

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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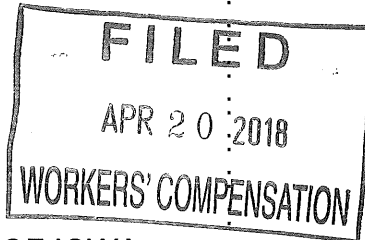
MELISSA EDWARDS,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Defendant.



File No. 5063012

ARBITRATION

DECISION

Head Note No.: 3202

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STATEMENT OF THE CASE

Claimant, Melissa Edwards, filed a petition in arbitration seeking workers' compensation benefits from the Second Injury Fund of Iowa (Fund). This matter was heard in Des Moines, Iowa, on January 23, 2018, with the final submission date of February 13, 2018.

The record in this case consists of Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 11, Fund's Exhibits A through I, and the testimony of claimant.

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.

ISSUES

1. Whether claimant has a qualifying first and second injury for the purposes of Fund benefits; and if so,
2. The extent of claimant's entitlement to Fund benefits.

FINDINGS OF FACT

Claimant was 50 years old at the time of hearing. Claimant graduated from high school. Claimant has a CNA certificate.

Claimant worked as a CNA in nursing homes. She worked for 25 years with JBS as a supervisor and a quality supervisor. Claimant testified she earned approximately \$60,000.00 per year with JBS.

Claimant began with Iowa Premium (IP) in late December 2014. Claimant's job was in quality control. Claimant testified her job in quality control required her to pull meat off a conveyor belt. Claimant said the meat weighed between 5-35 pounds. She said she picked meat off the conveyor belt repeatedly 8-10 hours per day, 5 days per week.

The records indicate claimant first began to have problems in her bilateral upper extremities in May 2015.

On August 4, 2015, claimant was evaluated by Yared Vazquez, M.D. Claimant complained of bilateral wrist pain. Claimant was assessed as having carpal tunnel syndrome with a date of injury of July 20, 2015. Claimant was treated with wrist splints and medication. (Jt. Ex. 1, pp. 1-2)

Claimant was treated with physical therapy beginning August 18, 2015. Claimant's symptoms at her initial date of physical therapy were bilateral medial epicondylitis with pain and tenderness in the forearms, wrists, and hands due to repetitive activity at work. Claimant indicated the pain in her right upper extremity was at a level 8, where a level 10 is excruciating pain. Claimant's pain in her left upper extremity was a level 6. (Jt. Ex. 2, pp. 1-2)

Claimant treated in physical therapy from August 18, 2015 through September 10, 2015 for bilateral carpal tunnel symptoms. (Jt. Ex. 2, pp. 1-8)

On October 16, 2015, claimant was evaluated by Daniel Miller, M.D. Notes indicate claimant was treated for bilateral carpal tunnel syndrome (BCTS). Claimant was assessed as having carpal tunnel syndrome on the left and right upper extremities. EMG and nerve conduction studies were recommended. (Jt. Ex. 3, pp. 1-2)

Claimant underwent EMG/nerve conduction studies on October 22, 2015 with Kurt Smith, M.D. Claimant had a history of bilateral hand pain. Testing revealed bilateral median neuropathy. (Jt. Ex. 4, pp. 1-2)

Claimant returned to Dr. Miller on October 27, 2015. Claimant indicated both arms continuously ached. EMG/nerve conduction studies were positive for bilateral carpal tunnel syndrome. Claimant was referred to a hand specialist. (Jt. Ex. 3, p. 3)

On November 13, 2015, claimant was seen by Benjamin Paulson, M.D., an orthopaedic specialist. Claimant had bilateral EMG results. Claimant was assessed as having carpal tunnel syndrome on left and right. Claimant was given an injection in the right upper extremity. She was returned to work with a 5-pound weight restriction. Claimant was also limited in her repetitive grasping, pushing, and pulling. (Jt. Ex. 5, pp. 1-2)

Claimant returned to Dr. Paulson on January 8, 2016. Claimant had a second injection in her right upper extremity. Claimant was doing well. Claimant was returned to work with no restrictions. (Jt. Ex. 5, p. 8)

On January 29, 2016, claimant returned to Dr. Paulson. Claimant was being seen for bilateral wrist pain. She indicated that when she returned to regular duties, her pain flared up. Claimant indicated her left upper extremity was worse than her right. Surgery was discussed for the right upper extremity and chosen as a treatment option. (Jt. Ex. 5, pp. 10-12)

On February 26, 2016, claimant underwent a right carpal tunnel release, a right cubital tunnel release, and a right first dorsal compartment release. Surgery was performed by Dr. Paulson. (Jt. Ex. 6, pp. 1-2)

