

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HEATHER LYNN KLEEMEYER,

Claimant,

vs.

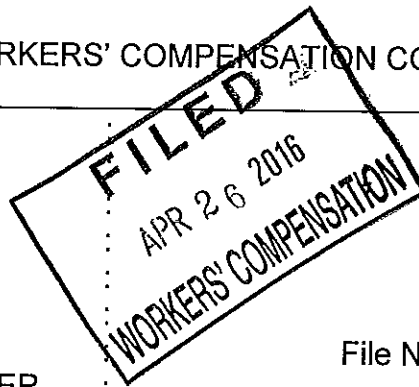
HENRY COUNTY HEALTH CENTER,

Employer,

and

FARM BUREAU PROPERTY &  
CASUALTY INSURANCE COMPANY,

Insurance Carrier,  
Defendants.



File No. 5048929

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Heather Lynn Kleemeyer, filed a petition in arbitration seeking workers' compensation benefits from Henry County Health Center, employer, and Farm Bureau Property & Casualty Insurance Company, insurance carrier, both as defendants, as a result of a stipulated injury sustained on November 1, 2012. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on September 14, 2015, in Des Moines, Iowa. The record in this case consists of joint exhibits 1 through 8 and the testimony of the claimant.

ISSUE

The parties submitted the following issue for determination:

The extent of claimant's industrial disability.

The stipulations of the parties in the hearing report are incorporated by reference in this decision.

FINDINGS OF FACT

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

Claimant's testimony was clear, knowledgeable, and consistent as compared to the evidentiary record and her deposition testimony. Her demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 33 years of age at the time of hearing. She is married, with three minor children. Claimant graduated high school in 1999 and thereafter, attended Kirkwood Community College for one year, studying criminal justice. She did not earn a degree or certification in this program. Claimant subsequently attended Southeast Community College, where she earned a paramedic certificate. Claimant also earned a Firefighter 1 certification. (Claimant's testimony)

Claimant's work history consists of: restaurant server earning minimum wage; prep cook at a convenience store earning minimum wage; jailer at Jefferson County Jail for approximately two years, earning \$10.00 per hour; security officer at Riverside Casino for two years, earning \$9.00 per hour; and her work for defendant-employer. In July 2009, defendant-employer hired claimant as an EMT basic, earning \$9.25 per hour. To complete her EMT duties, claimant was required to lift equipment, cots, and patients. Claimant estimated the equipment had the following weights: 10- to 15-pound cardiac monitor, 40-pound jump bag, and 50-pound cot. Additionally, claimant was required to engage in carrying or supporting of patients, with the physical demands varying based on patient need. (Claimant's testimony)

In August 2010, claimant obtained a position as a paramedic for defendant-employer. Her new position required additional duties not performed by EMTs, such as administration of medication and placing IVs. Her hourly wage increased to \$13.50 per hour. When not working on an ambulance for defendant-employer, claimant also assisted throughout the hospital, as needed. Claimant had no physical limitations and was capable of performing all elements of the EMT and paramedic positions. (Claimant's testimony)

While working on November 1, 2012, a heavy patient grabbed and pulled down on claimant's left arm. Claimant felt a pop and developed pain of her left shoulder. Claimant testified she completed the call and later reported the event to defendant-employer. (Claimant's testimony)

Defendant-employer directed claimant for medical care at the Henry County Health Center (HCHC) Emergency Department. On November 13, 2012, Andrew Walker, M.D. evaluated claimant for complaints of a pulling injury of the left shoulder and AC joint area. An x-ray revealed no bony injury. Dr. Walker assessed an AC injury and recommended supportive measures. (Exhibit 1, page 1) Dr. Walker also prescribed hydrocodone. Claimant testified she continued working in pain and removed her sling when on a patient call. (Claimant's testimony)

Defendants subsequently referred claimant for evaluation with Atiba Jackson, M.D. of Great River Orthopedic Specialists. At evaluation on December 19, 2012, claimant complained of pain of the left AC joint and biceps tendon region. Dr. Jackson ordered an MRI. (Ex. 2, pp. 1-2)

Following the left shoulder MRI, claimant returned to Dr. Jackson on January 7, 2013. Dr. Jackson reviewed the MRI and opined it revealed bursitis and tendinopathy. Dr. Jackson assessed pain of the left shoulder rotator cuff and biceps tendon; he performed injections of the subacromial space and biceps tendon sheath. Dr. Jackson released claimant to work without restrictions and advised her to follow up in six weeks. (Ex. 2, p. 4)

