

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DON LINDLY,  
Claimant,

vs.

FAIRFIELD CASTINGS, L.L.C.,  
(DEFUNCT),

Employer,

and

REDWOOD FIRE & CASUALTY  
INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

FILED  
MAY 30 2019  
WORKERS COMPENSATION

File No. 5063772

ARBITRATION DECISION

Head Note Nos.: 1803, 2907

STATEMENT OF THE CASE

Don Lindly, claimant, filed the current petition in arbitration against Fairfield Castings, L.L.C., as the employer, and Redwood Fire & Casualty Insurance Company, as the insurance carrier. The undersigned heard this case on May 21, 2019, in Des Moines.

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 Claimant's Exhibits 1 through 8 and Defendants' Exhibits A through F. All exhibits were received without objection. Claimant testified on his own behalf. No other witnesses were called to testify live. The evidentiary record closed at the conclusion of the arbitration hearing and the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to permanent partial disability benefits as a result of the March 25, 2017 work injury at Fairfield Castings, L.L.C.

2. The extent of claimant's costs that should be assessed.

#### FINDINGS OF FACT

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

Don Lindly is a 52-year-old gentleman, who lives near Drakesville, Iowa. Mr. Lindly is a high school graduate. He obtained a certificate of completion from an 18-month home improvement and home maintenance course at Danville Area Community College. Mr. Lindly also obtained an associate's degree in psychology and social services from Indian Hills Community College. He has never utilized the latter degree in his employment endeavors. (Claimant's testimony)

Claimant's main occupational pursuits have been in industrial maintenance and as a millwright. He has worked as a mechanic and performed welding during his work life. He testified that he obtained his skills with automotive repair from his father's training and received on the job training for his industrial mechanic skills. (Claimant's testimony)

Mr. Lindly testified that his jobs as an industrial mechanic required strength, including for carrying tools, lifting or holding parts, as well as to apply force or leverage when manipulating parts and machinery. He testified that his job as an industrial mechanic required significant bending, stooping, kneeling, awkward positions, pushing, and pulling. (Claimant's testimony)

Mr. Lindly worked for Fairfield Castings in Fairfield, Iowa, beginning in July 2016. On March 25, 2017, Mr. Lindly reported for his typical shift beginning at 3:00 p.m. His lead man pulled him off his typical job and sent him to assist another maintenance person with installing a clamshell on a large excavator outside. Mr. Lindly had never worked with this or another excavator before. (Claimant's testimony)

On the evening of this accident, it was raining. Mr. Lindly and his counterpart were struggling working in rain and mud. Mr. Lindly suggested that they move the excavator to a large opening or doorway in the employer's building so that he could attempt to install the clamshell out of the rain. (Claimant's testimony)

After moving the excavator, claimant's co-worker operated the controls while claimant attempted to use a large sledgehammer to place a large main pin to hold the clamshell in place. After hammering the pin into place, Mr. Lindly turned to set down the sledgehammer. As he did so, his co-worker moved the clamshell. The clamshell moved toward, rather than away from, claimant. Mr. Lindly was pinned between the clamshell and a large, metal I-beam. Claimant described it as essentially being crushed between the clamshell and the beam and unable to escape or protect himself. (Claimant's testimony)

When he was crushed, claimant testified he could hear his ribs breaking and believed he would die as a result of the accident. Mr. Lindly sustained multiple and significant rib fractures, four broken toes on his right foot, a collapsed lung, and injuries to his lumbar spine. He also experienced immediate symptoms, including swelling, in his right knee and a swollen left elbow. After the clamshell was moved, Mr. Lindly was able to lower himself to the ground and call for help. However, he experienced significant pain and difficulties breathing. He was transported to a local hospital via ambulance and later transferred to the University of Iowa Hospitals and Clinics. (Claimant's testimony)

The University of Iowa Hospitals and Clinics diagnosed multiple broken ribs, including two that had separated from his spine. The broken ribs punctured claimant's left lung and a chest tube was required to re-inflate claimant's lung. The broken ribs also bruised claimant's posterior aortic wall. (Claimant's testimony; Claimant's Exhibit 1, p. 9) Claimant is very lucky that his aorta was not punctured causing his death.

