filed a petition in arbitration seeking workers' compensation benefits from the defendant, J C Builders, employer, and Grinnell Mutual Reinsurance Company, insurer, both as defendants. This case was heard on September 30, 2014 by Jim Elliott, Deputy Workers' Compensation Commissioner, in Davenport, Iowa, and fully submitted November 4, 2014. Joint exhibits 1 – 7 were admitted into the record. Claimant testified and the parties submitted briefs. All evidence, testimony and briefs were considered.

ISSUES

1. Whether the work injury of August 27, 2013 is a scheduled or industrial disability;
2. The extent of claimant's entitlement to permanent partial disability benefits;
3. Whether claimant is entitled to an award of alternate medical care, including an order for defendants to pay for a recommended EMG and nerve conduction study of the upper extremity.
4. Assessment of costs.

The stipulations in the hearing report are accepted and incorporated by reference. Defendants have paid temporary total disability benefits as shown by Joint Exhibit 7. The parties agreed that commencement date of permanent partial disability benefits is November 28, 2013.

FINDINGS OF FACT

Claimant was 54 years old at the time of hearing. He graduated from high school. Claimant has no additional formal education. Claimant is a journeyman carpenter. Claimant has worked as a carpenter for about 30 years and for a time would build houses. At the time of the hearing claimant had been laid off from a carpentry job and had just obtained a new job.

On August 27, 2013 claimant was at work for J B Builders, Incorporated. He was on a ladder using a nail gun when his ladder gave out and he fell hitting his buttocks and right hand and arm. (Exhibit 1, pages 1 – 7) Claimant went to an urgent care clinic that day. His diagnosis was right 4th metacarpal fracture and sacral contusion. (Ex. 1, p. 4)

On August 28, 2013 claimant was seen by Michael Pyevich, M.D. (Ex. 2, p. 8) Dr. Pyevich noted claimant's hand was crushed when he fell. His impression was "A 4th metacarpal shaft fracture." (Ex. 2, p. 8) Claimant's right hand and arm was put in an ulnar gutter cast and he was put on restrictions of no right hand work. (Ex. 2, p. 9) On October 4, 2013 Dr. Pyevich recommended physical therapy. On November 27, 2013 Dr. Pyevich examined the claimant for his last time. Claimant testified that Dr. Pyevich spent little time with him and did not do any type of measuring or testing, other than having him make a fist. Dr. Pyevich noted claimant was reporting his hand was at an 8/10 in pain severity, claimant had swelling and weakness, and his hand was stiff in the morning. (Ex. 2, p. 15) Dr. Pyevich noted that the x-ray showed a healed fracture. Claimant was returned to work without restrictions. (Ex. 2, p. 15) On May 14, 2014 Dr. Pyevich wrote that he had last examined claimant in November 2013 and at that time claimant had subjective symptoms but no ratable impairment under the AMA Guides. (Ex. 2, p. 18) Claimant went to physical therapy from October 8, 2013 through November 22, 2013. (Ex. 3, pp. 25 – 32) The treatment diagnosis provided by the physical therapist was "Edema and limited range of motion in the hand and wrist, decreased grip and functional carrying capabilities of the right upper extremity, decreased hand strength." (Ex. 3, pp. 25, 31) Claimant reported an 80 percent improvement in the hand and wrist range of motion as well as an increase of grip strength. (Ex. 3, p. 31)

On May 14, 2014 Dr. Pyevich wrote,

Clinically and radiographically, he [claimant] is just so slightly shortened but functionally, there is no ratable criteria using the AMA Guides to Evaluation of Permanent Impairment, 5th Edition. Therefore, his impairment rating would be 0%.

(Ex. 2, p. 18)

Richard Kreiter, M.D. was asked by claimant to perform an independent medical examination (IME) to evaluate claimant's right hand, right arm and right shoulder. Claimant testified that Dr. Kreiter spent over an hour with him and performed examination with needles and other tests. (Transcript, p. 31; Ex. 4, p. 38) Dr. Kreiter examined claimant on June 17, 2014. (Ex. 6, pp. 37, 38) Dr. Kreiter's impression was,

1. Healed, spiral ring finger metacarpal fracture shaft with mild shortening.
2. Ulnar nerve entrapment below the mid forearm on the right, with secondary weakness, decreased sensitivity, and loss of dexterity.
3. Rule out cervical disc with mild right radiculopathy, neurologically intact.

