

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHANE MATHER,

Claimant,

vs.

ARCHER DANIELS MIDLAND CO., INC

Employer,
Self-Insured,

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 1640328.01

ARBITRATION DECISION

Head Note Nos.: 1803, 2907

Claimant Shane Mather filed a petition in arbitration on February 26, 2020, alleging he sustained an injury to his left upper extremity, while working for Defendant Archer Daniels Midland Co., Inc., self-insured ("ADM"), on November 1, 2017. Mather also sought benefits from Defendant Second Injury Fund of Iowa ("Fund"). ADM filed an answer, admitting Mather sustained a work injury. The Fund filed an answer on March 16, 2020.

An arbitration hearing was held *via* CourtCall video conference on April 9, 2021. Mather settled his claim against the Fund prior to the hearing. Attorney Andrew Giller represented Mather. Mather appeared and testified. Attorney Peter Thill represented ADM. Jordan Privratsky appeared and testified on behalf of ADM. Karl Schewe also appeared on behalf of ADM, but did not testify. Joint Exhibits ("JE") 1 through 4, and Exhibits 1 through 5 and A through D were admitted into the record. The record was held open through May 21, 2021, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Prior to the hearing the parties submitted a hearing report, listing stipulations and issues to be decided. ADM waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between ADM and Mather at the time of the alleged injury.
2. Mather sustained an injury on November 1, 2017, which arose out of and in the course of his employment with ADM.
3. The alleged injury is a cause of temporary disability during a period of recovery.

4. Entitlement to temporary benefits is no longer in dispute.
5. The alleged injury is a cause of permanent disability.
6. If the injury is found to be a cause of permanent disability, the disability is a scheduled member disability to the left upper extremity.
7. The commencement date for permanent partial disability benefits, if any are awarded, is January 26, 2018.
8. At the time of the alleged injury Mather's gross earnings were \$1,200.10 per week, he was single and entitled to one exemption, and the parties believe the weekly rate is \$689.42.
9. Medical benefits are no longer in dispute.
10. Prior to the hearing Mather was paid 2.5 weeks of compensation at the rate of \$689.42 per week.

ISSUES

1. What is the extent of disability?
2. Should costs be awarded to either party?

FINDINGS OF FACT

In 2015, Mather commenced employment with ADM as a maintenance mechanic where he was responsible for repairing and performing preventative maintenance on equipment in the facility. (Tr., pp. 9-10; Ex. 3, p. 44) Mather also worked on cleanup before working on pumps at the plant. (Tr., pp. 11-12) Mather is right hand dominant. (JE 3, p. 31)

On November 1, 2017, Mather was working on a machine with his coworkers and his left arm caught between the rotor and the housing of the machine. (Tr., p. 12) Mather testified he continued to work, but took it easy the rest of the day. (Tr., p. 12) Mather's arm was bruised and swollen. (Tr., p. 14)

The next day Mather returned to work and reported his work injury. (Tr., pp. 13-14) The company nurse sent Mather to St. Luke's WorkWell, where William Manley, PA-C examined him. (JE 1, p. 15) Manley documented Mather had obvious extensive soft tissue swelling in his left upper extremity, his pulse was weak, but intact, he was unable to flex or extend his left elbow due to the swelling and pain, and he had a significant amount of pain with light touching primarily in the lateral and medial aspect of the left elbow, and extensive ecchymosis throughout. (JE 1, pp. 15-16) Manley listed an impression of early possible compartment syndrome and a crush injury to the left arm and he transferred Mather to the emergency room for treatment. (JE 1, pp. 16-17)

After Mather was transferred to the emergency room, Manley documented he spoke with the safety manager for ADM regarding Manley and his restrictions, and he imposed restrictions of no forceful grasping, pinching, pushing or pulling, or repetitive use of the left upper extremity, or use of ladders. (JE 1, pp. 16, 18)

Brian Shedek, D.O., an emergency medicine physician examined Mather, ordered an x-ray, and determined his history and exam were not consistent with compartment syndrome. (JE 1, p. 19) Dr. Shedek assessed Mather with a crush injury to his left upper arm and discharged him to home. (JE 1, p. 19)