Physicians also performed a surgical procedure to remove portions of his broken ribs and to plate the multiple rib fractures to stabilize his chest wall. Claimant described a 9 to 11 inch scar on his left side through his spine as a result of this surgical intervention. Claimant's right toe fractures eventually healed without surgical intervention. However, as his foot was pinned, he lost the fat pad below the ball of his right foot. (Claimant's testimony; Claimant's Ex. 2, p. 14)

Mr. Lindly testified that he has ongoing symptoms in his right foot, especially with standing and stairs. He cannot bend his right great toe normally. He complains of ongoing loss of pulmonary function and testified that he has difficulties with physical exertion, especially on a sustained basis. Mr. Lindly credibly testified that he has difficulties walking two sets of stairs in a row without a break and that he has difficulties climbing and working on ladders because it causes symptoms in his right foot. (Claimant's testimony)

Mr. Lindly testified that he is not as strong as he was before the accident. He credibly testified that he would not be able to use a sledgehammer or axe now because the jarring sensation of using those tools would be too painful in his ribcage. Mr. Lindly also described muscle spasms in his left chest and back when he attempts to pull something up or down with force. He would not be able to perform industrial mechanic positions that required such duties on any type of sustained basis. He also described bodybuilding efforts prior to the date of injury and having a gym membership prior to the date of injury. Mr. Lindly also testified to difficulties with running since the injury. (Claimant's testimony)

Four physicians have discussed claimant's current condition. Joseph Chen, M.D., is a physical medicine and rehabilitation physician at the University of Iowa Hospitals and Clinics. Dr. Chen opined that claimant achieved maximum medical improvement on January 10, 2018. He opined that claimant sustained permanent functional impairment of his right foot, lumbar spine, and rib fractures. Combining all

impairment, Dr. Chen opined that Mr. Lindly sustained a 17 percent permanent loss of function of the whole person as a result of his injuries from the March 25, 2017 injury. (Claimant's Ex. 3, pp. 12-13) However, Dr. Chen opined that claimant required no permanent work restrictions as a result of his injuries. (Claimant's Ex. 2, pp. 17-18)

Mr. Lindly obtained an independent medical evaluation performed by Sunil Bansal, M.D., on February 12, 2019. Dr. Bansal diagnosed claimant with a crush injury causing multiple rib fractures on claimant's left chest wall. Dr. Bansal noted the pulmonary contusion, aortic contusion, rib plating, and plating of the ribs.

Dr. Bansal also diagnosed claimant with aggravation of his lumbar spondylosis as a result of the work injury in March 2017. He also identified four toe fractures and a small avulsion fracture of the lateral cuboid in claimant's right foot. Finally, Dr. Bansal opined that claimant sustained post-traumatic stress disorder (PTSD), depression, and anxiety. He attributed the PTSD to the work injury.

Dr. Bansal assigned permanent impairment for claimant's broken ribs, right foot fractures, and the lumbar spine aggravation. In total, Dr. Bansal opined that Mr. Lindly sustained permanent functional impairment equivalent to 23 percent of the whole person. (Claimant's Ex. 2, pp. 23-25) Dr. Bansal also opined that Mr. Lindly sustained mild impairment as a result of the PTSD and recommended further evaluation and treatment with a mental health specialist.

Dr. Bansal also recommended that claimant avoid multiple stairs and avoid walking greater than 20 minutes at a time. Additionally, Dr. Bansal recommended against lifting greater than 30 pounds or pushing and pulling greater than 50 pounds on an occasional basis. He also recommended against any frequent pushing or pulling and avoidance of overhead work. (Claimant's Ex. 2, p. 27)

Defendants obtained an evaluation performed by Robert Rondinelli, M.D., on March 26, 2019. Dr. Rondinelli concurred with Dr. Chen's placement of maximum medical improvement on January 10, 2018. Dr. Rondinelli also concurred that claimant is capable of returning to full duty work without the need for permanent work restrictions. (Claimant's Ex. 5, p. 6)

Dr. Rondinelli opined that claimant sustained no permanent impairment as a result of his pulmonary functioning, stating that the rib fractures do "not appear to limit him in relation to his cardiopulmonary function or exercise endurance." (Claimant's Ex. 5, p. 6) However, I found claimant's testimony on this topic to be credible and convincing. I find that claimant does have some cardiopulmonary functional deficits or loss of exercise endurance as a result of the March 2017 work injury.

