BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GREG RING,

Claimant,

vs.

CRESLINE PLASTIC PIPE CO, INC.,

Employer,

and

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

Insurance Carriers,
Defendants.

File No. 5049260

ARBITRATION DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Greg Ring, has filed a petition in arbitration and seeks workers' compensation benefits from, Cresline Plastic Pipe, employer, and Travelers Insurance Company, insurance carrier, defendants.

Deputy workers' compensation commissioner, Stan McElderry, heard this matter in Council Bluffs, Iowa.

ISSUE

The parties have submitted the following issue for determination:

1. The extent of permanent industrial loss from an injury arising out of and in the course of employment on or about February 5, 2010.

FINDINGS OF FACT

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

The claimant was 55 years old at the time of hearing. The claimant did graduate high school. He has no additional formal education. He began working for Cresline Plastic Pipe in 1978 in production (briefly) and then in the shipping department. Cresline is a manufacturing and distribution facility for PVC sewer line pipe.

He suffered a stipulated injury arising out of and in the course of his employment with Cresline on or about February 5, 2010, when he slipped on ice obscured by snow.

The back of his head was the first thing to hit the ground. He was found unconscious and shortly thereafter transported by ambulance to the Mercy Hospital emergency room (ER). ER records show a diagnosis of concussion. (Exhibit 1, page 3) Follow-up care was with James G. Kalar, M.D., at Mercy Hospital Occupational Health Clinic. (Ex. 2) Treatment was conservative for claimant's severe headaches, neck pain, blurred vision, vertigo, and left shoulder pain. For the left shoulder pain the claimant was referred to R. Michael Gross, M.D. (Ex. 3) Dr. Gross diagnosed a high grade partial tear of the supraspinatus tendon. (Ex. 3, p. 2) Dr. Gross felt the matter was on the bubble for surgery, and between him and the claimant, conservative treatment was elected. Later, Dr. Gross diagnosed a bulge at C6 which he believed to also be a result of the fall injury. (Ex. 3)

The claimant continued treating with Dr. Kalar and was eventually referred to Andrew S. Lee, M.D. (Ex. 4) Claimant first saw Dr. Lee on April 27, 2011. Dr. Lee treated the claimant up until releasing him on January 2, 2013 as at maximum medical improvement (MMI). (Ex. 4, pp. 35-37) Dr. Lee rated the claimant as having a 17 percent of the body as a whole (BAW) impairment from the concussive (including cognitive deficits) disorder, bulging C6 disc, and left shoulder rotator cuff tear. (Ex. 4, p. 36) Dr. Lee did not rate the claimant's reported vision deficits and recommended this be done by a neuro-ophthalmologist. (Ex. 4, p. 36) Dr. Lee imposed restrictions of limiting overhead work and that claimant "should never perform any activities that would require any balance more complicated than walking." (Ex. 4, p. 34)

The claimant also had a neuropsychological evaluation performed by Richard L. Bowles, Psy.D., ABN. Dr. Bowles diagnosed permanent brain injury with cognitive disorder, adjustment reaction, and pain disorder. (Ex. 5) The claimant was referred to Kerri Dietz-Pillen, O.D., F.C.O.V.D., for the visual problems including sensitivity to light. (Ex. 6) She rated the claimant as having a 19 percent impairment of the whole person due to impairment of the visual system. (Ex. 6, p. 7)

The claimant saw Sunil Bansal, M.D., for an independent medical evaluation. (Ex. 8) Dr. Bansal rated the claimant as having an 18 percent BAW impairment, not including visual impairment. (Ex. 8, p. 25) Dr. Bansal also opined restrictions of:

> No safety sensitive duties, such as climbing ladders or operating machinery, secondary to his headaches, memory difficulties, and dizziness. Avoid walking on high elevations secondary to balance issues.
>
> Occasional overhead lifting only, and avoid overhead lifting with the left arm.
>
> He needs to avoid work or activities that require repeated neck motion or that place his neck in a posturally fixed position for any appreciable duration of time (greater than 15 minutes).

(Ex. 8, p. 25)

The claimant was a credible witness. His body movements, eye contact, cadence of testimony, speech patterns, general demeanor, and general consistency were all consistent with a very credible witness with some cognitive difficulties. The claimant's spouse was a very credible witness who was able to accurately convey the loss of abilities the claimant has suffered from the fall injury herein.

Claimant is a long-term and motivated employee who has worked for the same employer for over 3 decades. His combined impairment ratings are over 30 percent of the body as a whole. If he were to lose his current employment he would have difficulty finding other employment. This decision contemplates that the claimant will continue in his present employment. Considering the claimant's medical impairments, training, permanent restrictions, cognitive disorder, daily pain, as well as all other factors of industrial disability, the claimant has suffered a 55 percent loss of earning capacity.

On the date of injury the claimant was married, entitled to 2 exemptions, and had gross earnings of $1,703.00 per week. As such, his weekly benefit rate is $471.50. The parties stipulated that the commencement date for permanent partial disability was September 9, 2013.

REASONING AND CONCLUSIONS OF LAW

The issue is the extent of permanent disability.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 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 Elec. 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.

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.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961). 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).

Based on the finding that the claimant has suffered a 55 percent loss of earning capacity, he has sustained a 55 percent permanent partial industrial disability entitling him to 275 weeks of permanent partial disability pursuant to Iowa Code section 85.34(2)(u).

ORDER

THEREFORE IT IS ORDERED:

That the defendants shall pay the claimant two hundred seventy-five (275) weeks of permanent partial disability commencing September 9, 2013 at the weekly rate of four hundred seventy-one and 50/100 dollars ($471.50).

Defendants shall receive credit for all benefits previously paid.

Costs are taxed to the defendants pursuant to 876 IAC 4.33.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code Section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Signed and filed this 25th day of March, 2016.

STAN MCELDERRY
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 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.