Claimant saw Dr. Paulson in follow up from surgery between March 10, 2016 and May 23, 2016. (Jt. Ex. 4, pp. 4-7) On June 23, 2016, records note that claimant was doing well with the left upper extremity and did not want further treatment on the left. Claimant was found to be at maximum medical improvement (MMI) on June 23, 2016. Claimant was returned to work with no restrictions. (Jt. Ex. 4, pp. 8-9)

In a June 23, 2016 letter, Dr. Paulson found claimant had a combined 2 percent permanent impairment to the right upper extremity and no permanent impairment to the left upper extremity. (Ex. 4, p. 10)

On or about September 16, 2016, Iowa Premium and Starr Companies, the insurer on the risk for the July 20, 2015 date of injury, paid claimant permanent partial disability benefits based on a 2 percent rating. (Ex. G, p. 1; Tr. p. 57)

On October 3, 2016, claimant returned to Dr. Paulson with complaints of pain in the left wrist and hand. Onset of symptoms were listed as occurring one year prior. Surgery for the left upper extremity was discussed and chosen as a treatment option. (Jt. Ex. 4, pp. 11-14)

At hearing, claimant testified that her symptoms in her left upper extremity in October 2016 were the same as were her symptoms in 2015. (Tr. pp. 74-75)

On October 18, 2016, claimant had surgery performed by Dr. Paulson. Surgery consisted of a left carpal tunnel release, a left cubital tunnel release, and a first dorsal compartment release. (Jt. Ex. 6, p. 3)

On November 11, 2016, claimant was terminated from her employment with IP. (Ex. A, p. 1; Cl. Ex. 4, p. 3)

Claimant returned in follow up with Dr. Paulson on November 17, 2016. Claimant was doing well after surgery on her left upper extremity. Claimant was allowed to return to work with no restrictions. (Jt. Ex. 4, p. 17)

In March 2017, Iowa Premium and Starr Companies, the insurer on the wrist for the July 20, 2015 date of injury, paid claimant temporary benefits from October 18, 2016 (date of surgery on left upper extremity) to December 19, 2016. (Ex. G, p. 1)

On March 21, 2017, claimant began a new job with REM Iowa. Claimant's job with REM is helping dependent adults. Claimant earns \$10.00 per hour. Claimant testified at hearing she rarely has any overtime with REM. (Tr. pp. 20, 32; Cl. Ex. 8, p. 2; Ex. 9, p. 1)

In an April 17, 2017 letter, Dr. Paulson found claimant at MMI as of April 17, 2017. He noted, in claimant's history, claimant's problems began as a bilateral carpal tunnel, cubital tunnel, and de Quervains tenosynovitis. He found claimant had a 7 percent permanent impairment to the right upper extremity and a 5 percent permanent impairment to the left upper extremity. Dr. Paulson found claimant had no permanent restrictions. (Jt. Ex. 7)

Claimant testified at hearing that IP and Starr Companies paid the rating to claimant in May 2017. (Tr. p. 64)

In a September 28, 2017 report, Robin Sassman, M.D., gave her opinions of claimant's condition following an independent medical evaluation (IME). Claimant told Dr. Sassman she began noticing symptoms in her upper extremities bilaterally in May 2015. She reported a bilateral injury on July 20, 2015. (Cl. Ex. 1, p. 2) Dr. Sassman's history notes that for the rest of 2015, claimant was treated for a bilateral carpal tunnel syndrome. (Cl. Ex. 1, p. 3)

Dr. Sassman opined that claimant's job with IP was a direct causal factor for development of carpal tunnel syndrome, cubital tunnel syndrome and de Quervains tenosynovitis. (Ct. Ex. 1, p. 8) She found claimant had a 10 percent permanent impairment to the right upper extremity, a 5 percent permanent impairment to the left upper extremity. The two impairments combined resulted in an 11 percent permanent impairment to the body as a whole. (Cl. Ex. 1, pp. 9-10) Claimant was limited in repetitive forceful gripping and grasping. Dr. Sassman noted that claimant should avoid vibratory tools. (Cl. Ex. 1, p. 15)

In a December 21, 2017 letter, written by defendants' counsel, Dr. Paulson indicated that claimant did not suffer a new injury on October 3, 2016. He opined that claimant's need for the October 18, 2016 left upper extremity surgery was causally connected to her 2015 symptoms. He opined that his impairment ratings for the left and right upper extremities were related back to claimant's 2015 symptoms. (Ex. C)

After hearing, claimant settled with IP and its insurer, Starr Companies, for an alleged date of injury of July 20, 2015 to the right arm (File No. 5063010) and August 20, 2015 for the left arm (File No. 5063011). These claims were settled in a compromised settlement on or about November 17, 2017. Claimant was paid \$25,000.00 for the compromised settlement. (Ex. B)

Claimant also entered into a settlement for an alleged date of injury of October 3, 2016. The agreement for settlement was with IP and Alliance, insurance company. (Ex. 11; Ex. E)

At the time of the hearing, claimant was still employed with REM.