On November 6, 2017, Mather returned to Manley reporting he was continuing to have pain and swelling primarily in his left elbow region. (JE 1, p. 22) Manley documented Mather continued to have soft tissue swelling on the left elbow region, both proximally and distally, extensive ecchymosis, he could not fully flex or extend at all, greater than approximately 10 percent, and observed he had a firm, swollen area around the size of a tennis ball in the posterior aspect of his left elbow. (JE 1, p. 22) Manley listed an impression of a left elbow injury and crush injury, ordered magnetic resonance imaging, released Mather to return to work with a restriction of no use of the left arm, and instructed him to elevate his arm. (JE 1, p. 22)

Mather underwent left upper extremity magnetic resonance imaging. (JE 1, p. 24) The reviewing radiologist listed an impression of a partial tear of the distal biceps tendon insertion with slight tendon thickening and tendinosis, a severe partial tear at the myotendinous junction of the proximal biceps muscle with a large intramuscular hematoma and more diffuse surrounding subcutaneous edema/hemorrhage throughout the elbow, mild muscle strain edema within the myotendinous junction of the brachialis, a "tiny left elbow joint effusion," and mild sprain versus partial tear of the humeral attachment of the ulnar collateral ligament. (JE 1, p. 25)

On November 8, 2017, Mather attended a follow-up appointment with Manley, reporting he had improved somewhat, but complaining of continued pain and swelling in his left elbow. (JE 1, p. 26) Manley noted Mather continued to have left elbow ecchymosis, swelling and tenderness primarily over the left elbow on the medial, lateral, and posterior aspects, and a slight increase in range of motion, but he was still limited to approximately negative 30 degrees of flexion and approximately 90 degrees on the left with full range of motion on the right. (JE 1, p. 26) Manley released Mather to return to work with no use of the left arm and referred him to an orthopedic specialist. (JE 1, p. 27)

Manley referred Mather to Dr. Johns with Cedar Valley Hand Surgery. (JE 4, p. 36) David Tearse, M.D., an orthopedic surgeon who later conducted an independent medical examination for ADM, documented he reviewed Dr. Johns' records and Dr. Johns diagnosed Mather with a left upper extremity complex partial biceps tear, imposed work restrictions, and recommended non-operative treatment. (JE 4, p. 36)

Dr. Johns ordered physical therapy for Mather. Mather attended 20 sessions of physical therapy and he was discharged on February 1, 2018. (JE 3, p. 34) The physical therapist documented Mather made very good progress with physical therapy and recommended a home exercise program to move toward full strength and use of the left upper extremity. (JE 3, p. 34)

On August 24, 2018, Dr. Tearse examined Mather, reviewed his medical records, and issued a report as part of an independent medical examination. (JE 4, p. 36) Dr. Tearse noted Dr. Johns released Mather to full duty on January 26, 2018 and that Mather reported he was able to perform his regular job without difficulty, he had no pain or noticeable weakness in his left arm, but felt a “knot” in the distal biceps musculature, but this is not tender. It does feel tight at times.” (JE 4, pp. 36-37) Mather denied numbness or tingling in his left upper extremity. (JE 4, p. 37) Dr. Tearse documented on exam:

[t]here is no swelling and no gross deformity about the left upper extremity from the shoulder to the fingers. There is no elbow effusion noted. He does have extension out to zero, with flexion to 115°, which is 10° less than the opposite side. Pronation and supination are normal and symmetric to the opposite side. There is no crepitus with active elbow motion. Distal biceps tendon is palpable and non-tender over this. Sensation is intact to light touch throughout his upper arm, forearm, and hand. He has good strength to manual testing for elbow flexion, extension, pronation, and supination without pain. There are no focal motor or sensory deficits to his fingers. Capillary refill is less than 2 seconds. Grip strength testing on the average is 55 kg on the left, compared to 66 kg on the right.

