

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL STREIF,

Claimant,

vs.

JOHN DEERE DUBUQUE WORKS
OF DEERE & COMPANY,Employer,
Self-Insured,
Defendant.

File No. 5068621

ARBITRATION

DECISION

Head Note: 1803

STATEMENT OF THE CASE

Claimant, Michael Streif, filed a petition in arbitration seeking workers' compensation benefits from John Deere Dubuque Works of Deere & Company, (Deere), self-insured employer. This matter was heard in Des Moines, Iowa on October 16, 2019. Claimant and his attorney participated by CourtCall.

The record in this case consists of Joint Exhibits 1-5, Claimant's Exhibits 1-8, Defendant's Exhibits A through B, and the testimony of claimant and Eric Gansen.

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.

ISSUE

The extent of claimant's entitlement to permanent partial disability benefits.

FINDINGS OF FACT

Claimant was 42 years old at the time of hearing. Claimant works as an assembler in the backhoe unit for Deere.

On February 22, 2018 claimant sustained an injury to his left thumb when a cylinder head crushed the thumb. (Joint Exhibits 1-2)

On the same day, claimant was taken to the Finley Hospital Emergency Department in Dubuque. Claimant was assessed as having a near complete amputation of the distal phalanx of the left thumb. Because of the seriousness of the injury, claimant was transported to Meriter Hospital in Madison, Wisconsin. (Jt. Ex. 3)

On February 22, 2018 claimant was evaluated at Meriter Hospital for a crush injury to the left thumb. Claimant had a near complete amputation of the distal phalanx of the left thumb. On the same day, claimant underwent surgery consisting of a left distal thumb amputation. Surgery was performed by Lisa Kruse, M.D. Claimant was discharged on the same day. (Jt. Ex. 4)

Records indicate claimant went to occupational therapy following the accident. (Ex. 2, p. 2) Claimant eventually returned to work at Deere.

In a July 11, 2018 note, Dr. Kruse found claimant had a 100 percent loss to the distal phalanx of the thumb, which converted to a 20 percent loss to the hand. (Jt. Ex. 5)

In a February 18, 2019 report, Mark Taylor, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant indicated he occasionally had phantom pain in the thumb and the tip of the stump of the left thumb was sensitive and felt cold. Claimant had difficulty picking up small items like pencils, screws and nuts. Claimant indicated gripping and grasping, using the hand and power tools was more difficult. (Ex. 2, p. 3)

On physical exam claimant had difficulty and discomfort with grip, different grip positions. Claimant had decreased motion in the left thumb. Surgical scarring extended down and across the MP joint on the left. (Ex. 2)

Claimant had decreased range of motion in the MP joint of the thumb, where the thumb articulates into the left hand. Based on these findings, Dr. Taylor opined claimant had a 21 percent permanent impairment to the left hand. (Ex. 2, pp. 5-6)

Claimant testified since his injury he has difficulty at work using impact wrenches and difficulty with gripping a hammer. Claimant testified his hand will go numb when gripping. He said he has loss of grip strength in the left hand. Claimant said he has difficulty holding a golf club and holding a bowling ball. He said he has difficulty using zippers due to problems with grip strength.

Eric Gansen testified he is a coworker with claimant at Deere. He said he has worked with claimant for approximately two years. Mr. Gansen testified claimant has limitations with the use of his left hand. He said he noticed claimant has difficulty picking up tools at work. He says claimant has difficulty using a hammer at work. Mr. Gansen says claimant complains of his hand being tired and tingling.

CONCLUSIONS OF LAW

The first issue to be determined is the extent of claimant's entitlement to permanent partial disability 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).

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).

When determining the functional loss of a scheduled member injury:

[T]he extent of loss of percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment.

Iowa Code section 85.34(2)(x) (2017).

New legislation under Iowa Code section 85.34(2)(x) prohibits the use of lay testimony "...in determining loss or percentage of permanent impairment." Consistent with the new statute, the undersigned has not used lay testimony to "determine" loss or the percentage of permanent impairment. However, the new statute does not appear to prohibit using lay testimony in aiding to ascertain which of the two ratings in this case is more convincing or credible.

