BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHELLE COX,	:	
	:	File No. 5010148
Claimant,	:	
	:	ARBITRATION
vs.	:	
	:	DECISION
EDS,	:	
	:	
Employer,	:	
Defendant.	:	
	:	Head Note Nos.: 1100; 1803; 2500

STATEMENT OF THE CASE

Claimant, Michelle Cox, has filed a petition in arbitration and seeks worker's compensation benefits from EDS, employer, defendant. The claimant moved for a default ruling on February 11, 2004. Default was entered on March 2, 2004.

Deputy workers' compensation commissioner, Stan McElderry, heard this matter on April 13, 2004 via telephone conference hearing. The record consists of claimant's exhibit 1, and the testimony of the claimant.

ISSUES

The claimant has submitted the following issues for determination:

1. Whether claimant sustained an injury on April 1, 2002 which arose out of and in the course of employment;

2. Whether the injury of April 1, 2002 was the cause of any permanent disability; and

3. Whether the claimant is entitled to payment of medical expenses.

FINDINGS OF FACT

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

The claimant on April 1, 2002 suffered an injury, while working at EDS in Des Moines, Iowa, from repetitive trauma to her left and right wrists and hands. She was a customer service representative who was required to type frequently. The claimant now

has difficultly typing and can only write for a few minutes. Based on the injury the claimant has been diagnosed with bilateral carpal tunnel.

The claimant presented no evidence of an impairment rating by a physician. The AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, at page 495, do not appear to address an impairment rating for individuals with carpal tunnel who have not had, or do not require surgery. However, the guides are just that, guides.

Based on the diagnosis of bilateral carpal tunnel, the claimant's credible testimony of swelling, numbness and tingling in her hands and wrists (worse on the right then the left), and inability to write for more then a few minutes, it is found that the claimant has suffered a ten percent loss of use of each arm.

At the time of the injury the claimant earned $10.00 per hour and worked 40 hours per week for earnings of $400.00 per week. The claimant was married and entitled to five exemptions at the time of injury. As such her weekly rate is $285.99. The commencement rate for any permanent partial disability benefits is July 7, 2003.

REASONING AND CONCLUSIONS OF LAW

The first issue is whether the claimant sustained an injury arising out of and in the course of employment on April 1, 2002.

The claimant has the burden of proving by of preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Ciha v. Quaker Oats Co., 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W. 2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if

brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

The claimant on April 1, 2002 suffered a bilateral carpal tunnel injury arising out of and in the course of employment while working at EDS in Des Moines, Iowa.

The next issue is the extent of the claimant's entitlement to permanent partial disability.

The right of an employee to receive compensation for injuries sustained is statutory. The statute conferring this right can also fix the amount of compensation payable for different specific injuries. The employee is not entitled to compensation except as the statute provides. Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. Delong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

Compensation for permanent partial disability begins at termination of the healing period. Section 85.34(2). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Simbro v. Delong's Sportswear, 332 N.W.2d 886 (Iowa 1983); Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 106 N.W.2d 95 (1960).

Although lay testimony as to the extent of loss of use is admissible and must be considered, ratings by physicians using the AMA Guides are the better or preferred method of measuring loss of use in scheduled member cases. Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998); Mead v. The Dial Corporation, File No. 1003299 (App. August 24, 1995); Gomez v. Armstrong Tire & Rubber Co., File No. 1043115 (App. August 31, 1995).

In making assessment of the loss of use of a scheduled member, the evaluation is not limited to the use of a standardized guide. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). The actual loss of use which is to be evaluated is the loss of use of the member for the purposes for which the member is customarily used in daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions and other pertinent factors may all be considered when

determining scheduled disability. Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Comm. Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Bieghler v. Seneca Corp., File No. 979887 (Arb. February 8, 1994); Ruylnad v. Rose's Wood Products, File No. 937842 (Arb. February 13, 1994); Smith v. Winnebago Industries, File No. 824666 (Arb. April 2, 1991).

Such use of the Guides appears to be favored by the Iowa Supreme Court but this is not entirely clear. In the case of Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998), the Court expressly upheld the Commissioner's holding that use of the Guides is the best evidence of functional loss. However, they go on to state that other evidence, medical or lay, can be considered as to whether the functional loss is higher or lower than measured by the Guides. Sherman, 576 N.W.2d at 322. The Court also states in Sherman that the scheduled member compensation system is constitutional because this agency is not bound by the Guides as they are just guidelines and not intended to exclude other avenues of measurement. Sherman, 576 N.W.2d at 319.

The claimant suffered simultaneous injuries to her left and right arms. The claimant presented no evidence of an impairment rating by a physician. The AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, at page 495 do not appear to address an impairment rating for individuals with carpal tunnel who have not had, or do not require surgery. However, the testimony of the claimant, and the medical evidence, make clear that the claimant has permanently lost some use of each arm. A loss of less then ten percent would be unlikely to be noticeable to an individual. A good analogy would be a race car going 100 miles an hour that slowed to 95. The change would be subtle and few would notice. The claimant who typed before has difficulty in doing so, and is unable to write for more then a few minutes. The changes in the claimant's abilities are significant and noticeable. Based on the finding that the claimant suffered a 10 percent loss of use to each arm, which converts to 12 percent of the body as a whole, the claimant is entitled to 60 weeks of benefits.

The last issue is the claimant's entitlement to medical benefits.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-reopen October 16, 1975).

The claimant has medical needs due to her work injury which have not yet been met. All medical costs due to the work injury are the defendant's responsibility.

ORDER

Therefore it is ordered:

That the defendant pay claimant sixty (60) weeks of permanent partial disability commencing July 7, 2003 at the rate of two hundred eighty-five and 99/100 dollars ($285.99).

That the defendant pay the claimants medical expenses, accrued, and ongoing, for the claimant's work injury.

That the defendant file a first report of injury.

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

That costs are taxed to the defendant pursuant to 876 IAC 4.33.

Signed and filed this _____3rd_____ day of May, 2004.

_____
STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Mr. Gary G. Mattson
Attorney at Law
1820 NW 118th St., Ste. 200
Clive, IA 50325-8259

EDS
Attn: Workers' Compensation Dept.
3600 Army Post Road
Des Moines, IA 50321

SRM/smb