BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MECENE LAGUERRE, Claimant, vs. JBS USA HOLDINGS, INC., Employer, and AMERICAN ZURICH INSURANCE CO., Insurance Carrier, Defendants.	File No. 21012994.01 ARBITRATION DECISION Headnotes: 1803, 1803.1, 2700

STATEMENT OF THE CASE

Mecene Laguerre, claimant, filed a petition for arbitration seeking workers' compensation benefits against JBS USA Holdings, Inc., employer, and its insurer, American Zurich Insurance Company. This case came before the undersigned for an arbitration hearing on March 1, 2023. The case proceeded to a live video hearing via Zoom.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted, and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 2, Claimant's Exhibits 1 through 8, and Defendants' Exhibits A through F. All exhibits were received without objection.

Claimant testified on his own behalf. Toni Daters testified on behalf of defendants. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties served their post-hearing briefs on April 14, 2023, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the stipulated injury is a cause of permanent disability; and

2. The nature and extent of claimant's entitlement to permanent disability benefits, if any.

FINDINGS OF FACT

Mecene Laguerre, claimant, was born in 1976, making him 46 years old on the date of hearing. (Exhibit F, Deposition Transcript, page 5) He was born in Haiti and his primary language is Haitian Creole. (See Ex. F, Depo. pp. 5, 7-8) Claimant received a high school education in Haiti before entering the workforce. (Hearing Transcript, page 17) While in Haiti, claimant ran a small business selling shoes, lotions, jewelry, and other small accessories. (Exhibit 5, p. 29) He moved to the United States in 2009. (Ex. F, Depo. p. 5) Since moving to the United States, claimant's work experience has consisted of work in meat packing plants for Butterball Turkey and Tyson Fresh Meats. (See Ex. 5, p. 29)

Claimant began working for JBS USA Holdings, Inc., defendant employer (hereinafter JBS), in April 2017. (Ex. 5, p. 29) Leading up to the date of injury, claimant worked in a position called "tongue cut-off." (Ex. 8, Depo. p. 12) In this position, claimant removed tongues from hog carcasses. (Id.) Claimant was in the process of qualifying for a different position called "snatch guts." (See id.)

On October 21, 2021, claimant's supervisor instructed him to work in a different position called "skinner." (Ex. 8, Depo. pp. 12-13) In this position, claimant and three other co-workers processed pig carcasses on a line. (Id.) Claimant was first in the line, meaning he had to inspect the hogs for feces. If the hog only had a small amount of feces, claimant would use a knife to cut out the problem areas. (Ex. 8, Depo. p. 14) If the hog was covered in feces, claimant and his co-workers had to remove it from the line and get it cleaned up. Immediately prior to the injury, claimant flagged a hog for feces. While trying to remove the hog from the line, claimant collided with a co-worker on the line named "Poppy." Unfortunately, Poppy was utilizing a mechanical Whizard knife, which lacerated claimant's right arm. (Hr. Tr., p. 20) As a result, claimant sustained a severe degloving injury to his upper right arm. (Joint Exhibit 1, p. 6)

Claimant was briefly taken by ambulance to an Ottumwa hospital before being transferred to the University of Iowa Hospitals and Clinics. (Ex. 1, p. 1) Once admitted, claimant's wound was irrigated with semi-sterile technique and dressed. (JE1, p. 31) On October 25, 2021, Robert Bertellotti, M.D. performed an excision and debridement with skin grafting from the right thigh. (JE1, pp. 32-33)

Over the next several days, the medical team at UIHC monitored claimant's condition. (JE1, pp. 35-42). Claimant reported significant ongoing pain, but maintained good sensation and motor function in his right forearm and hand. (JE1, p. 35). Claimant was discharged from the hospital on October 27, 2021. (See JE1, pp. 61, 66, 78)

Claimant attended several follow-up appointments at the UIHC burn and wound clinic. (JE 1) By November 5, 2021, claimant was reportedly doing well overall, with

minimal pain and intermittent itching. (JE1, p. 66) A photo was included in the medical record, showing a large rectangular patch of skin on the right thigh. (JE1, p. 69) The UIHC Burn Clinic observed that the graft appeared to be adhered well and vascularized. (JE1, p. 70) The UIHC Burn Clinic allowed claimant to return to work on November 15, 2021, provided he was able to work in a clean and climate-controlled environment. (JE1, p. 71)

