BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD CHRISTIANSON,

Claimant,

vs.

SNAP-ON TOOLS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5038898

REVIEW-REOPENING

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Ronald Christianson, has filed a petition in review-reopening and seeks workers' compensation benefits from Snap-On Tools, Inc., employer, self-insured defendant.

This matter was heard by Deputy Workers' Compensation Commissioner Ron Pohlman in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1 through 12; defendant's exhibits A through J, as well as the testimony of the claimant.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant is entitled to additional permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u);

2. Whether the defendant is entitled to apportionment under Iowa Code section 85A.7; and

3. Whether the claimant is entitled to payment of medical expenses including a home air purification system and other expenses shown in claimant's exhibit 11.

FINDINGS OF FACT

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

On June 4, 2013, an arbitration decision was issued by Deputy Workers' Compensation Commissioner David Rasey, which found claimant had developed

occupational asthma as a result of exposure to harmful fumes, vapors, and smoke at Snap-On Tools. The claimant was awarded a running award of healing period benefits and the issue of permanent disability was not addressed as it was determined it was not ripe.

On February 7, 2014, the claimant filed a petition in review-opening.

At the time of the review-reopening hearing, the claimant was 59 years old. He is a high school graduate and attended two years of community college in retail marketing. He then took classes in elementary education at Buena Vista University but never graduated. The claimant worked briefly in unskilled labor before he was hired in 1979 by Snap-On Tools. He continued to work at Snap-On Tools until he was advised not to return to work by his physician on December 2, 2011. The claimant's primary work at Snap-On, involved welding.

The claimant's treating physician for his work injury has been Arvind M. Perathur, M.D. Dr. Perathur saw the claimant on June 27, 2014 and noted the claimant was in worse condition:

> Overall I think his breathing is a little worse compared to what it was. I would now grade his asthma as moderate persistant [sic]. Hence further increasing the step Rx is going to help.
>
> He is diabled [sic] from his lung. Any humidicty [sic] or temperature change and exposure to perfume will bring on his symptoms. He has been given a prescription of a hospital grade air conditioner.

(Exhibit 1, page 37)

In his deposition, Dr. Perathur was asked about claimant's ability to work:

> Q. So if the environment were a clean environment where he wasn't going to be exposed to cold or excessive heat or smoke, say, an office-type environment, would there – there wouldn't be any reason that he couldn't go full time in that type of environment, would there?
>
> A. So my fear as a physician when I was taking care of him – as I'm still taking care of him – one of the things we try to do is – for younger patients we don't want them to go out of work completely because that, in fact, tends to worsen their overall decline. So my point to him was, given his age and given the situation, I thought that it would be worthwhile for him to consider some kind of work environment to keep him, you know – to help prevent such a decline because as I told you, deconditioning is something that tends to set in, and then it can spiral down.

(Ex. I, pp. 32-33)

The claimant was sent by the defendants to Patrick Hartley, M.D., at the University of Iowa Hospitals and Clinics, for an independent medical evaluation on January 15, 2013. Dr. Hartley opines that the claimant has a 21 percent impairment of the whole person as a consequence of asthma. With respect to restrictions, Dr. Hartley opines:

> Work Status
>
> I would recommend that Mr. Christianson not work in an environment where he is exposed to fumes, smoke, dust or irritant chemicals. Because we do not know whether he is sensitized to something in his workplace, it is difficult to state whether use of a respirator would provide sufficient protection to allow him to resume working in his former position at Snap-On Tools. I would recommend that these restrictions be considered permanent.

(Ex. E, p. 53)

Dr. Hartley in a follow up report on January 9, 2015, after having reviewed Dr. Perathur's report of June 27, 2014 indicated that the claimant should avoid extremes in temperature and humidity. Further, he indicated it would be difficult to state whether the use of a respirator would provide sufficient protection to allow him to resume working in his former position at Snap-On Tools. With respect to future medical care, Dr. Hartley opined:

> Mr. Christianson will need to have follow-up care for his asthma. He should be followed by a pulmonologist or primary care provider on at least an annual basis, and should have spirometry performed annually to assess his pulmonary function. He is currently on a number of prescription medications which will need to be refilled periodically. He may experience periodic exacerbations of his asthma associated with viral respiratory tract infections or other nonspecific triggers, and exacerbations may necessitate treatment with prednisone, and more severe exacerbations may necessitate visits to an urgent care clinic or Emergency Department.