Claimant returned to Dr. Jackson on February 18, 2013 and reported significant improvement in her symptoms. Dr. Jackson recommended claimant continue working on strengthening and range of motion, but released claimant to follow up as needed. (Ex. 2, p. 6)

On July 15, 2013, claimant presented to Dr. Jackson and reported improvement for a couple months with prior injections, but then the pain had returned and had progressively worsened since. Dr. Jackson recommended a diagnostic arthroscopy. (Ex. 2, pp. 7-8)

Dr. Jackson performed left shoulder arthroscopy on September 17, 2013. During the procedure, Dr. Jackson noted the presence of a SLAP tear and accordingly, repaired the tear. Post-operatively, Dr. Jackson opined a diagnosis of a left shoulder SLAP tear and placed claimant in a shoulder sling/immobilizer. (Ex. 3, pp. 1-2) Following surgery, claimant performed home exercises as instructed by Dr. Jackson. (Ex. 2, p. 11) At follow-up on September 30, 2013, Dr. Jackson recommended continued use of the shoulder sling. He released claimant to work under a restriction of no use of the left upper extremity. In mid-October 2013, Dr. Jackson advised claimant to discontinue use of the shoulder sling and begin a course of physical therapy. (Ex. 2, pp. 12-14)

On October 28, 2013, claimant returned to Dr. Jackson and reported feeling worse than prior to surgery, with reports of constant pain without relief from physical therapy. Dr. Jackson recommended additional physical therapy, refilled claimant's prescription for Percocet, and advised her to return for evaluation in one month's time. (Ex. 2, pp. 15-16) When claimant presented to Dr. Jackson on November 25, 2013, she reported improvement over the prior visit, but some continued pain with range of motion. Dr. Jackson recommended continued physical therapy. (Ex. 2, pp. 17-18) On January 24, 2014, claimant returned to Dr. Jackson with complaints of some pain and discomfort with overhead activities, as well as a sensation of tightness of the left shoulder. Dr. Jackson recommended continued physical therapy and work hardening. (Ex. 2, pp. 19-21)

On March 4, 2014, claimant returned to Dr. Jackson and expressed complaints of continued left shoulder pain. Examination revealed popping, significant discomfort and instability of the shoulder. Dr. Jackson performed an injection of the posterior glenohumeral joint. In the event claimant continued to suffer with pain and discomfort, Dr. Jackson indicated he recommended a diagnostic arthroscopy with potential SLAP revision repair. He released claimant to full duty work, without restrictions. (Ex. 2, pp. 22-24)

Due to continued complaints, on April 15, 2014, Dr. Jackson performed surgical revision of the left shoulder SLAP repair. He opined a postoperative diagnosis of left shoulder SLAP repair with a loose anchor. Post-surgery, he placed claimant in a shoulder sling for four weeks, with physical therapy to follow. (Ex. 3, p. 3)

The following day, April 16, 2014, claimant presented to the HCHC Emergency Department and was evaluated by Julie Wagner, D.O. Claimant complained of severe chest pain, as well as cramping and pain of the legs. She was admitted to the hospital for observation and testing. Following work-up, claimant was discharged the following day with prescriptions for pain medication and muscle relaxers. (Ex. 1, pp. 10-14)

Six months post-revision surgery, claimant returned to Dr. Jackson for evaluation. At the evaluation on October 17, 2014, Dr. Jackson noted claimant continued to demonstrate slight difficulty with abduction. Following examination, Dr. Jackson placed claimant at maximum medical improvement (MMI) and released claimant to return as needed. Due to decreased abduction, Dr. Jackson opined claimant sustained a permanent impairment of 1 percent left upper extremity. Claimant requested a release to full duty work; Dr. Jackson obliged and released claimant to work without restrictions. (Ex. 2, pp. 26-27)

Claimant testified despite constant, daily left shoulder pain, she requested a full duty release, as she found her paramedic duties to be less painful than her light duty assignment. While the light duty work was not as physically demanding, it was constant in nature and did not allow claimant a break from using the shoulder. Claimant testified during her paramedic work, there are periods of inactivity during which she is able to ice the shoulder. (Claimant's testimony)