On November 24, 2021, claimant reported that his right arm was healed; however, his thigh wound was still open and painful. (JE1, p. 78) The burn clinic described the thigh wound as partly healed and macerated. (Id.) On January 13, 2022, claimant reported significant pain over the donor site, as well as itching, tightness, and limited range of motion in his arm. (JE1, p. 91)

Despite his progress, claimant continued to report significant pain through March of 2022. (JE1, p. 98) Due to his significant hypertrophic scarring, which was "causing him functional limitations on his right upper extremity and significant pain[,]" claimant was scheduled to undergo pulse dye laser (PDL) and CO2 laser treatments. (JE1, p. 103)

Lucy Wibbenmeyer, M.D. performed PDL and CO2 laser procedures on June 16, 2022. (JE1, pp. 111-112) Dr. Bertellotti repeated the procedures on August 17, 2022. (JE1, pp. 124-125) Lastly, Dr. Mohr performed the procedures on October 6, 2022. (JE1, pp. 141-143)

Given claimant's persistent complaints of neuropathic pain, claimant was scheduled for a consultation with a pain clinic. (See JE1, p. 141)

Claimant presented for an initial evaluation with John Rayburn, M.D. of Iowa Ortho on October 17, 2022. (JE2, pp. 158-160) Claimant reported ongoing itching and burning pain in the right upper extremity since undergoing surgery in October of 2021. (JE2, p. 158) He further relayed that his right shoulder and neck will cramp when his pain is bad. (Id.) Claimant denied radiating pain down to his hand, and he did not describe any temperature or color changes. (Id.) Dr. Rayburn assessed claimant with neuralgia, myalgia, and chronic pain. (JE2, p. 160) He felt that claimant's symptoms stemmed from "some neuropathic issues in the graft site due to the extensive nature of his injury." (Id.) Dr. Rayburn switched claimant from gabapentin to Lyrica and told claimant he could consider a stellate ganglion block if he did not see significant progress with Lyrica. (Id.)

On November 14, 2022, claimant returned to Dr. Rayburn's office and reported he had not yet noticed much improvement with the use of Lyrica. (JE2, p. 162) Dr. Rayburn increased claimant's dosage and again discussed the possibility of a stellate ganglion nerve block. (Id.)

From a burn-related perspective, claimant was released to return to work without restrictions on November 17, 2022. The burn clinic deferred to Dr. Rayburn with respect to any pain-related restrictions. (JE1, p. 154)

The last medical record in evidence from Dr. Rayburn's office is dated January 23, 2023. (JE2, p. 170) Claimant reported that taking Lyrica in the morning, afternoon, and night was providing him with some relief of his symptoms; however, he noted that the effects of the medication typically wore off after 2-3 hours. (JE2, p. 171) Dr. Rayburn increased claimant's dosage and continued his restrictions. (JE2, pp. 171, 173)

Claimant is still working as a full-time employee for the defendant employer; however, he has not returned to his pre-injury position. (Ex. 8, Depo. pp. 9-10) He currently inspects pigs for feces. If he observes feces, he will mark the pig with a black marker and then someone will come and remove the carcass for cleaning. (Ex. 8, Depo. p. 10) Claimant works 10-hour days, five days per week. (Ex. 8, Depo. p. 23) Claimant will sometimes work a sixth day for less hours. (Id.)

In a letter, dated January 3, 2023, defendants asked Dr. Bertellotti to agree or disagree with several pre-written opinions. (Ex. B, pp. 26-28) Interestingly, instead of asking Dr. Bertellotti to provide an impairment rating, defendants asked Dr. Bertellotti to agree or disagree with the following statement:

> With respect to permanent impairment pursuant to the 5th Edition of the AMA Guides, you prefer your former colleague and Physical Medicine and Rehabilitation specialist Dr. Joseph Chen perform the rating, and you would defer to his rating.