Dr. Rondinelli further opines that claimant sustained a six percent permanent impairment as a result of his rib fractures. (Claimant's Ex. 5, p. 6) Dr. Rondinelli concluded that claimant does not meet the diagnosis for, or impairment for, a gait derangement because he "wears work boots with no routine or habitual orthotic

support.” (Claimant’s Ex. 5, p. 7) Again, I find Dr. Rondinelli’s understanding and history to be inaccurate. Claimant testified that he uses orthotics in his right shoe or boot routinely as a result of the loss of the fat pad on the ball of his right foot. (Claimant’s testimony) Dr. Rondinelli assigns a one percent permanent impairment for the right foot. (Claimant’s Ex. 5, p. 8)

After combining all injuries and permanent impairment, Dr. Rondinelli opines that claimant sustained a seven percent permanent impairment of the whole person as a result of the March 2017 work injury. (Claimant’s Ex. 5, p. 8) I find that this impairment likely underestimates claimant’s actual loss of permanent impairment given Dr. Rondinelli’s misunderstanding of claimant’s pulmonary functioning and use of orthotics.

The main difference between Dr. Chen’s impairment rating and Dr. Bansal’s impairment rating is for the rib fractures. In this instance, claimant had some ribs removed due to the significant fractures. He required surgical plating to stabilize his chest wall. I find Dr. Bansal’s impairment rating to most accurately represent the significance of the injury sustained by Mr. Lindly in this case. Therefore, I find Dr. Bansal’s impairment rating to be most accurate and specifically find that claimant sustained a 23 percent impairment of the whole person as a result of the March 25, 2017 work injury.

With respect to claimant’s mental health issues, Scott A. Eastin, M.D., evaluated claimant at the defendants’ request. Dr. Eastin diagnosed claimant with post-traumatic stress disorder (PTSD) and opined that it is causally related to the March 2017 work injury. (Claimant’s Ex. 4, p. 8) I accept that diagnosis and causation opinion as accurate given Dr. Eastin’s expertise and credentials.

Dr. Eastin opined that claimant is not capable of working in an area with motorized equipment such as forklifts or excavators. (Claimant’s Ex. 4, p. 8) However, Dr. Eastin opined that claimant will require further mental health treatment and has not incurred permanent impairment due to mental health issues at this time. (Claimant’s Ex. 4, p. 9) I accept Dr. Eastin’s recommendations for further mental health treatment and restrictions as realistic, credible, and accurate.

Mr. Lindly testified that he requires medication to control his mental health. He also described having nightmares of the accident as recently as two weeks before the hearing. Fortunately, a recent medication change has eliminated the nightmares and permitted claimant better sleep regulation. Unfortunately, Dr. Eastin recommends that claimant permanently avoid working around moving industrial equipment, which precludes any employment around excavators, forklifts, or other moving equipment.

The employer sold its business in June 2018. However, claimant returned to work for the employer’s successor company for a short period of time. He left that employment not because of any physical difficulties but because of his PTSD and residual anxiety caused by the accident. Subsequent to quitting his employment with

Fairfield Casting's successor company, Mr. Lindly found a new position as an industrial mechanic with C & W. (Claimant's testimony)

At the time of his injury, Mr. Lindly earned \$18.15 per hour and worked at least 48 hours per week. In his current position, Mr. Lindly earns \$25.00 per hour. He continues to work full-time, but concedes this is the most he has ever earned in any job. He now works fewer hours than he did at the time of the injury and still makes more money. Mr. Lindly also has better benefits in his current position than he did at Fairfield Castings. (Claimant's testimony)

Claimant candidly admits that he could return to former industrial mechanic positions he held with Hormel and Oskaloosa Food Products. However, claimant testified that he could not return to a prior position he held with Cargill because it was a much more physically demanding job that would require significant lifting and physical exertion. (Claimant's testimony) Claimant's testimony was credible and is accepted in this respect.

