

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERTA BECKWITH,	FILED	
Claimant,	MAR 22 2019	
vs.	WORKERS' COMPENSATION	
OMAHA STANDARD/PALFINGER,	:	File No. 5065406
Employer,	:	ARBITRATION
and	:	DECISION
BROADSPIRE,	:	
Insurance Carrier,	:	
Defendants.	:	Head Note No.: 1803

STATEMENT OF THE CASE

Roberta Beckwith, claimant, filed a petition in arbitration seeking workers' compensation benefits from her employer, Omaha Standard/Palfinger and Broadspire, the insurance carrier. The matter proceeded to hearing on December 20, 2018. The parties submitted post-hearing briefs and the matter was considered fully submitted on January 25, 2019.

The evidentiary record includes: Joint Exhibits JE1 through JE8; Claimant's exhibits 1 through 4; and, Defendants' Exhibit A. Claimant provided testimony at hearing.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of permanent partial disability.
2. Costs.

FINDINGS OF FACT

After a review of the evidence presented, I find as follows:

Roberta Beckwith, claimant, was 53 years old at the time of the hearing. She graduated from high school in 1983 and has no additional formal education.

Claimant has worked as a waitress and bussed tables in a restaurant. She worked for Campbell's Soup and other manufacturers on the production line. Claimant began working for Omaha Standard in 1988, which merged with the defendant employer, Palfinger. The employer manufactures service bodies for trucks. She initially worked in the Eagle Lift Department prepping lift gates that go on the back of pick-up trucks. She then switched to shipping and receiving, which included driving a truck. Claimant was working in this job when she was injured on September 8, 2016. Claimant remained employed by the defendant employer on the date of the hearing. She has worked for the employer and/or its predecessor for a total of 29 years.

The Injury

On September 8, 2016, claimant fell about four to five feet off a loading dock at work and could not get up right away. She testified that she could not feel her right leg.

Pre-Injury Medical Condition

Claimant testified that before she fell at work, her low back was stiff and sore on occasion and she had some low back and neck treatment with a chiropractor. The problem was intermittent and not constant. She had no prior hip complaints. Concerning her right foot, she had Achilles tendon surgery about six years ago, and she testified that she healed completely following surgery and had no ongoing issues with her Achilles tendon or ankle.

Post-Injury Medical Treatment

After claimant fell at work, she was transported by ambulance to Mercy Hospital in Council Bluffs, Iowa. At Mercy Hospital, she was diagnosed with lumbar spine, right hip, and right ankle pain and a forehead contusion. (Ex. JE2, pp. 5, 9-10; Ex. JE5-27) Claimant had a CT scan of her lumbar spine that showed L5-S1 degenerative disc disease and multilevel degenerative facet disease. (Ex. JE2-11) A CT scan of her right hip showed suspected mild osteoarthritis. (Ex. JE2-12) Claimant also had a CT scan of her right ankle that revealed postsurgical changes from prior Achilles tendon surgery and mild talonavicular joint osteoarthritis. (Ex. JE1-13) Claimant testified that she was off work for a few months after the work injury.

On September 12, 2016, claimant was seen at CompChoice Occupational Health Services where her diagnosis was: multiple contusions; sprain and contusion right hip; and, sprain right ankle. (Ex. JE3-14) Claimant was prescribed physical therapy.

Claimant continued to treat at CompChoice with Dean Wampler, M.D., who ordered an MRI of the right hip and pelvis, the right ankle and the lumbar spine. (Ex. JE3-15, 18)

Following the MRI results claimant was sent to GIKK Ortho Specialists. On October 18, 2016, claimant was seen by Nicholas Wegner, M.D. who stated, "I think much of Roberta's plantar heel pain has been caused by a fall. It is likely a heel contusion." (Ex. JE5-26) He also added that "I think she aggravated her talonavicular arthritis," but that the talonavicular arthritis "looks to me to be preexisting prior to the fall; however, the pain I think is something that is aggravated and should get better with time." (Ex. JE5-26) Claimant treated with Dr. Wegner for her foot and ankle conservatively with inserts and injections. She did not have any surgery. She was released in June, 2017, although she continued to have symptoms.