Following returning to full duty work, claimant modified the manner in which she performed certain tasks. She explained her partner performs the majority of heavy lifting and drives the majority of longer calls. Her partner will lift the cot from the ambulance and carries the heavier jump bag, whereas claimant carries the lighter cardiac monitor. In the event the partners are required to lift a patient, claimant positions herself so as to allow use of her right arm and shoulder. Claimant also testified she is unable to perform extended CPR. Claimant testified she is unable to perform all the duties of her job and would be unable to continue her work without her partner's assistance. (Claimant's testimony)

At the arranging of claimant's attorney, on March 21, 2015, claimant presented for independent medical examination (IME) with Theron Jameson, D.O. Dr. Jameson is board certified by the American Osteopathic Academy of Orthopedics. (Ex. 7, p. 3) Dr. Jameson performed a medical records review. (Ex. 4, pp. 2-4) He also interviewed claimant. Claimant reported she worked under no permanent restrictions; however, she compensated greatly by use of her right arm. Claimant also reported ongoing difficulties including the inability to lie on her left shoulder and difficulty lifting her arm overhead with weight. Additionally, claimant reported suffering with numbness of the anterior aspect of the left arm and dorsally into the left hand. (Ex. 4, p. 4) Claimant also submitted to a physical examination by Dr. Jameson. (Ex. 4, p. 5)

Following records review, interview, and examination, Dr. Jameson opined claimant's diagnosis was of internal derangement of the left shoulder/labral tear. Due to decrements in range of motion of the shoulder, Dr. Jameson opined claimant sustained a permanent impairment of 3 percent left upper extremity or 2 percent whole person. Dr. Jameson recommended permanent restrictions of no lifting greater than 10 pounds above chest height with the left upper extremity and no pushing, pulling, or lifting greater than 50 pounds repetitively. (Ex. 4, p. 5)

Claimant provided deposition testimony in this matter on June 26, 2015. At the time of deposition, claimant complained of pain on the outer part of her left shoulder, radiating into the biceps. On bad days, that pain radiates into claimant's left fingers and she develops numbness and tingling of the hand and fingers. Additionally, claimant reported a popping sensation of the left shoulder; when a pop occurs, she feels pain in the front of her shoulder. Claimant reported experiencing so-called bad days approximately one time per week; she was unable to identify any particular inciting event or cause for the flares in symptoms. Claimant also reported she makes daily use of Tylenol to manage her pain. (Ex. 6, Depo. Tr. pp. 31-32)

At evidentiary hearing, claimant testified she believes her shoulder strength and range of motion have progressively worsened. Her pain complaints have plateaued, following the same general pattern. The pain is constant and varies in severity. On good days, the pain remains limited to the shoulder. On bad days, the pain can radiate to the hand, and she also may develop burning and tingling sensations of the fingers. Claimant testified her pain averages a level 3 or 4 on a 10-point scale; pain worsens with activity or when she rolls onto the shoulder and can reach a level 10. She is generally able to avoid level-10 pain if able to rest between patient calls. Claimant also self-treats with use of Tylenol every 4 to 6 hours and on rare occasions, has utilized unused hydrocodone from prior prescriptions. (Claimant's testimony)

Claimant testified on days she does not work, she is recovering from work days. Claimant explained her work week consists of a 24-hour shift, a 16-hour shift, and 8 on-call hours. These shifts increase her symptoms, and between shifts she attempts to rest and ice her shoulder. Claimant testified she intends to pursue additional college coursework, as she does not believe herself physically capable of performing paramedic work on an extended basis. As of the date of evidentiary hearing, claimant had made

arrangements to engage in job shadowing of a funeral director in order to determine if she is interested in such a career path. She had not actively engaged in a search for alternative employment. Following the work injury, claimant has continued to receive annual raises. (Claimant's testimony)

### CONCLUSIONS OF LAW

The sole issue for determination is the extent of claimant's permanent disability.

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 parties have stipulated claimant's disability shall be evaluated industrially.

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.

Claimant was 33 years of age as of the date of evidentiary hearing. She graduated from high school and subsequently pursued one year of postsecondary education in criminal justice. Although claimant has not earned a postsecondary degree, claimant successfully earned certificates as a paramedic and Firefighter 1. Claimant provided clear, descriptive, and knowledgeable testimony regarding her medical conditions. The undersigned believes claimant to be an intelligent individual, and she is of a younger age within the labor market; her candidacy for retraining, if necessary, is good.