(Ex. 6, p. 38) Dr. Kreiter stated that claimant's hand condition was definitely caused by his work injury of August 27, 2013. He said it was less clear in regard to the right scapula pain. (Ex. 6, p. 6) Dr. Kreiter provided a 27 percent impairment rating to the upper extremity from weakness and sensory loss and dexterity issues. Dr. Kreiter recommended that claimant should avoid overhead lifting with the right arm, and should limit any heavy grasping with the right hand and the use of vibrating tools. He recommended additional medical treatment, an EMG or nerve conduction velocity of the upper extremity to show the severity and location of the ulnar entrapment. (Ex. 6, p. 36)

Dr. Pyevich was asked to review Dr. Kreiter's IME. Dr. Pyevich disagreed with Dr. Kreiter's assessment of an ulnar nerve entrapment. Dr. Pyevich stated claimant did not report ulnar nerve symptoms to him and that if he has such symptoms they are not work related. Dr. Pyevich stated he never found any sensory loss of the claimant. He also disagreed with Dr. Kreiter using grip strength in providing a rating. (Ex. 2, pp. 22 – 24)

I found the testimony of the claimant to be credible. His demeanor was not evasive, and he answered questions on direct and cross examination in a direct manner. Claimant testified to a loss of grip strength. He is right-hand dominate and has difficulty using his right hand performing heavy work. Claimant cannot swing a sledge hammer, use vibratory tools, use his right hand for torqueing or do concrete work any longer due to his hand injury. Claimant has some numbness in his right hand.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable

rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavy v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

A wrist injury is an injury to the arm, not the hand. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008).

The case has two very different medical opinions concerning the extent of claimant's impairment. Dr. Pyevich is also critical as to the methods Dr. Kreiter used in obtaining his ratings.

Dr. Pyevich has stated claimant has a zero impairment, and Dr. Kreiter found claimant has 27 percent upper extremity impairment.

Claimant testified that Dr. Pyevich did not perform any testing during his last visit in November 2013. Dr. Pyevich did observe claimant's range of motion and noted claimant had no instability. He also noted claimant had some stiffness in a subjective sense. Claimant credibly testified that he is restricted in using his finger and hand. It was visibly apparent that his finger did not have normal function at the hearing.

Dr. Kreiter found function loss in claimant's right hand due to loss of grip strength and sensory loss in the ulnar distribution of his hand. As Dr. Kreiter performed more testing I find his report more convincing than Dr. Pyevich's report. Dr. Kreiter found the claimant had a 36 percent loss to his hand. (Ex. G, p. 36)

I find that the medical and lay evidence supports loss of function in claimant's right hand.

Dr. Kreiter's opinions about impairment to the arm and shoulder are not as clear. He concludes that it was less than clear that his injury caused claimant's scapular condition and pain. Dr. Kreiter was not clear that claimant had a nerve injury or numbness in the wrist.

I find that claimant has a 36 percent loss of function in his right hand. This entitles claimant to 68.40 weeks of permanent partial disability benefits [190 x 36% = 68.40].

I find that claimant has failed to prove by a preponderance of the evidence that his arm, shoulder and scapular conditions are a result of his work injury of August 27, 2013.

Claimant requested alternate medical care. As claimant has proven an injury to his right hand and is entitled to medical care for that injury, he is entitled to an EMG to determine if the ulnar entrapment is located in the hand. He is not entitled to care for his arm and shoulder.

ORDER

Therefore it is ordered:

Defendants shall pay to claimant permanent partial disability benefits of sixty-eight point four (68.4) weeks - commencing on November 28, 2013 at the weekly rate of five-hundred eighty-seven and 54/100 dollars (\$587.54).

Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

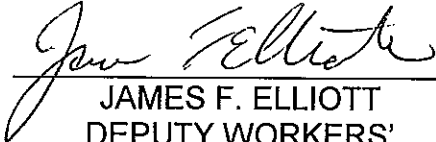
Defendants shall provide claimant care for his hand and an EMG.

Defendants shall pay any past due benefits in a lump sum.

Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter.

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

Signed and filed this 6th day of April, 2015.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

M. Leanne Tyler
Attorney at Law
4431 E. 56th St.
Davenport, IA 52807-2995
mlt@tylerlaw.com

Peter M. Sand
Attorney at Law
2629 Beaver Ave. #3
Des Moines, IA 50310
psandlaw@qwestoffice.net

JFE/sam

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.