Defendant contends claimant's permanent disability is limited to his thumb, and claimant's entitlement to permanent partial disability benefits should be evaluated as a loss of the thumb. Claimant contends his permanent partial disability benefits should be determined as to a loss of the use of the hand.

Claimant credibly testified since his thumb amputation, he has difficulty with gripping hammers, using power tools, and picking up items. Claimant credibly testified his left hand is often tired, and his left hand goes numb and tingles. Claimant testified he has other problems with gripping with the left hand.

Claimant's testimony is corroborated by his coworker, Mr. Gansen. Mr. Gansen testified claimant has difficulty hammering and picking up things with his left hand. Mr. Gansen testified claimant complains at work his left hand is tired and tingles.

Two experts have opined regarding the extent of claimant's permanent impairment. Dr. Taylor opined claimant had a 21 percent permanent impairment to the left hand. This opinion is based on a finding claimant has difficulty with grip strength in different positions on the left. It is also based on a finding claimant has decreased range of motion in the MP joint, which articulates into the left hand. Claimant's surgical scarring extends down across the MP joint on the left. (Ex. 2)

Dr. Kruse performed the thumb amputation on claimant. She indicated on a form claimant had a 100 percent loss to the distal phalanx of the thumb, converting to a 20 percent loss of the hand. (Jt. Ex. 5)

Both Dr. Kruse and Dr. Taylor convert claimant's loss of the thumb to the hand. Dr. Kruse's opinion appears to be limited to assessing permanent partial disability to the thumb, although the rating is not entirely clear. Dr. Taylor's opinions regarding permanent impairment are far more detailed than the form filled out by Dr. Kruse. Dr. Taylor found claimant had permanent impairment to the hand based upon claimant's limitation in the MP joint, which articulates into the thumb. Dr. Taylor also found claimant had difficulty with grip strength in several positions. Dr. Taylor's findings regarding permanent disability are corroborated by the testimony of claimant and Mr. Gansen. Based upon this, it is found the opinions of Dr. Taylor, regarding the extent of claimant's permanent disability into the hand, is more convincing than the opinion of Dr. Kruse.

Both claimant and Mr. Gansen testified claimant has problems with gripping with his left hand. They both testified claimant has lost strength in the left hand. They both testified claimant has fatigue in the hand due to the thumb amputation. The opinion of Dr. Taylor that claimant's permanent disability is to the hand, is more convincing than that of Dr. Kruse. Based upon these findings, it is found claimant has carried his burden of proof his permanent disability should be assessed as a loss to the hand.

Assuming, for argument's sake, the new statute under Iowa Code section 85.34(2)(x) completely prohibits using any evidence, other than the ratings, in determining a percentage of permanent impairment, it is still found the rating of Dr. Taylor is more convincing than that of Dr. Kruse. As noted, both Dr. Kruse and Dr. Taylor converted claimant's permanent impairment as a loss to the hand. Dr. Taylor's opinions are more detailed and I am able to follow his analysis why claimant has a loss to the hand. Dr. Taylor's opinions regarding impairment, are based in part, on claimant's difficulty with gripping on exam. Based on these facts, and the others as detailed above, it is found Dr. Taylor's opinions regarding permanent impairment are more convincing than those of Dr. Kruse.

Dr. Taylor found claimant had a 21 percent permanent impairment to the hand as a result of the thumb amputation. Claimant is due 39.9 weeks of permanent partial disability based on this rating (21% x 190 weeks).

ORDER

Therefore, it is ordered:

That defendant shall pay claimant thirty-nine point nine (39.9) weeks of permanent partial disability benefits at the rate of six hundred forty-four and 66/100 dollars (\$644.66) per week commencing on July 11, 2018.

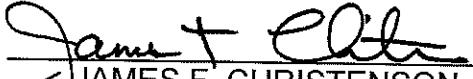
Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

That defendant shall receive a credit for benefits previously paid.

That defendant shall pay costs.

That defendant shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 3rd day of December, 2019.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dirk Hamel (via WCES)
Paul McAndrew (via WCES)
Theron Christensen (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, 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.