(Ex. B, p. 27) Dr. Bertelloti agreed with the above statement. He further agreed that he would not assign any permanent restrictions and he did not have any immediate recommendations for further medical treatment. (Ex. B, p. 28)

Defendants directed claimant to Dr. Chen for an independent medical examination. (Ex. A, p. 1) The report notes that Dr. Chen has rated over 100 burn patients for workers' compensation purposes. (Ex. A, p. 6) The examination occurred on January 9, 2023. (Ex. A, p. 1) Dr. Chen collected a medical history from claimant, reviewed his medical records, and performed a physical examination. (See Ex. A, p. 1) It should be noted that Dr. Chen did not review all medical records from Dr. Rayburn. (See Ex. A, p. 1) On examination, claimant reported itching and numbness over his grafted area on the right arm. He further reported difficulty with reaching behind his right shoulder because of stiffness over the right biceps area. (Ex. A, p. 3)

Dr. Chen assessed claimant with a severe degloving injury, which resulted in hypertrophic scarring to the right upper arm. (Ex. A, p. 5) He opined that claimant's severe degloving injury is limited to the right arm/upper extremity, as he sustained no injuries to any other part of his body on October 21, 2021. (Id.) He further assessed claimant with cervical myofascial pain, with no evidence of cervical radiculopathy; however, he did not relate the same to the October 21, 2021, work injury. (Id.)

Dr. Chen placed claimant at MMI on November 17, 2022, and assigned nine percent right upper extremity impairment. (Ex. A, p. 6) Dr. Chen explained the nine percent upper extremity rating was attributable to the total surface area of the skin graft, disuse atrophy of the right biceps, and notable hypertrophic scarring that required three

laser surgery treatments to control refractory pruritis/itching. (Id.) Dr. Chen did not believe claimant's condition required any permanent work restrictions. (Ex. A, p. 5)

Four days later, Sunil Bansal, M.D. performed an independent medical examination at the request of claimant's attorney. (Ex. 2, p. 10) Like Dr. Chen, Dr. Bansal collected a medical history from claimant, reviewed his medical records, and performed a physical examination. Dr. Bansal also had the opportunity to review Dr. Chen's report. During the examination, claimant complained of ongoing pain from his shoulder down to his hand, with numbness and tingling in all of his fingers. (Ex. 2, p. 17) Claimant further reported the donor site on his right thigh is constantly painful and itches. (Id.) Dr. Bansal placed claimant at MMI as of November 17, 2022, and assigned seven percent whole person impairment pursuant to Table 8-2 in the AMA Guides, Fifth Edition. (Ex. 2, p. 20)

Dr. Bansal noted that the impairment rating was for the "right upper extremity/right lower extremity." (Id.) He explained the seven percent impairment rating was attributable to the massive scarring over claimant's right upper arm, and the grafting scars over claimant's right lower extremity that are painful, hypertrophic, and hyperpigmented. Dr. Bansal also noted that claimant is limited with his right hand grip strength, he has to apply lotion and sunscreen, and he is sensitive to environmental conditions such as heat and sunlight. (Id.)

Notably, both medical experts concluded that claimant sustained permanent impairment as a result of the October 21, 2021, work injury. This, coupled with claimant's credible testimony regarding his ongoing symptoms and functional limitations, leads me to find the stipulated work injury is a cause of permanent disability.

Dr. Chen responded to Dr. Bansal's opinions in a report dated February 7, 2023. (Ex. A, p. 12) With respect to Dr. Bansal's impairment rating, Dr. Chen explained he does not believe it is appropriate to assign him an impairment rating that applies to the whole body because his injured tissues and any functional limitations are confined to the right upper extremity. (Ex. A, pp. 12-13) He goes on to explain that he assigned "the maximum numerical value for his Class 1 skin impairment" of nine percent to the right upper extremity. Importantly, Dr. Chen's explanation does not comply with Table 8-2, which only assigns impairment to the whole person. In this respect, Dr. Chen appears to apply his own methodology.

