

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

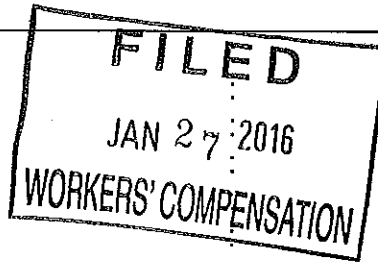
WARREN GRAHAM,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Defendant.



File No. 5044585

ARBITRATION

DECISION

Head Note No.: 3202

STATEMENT OF THE CASE

Claimant, Warren Graham, filed a petition in arbitration seeking workers' compensation benefits from defendant Second Injury Fund of Iowa (Fund). This matter was heard in Des Moines, Iowa, on November 16, 2015 with a final submission date of December 7, 2015.

The record in this case consists of claimant's exhibits 1 through 8; defendants exhibits A through D, and the testimony of claimant.

ISSUES

1. Whether claimant has a qualifying first injury for the purposes of Fund benefits.
2. The extent of claimant's entitlement to Fund benefits.

FINDINGS OF FACT

Claimant was 56 years old at the time of hearing. Claimant graduated from high school. Claimant has a B.A. in Business Management.

Claimant worked as a radiator mechanic, and a car and truck mechanic. He worked at a feed manufacturer. He has also owned his own business with his father in the 1980's. Claimant also worked as a supervisor and manager at a number of car dealerships. (Exhibit 7, pages 61-63)

Claimant testified he fell off a ladder and fractured his left arm in 1981 while working for a feed manufacturer. Claimant said he was put in a cast for four weeks. Claimant said when the cast was removed, he was released from care. Claimant testified when the cast was removed he was not given any permanent restrictions or

permanent impairment. Claimant was returned to full duty work, after the cast was removed in 1981. (Ex. 5, p. 51)

Claimant said his job with the feed company required him to mix feed. He testified the job with the feed company was very physical.

Claimant began employment with the Wittern Group in 2011. Claimant worked at Wittern as a supervisor on a plant line that made vending machines.

On November 7, 2012, claimant was moving items at work. He tripped over a pallet, and fell backwards on his right hand.

On November 7, 2012, claimant was evaluated by Richard Bratkiewicz, M.D. Claimant was assessed as having a right fifth metacarpal fracture. Claimant was referred to an orthopaedic surgeon. (Ex. 2, p. 2)

On November 9, 2012, claimant was seen by Melissa Young-Szalay, M.D. He was assessed as having a right fifth metacarpal fracture and a possible right fourth metacarpal fracture. (Ex. 3, pp. 3-5)

On November 12, 2012, claimant underwent surgery consisting of a closed reduction and pinning of the right fifth metacarpal fracture. (Ex. 3, p. 6-7)

Claimant returned in follow up to Dr. Young-Szalay in November and December 2012. (Ex. 3, pp. 8-14) In early January 2013, claimant returned in follow up to Dr. Young-Szalay with complaints of increased pain in the right hand. Claimant indicated he had used his right hand too much. Claimant was cautioned to stay within his restrictions. (Ex. 3, pp. 15-16)

Claimant was returned to full duty work and released from care by Dr. Young-Szalay on March 15, 2013. (Ex. 3, pp. 21-22)

On March 18, 2013, claimant was terminated from Wittern.

Claimant testified that after he was terminated from Wittern, it took him approximately one and one-half years to find another job. Eventually, claimant said he was hired as a maintenance person for Raccoon Valley Partners (Raccoon Valley). Claimant said Raccoon Valley owns a number of fast food restaurants. Claimant does maintenance work on restaurant machines, including heating and air conditioning equipment.

Claimant said he worked 50 hours per week for \$15.00 per hour with Wittern. As an employee with Raccoon Valley, claimant works 40 hours per week at \$8.50 per hour.

In a May 31, 2013 note, Dr. Young-Szalay found claimant had a 2 percent permanent impairment to the right hand. (Ex. 3, pp. 23-24)

In a December 20, 2013 report, Jacqueline Stoken, D.O., gave her opinions of claimant's condition following an independent medical evaluation (IME). Claimant had pain in the right hand and in both legs. Dr. Stoken found claimant had a 3 percent permanent impairment to the right upper extremity due to deficits in range of motion. (Ex. 4)

In a December 27, 2013 answer to the Fund's interrogatories, claimant indicated he broke his left wrist in 1978; broke his right hand in 1993; herniated discs in his lower back and had surgery in 1995; he had a left knee injury in 1998; a low back injury in 2009; and pain and numbness in his legs bilaterally in May 2011. (Ex. A, p. 2)

Claimant testified he thought the answer for Exhibit A, page 2 should indicate a date of injury of 1981, and not 1978 for the broken left wrist.

