

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CAMERON L. WALKER,

Claimant,

vs.

PMX INDUSTRIES, INC.,

Employer,

LIBERTY MUTUAL INS. CO., :

Insurance Carrier,
Defendants.

File No. 5044477

ARBITRATION

DECISION

FILED

SEP - 4 2015

WORKERS' COMPENSA. 1

Head Note No: 1803

STATEMENT OF THE CASE

Cameron Walker, claimant, has filed a petition in arbitration and seeks workers' compensation benefits from PMX Industries, Inc., employer, and Liberty Mutual Ins. Co., insurance carrier, defendants.

This matter came on for hearing before deputy workers' compensation commissioner, Jon E. Heitland, on April 15, 2015, in Cedar Rapids, Iowa. The record in the case consists of claimant's exhibits 1 through 15; defense exhibits A through Q; as well as the testimony of the claimant and Jennifer Meadows.

ISSUES

The parties presented the following issues for determination:

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

FINDINGS OF FACT

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

Cameron Walker testified he is 48 years old. He lives in Toddville, Iowa. He is right hand dominant. He is married, and has a 22-year-old son at home.

On January 19, 2010, claimant had a stipulated work injury. Claimant worked at PMX Industries in Cedar Rapids. The plant manufactures copper and brass products. It is a large employer, running several shifts. His job involved rolling copper and brass into two different machines. Claimant worked there 17 years and was a union member. He did different jobs in the same part of the plant. The last job he performed there was driving a forklift, for about a year. He earned about \$17.00 or \$18.00 per hour, with benefits. The union was UAW. He no longer works there.

On the date of injury, claimant was working on a mill which prepares sheets of metal for the U.S. Mint for the production of coins. This was before his fork lift job. His job was to set up the machine and operate it. It was a physical job at times. Claimant slipped on an absorbent pad on the floor which was covered with oil and fell back into a gate. He felt immediate sharp pain in his back.

His injury eventually resulted in three back surgeries, one by Chad Abernathy, M.D., and two by David Segal, M.D. The last one was a fusion of his low back.

Claimant had a prior back injury while working at PMX in 1995. He was able to come back to work without any restrictions.

After his first surgery with Dr. Abernathy on January 21, 2011, claimant had some relief when he was resting, but had back pain when working. The second surgery was on June 11, 2012. The third surgery was in August 2013, by Dr. Segal. By then claimant was driving a fork lift.

After the third surgery, claimant was returned to full duty without any restrictions. However, he had continuing pain. He reported the pain and Dr. Segal gave him a restriction of not driving a fork lift. He was shifted to a tandem mill job, but the bending and twisting in that job also caused back pain. Claimant was moved around to different jobs and was put on the night shift for a time. Claimant asked for more physical therapy, which was not beneficial. He was put on light duty by Dr. Segal. PMX put him on medical layoff.

Claimant has not worked since being put on medical leave. Claimant understands medical leave means that if claimant gets better within five years he can return to his job. Claimant feels the restrictions are appropriate.

He feels his symptoms today have been about the same for some time. The pain is in his low left back, just to the left of the spine. He describes the pain as moderate, a four or five on a scale of ten, and constant. It radiates to his left knee and left foot, which goes numb. The pain comes around the hip to the front of his leg. He takes Ibuprofen, and uses a TENS unit. He has trouble bending without pain, he avoids heavy lifting and complies with his 20 pound lifting restriction. He is not to sit more than 30 minutes. If he sits too long, his foot goes numb and produces a pins and needles

pain. If he stands too long, he has increased pain over his chronic pain. The same is true for walking.

He does not feel he could return to his old jobs at PMX with his current back condition. All the jobs required lifting up to 50 pounds, which he can no longer do due to his restrictions. They also involve bending, twisting, etc. which he cannot do.

In 1993, claimant had an arthroscopic procedure on his right knee. He has had torn rotator cuffs in both shoulders. These conditions were while working at PMX, but he has no work restrictions from them. He has had a partial amputation of his left thumb, which happened at PMX. It interferes with his ability to grasp or hammer things. He has a loss of dexterity in the thumb.

He has a high school diploma and some college work but no degree. He studied communication electronics in 1994 to 1997, but things have changed greatly in that field since then. He does not type but "hunts and pecks" on a keyboard.

Since leaving PMX, he has done job searches online. When he was getting unemployment benefits, he kept track of these searches, but has not since. PMX hired Candace Kaelber to help claimant find a job beginning in November 2014. Claimant met with her several times. She helped him with interviewing skills and sent him job contacts, which he pursued. He has had some callbacks, but no formal interviews. He has not found a job.

He began working with Iowa Vocational Rehabilitation a short time ago. He has taken tests with them, passing the first course the week before the hearing, which was an introduction to setting up a computer network within an office. He does not feel this will lead to any job. The next course is intermediate networking, which has not yet begun. He is not certain what jobs these courses might lead to.

He feels he needs to find an independent contractor position so he can control his work duties, given his restrictions. He feels they would affect his ability to be somewhere forty hours a week working for someone else. He has been turned down for Social Security Disability benefits.