Claimant's work experience includes limited periods as a restaurant server and prep cook; jailer for two years; security officer at a casino for two years; and her work for defendant-employer. Claimant began work for defendant-employer in July 2009 as an

EMT. In August 2010, defendant-employer hired claimant as a paramedic; claimant remained employed by defendant-employer as a paramedic at the time of evidentiary hearing.

As a result of the stipulated work injury, claimant was diagnosed with a left shoulder SLAP tear. Claimant initially received conservative treatment, including use of a sling, pain medication, and injections of the subacromial space and biceps tendon sheath. These treatments failed to resolve claimant's symptoms, resulting in an arthroscopy and SLAP tear repair on September 17, 2013. Post-surgery, claimant was treated with use of an immobilizer, work restrictions, physical therapy, pain medications, and an injection of the glenohumeral joint. However, claimant ultimately required surgical revision of the SLAP repair on April 15, 2014. Thereafter, claimant underwent additional treatment including immobilization and physical therapy. Six months following revision, Dr. Jackson opined claimant had achieved MMI.

Two physicians offered opinions regarding the extent of claimant's functional impairment as a result of the stipulated work injury. Treating surgeon, Dr. Jackson, opined claimant sustained a 1 percent left upper extremity impairment, the equivalent of a 1 percent whole person rating. Dr. Jameson opined claimant sustained a 2 percent whole person impairment. Both physicians based claimant's impairment upon decrements in range of motion and reached consistent opinions with respect to the extent of claimant's functional impairment.

Following the course of treatment, Dr. Jackson released claimant to return to full duty work, as requested by claimant. Claimant explained her work as a paramedic is actually less taxing on her shoulder, as she is often allowed an opportunity to rest her shoulder while working as a paramedic. Her light duty assignment, on the other hand, had required constant motion. Dr. Jameson recommended permanent restrictions of no lifting greater than 10 pounds above chest height with the left upper extremity and no pushing, pulling, or lifting greater than 50 pounds repetitively. Claimant did not undergo any form of functional capacity evaluation to determine her functional abilities post-injury.

After securing a release from Dr. Jackson, claimant returned to work without formal restrictions in her pre-injury position as a paramedic for defendant-employer. However, claimant credibly testified she does not perform all the essential functions of her paramedic position. She credibly explained she modifies the manner in which she performs certain tasks, but also has relied heavily upon her permanent partner. This partner willingly performs the majority of heavy lifting tasks and drives the extended call distances. Claimant testified she is also unable to perform extended CPR, meaning this responsibility would also fall upon her partner. While claimant has returned to her pre-injury position, the undersigned finds she is not fulfilling all the requirements of her job as a result of her physical limitations. It is very likely claimant would have been

physically unable to return to her pre-injury position were it not for the informal accommodations offered by her permanent partner.

Although performing less than the full range of her job duties, claimant has successfully maintained her employment with defendant-employer as a paramedic. Claimant has not suffered any loss of earnings as a result of the work injury; she has received annual raises since the stipulated work injury on November 1, 2012. Claimant's employment as a paramedic has brought her the highest wages of her working career. As a paramedic, claimant's hourly wage is \$13.50 per hour; this wage is \$3.50 per hour higher than her highest wage in any prior employment. Despite expressing interest in further education and new career possibilities, claimant has not actively sought any alternative employment.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 20 percent industrial disability as a result of the stipulated work-related injury of November 1, 2012. Such an award entitles claimant to 100 weeks of permanent partial disability benefits (20 percent x 500 weeks = 100 weeks), commencing on the stipulated date of October 17, 2014. The parties stipulated defendants previously paid 5 weeks of permanent partial disability benefits at the weekly rate of \$490.10. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were \$697.04, and claimant was married and entitled to five exemptions. The proper rate of compensation is therefore, \$490.10.

#### ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant one hundred (100) weeks of permanent partial disability benefits commencing October 17, 2014 at the weekly rate of four hundred ninety and 10/100 dollars (\$490.10).

Defendants shall receive credit for benefits paid.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).



Costs are taxed to defendants pursuant to 876 IAC 4.33.

Signed and filed this 26<sup>th</sup> day of April, 2016.



ERICA J. FITCH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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EJF/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.