In an attempt to further justify his impairment rating, Dr. Chen discussed his use of a "diagram that burn surgeons use to estimate total body surface area[.]" (Ex. A, p. 13) Relying on said diagram, Dr. Chen opined that a nine percent upper extremity impairment rating is more appropriate than a seven percent whole person impairment rating as claimant's degloving injury only occurred to 1.5 percent of claimant's total body surface area. (Id.) Regardless of the accuracy or reasonableness of Dr. Chen's statement, his methodology is not supported by the AMA Guides.

Admittedly, Class 1 on Table 8-2 grants the evaluator discretion to assign an impairment rating between zero and nine percent, and, once converted, Dr. Chen's upper extremity impairment rating would technically fall within the Class 1 range for

whole person impairment. However, this does not negate the fact his calculation is not supported by the AMA Guides.

Dr. Bansal's report is similarly flawed. For instance, Dr. Bansal incorrectly notes that claimant has pain from his shoulder down to his hand. (Ex. 2, p. 17) While it is possible claimant developed radiating pain down to the hand around the time of Dr. Bansal's IME, Dr. Rayburn's medical records specifically note claimant had "No radiation down to his hand" between October 17, 2022, and January 23, 2023. (JE2, pp. 158, 170) Dr. Bansal also incorrectly notes that claimant has returned to his regular, full-duty job. (Id.)

Having reviewed the competing impairment ratings of Drs. Chen and Bansal, I find Dr. Bansal's assessment to be more persuasive. Most importantly, Dr. Bansal's permanency assessment appears to be in line with the AMA Guides, Fifth Edition, while Dr. Chen has implemented his own methodology. Regardless of the reasonableness of Dr. Chen's methodology, I am compelled to select an impairment rating that complies with the AMA Guides, Fifth Edition. Therefore, I accept Dr. Bansal's impairment rating and find claimant sustained seven percent whole person impairment as a result of the October 21, 2021, work injury.

That being said, as will be discussed in the Conclusions of Law section, such a finding does not convert claimant's claim from a scheduled member injury to an unscheduled injury to be compensated through industrial disability. I conclude claimant sustained a combined seven percent whole person impairment to his upper and lower extremities due to his work injury.

CONCLUSIONS OF LAW

The first issue to be addressed in this decision is whether the stipulated work injury is a cause of permanent disability.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); Miller v.

Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

In the instant case, two physicians addressed whether claimant's injury resulted in permanent disability. Both physicians concluded that claimant sustained permanent impairment as a result of the October 21, 2021, work injury. This, coupled with claimant's credible testimony regarding his ongoing symptoms and functional limitations, led me to find the stipulated work injury is a cause of permanent disability.

Having concluded the work injury resulted in permanent disability, I must now determine the nature and extent of said disability. While claimant's brief provides no argument regarding the same, he appears to contend that the whole person impairment rating from Dr. Bansal converts his claim to an industrial disability or unscheduled injury. Defendants contend that any and all functional limitations are confined to claimant's right arm and should be compensated as a scheduled injury. Defendants alternatively assert that claimant's injuries are confined to the right arm and right leg and should be compensated under Iowa Code section 85.34(2)(t).

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 extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods. Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

A finding of impairment to the body as a whole found by a medical evaluator does not equate to industrial disability. Dikutole v. Tyson Foods, Inc., File No. 5054404 (App. May 2018) (citing Smith v. Aramark, File No. 1199677 (App. April 2001)) Additionally, the fact that the skin covers the entire body does not render an injury to the skin of a scheduled member an injury to the body as a whole. Id. (citing Topete v. Global Food Processing, File No. 1167910 (Arb. June 1999)). Rather, an injury to the skin that is limited to one scheduled member is confined to and compensated as a scheduled member loss. Id. (citing Second Injury Fund v. Armstrong, 801 N.W.2d 628

(Iowa App. 2011) (Table of Unpublished Decisions); see also Gacek v. Second Injury Fund, File No. 5030637 (Arb. Feb. 2011); Singleton v. Newton Correctional Facility, File No. 5041430 (Arb. Oct. 2013); Bryan v. Kiowa Line Builders, Inc., File No. 5062947 (Arb. March 2018); Deffenbaugh v. 1st Interiors, Inc., File No. 5047330 (Arb. April 2018)).