(Ex. E, p. 63)

On December 1, 2014, Joel Kline, M.D., a professor of medicine and director of the University of Iowa Asthma Center, opined after examination of the claimant that he had sustained a 25 percent permanent impairment of the whole person. See Exhibit E, page 54. The claimant obtained a vocational evaluation from Rick Ostrander on December 5, 2012. Mr. Ostrander opined based upon limitations identified by Dr. Perathur on August 22, 2012 that there would be no work within the labor market for which the claimant would have the necessary physical and vocational capabilities and thus he had sustained a 100 percent loss of earning capacity.

REASONSING AND CONCLUSIONS OF LAW

The first issue in this case is the extent of claimant's entitlement to permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u).

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.

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

The claimant has substantial restrictions from his treating physician and from the defendant's independent medical evaluator. He cannot return to the job that he performed for nearly all of his career. He has substantial permanent impairment as a result of this work injury. Claimant is currently receiving Social Security Disability benefits which while not determinative for his disability for workers' compensation purposes does indicate that his prospects for employment in the labor market are in the view of the Social Security administration severely limited.

The defendants obtained a vocational evaluation from Scott Mailey, which indicated that claimant was capable of performing 60-70 percent of all the jobs in the labor market even with his restrictions. See Exhibit F. The defendants contend the claimant lacks motivation because he has not sought work since he left his job at Snap-On. Mr. Mailey's opinion had indicated that claimant had been denied Social Security Disability benefits, which is not correct. Further, it does not appear that Mr. Mailey took into account that there are a number of triggers that may light up the claimant's asthma condition that would likely be found in work environments outside of that at Snap-On. The claimant's medical condition is so severe that his treating physician has recommended a hospital grade air conditioner to be installed in the claimant's home. It is logical that if the claimant is impacted by the air in the home environment he would have difficulties in other work environments besides Snap-On Tools. The claimant has some education but it is so far back in his career that it is unlikely to be of much value if any to him at this point in re-entering the workforce. The undersigned concludes based upon this record that the claimant is permanently and totally disabled.

The next issue is whether apportionment pursuant to Iowa Code section 85A.7 applies.

This code section indicates that the compensation payable to the claimant is reduced "the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease was the sole cause of the disability or death, as such occupational disease bears to all the causes of such disability or death." Iowa Code section 85A.7.

Defendants argue that based upon Dr. Perathur's testimony that the claimant's symptoms had improved from 60-70 percent after he had been removed from the work environment but this is a little inconsistent because Dr. Perathur then goes on to agree to counsel's question that 60-70 percent of his condition was related to work exposure. Defendants ultimately argue that whatever industrial disability the claimant is awarded must be reduced by 40 percent based upon these answers from Dr. Perathur. It's doubtful that Dr. Perathur understood what he was being asked to opine. Dr. Perathur, Dr. Kline, and Dr. Hartley have all opined as to the claimant's permanent impairment and work restrictions and in no case did they indicate that that impairment was due to anything other than the work exposure. The apportionment is an affirmative defense and the greater weight of evidence does not indicate that the defendants have established this affirmative defense. Defendants are not entitled to apportionment under 85A.7.

The final issue is whether the claimant is entitled to payment of medical expenses and in this case payment for the hospital grade air conditioner pursuant to Iowa Code section 85.27.

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-Reopening October 1975).

After the arbitration hearing, the defendants accepted the claim and paid Dr. Perathur's medical bills. As such, they accepted Dr. Perathur as the authorized and treating physician in this case. Dr. Perathur has recommended the hospital grade air conditioner which has been beneficial for treatment of the claimant's condition. The claimant has established that this is a reasonable and necessary medical expense to treat his work injury and defendants shall pay the costs for this expense directly and reimburse claimant for the portion he has paid himself.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant permanent total disability benefits commencing October 31, 2014 at the weekly rate of five hundred thirteen and 82/100 dollars ($513.82).

Defendant shall receive credit for benefits previously paid.

Accrued benefits shall be paid in a lump sum together with interest pursuant to Iowa Code section 85.30, with subsequent reports of injury filed as directed by this agency.

Defendant shall pay claimant's medical expenses directly and reimburse those portions that he has personally paid for the hospital grade air conditioner.

Costs of this action are taxed to the defendant pursuant to rule 876 IAC 4.33.

Signed and filed this 28th day of August, 2015.

Ron Pohlman

RON POHLMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Willis J. Hamilton
Attorney at Law
PO Box 188
Storm Lake, IA 50588
willis@hamiltonlawfirm.com

Joseph A. Quinn
Attorney at Law
700 Walnut, Ste. 1600
Des Moines, IA 50309-3899
jquinn@nyemaster.com

RRP/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.