He is no longer able to do recreational activities. A typical day involves getting up around 5 or 6 a.m., taking the dog out, watching television, and relaxing in a recliner much of the time for his back pain. He takes a shower. He only eats one meal per day, in the evening, with his wife. He will play "fetch" with his dog in the yard. If he goes for a walk, he can walk at most a half mile, but this results in pain and numbness in his foot. He does some vacuuming around the house, a little dusting. His wife does the laundry. He mows the lawn with a riding mower, and does some snow removal with a self-propelled snow blower. His sleep is disrupted, as it is hard to find a comfortable spot, and he wakes up many times per night. He and his wife had to buy a Sleep Number bed, which helps somewhat. He has changed to special slip-on shoes because he has

pain when he bends over to put on socks and shoes. He cooks the evening meal for him and his wife, then spends the evening watching television. They go out to eat every Friday. He and his wife go grocery shopping every Saturday, but he waits in the car.

He likes computers. He has built his own computers in the past, assembling a motherboard, video card, operating system, etc. This led to his interest in the networking classes. Currently, he does not have the level of energy he once had. He used to come home from work and do yard work, but now his fatigue level is very high. He naps more than ever before. He has had treatment for ADHD in the past, so he was hyper-active even as an adult, but now he moves at a much slower pace.

He will be attending a pain clinic, which has been approved by the employer. This will be in Waterloo at a hospital, but that is a 40-minute drive and with his sitting restrictions he will have to stop along the way. There are pain clinics in Cedar Rapids. He is not currently on any narcotic pain medication, but he was with some of his surgeries.

On cross examination, he agreed his wife does not attend doctor's appointments with him. His prior back condition before this injury was in 1994, with surgery at L4-L5. William Roberts, M.D., who performed the surgery, imposed permanent work restrictions as well as vocational retraining, but claimant was not aware of that. He did attend Kirkwood Community College after that, and had a 3.5 grade point average, although he did not complete the certification. In 1998, he reported pain in his low back while lifting a coil. In 2000, he reported low back and left leg pain after bending over to pull a strap. In 2005, he received a seven percent body as a whole rating and he was compensated for that. He agreed he continued to have left leg pain and cramping in 2007.

He denied having a history of being treated for depression. He has been on medications but he thought they were for his ADHD. He has continued on those medications even after this injury.

Claimant was fired from his job he had just before working for PMX. Prior to that, he worked for Kay's Merchandise. He was fired from that position as well, although claimant states there was a dispute over that. When he was hired at PMX, he did not disclose any permanent work restrictions from Dr. Roberts as he was not aware of them.

Immediately after the injury, he had low back pain and pain in his right leg. When he was seen shortly thereafter by Jeffrey Westpheling, M.D., he reported left leg pain. On February 9, 2010, claimant reported to Dr. Westpheling left leg pain, not right leg symptoms. Claimant saw Dr. Westpheling four or five times, and reported left leg pain each time. During multiple physical therapy sessions, he also only reported left leg pain. In February 2010, claimant received an epidural injection, and again, only left leg symptoms were reported.

Claimant saw Dr. Abernathey in March, 2010. His notes show claimant had similar symptoms to what he had reported over the prior five years. Claimant was released to full duty and returned to his old job, full time and full duty. Claimant agreed he did not report symptoms in his right leg until several months after the injury.

In the summer of 2010, claimant met with Mercy Care doctors. On May 7, 2010, he reported fatigue. He later reported cardiac issues, but did not report back pain. On July 15, 2010, August 6, 2010, and August 16, 2010, he was seen for heart and chest conditions, but did not report back or leg pain. He did not report back pain until September 24, 2010, nine months after the injury.

On March 11, 2011, Dr. Abernathey again returned claimant to work with no restrictions. Claimant was happy with the result of his surgery.

In his application for Social Security Disability benefits, he made them aware of all of his conditions, but he was denied benefits. They found him able to have full use of his arms, legs and back, and although he could not return to his past work, his condition was not severe enough to keep him from working.

His thumb amputation does not prevent him from doing computer work or his online courses. He agrees he is computer "savvy". He agreed Candace Kaelber has provided him with positions in the Cedar Rapids area where he might obtain employment using the certification he is pursuing. These jobs pay anywhere from \$45,000.00 to \$90,000.00 per year. He has two more courses to complete and there are additional ones in wireless networking. He agreed he has not applied for any production or non-production jobs at PMX. He is aware he can do so online.

The courses he took in 1994 to 1997 at Kirkwood were in the communications field. He worked at Kirkwood while a student there running a video system for the classrooms.

Jennifer Meadows testified she works at PMX Industries and has been there 11 years. She is familiar with claimant. She has had discussions with him about re-applying for positions at PMX. He is free to come to the plant, check the bulletin board, etc. He is technically still an employee under the union contract, for four more years. He can bid for a position. They are also online, and applications can be submitted online.

There are jobs available in both production and non-production jobs. They also have their own IT department, and positions are available there. Claimant has not applied for any positions since leaving in 2014.

During one of her conversations with claimant, claimant stated a goal of retiring at age 45, and talked about his 401(k). Earlier in his testimony, claimant indicated employment was important to him.

