

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

---

DAVID RILEY,

Claimant,

vs.

EATON CORP,

Employer,  
Self-Insured,  
Defendant.

**FILED**  
**FEB 13 2015**  
WORKERS' COMPENSATION

File Nos. 5041392, 5041393, 5041394

REMAND

DECISION

Head Note No: 1803

---

This is a case involving David Riley, claimant, who is seeking workers' compensation benefits from Eaton Corporation, a self-insured employer, as a result of a work injury on September 7, 2011.

Defendants sought judicial review of an appeal decision filed on March 31, 2014 which sustained an award of healing period benefits from December 21, 2012 through January 4, 2012 and an award of permanency benefits for a 15 percent loss of use to the right hand.

The Iowa District Court affirmed the agency action in finding a work injury on September 7, 2011; the claim is not time barred for failure to provide notice pursuant to Iowa Code section 85.23; and, the work injury was a cause of trigger thumb. However, the Court reversed the agency in finding the injury extended to the hand and awarding benefits for hand impairment. Also, the Court modified award of healing period benefits.

On remand, the Court directed this agency to limit healing period benefits to the period from December 21, 2012 through December 23, 2012 and to limit an award of permanency benefits to the loss of use to the thumb and properly assess the extent of this loss of use.

Upon written delegation of authority by the acting workers' compensation commissioner on February 10, 2015 pursuant to Iowa Code section 86.3, I was assigned to render this remand decision as a final agency decision on behalf of the commissioner.

This decision is based on the record established at the arbitration hearing which was conducted by another deputy commissioner. Claimant's exhibits were marked

numerically. Defendant's exhibits were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Exhibit 1-2:4." References to a page of a transcript shall be to the actual page number of the original transcript such as "Tr-15)

The agency's finding of a weekly rate of compensation, \$569.48, is not at issue.

### FINDINGS OF FACT

Claimant's injury occurred while operating controls on a machine with his hands. Repetitive use of the thumb and fingers was a cause of a trigger thumb and/or tenosynovitis which required surgery by the treating orthopedist, Nicholas Bruggeman, M.D. Upon completion of his treatment, Dr. Bruggeman released claimant to return to full duty work at Eaton and imposed no work activity restrictions.

The only impairment rating in the record came from Dr. Bruggeman who opined that claimant suffered a three percent permanent partial impairment to the right hand based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Exhibit 9-17) The doctor did not explain how he arrived at his rating using these Guides. According to Table 16-1 at page 438 of these Guides, a three percent impairment to the hand is equivalent to a seven or eight percent impairment to the thumb.

At hearing, claimant described his current difficulties with his right hand/thumb. Typically, he is rotated to different jobs during his shift in the plant and he has no problems with his thumb. However, many times he is unable to rotate jobs and when this occurs, he experiences "a little soreness and stiffness in my thumbs." (Transcript-38, lines 5-6) The claimant elaborated as follows:

Q. How does that affect you physically when you're on that all day?

A. It wears me out.

\*\*\*\*\*

Q. Okay. And is your ability to grip impacted at all?

A. Quite a bit.

\*\*\*\*\*

Q. How much do you think you've lost in terms of your grip strength?

A. I don't know. At least probably into about a fourth of the grip strength on that hand and thumb.

.....

Q. And is your range of motion compromised?

A. No, I got pretty much full range.

(Tr-39:40)

Claimant stated further that he had to do a lot of stretching of his hands after heavy use. (Tr-41)

Given claimant's lay testimony as to his loss of use, I find that using only the impairment rating under the AMA Guides, which indicate only a slight loss of use, is not representative of claimant's actual loss of use. I find claimant has suffered a permanent 20 percent loss of use of his right thumb on his dominate right hand due to his occasional loss of grip strength and endurance.

Findings are unnecessary concerning healing period benefits as the Court ruled on the extent of claimant's entitlement to such benefits.

### CONCLUSIONS OF LAW

I. The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

The District Court on remand directed this agency to only award permanent partial disability benefits for a scheduled loss of use to the thumb pursuant to Iowa Code section 85.34(2)(a). In this case the evidence as to such loss of use came in two forms.

First, we have an impairment rating under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. By agency rule, these Guides have been adopted by this agency as a guide for determining permanent partial disabilities under Iowa Code sections 85.34 "a" to "s." However, that rule also states that the rule shall not be construed to prevent the presentation of other medical opinions, or other material

evidence for the purpose of establishing that the degree of permanent disability to which the claimant is entitled would be more or less than the entitlement in the Guides. (876 IAC 2.4.)

We also have lay testimony from claimant as to the extent of his loss of use of the thumb. In making an assessment of the loss of use of a scheduled member, the evaluation is not limited to the use of the AMA Guides to Evaluating Permanent Disability. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W. 2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

The Iowa Supreme Court has stated that the term "loss" in Iowa Code section 85.34 means loss of use. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921). The loss of use provided by the statute is not necessarily the same thing as the term, "impairment" which is measured by the Guides. The AMA Guides might be reasonably well suited to measuring the extent of loss from a traumatic injury, but they are not well suited to measuring the loss of use that results from an overuse syndrome such as that which afflicts the claimant. The problems of lack of endurance, fatigability, recurrence of symptoms and loss of strength are in the principle residual limitations which typically follow overuse syndrome conditions yet most of those factors are not considered when determining the degree of impairment under the Guides. Wright v. APAC Customer Services, Inc., File No. 5019315 (App. March 24, 2008).

In the case, I found that claimant suffered a 20 percent permanent loss of use of his thumb. Based such a finding, claimant is entitled to 12 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(a), which is 20 percent of 60 weeks, the maximum allowable weeks of disability for an injury to the thumb in that subsection.

Healing period benefits shall be awarded as directed by the Court.

#### ORDER

1. Defendants shall pay to claimant 12 weeks of permanent partial disability benefits at the rate of five hundred sixty-nine and 48/100 dollars (\$569.48) per week from December 25, 2012.

2. Defendants shall pay to claimant healing period benefits from December 21, 2012 through December 24, 2012, at the rate of five hundred sixty-nine and 48/100 dollars (\$569.48) per week.

3. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

4. Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter.

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

Signed and filed this 13<sup>th</sup> day of February, 2015.



LARRY WALSHIRE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Jacob J. Peters  
Attorney at Law  
PO Box 1078  
Council Bluffs, IA 51502  
[jakep@peterslawfirm.com](mailto:jakep@peterslawfirm.com)

Tiernan Siems  
Sara A. Lamme  
Attorneys at Law  
10330 Regency Pkwy Dr. STE 100  
Omaha, NE 68114-3736  
[tsiem@eslaw.com](mailto:tsiem@eslaw.com)  
[slamme@eslaw.com](mailto:slamme@eslaw.com)

LPW/blr