

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID E. KLAPPROTH,

FILED

Claimant,

JAN 11 2017

File No. 5052845

vs.

WORKERS COMPENSATION

ARBITRATION

SECOND INJURY FUND OF IOWA,

DECISION

Defendant.

Head Note No.: 3200

STATEMENT OF THE CASE

David Klapproth, claimant, filed a petition in arbitration seeking workers' compensation benefits from the Second Injury Fund of Iowa. The matter was heard in Des Moines, Iowa by Deputy Workers' Compensation Commissioner Stan McElderry.

ISSUE

The parties presented the following issue for resolution in the case:

1. Whether claimant is entitled to benefits from the Second Injury Fund of Iowa.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony of the witness and considered the evidence in the record, finds that:

The claimant was 64 years old at the time of the hearing. Claimant is not a high school graduate, but has a GED. He has specialized training as a repair shop machinist but has been a semi-truck driver since 1992.

The claimant was involved in a serious motor vehicle accident on November 20, 2005. He suffered severe injuries to his cervical spine. An MRI revealed a disc herniation in the cervical spine. (Exhibit 2, page 8) A discectomy and fusion surgery was performed by Mary Hllavin, M.D. (Ex. 2, p. 9) Dr. Hllavin's postoperative diagnosis was "cervical central cord syndrome secondary to acute C5-6 disc herniation after motor vehicle accident." (Ex. A, p. 1) At no time during claimant's hospital stay were any imaging studies or surgeries performed on claimant's right arm. Todd Troll, M.D., and Dr. Hllavin both assigned a 45 percent body as a whole (BAW) impairment for the cervical disorders. (Ex. B, p. 11; Ex. C, p. 16) A petition for workers' compensation benefits was later filed for the injury and lists the affected or disabled body portion as "spinal cord, herniation of cervical disk, fracture of thoracic spine and partial paresthesia." (Ex. H, p. 31) The settled claim on file with the agency states

"Neck/BAW." (Agency file, administrative notice taken) Claimant was evaluated in connection with the present litigation by Marc Hines, M.D., for an independent medical evaluation (IME). (Ex. 1) Dr. Hines assigned a 22 percent impairment to the right upper extremity based on grip strength, pinch strength, and sensory loss. (Ex. 1, p. 6) Dr. Hines noted that these "problems appear to be all secondary to the patient's cervical and cord injury." (Ex. 1, p. 5) "Secondary to cervical cord injury" is noted at least 2 more times in the IME report. (Ex. 1, pp. 5 and 6) This means there is no independent injury to the arm. At hearing the claimant testified that he did not suffer an injury to his right arm and that all his symptoms in his right arm are due to the neck injury. (Transcript) It is this injury that the claimant asserts is his qualifying first injury for Second Injury Fund (SIF) purposes. The Second Injury Funds (SIF) asserts that this injury does not qualify for SIF purposes.

The claimant sustained a stipulated work injury to his left wrist and arm on March 20, 2014. Patricia Kallemeier, M.D., assigned a 53 percent permanent impairment rating for the left upper extremity for the work injury of March 20, 2014. (Ex. 3, p. 57) It is this injury that the claimant asserts is his qualifying second injury for Second Injury Fund (SIF) purposes. It is found that the November 20, 2005 injury is not qualifying for SIF purposes. The 2005 injury was to the body as a whole and only secondarily affects scheduled member(s) as nearly all body as a whole injuries do.

REASONING AND CONCLUSIONS OF LAW

The first issue to be resolved is whether claimant is entitled to benefits from the Second Injury Fund of Iowa.

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

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).

The Second Injury Fund of Iowa first contends that it has no liability in this case because claimant did not have a qualifying loss to a specified member as it relates to

the 2005 injury, contending that the injury did not result in any loss of his right upper extremity (arm). It was so found. Therefore, it is concluded that claimant has not met the requirements of Iowa Code section 85.64 and there is no SIF liability.

ORDER

THEREFORE, IT IS ORDERED:

That the claimant take nothing as it relates to the Second Injury Fund of Iowa.

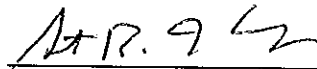
That all accrued benefits shall be paid in a lump sum.

That interest shall accrue pursuant to Iowa Code section 85.30. Interest accrues on unpaid Second Injury Fund benefits from the date of the decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990).

That the parties bear their own costs.

That defendant shall file subsequent reports of injury as required by the agency.

Signed and filed this 11th day of January, 2017.



STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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SRM/srs

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.