On questioning by the undersigned, Ms. Meadows indicated there are currently no IT jobs available at PMX, and there are no production jobs available within claimant's permanent restrictions.

CONCLUSIONS OF LAW

The first issue in this case is the extent of the claimant's entitlement to permanent partial disability benefits.

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.

As a result of his work injury, claimant underwent three surgeries, including a fusion procedure. After his last surgery, he tried to return to work but continued to have pain in his back, radiating down into his left leg.

Claimant had worked at a forklift job, but Dr. Segal's restrictions prevented him from returning to that job. Claimant had to be transferred to other jobs, but he had pain with the bending and twisting. Most of the employer's jobs required a 50-pound lifting ability. Jennifer Meadows, on behalf of the employer, confirmed PMX had no job for claimant within his restrictions.

A Functional Capacity Evaluation (FCE) in December 2013 showed claimant was only capable of light work. (Exhibit 2, p. 1) Claimant was placed on medical layoff based on Dr. Segal's permanent work restrictions. Those restrictions included working light duty, lifting no more than 20 pounds, sitting no more than 30 minutes per hour, and

no bending or twisting. (Ex. 3, p. 35) It was noted sitting, standing, bending, lifting, twisting, and walking aggravated his condition. Dr. Segal recommended claimant be allowed to alternate between sitting, walking, and/or standing as needed, and not walk or stand over 20 minutes. Dr. Segal found claimant to have a 20 percent permanent partial impairment of the body as a whole. (Ex. 3, p. 34-39)

Claimant was also evaluated for an independent medical examination (IME) by Robin Sassman, M.D. (Ex. 1, p. 8) Dr. Sassman found a 30 percent permanent partial impairment of the body as a whole, as well as restrictions of not lifting, pushing, pulling or carrying over 10 pounds occasionally below waist level, 20 pounds occasionally from waist to shoulder, and 10 pounds occasionally above shoulder height, with only occasional sitting, standing and walking and ability to change positions frequently. (Ex. 1, p. 19)

Claimant was never able to return to his old job, or any job at PMX, as the employer had no job within his restrictions. Although claimant did state he hoped to retire at 45, after he was injured, he showed good motivation to find substitute work by attending vocational rehabilitation. He also undertook an online course in computer networking. He is interested in computers but lacks basic typing skills. He hopes to work as an independent contractor so he can set his own hours and work within his restrictions.

He has searched for a job through Corridor Careers, and, shortly before the hearing, state vocational rehabilitation, who recommended he could benefit from further vocational services. (Ex. 10; Ex. 9, p. 2) Defendants provided a vocational counselor, Candace Kaelber, who provided him with job leads. Claimant attempted 36 job leads during February and March 2015, with no job offers or even interviews. Some of the potential employers cited his work restrictions as prohibiting employment with them. (Ex. B, p. 12) Some of the jobs suggested by Ms. Kaelber required a computer certification claimant does not yet have.

Claimant was also evaluated by Kent Jayne, a vocational expert. Claimant met with him in December 2014. Mr. Jayne concluded, "The combination of Mr. Walker's physical limitations...and his residual vocational capacities tested here, would preclude Mr. Walker from competitive employment in any reasonably stable branch of the labor market at the present time." (Exhibit 8, p. 12)

Claimant was 48 years old at the time of the hearing. His education consists of a high school diploma, with some community college courses but no degree. Since his injury, he has pain on the left side of his low back, which radiates down into his left leg into his knee and foot. That pain is aggravated when he sits, stands or walks. He has had to give up his hobbies of hunting, fishing and golfing. He now suffers from fatigue and has sleep disruption due to his pain. He has to wear a TENS unit and use slip on shoes due to his back pain when bending. He cannot ride in a car for long distances due to his pain.

Defendants argue claimant is not permanently and totally disabled because once he obtains his certified computer network administrator (CCNA) certificate, he can be expected to earn from \$40,072.00 to \$93,797.00 annually. (Ex. B, p. 18) However, claimant has not obtained that certificate. He has not completed educational requirements for that or any other computer related job. It would be speculative to base claimant's analysis of industrial disability on a computer certification he may or may not achieve, and on a job in the computer field he may or may not obtain. This analysis must be limited to the record made at the hearing and claimant's situation as of that date.

Claimant's work injury has resulted in a severe low back pain condition that also affects his left leg. He has high ratings of permanent impairment of the body as a whole. He has severe work restrictions. He is not able to do his old job, or any other job, with the employer. He has not been able to obtain other employment, as employers have no job for him with his work restrictions. His pain has severely affected his personal life. He has shown good motivation to find other work and to further his education, but without success.

It is concluded claimant is, as a result of his work injury, permanently and totally disabled. This conclusion is reached under traditional industrial disability analysis and without resort to the odd lot doctrine.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay unto the claimant permanent total disability benefits at the rate of five hundred forty-eight and 66/100 dollars (\$548.66) per week commencing March 12, 2004, and during the time claimant remains permanently and totally disabled.

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 be given credit for benefits previously paid.


Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

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.

Signed and filed this 4th day of September, 2015.



JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date below, 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.