BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMIE LADEHOFF, Claimant, vs. MENARD, INC., Employer, and AMERICAN ZURICH INS. CO., Insurance Carrier, Defendant.	File No. 5043851 APPEAL DECISION FILED OCT 14 2015 WORKERS' COMPENSATION Head Note No.: 1803

Defendants Menard, Inc., and American Zurich Insurance Company appeal from an arbitration decision filed September 26, 2014. The case was heard on May 15, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 4, 2014.

The deputy commissioner awarded claimant 20 percent industrial disability.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to 20 percent industrial disability. Defendants assert that the award of industrial disability should be reduced. Claimant asserts that the findings of the deputy commissioner should be affirmed.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I modify the determination of the deputy commissioner and I find that claimant sustained industrial disability of ten percent related to the work incident of January 27, 2012.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of September 26, 2014, filed in this matter that relate to issues properly raised on intra-agency appeal, that are not otherwise modified, with the following additional analysis:

Claimant sustained a quite significant injury on January 27, 2011. She was working at a distribution warehouse for Menard's in Shelby, Iowa. A co-worker made an

error while operating a fork lift and a pallet and its contents fell from a significant height and hit claimant on the head and left hand.

Claimant was knocked unconscious for a short period of time. She required seven staples and 45 stitches to close the lacerations on her head. She also suffered tendon damage in her left hand, which required surgical repair on March 3, 2011. Claimant's left hand recovered very well and she is left with no permanent work restrictions for her left hand and a four percent impairment of the left hand as a result of the left ring finger tendon injury according to the treating orthopaedic surgeon, Nicholas B. Bruggeman, M.D. (Exhibit 5, page 12)

Claimant's head and neck injuries resulted in some vertigo, which was ultimately treated with an Epply procedure (a positional, non-invasive procedure) which corrected the problem. The treating neurosurgeon, Guy A. Music, M.D., opines that claimant reached maximum medical improvement from her head and neck injuries on June 20, 2012. He assigned a two percent whole body permanent impairment rating for the head and neck injuries. (Ex. 8, p. 16)

Dr. Music diagnosed claimant with ongoing intermittent headaches and an ongoing intermittent cervical strain. He indicated claimant's only real ongoing symptoms at the time he released her from care was tightness and pain in her right shoulder region when she performed one specific job task, a tug. Therefore, the only permanent medical restriction Dr. Music imposed was to preclude claimant from the operation of a tug at work. (Ex. 8, pp. 15-16)

Defendants also obtained independent medical evaluations performed by Dean Wampler, M.D., and Donald Gammel, M.D. Dr. Wampler identified a one percent left hand impairment resulting from claimant's left ring finger injury. He also identified a two percent permanent impairment related to claimant's right shoulder symptoms. (Ex. C)

Dr. Gammel opined that claimant sustained a six percent permanent impairment of the left fourth finger. He also opined that claimant has no permanent impairment as a result of her head and neck injuries. Dr. Gammel opined that claimant is at maximum medical improvement and requires no permanent restrictions. (Ex. B)

Despite the initial severity of the injuries, claimant has experienced a very good recovery. She missed only a couple of days of work after her left hand surgery. Claimant's only restriction is prohibition of the use of a tug at work, which claimant says is because she has difficulties working overhead. No physician has specifically imposed a restriction against overhead work.

Claimant remains employed in her pre-injury position with Menard's but is no longer required to use the tug. She has received raises and intends to continue working for Menard's. She has little, or no, actual loss of earnings as a result of this injury. She has a very minor restriction, which really only applies to her current job. I find there is

very little actual impact upon claimant's future earning capacity as a result of this accident.

Claimant is now 38 years of age. She has restaurant experience as a shift supervisor at Pizza Hut for five years. She remains employable in the general labor market and she has not lost significant access to the labor market as a result of this injury.

Defendants contend that the deputy commissioner's award of twenty percent industrial disability is excessive. Considering claimant's age, employment history, educational background, ability to return to her pre-injury job, her lack of permanent medical restrictions other than the operation of a tug, the minimal permanent impairment ratings, as well as all other industrial disability factors outlined by the Iowa Supreme Court, I find that claimant has proven a ten percent loss of future earning capacity.

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 is determined to have sustained a ten percent loss of future earning capacity. Therefore, claimant is entitled to an award of ten percent industrial disability. This entitles claimant to 50 weeks of permanent partial disability benefits. Having reached this conclusion, I further conclude that the arbitration decision's orders should be modified to reflect my findings and conclusions. I affirm the arbitration decision in all other respects.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of September 26, 2014, is modified.

Defendants shall pay fifty (50) weeks of permanent partial disability benefits at the rate of three hundred thirty-five and 78/100 dollars ($335.78) per week commencing on January 21, 2012.

All other orders contained in the September 26, 2014, arbitration decision are affirmed.

All costs associated with this appeal are taxed to claimant.

Signed and filed this 14th day of October, 2015.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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