(JE 4, p. 37) Dr. Tearse listed an impression of status post work-related complex left biceps tear. (JE 4, p. 37)

Mather testified while Dr. Tearse documented he had full extension of his left arm, he has never had full extension of his left arm since his work injury. (Tr., pp. 19-20) During the hearing Mather demonstrated his ability to lift his right and left arms, and he testified he has a problem with side extension and bringing his arm up on the left side. (Tr., p. 21)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) (“AMA Guides”), Dr. Tearse assigned Mather a one percent upper extremity impairment using Figure 16-34, for a 10 degree limitation of elbow flexion. (JE 4, p. 37) Dr. Tearse recommended no permanent restrictions or treatment. (JE 4, p. 37)

Mather testified after he was released to full duty in 2018, he returned to his normal job. (Tr., p. 18) Mather accepted a maintenance position with Quaker Oats, which was a better opportunity financially, and he voluntarily resigned from ADM effective February 12, 2019. (Tr., pp. 20-22; Ex. D, p. 15) Mather reported his job for

Quaker Oats is similar to the job he held at ADM. (Tr., p. 22) Mather has to lift up to 100 pounds on his own at Quaker Oats at times, which exceeds the individual and team lifting requirements for his position at ADM. (Tr., pp. 44, 55)

On May 7, 2020, Farid Manshadi, M.D., a physiatrist, conducted an independent medical examination for Mather and issued his report on May 15, 2020. (Ex. 1) Dr. Manshadi reviewed Mather's medical records and examined him. (Ex. 1) Dr. Manshadi used a goniometer and measured Mather's left elbow to have extension at -25 degrees, flexion to 105 degrees, flexion 4+/5, extension 5/5, supination actively to 62 degrees, and right elbow range of motion from 0 to 127 degrees, 5/5 flexion and extension, and supination to 80 degrees. (Ex. 1, p. 8) Using the AMA Guides, Chapter 16, Dr. Manshadi noted Mather has reduced range of motion of the left elbow and assigned a 9 percent permanent impairment of the left upper extremity. (Ex. 1, p. 9)

In his answers to interrogatories and at hearing, Mather reported he does not have full range of motion in his left arm and that his work injury limits his ability to use chain pulls because he has to use two hands in a hand-over-hand motion and before his injury he could use one hand for pulling. (Ex. 3, p. 45; Tr., pp. 25-26) Mather reported his left arm does not have as much stamina as his right arm, so he relies more on his right arm. (Tr., p. 24)

Mather farms 20 hours per week on average and he has continued to farm since his work injury. (Tr., p. 23) Mather reported he is able to perform all of his job duties at Quaker Oats and he was able to perform his full job at ADM when he was released to full duty. (Tr., p. 24) Mather is also able to fully perform his farm duties. (Tr., p. 27) Mather reported his left arm gets fatigued, so he installed auto-steer into his tractors after his work injury. (Tr., p. 28)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves the issues of extent of disability and recovery of costs under Iowa Code sections 85.34 and 86.40. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring after July 1, 2017, therefore, the provisions of the new statute involving extent of disability under Iowa Code section 85.34 apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid

when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable 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. Again, given this case concerns an injury occurring after July 1, 2017, the new provision on interest applies to this case.

II. Extent of Disability

Iowa Code section 85.34(2) governs compensation for permanent partial disabilities. The law distinguishes between scheduled and unscheduled disabilities. The Division of Workers Compensation evaluates disability using two methods, functional and industrial. Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983).