In Smith v. Aramark, File No. 1199677 (App. April 2001), the claimant sustained a right leg burn injury that required skin grafting. Similar to this case, the permanent impairment rating rendered by the physician was to the "body as a whole." Chief Deputy Heitland, acting under delegation of authority from the Commissioner, concluded that "[a] finding of impairment to the body as a whole found by a medical evaluator does not equate to industrial disability. Impairment and disability are not synonymous." Id.

Deputy Trier faced a similar situation involving skin grafting and an impairment rating rendered to the whole person. Deputy Trier "noted that all the impairment ratings under chapter 13 (of the AMA Guides) are couched in a percentage of impairment of the whole person, even in those examples where the injury was limited to a scheduled member. It is noted that the Guides contain a system for determining equivalent impairments to hands or arms." Haley v. Dave McAlpin Motors, File No. 1212609 (Arb. October 2000). Deputy Trier noted "[t]he only permanent disability that exists is in Boyd's hands and arms." Id. Therefore, Deputy Trier concluded that the injury remained confined to the scheduled members, awarded permanent disability as a scheduled member, and rejected claimant's request to award industrial disability benefits. Id.

A similar issue came before the agency in Hansen v. Codycal, Inc. d/b/a Greenbriar Restaurant & Bar, File No. 5001522 (Arb. February 2003). Mr. Hansen worked as a cook and spilled hot butter and water onto his left forearm. The burn resulted in keloid scarring on his left forearm, which required scar revision surgeries and resulted in painful itching of the left forearm. The physicians utilized the AMA Guides and opined that the claimant sustained five percent impairment of the whole person as a result of the burn. The claimant urged that the whole person impairment rating converted the claim to an industrial disability claim.

The deputy commissioner held:

> The only basis for claimant's argument that his injury extends into the body as a whole is the fact that the AMA Guides rate disorders of the skin, including scarring from burns, to the body as a whole. Whether a condition is rated to an extremity or to the body as a whole under the AMA Guides is not controlling under Iowa law, however. For example, the Guides rate impairment in the shoulder as impairment to the upper extremity. Under Iowa law, an impairment to the shoulder is a body as a whole injury. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995).

Hansen v. Codycal, Inc. d/b/a Greenbriar Restaurant & Bar, File No. 5001522 (Arb. February 2003).

More recently, another deputy commissioner analyzed a claimant's contention that "scarring is a skin disorder, which is not a scheduled impairment and should be

assessed industrially." Bryan v. Kiowa Line Builders. Inc., File No. 5062947 (Arb. March 2018). The deputy commissioner rejected the argument and explained:

> [T]he nature of scarring is specific in its location. It is not the sort of skin disorder that may be intermittent or spread around the body from one location to another such as dermatitis or psoriasis. A scar by its nature is permanently located in a particular area. In this case, the scarring does not enter into the shoulder, neck or torso and is limited to the upper extremity. Also, there was no evidence that the scarring limited function to any unscheduled part of his body. Therefore, I conclude that the injury is to a scheduled member, the left arm, and not the body as a whole.

Id. The deputy commissioner also noted that the AMA Guides permit conversion of impairment ratings from the whole person to a scheduled member.

Therefore, this agency has rejected the theory that merely obtaining a permanent impairment rating to the whole person was sufficient to convert an otherwise scheduled member into an industrial disability claim.

The question then becomes whether claimant's injury is confined to the right arm, or whether he sustained injuries to both the right arm and right leg.