Claimant was also seen by Erik Otterberg, M.D. at GIKK Ortho Specialists on October 27, 2016, for evaluation of the right hip. (Ex. JE5-27) He noted that her MRI of the hip showed "fluid collection between [the] gluteus medius and gluteus maximus consistent with a fall [and] with [a] strain of the obturator externus." (Ex. JE5-27) His impression at that time was simply: pain in the right hip; and, low back pain. (Ex. JE5-27)

On November 17, 2016, claimant was referred by Dr. Wampler to Jeremiah Ladd, M.D. of Nebraska Spine and Pain Center for her low back and right leg pain. (Ex. 6-44) Dr. Ladd's impression after examination was: lumbar disc degeneration; lumbosacral disc degeneration; connective tissue stenosis of neural canal of lumbar region – multilevel epidural lipomatosis; and, intervertebral disc stenosis of neural canal or lumbar region. (Ex. JE6-47) He treated claimant conservatively for about nine months, including physical therapy and multiple injections. He also suggested losing weight. Claimant testified that she lost 80 pounds. Eventually, Dr. Ladd recommended a surgical consultation after failing to improve with six months of conservative care. (Ex. JE6-58) Claimant did not have surgery.

On June 1, 2017, Dr. Ladd recommended a functional capacity evaluation (FCE) "to establish safe restrictions for the workplace." (Ex. JE6-65)

On July 10, 2017, claimant underwent an FCE at Fyzical Therapy & Balance Centers in Omaha, Nebraska. (Ex. JE8) Claimant was noted to have provided maximal effort during testing. (Ex. JE8-96) The therapist concluded that claimant's physical abilities do not match her job requirements and she should be returned to work with modifications. (Ex. 8-96) The FCE indicated that claimant had the ability to lift rarely: 40 pounds, waist to floor; 25 pounds waist to crown; and, 30 pounds front carry. Claimant can lift occasionally: 20 pounds waist to floor; 20 pounds waist to crown; and 25 pounds front carry. She can lift frequently zero pounds from waist to floor, zero pounds waist to crown and 20 pounds front carry. (Ex. JE8-97) She can occasionally: stand; crouch; kneel; use stairs; sit; and, walk with rest breaks as needed. (Ex. JE8-97)

On August 11, 2017, Dr. Wegner authored a letter in apparent response to an inquiry from claimant's counsel. (Ex. JE5 pp. 41-43) Dr. Wegner stated that claimant fell four to five feet off a dock and landed on concrete. She "sustained a heel contusion of her right foot that aggravated her talonavicular arthritis as well as her plantar fasciitis." (Ex. JE5-43) Considering her FCE, he opined that claimant is "able to work a full work week of 40 hours. She has been placed in a light to medium category and exerting 20-50 pounds of force occasionally and 10-25 pounds of force frequently." (Ex. JE5-43) Her range of motion of her foot was found to be normal in the FCE test. Dr. Wegner relied on the AMA Guides, sixth edition and stated that claimant should have no "functional long term impairments." (Ex. JE5-43) He then stated that claimant aggravated her preexisting plantar fasciitis and "may ultimately require long term use of custom plastazote inserts in order to pad up her heel, given the *permanent damage* that she had to her fat pad and she may have occasional flares of plantar fasciitis." (Ex. JE5-43)(emphasis added)

On November 28, 2017, Dr. Ladd authored a letter to claimant's counsel and opined that claimant had reached MMI on August 11, 2017. He assigned claimant an 8 percent whole person impairment for her back condition based on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition. (AMA Guides) He relied on page 384, Table 15-3. He placed claimant in the light-medium physical demand level based on the FCE. (Ex. 6-81)

On July 24, 2018, Dr. Ladd changed his opinion concerning MMI and opined that claimant reached MMI on May 18, 2018. (Ex. 6-89) He also then changed his opinion and reduced claimant's functional impairment to five percent of the whole person for her back. This was based on a more recent MRI. (Ex. 6-90) He maintained his opinion that the restrictions identified in the FCE remained reasonable and appropriate. (Ex. 6-90)

On August 31, 2018, claimant was seen by Sunil Bansal, M.D. for an independent medical examination (IME) at the request of claimant's counsel. (Ex. 1) Dr. Bansal reviewed the medical history, the mechanism of injury, and discussed with claimant her condition. I note that Dr. Bansal stated claimant had no prior back or right leg injuries, but acknowledged that she "did have aches and pains" prior to the work injury. Dr. Bansal reviewed claimant's job duties and conducted a physical examination, noting range of motion measurements and the results of sensation testing. Dr. Bansal offered his opinion of claimant's permanent partial disability based on the AMA Guides, fifth edition. He opined that claimant sustained eight percent whole person impairment for the back injury based on placement in DRE category II. He assigned four percent whole person impairment for the right hip based on Table 17-9 of the AMA Guides due to reduced range of motion. Dr. Bansal assigned one percent whole person impairment for the right foot/ankle based on Table 17-14 of the AMA Guides. He adopted the restrictions set forth in the Fyzical Therapy FCE at Joint Exhibit 8, page 95. (Ex. 1-20)

Considering the combined whole person rating as assigned by Dr. Bansal I refer to the combined values chart, page 604 of the AMA Guides. I find that eight percent

combined with four percent is twelve percent, and twelve percent combined with one percent is thirteen percent. I find that Dr. Bansal's combined functional impairment rating for claimant is thirteen percent to the whole person.