The Division applies the functional method for a scheduled injury to a part of the body listed in the statute, including: (1) a thumb; (2) a first finger; (3) a second finger; (4) a third finger; (5) a fourth finger; (6) a first or distal phalange of the thumb or any finger; (7) loss of more than one phalange of the thumb or a finger; (8) a great toe; (9) one of the toes other than the great toe; (10) a first phalange of any toe; (11) loss of more than one phalange of any toe; (12) a hand; (13) an arm; (14) a shoulder; (15) a foot; (16) a leg; (17) an eye; (18) "loss of an eye, the other eye having been lost prior to the injury;" (19) hearing, other than occupational loss; (20) occupational hearing loss; (21) "loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident;" and (22) disfigurement of the face or head. Iowa Code § 85.34(a)-(u); Westling v. Hormel Foods Corp., 810 N.W.2d 247, 252 (Iowa 2012). Each of these subsections provides a maximum number of weeks of compensation for the complete loss of the scheduled member or body part. Since 2017, compensation or functional loss for scheduled injuries is determined by taking the number of weeks allowed for a complete loss of the body part or scheduled member, multiplied by a percentage of impairment determined using the AMA Guides. Iowa Code § 85.34(2)(x).

The parties obtained competing opinions from Drs. Tearse and Manshadi. Dr. Tearse is an orthopedic surgeon and Dr. Manshadi is a physiatrist. Neither physician treated Mather and I do not find either physician's training and experience to be superior over the other. ADM avers Dr. Tearse's opinion should be afforded more weight because Dr. Tearse examined Mather closer to the time when he reached maximum medical improvement, and the intervening physically strenuous and demanded activities he engaged in with farming and at Quaker Oats account for the decrease in his condition. I find Dr. Manshadi's opinion to be the most persuasive.

Contrary to ADM's position, there is no evidence Mather sustained an additional injury to his left upper extremity while farming or working at Quaker Oats after he reached maximum medical improvement. There is no evidence of an intervening or superseding cause that caused a change in his condition. Dr. Manshadi's findings are

consistent with Mather's testimony and medical records concerning his physical condition. The evidence presented at hearing supports Mather has problems with supination, pronation, flexion, and extension consistent with Dr. Manshadi's findings. I find Mather sustained a 9 percent permanent impairment to his left upper extremity caused by the work injury. The schedule affords a maximum of 250 weeks for loss of an arm. Iowa Code § 85.34(m). 250 weeks times 9 percent is 22.5 weeks. Mather is awarded 22.5 weeks of compensation at the stipulated weekly rate of \$689.42, commencing on the stipulated commencement date of January 26, 2018.

III. Costs

Mather seeks to recover the \$100.30 cost for filing the petition, \$6.90 cost of service for ADM for the February 27, 2020 petition, \$6.90 cost of service on the Fund for the February 28, 2020 petition, \$7.36 cost of service for ADM for the February 24, 2021 petition, and \$504.46 cost of his deposition transcript.

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers' compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors' and practitioner's deposition testimony; (6) the reasonable cost of obtaining no more than two doctors' or practitioners' reports; (7) filing fees; and (8) the cost of persons reviewing health service disputes. Miller was not successful in proving his case. I find the parties should be responsible for their own costs.

This case concerns the February 26, 2020 petition. I find Mather is entitled to recover the cost of the petition and cost of service on ADM, but not for his claim against the Fund or the second service fee for ADM. The administrative rule expressly allows for the recovery of the cost of the transcript, but not for interest related to the deposition fee. I find Mather is entitled to recover the \$497.00 cost of the deposition transcript.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay Claimant twenty-two point five (22.5) weeks of permanent partial disability benefits at the stipulated rate of six hundred eighty-nine and 42/100 dollars (\$689.42), commencing on the stipulated commencement date of January 26, 2018.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of 10 percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the

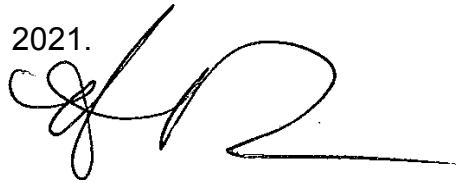
one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendant is entitled to a credit for all benefits paid to date.

Defendant shall reimburse Claimant one hundred and 30/100 dollars (\$100.30) for the filing fee, six and 90/100 dollars (\$6.90) for the cost of service on ADM, and four hundred ninety-seven and 00/100 dollars (\$497.00) cost of the deposition.

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

Signed and filed this 26th day of July, 2021.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Giller (via WCES)

Peter Thill (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.