Defendants assert that claimant's complaints of right leg pain were inconsistent leading up to Dr. Bansal's examination. For instance, claimant made no complaints of right leg pain or limitations when presenting to Dr. Rayburn. (JE2) Similarly, when he saw Dr. Chen on January 9, 2023, he did not report any symptoms or problems with his right leg at the donor site. (Ex. A, pp. 1-4) In comparison, claimant told Dr. Bansal that the donor site in his right leg was constantly painful and itchy. He further reported pain with walking. (Ex. 2, p. 17) The medical records in evidence reflect claimant has previously complained of persistent pain and itching in his right thigh, albeit sparingly. (See JE1, pp. 78, 91) Claimant reported cramping in his right leg at the time of his deposition. (See Ex. 8, Depo. p. 23) At hearing, claimant endorsed itchiness in the right leg. (Hr. Tr., p. 29)

Generally, an injury to the skin that is limited to one scheduled member is confined to and compensated as a scheduled member loss. A recent agency decision found compensation for a degloving injury to the left hand was limited to one scheduled member despite the fact skin grafts were collected from the claimant's right thigh and forearm. Loraditch v. Seaboard Triumph Foods, Inc., File No. 19004961.01 (Arb. August 10, 2022) Importantly, the claimant in Loraditch made no allegations that the donor scars on his thigh and forearm caused him any ongoing issues or disability. Moreover, no physician provided an impairment rating to the right thigh or forearm.

In the matter at hand, both expert physicians agree, to some extent, that claimant's scars are sensitive to environmental conditions. Claimant reported cramping in his right leg at his deposition, and itchiness in his right leg at hearing. (See Ex. 8, Depo. p. 23; Hr. Tr., p. 29) Claimant told Dr. Bansal that the donor site in his right leg was constantly painful and itchy. (Ex. 2, p. 17) Example 8-7 on page 180 of the AMA Guides, Fifth Edition, notes that itching can temporarily interrupt some activities of daily

living. Additionally, this agency has previously awarded permanent impairment as a result of a skin graft donor site. Dikutole v. Tyson Foods, Inc., File No. 5054404 (App. May 11, 2018)

Dr. Chen did not offer a direct opinion on the skin graft and any potential permanent impairment related to the same. By way of contrast, Dr. Bansal directly addresses the skin graft and permanent impairment related to the skin graft. As such, I find Dr. Bansal's opinion more convincing on the issue of the skin graft.

The evidence establishes that claimant sustained a right arm injury, with a sequela injury to the right leg. A skin graft was taken from claimant's right leg and placed onto claimant's right arm. The injury does not extend into the body as a whole. The mere fact that a whole person impairment rating was rendered does not convert the case from a bilateral scheduled member injury to be compensated pursuant to Iowa Code section 85.34(2)(t) into an unscheduled injury to be compensated pursuant to Iowa Code section 85.34(2)(v). Where an injury is limited to a scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(t). The degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983). Iowa Code section 85.34(2)(t) does not require a simultaneous injury and does not use the word simultaneous. The statute refers to a loss "caused by a single accident." While claimant's right upper and lower extremity injuries did not occur at the same time, they were both caused by a single accident.

Claimant sustained a permanent loss to his right upper and lower extremities as a result of a single accident. As such, defendants are liable for claimant's disability under Iowa Code section 85.34(2)(t). Iowa Code § 85.34(2)(x) mandates the use of the AMA Guides, 5th Edition, and prohibits the exercise of "agency expertise" in the determination of functional disability.

As noted above, I found Dr. Bansal's opinion regarding permanent functional impairment to be more credible and in line with the AMA Guides, Fifth Edition, than that of Dr. Chen. As such, I found claimant sustained seven percent permanent functional impairment of the whole person. Therefore, I conclude that claimant is entitled to an award equal to seven percent of the body as a whole. Using the 500-week schedule, I conclude that seven percent results in an award of 35 weeks of permanent partial disability benefits.

ORDER

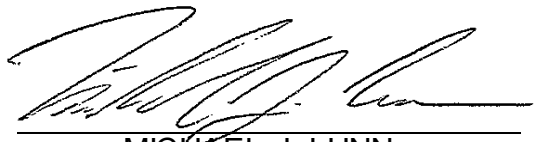
THEREFORE, IT IS ORDERED:

Defendants shall pay claimant thirty-five (35) weeks of permanent partial disability benefits, commencing November 18, 2022, at the stipulated rate of nine hundred ninety-six and 75/100 dollars ($996.75).

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this ___3RD___ day of August, 2023.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Gabriela Navarro (via WCES)

Patrick Waldron (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.