I find Dr. Bansal's opinion to be thorough and well-reasoned and I find that based on his opinion, claimant sustained thirteen percent impairment to the whole person as a result of the September 8, 2016 work injury.

Current Physical Condition

Claimant testified that she has ongoing lower back pain, down around her groin every day. She stated that it always hurts with walking and standing on concrete and that the pain goes down her right leg into the top of her right foot. She also testified that her pain levels have generally stabilized.

Claimant stated that she takes two 600mg gabapentin pills per day, one 500mg naproxen pill per day, and uses one narcotic patch per week. Dr. McElderry, claimant's family physician is prescribing these medications for claimant, per the instructions of Dr. Wegner and Dr. Ladd.

Claimant still enjoys camping and fishing as she did before the injury and does housework, although her husband does more of the housework than he did before the injury.

Current Work Conditions

Claimant stated that her employer took her off of her shipping and receiving job that included driving a truck about a year ago. The employer placed her in the lift gate department. She is now working in the lift gate area making the kits for the lift gates. This is considered a light duty job. She still asks for help with some tasks, like moving loaded pallets. Claimant agreed that the narcotic patches she uses as a result of this injury prevents her from maintaining her CDL license which was required in the shipping and receiving job.

The employer is accommodating claimant's permanent work restrictions in her light duty position by allowing claimant to sit and stand as needed, which is commendable.

Claimant works 40 hours per week, earning \$18.30 per hour. She was making \$17.90 when she was injured. Claimant no longer works overtime even though her department often works 50 to 55 hours per week.

Claimant testified that she could not go back to her shipping and receiving job, which required driving a truck because it is too hard on her body. Also, the prolonged standing on concrete and the lifting required in that position is too difficult for her. She does not believe that she could return to her first job in the Eagle Lift Department because it required standing all day and the lifting would be too much.

Claimant does not believe she could do any of her old jobs in manufacturing because of the long hours of standing.

Claimant currently has no plans of retiring.

Additional Findings

Considering the extent of permanent partial disability, I note that claimant's age may cause her to face age discrimination in the competitive labor market. Her limited education would make it difficult to find work outside of jobs based in some form of manual labor. Claimant's restrictions would prevent her from performing many occupations. These factors along with her limited work experience and her functional impairment would tend to support a higher award of industrial disability.

However, claimant now earns more per hour than she did at the time of the injury and she continues to work full-time, albeit without overtime. These factors, without regard to the accommodated nature of the work claimant now performs, would tend to support a lower award of industrial disability.

In view of the above and all other appropriate factors for the consideration of industrial disability, I find claimant sustained 35 percent industrial disability, which is 175 weeks of benefits.

The parties have stipulated that claimant was paid 40 weeks of permanent partial disability benefits before the hearing in this matter. (Hearing Report)

The parties have stipulated that any permanent partial disability awarded would commence on August 11, 2017. (Hearing Report)

The parties have stipulated that the applicable rate in this case is \$456.17. (Hearing Report)

CONCLUSIONS OF LAW

The disputed issue in this case is the extent of industrial disability.

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, 593; 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. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured workers'

qualifications intellectually, emotionally and physically; the worker's earning before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted. Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); 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).

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).

As stated above and for the reasons there given, I have determined that claimant has sustained 35 percent industrial disability.

The final issue is costs. Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I conclude that claimant was generally successful in this claim and therefore exercise my discretion and assess costs against the defendants in this matter as set forth in claimant's exhibit 4 in the amount of \$100.00 for the filing fee and \$700.00 and \$800.00 for two doctor's reports for a total amount of costs of \$1,600.00.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant industrial disability benefits of one hundred seventy-five (175) weeks, beginning on the stipulated commencement date of August 11, 2017, until all benefits are paid in full.

Defendants shall be entitled to credit for all weekly benefits paid to date. The parties have stipulated that defendants are entitled to a credit of forty (40) weeks.

All weekly benefits shall be paid at the stipulated rate of four hundred fifty-six and 17/100 dollars (\$456.17) per week.

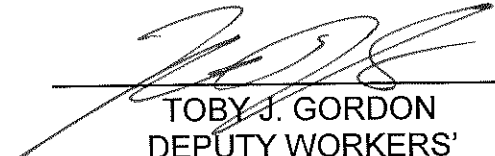
All accrued benefits shall be paid in a lump sum.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten 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, See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay costs of one thousand six hundred and 00/100 dollars (\$1,600.00).

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 22nd day of March, 2019.



TOBY J. GORDON
DEPUTY WORKERS'
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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.