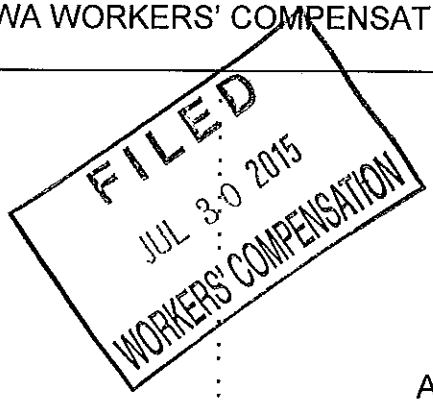
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JERRY EGAN,

Claimant,

vs.

SCHEBLER COMPANY,

Employer,

and

TWIN CITY FIRE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5047245

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Jerry Egan has filed a petition in arbitration and seeks workers' compensation benefits from Schebler Company, employer, and Twin City Fire Insurance Company, insurance carrier defendants.

This matter was heard by Deputy Workers' Compensation Commissioner Ron Pohlman on April 1, 2015 at Des Moines, Iowa. The record in the case consists of claimant's exhibits 1-13; defendants' exhibits A and B, D through E as well as the testimony of the claimant.

ISSUE

The parties submitted the following issue for determination:

The extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u).

FINDINGS OF FACT

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

The claimant at the time of the hearing was 56 years old. He is a high school graduate and completed an apprenticeship in sheet metal. He is right-hand dominant. His work history consists of sheet metal work in the field. Sheet metal work done in the field requires extensive overhead work. The claimant also worked for approximately two years for the railroad after high school graduation. The claimant does not believe that the work he performed for the railroad exists any longer.

At the time of his work injury the claimant was a foreman for Schebler Company. His job duties required him to not only supervise but also perform the job tasks of a sheet metal worker. See Exhibit A. In fact, at times he was working independently or working alone. His job required him to climb and descend ladders and lift 50 pounds on a regular basis and up to 100 pounds on an occasional basis. See Exhibit 8, page 90.

On March 1, 2012 the claimant was injured when his foot got caught in a pallet and he fell directly on his right shoulder. After some conservative care and physical therapy the claimant had an MRI on June 28, 2012. He was initially treated by Rick Garrels, M.D., an occupational physician. The claimant was referred to Suleman Hussain, M.D. for surgical care of his shoulder. On September 18, 2012 Dr. Hussain performed a rotator cuff repair, and the claimant subsequently attended 60 sessions of physical therapy.

The claimant still has problems with throbbing in his right shoulder, lacks overhead strength and has reduced range of motion. He has difficulty reaching behind his back.

On April 9, 2013 the claimant returned to Dr. Garrels regarding his ongoing shoulder symptoms. Dr. Garrels' nurse had ordered an MRI for the claimant, but Dr. Garrels cancelled the MRI. On May 7, 2013 Dr. Garrels release the claimant to return to work with a helper for two weeks. Schebler did not have work for the claimant at that time. Dr. Garrels released the claimant to work full duty on May 21, 2013 telling the claimant that he should try to go back to work without restrictions and "knock the dust off" of his shoulder. The claimant did not believe that he was capable of performing full-duty work however. The claimant had lined up work with Johnson, a company that he had worked for in the past.

Johnson made accommodations for the claimant and provided him with an apprentice. However, whenever the claimant attempted to do overhead work he was unable to do so because of weakness in his right shoulder.

The claimant was sent by the defendants for an independent medical evaluation with Steven Mash, M.D. on April 11, 2013. Dr. Mash opined that the claimant's regular job duties were a heavy type of job involving quite a bit of overhead reaching. See Exhibit 3, page 17. Dr. Mash concluded that the claimant's objective findings supported his subjective complaints and that it was quite common after rotator cuff repair for patients to experience continued weakness with overhead use of the hand and arm. See Exhibit 3, page 17. Dr. Mash placed the claimant at maximum medical

improvement and considered the claimant impaired for any activity that involved repetitious overhead use of the hand and arm on the right side. See Exhibit 3, page 17. Finally, he proposed restrictions:

> I do believe Mr. Egan is capable of working. He is capable of working with physical restrictions. He can lift no more than 30 pounds to waist level, and should not be asked to use the right hand and arm overhead in any way given his objective residual strength deficits with overhead use of his arm. These restrictions are the result of the work-related injury in question. Given that he is now six months post surgery and has plateaued with residual strength deficits, these are permanent restrictions.

(Exhibit 3, pages 17, 18)

The claimant has experience with the Sheet Metal Workers Local 91 Union from his career as a sheet metal worker. He was able to obtain a position as a business representative with his local. However, this is an elected position, and the length of time that he would be able to hold that position would be subject to his success in subsequent elections. This position pays the claimant well and provides the claimant benefits. The claimant earned $75,852.00 between July 26, 2013 and July 3, 2014 in his employment with the Sheet Metal Workers Local Union Number 91. If the claimant is not reelected to his position at the union after his term ends in June 2016 he would need to go back on the books at the union and find another job as a sheet metal worker. His seniority will aid him in that endeavor, but he would still need assistance given his right shoulder pain.

The claimant also had an independent medical evaluation from Mark Taylor, M.D. at his attorney's request on April 22, 2014. Dr. Taylor signed a 7 percent right upper extremity impairment rating due to loss of range of motion and proposed restrictions:

> As far as material handling, I would generally recommend a lifting limit of 50 pounds between floor and waist level, 40 pounds between waist and chest level, and no more than 25-30 pounds above chest level. This is all on an occasional basis. This is due to his residual right shoulder pain. He will generally have to rely fairly heavily on his left upper extremity. With respect to nonmaterial handling, he can sit, stand and walk as needed without specific restrictions. He can squat and bend without restrictions. He can crawl occasionally. He can kneel without restrictions. He denies being on medications that would affect ones sensorium and therefore he can work off ground level and occasionally on ladders; however, I will point out that due to his decreased range of motion in the right shoulder and his difficulty performing overhead tasks, he will be limited in his job functions that he can perform while up on a ladder. I would generally recommend that he avoid any sustained overhead work with the right arm

and no repetitive overhead tasks. There are no lower extremity restrictions in his particular case.

(Ex. 1, p. 9)

REASONING AND CONCLUSIONS OF LAW

The issue in this case is the extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

The claimant has significant permanent impairment and work restrictions that substantially limit his ability to perform the work that he has done for nearly all of his career before his injury. He has fortunately been able to find a good job as a business representative for his union, so the substantial impact of his work injury disability has not been fully experienced. However, that does not mean that it does not exist and that it is not substantial. Considering these and all factors of industrial disability it is concluded that the claimant has sustained a 50 percent industrial loss entitling him to 250 weeks of permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u).

ORDER

THEREFORE IT IS ORDERED:

Defendants Schebler Company and Twin City Fire Insurance Company shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits

commencing July 19, 2013 at the weekly rate of eight hundred fifty-five and 12/100 dollars ($855.12).

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury filed as directed by this division.

Costs of this action are taxed to the defendants pursuant to rule 876 IAC 4.33.

Signed and filed this 30th day of July, 2015.

RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Emily Anderson
Attorney at Law
425 – 2nd St. SE, Ste. 1140
Cedar Rapids, IA 52401
eanderson@fightingforfairness.com

Timothy W. Wegman
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266
tim.wegman@peddicord-law.com

RRP/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.