With respect to restrictions, I find that Dr. Bansal's restrictions are overly restrictive. Mr. Lindly returned to an industrial mechanic position and he clearly exceeds the restrictions outlined by Dr. Bansal in performing his current position. Claimant's current employment requires him to lift more than Dr. Bansal recommended and walk more stairs than Dr. Bansal recommended. Mr. Lindly is also clearly capable of continuing in his current industrial mechanic position. (Claimant's testimony; Defendants' Ex. B) Dr. Bansal's restrictions would unnecessarily disqualify claimant from positions he clearly is capable of continuing to perform.

On the other hand, I find the full duty releases offered by Dr. Chen and Dr. Rondinelli to be overly optimistic as to claimant's residual abilities. Mr. Lindly sustained significant injuries and credibly testified as to ongoing symptoms involving his cardiopulmonary functioning, ability to tolerate exercise exertion on a sustained basis, and his right foot. I find that it would be unwise and not practical to expect Mr. Lindly to return to some of the heavier industrial mechanic positions he held in the past. Mr. Lindly's residual physical capabilities fall somewhere between Dr. Bansal's restrictions and the full duty releases offered by Dr. Chen and Dr. Rondinelli.

Additionally, claimant suffers from PTSD. He has difficulties being around large, motorized equipment such as excavators and forklifts. He is not likely capable of returning to Fairfield Castings, its successor, or similar industrial mechanic positions. A full duty release is not realistic in this respect. Claimant's position with C & W is work mainly indoors and no forklifts are utilized inside the facility. It is unlikely that Mr. Lindly would be capable of returning to a position where significant forklifts or other motorized equipment is utilized in close proximity to claimant.

Mr. Lindly now earns significantly more per hour than he did at the time of this injury. He testified that his knowledge and skills are highly valued by his new employer and that they are willing to retain him in spite of his limitations and PTSD. Claimant has

not experienced ongoing loss of income related to the March 2017 work injury. Instead, he has demonstrated excellent motivation to return to employment and found himself a new position in which he actually earns more than he did with Fairfield Castings. Claimant expects to continue working for C & W into the foreseeable future. (Claimant's testimony)

Considering claimant's age, the situs and severity of his injuries, his permanent impairment, surgical interventions, physical limitations, PTSD and residual mental limitations, his educational background, employment history, ability to return to some industrial mechanic positions, his subsequent earnings, motivation, and all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mr. Lindly has proven he sustained a 45 percent loss of future earning capacity as a result of the March 25, 2017 work injury at Fairfield Castings.

### CONCLUSIONS OF LAW

The parties stipulate that claimant sustained a work injury on March 25, 2017 and that the injury caused permanent disability. The parties also appropriately stipulate that the injury should be compensated as an un-scheduled injury with industrial disability benefits pursuant to Iowa Code section 85.34(2)(u). (Hearing Report)

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 Ry. Co. of Iowa, 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.

Having found that claimant proved he sustained a 45 percent loss of future earning capacity as a result of the March 25, 2017 work injury, I conclude that claimant has proven a 45 percent industrial disability. This entitles claimant to an award of 225 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u).

Finally, claimant seeks assessment of costs. Specifically, claimant seeks assessment of his filing fee (\$100.00) and his service fee upon the insurance carrier (\$6.47). (Claimant's Statement of Costs)

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Both of the requested costs are permissible pursuant to 876 IAC 4.33. I conclude that claimant's costs, totaling \$106.47, should be assessed against defendants.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant two hundred twenty-five (225) weeks of permanent partial disability benefits at the stipulated rate of six hundred nine and 53/100 dollars (\$609.53) per week.

Pursuant to the parties' stipulation, permanent partial disability benefits shall commence on January 10, 2018.


The employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

The employer and insurance carrier shall be entitled to a credit for all weekly benefits paid to date, as stipulated to on the hearing report.

The employer and insurance carrier shall reimburse claimant costs totaling one hundred six and 47/100 dollars (\$106.47).

The employer and insurance carrier 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 30<sup>th</sup> day of May, 2019.

  
WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER



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WHG/kjw

**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.