In a September 25, 2015 report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an IME. Claimant complained of right hand pain. Claimant had no significant problems with the left arm. Dr. Bansal found claimant had a 3 percent permanent impairment to the right upper extremity as a result of his November 2012 injury. He also opined claimant had a 1 percent permanent impairment to the left upper extremity. This was due to a finding of an ulnar deviation in a range of motion study. This was based on using Figure 16-28, 16-31, and 16-37 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Bansal restricted claimant to lifting up to 25 pounds occasionally on the left and right upper extremity. (Ex. 5, pp. 45-56)

On, or about, November 16, 2015, claimant entered into an Agreement for Settlement, under Iowa Code section 85.35(2) with the Wittern Group. The agreement indicates claimant was due permanent partial disability benefits based upon a 3 percent permanent impairment to the right upper extremity. According to the administrative file, the settlement was approved by the Iowa Workers' Compensation Commissioner on November 23, 2015. (Ex. 8)

Claimant testified he has problems with his right hand. He said he has problems with gripping on the left. He said his right hand is worse than his left. He testified his symptoms on his left arm are located in the arm approximately halfway between his wrist and his elbow.

CONCLUSIONS OF LAW

The first issue to be determined is if claimant has a qualifying first injury for the purposes of qualifying for Fund benefits.

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

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

Claimant testified he sustained a qualifying first injury to his left upper extremity in 1981. He testified he broke his arm at a feed manufacturer in 1981. Claimant testified he had a cast on his left arm for approximately four weeks. He said that once the cast was taken off, he returned to work full duty. He said his job at the feed manufacturer required him to mix feed. His job was very physical.

Claimant testified he had no permanent impairment or permanent restrictions for over 30 years following the 1981 injury until he was evaluated by Dr. Bansal. He testified he received no medical care for his 1981 fracture once the cast was removed. Between 1981 and the evaluation of Dr. Bansal, claimant worked on jobs where he did repair and maintenance of cars and trucks. Claimant also co-owned and worked at a radiator repair business with his father.

In 2013, claimant was evaluated by Dr. Stoken for an IME. Dr. Stoken's 2013 IME did not find claimant had permanent impairment to the left upper extremity. (Ex. 4)

In his 2015 IME report, Dr. Bansal indicates claimant has no significant problems with his left arm. (Ex. 5, p. 51) Dr. Bansal's rating of permanent impairment to the left arm is based on loss of range of motion in claimant's wrist. (Ex. 5, p. 55) See Table 16-28 and 16-31 of the Guides. Claimant testified at hearing his main symptoms in his left arm were approximately halfway between his wrist and elbow.

Dr. Bansal's finding of permanent impairment is based upon claimant having a loss of range of motion in the left wrist. Claimant testified at hearing that his symptoms in his left upper extremity are located more in his left forearm. Based on these facts, it is found that Dr. Bansal's opinion regarding permanent impairment are not convincing.

Claimant had a 1981 injury to the left upper extremity. Claimant wore a cast on his arm for approximately four weeks following the injury. After the cast was removed, claimant was given no permanent restrictions and no permanent impairment until his 2015 IME with Dr. Bansal. Claimant received no medical treatment for the left upper extremity after his cast was removed in 1981. Claimant returned to work after his 1981 injury doing physical work, mixing feed. Between 1981 and his employment with Wittern, claimant worked several jobs where he repaired cars, trucks, and fixed radiators. Dr. Bansal's opinion regarding permanent impairment are found not convincing. Given this record, claimant has failed to carry his burden of proof he has a qualifying first injury for the purposes of Fund benefits.

As claimant has failed to carry his burden of proof he has a qualifying first injury for the purposes of Fund benefits, all other issues are moot.

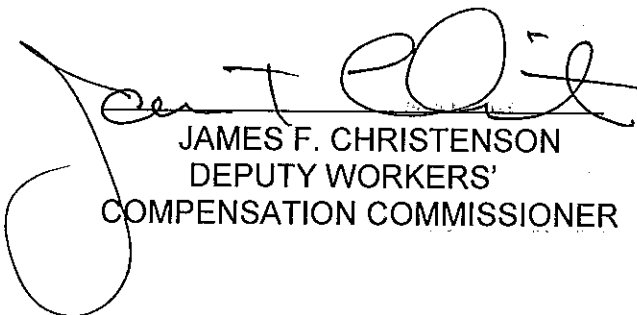
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing in the way of Fund benefits from these proceedings.

Both parties shall pay their own costs.

Signed and filed this 27th day of January, 2016.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.