Claimant testified she still has pain in both her hands and wrists. Claimant's pain limits her ability to drive, perform household chores, and do yard work. Claimant testified that she has pain in both arms, left greater than the right. Claimant says she has difficulty sleeping due to tingling and pain in her wrists.

Claimant testified given her symptoms, she could not return to work at IP. She said she could return to work at JBS as a supervisor, as long as she did not work on the line.

Claimant earns \$10.00 per hour with REM. In the nine months prior to hearing, claimant made \$14,823.15 working for REM. (Cl. Ex. 10, p. 4) In her last full year at IP, claimant earned \$37,245.00. (Cl. Ex. 10, p. 1)

### CONCLUSIONS OF LAW

The first issue to be determined is whether claimant has a qualifying first and second injury for the purposes of Fund benefits.

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).

This agency has held that bilateral extremity conditions caused by the same repetitive trauma injury process is a single, simultaneous injury that does not invoke Second Injury Fund liability. Bilateral conditions that manifest at the same time are viewed as simultaneous Hartney v. Vermeer Mfg., File Nos. 1167622 and 1167624 (App. April 28, 2000) affirmed by Court of Appeals in Vermeer Mfg. v. Hartney,

No. 1-1013/00-2040, slip op (Iowa Ct App. July 31, 2002). See also Freitag v Second Injury Fund of Iowa, File No 1281491 (App. September 22, 2003); Erickson v Second Injury Fund of Iowa, File No. 5004319 (Arb. June 9, 2004).

The record indicates claimant's position at IP required repetitive grasping and pulling with both hands.

On August 4, 2015, claimant was evaluated by Dr. Vazquez for bilateral wrist pain. Claimant was assessed as having bilateral carpal tunnel syndrome with a date of injury of July 20, 2015. (Jt. Ex. 1, pp. 1-2)

Claimant was given physical therapy for August through September 2015 for bilateral carpal tunnel syndromes. (Jt. Ex. 2, pp. 1-8)

Claimant was evaluated by Dr. Miller on two occasions as having bilateral carpal tunnel syndrome. (Jt. Ex. 3, pp. 1-3)

EMG and nerve conduction studies taken October 22, 2015 revealed a bilateral neuropathy. (Jt. Ex. 4, pp. 1-2)

In November 2015, claimant was assessed by Dr. Paulson as having bilateral carpal tunnel syndrome. (Jt. Ex. 5, pp. 1-2)

In a December 2017 opinion letter, Dr. Paulson, performed both of claimant's upper extremity surgeries, opining that claimant did not suffer a distinct upper extremity injury on October 3, 2016. He opined that the left and right upper extremity injuries were related to her 2015 symptoms. (Ex. C)

Claimant was paid benefits for both upper extremity injuries based upon a date of July 20, 2015. (Ex. G)

The record indicates claimant's symptoms manifested in both upper extremities on or about July 2015. Numerous medical records list the date of injury to both upper extremities as July 20, 2015. Nearly every physician who has treated claimant has diagnosed claimant as having a bilateral injury to both upper extremities with a date of injury of July 20, 2015. EMG and nerve conduction studies taken prior to claimant's first surgery indicate a bilateral neuropathy. Dr. Paulson who performed both of claimant's surgeries, opined that claimant's left and right upper extremity injuries relate back to a 2015 injury. No expert has opined claimant sustained a second and distinct injury to the left upper extremity in October 2016.

A first and second injury may not occur at the same time for purposes of Second Injury Fund benefits. Vermeer Mfg. v. Hartney, No. 1-1013/00-2040, slip op, (Iowa Ct. App. July 31, 2002) The record indicates that claimant had a single simultaneous injury occurring on or about July 20, 2015. For this reason, and for the reasons as detailed above, claimant has failed to prove she qualifies for benefits from the Fund.

As claimant has failed to prove that she has a qualifying first and second injury for purposes of Fund benefits, the issue of the extent of claimant's entitlement to Fund benefits is moot.

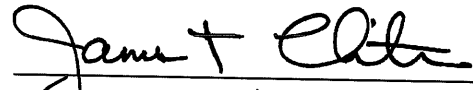
ORDER

THEREFORE, IT IS ORDERED:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 20<sup>th</sup> day of April, 2018.

  
JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JFC/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.