

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FRANCISCO RODRIGUEZ BLANCAS,

Claimant,

vs.

SMITHFIELD FOODS, INC.,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,
Defendants.

FILED

OCT 27 2017

WORKERS COMPENSATION

File No. 5054974

ARBITRATION DECISION

Head Note Nos.: 1803

STATEMENT OF THE CASE

Francisco Rodriguez Blancas, claimant, filed a petition for arbitration against Smithfield Foods, Inc., as the employer and Safety National, as the insurance carrier. An in-person hearing occurred on March 17, 2017 in Sioux City.

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.

The evidentiary record includes Claimant's Exhibits 1 through 8 and Defendants' Exhibits A-I. All exhibits were admitted without objection. Claimant testified on his own behalf. Defendants called William Mischnick to testify.

The evidentiary record closed at the end of the March 17, 2017 hearing. The parties requested the opportunity to file post-hearing briefs. That request was granted and the case was considered fully submitted to the undersigned upon the filing of the parties' briefs on April 24, 2017.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to permanent disability benefits.
2. Whether costs should be assessed against either party.

FINDINGS OF FACT

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

Francisco Rodriguez Blancas is a 46-year-old gentleman, who was born and raised in Mexico. He speaks and understands very little English in either the written or spoken manner. (Defendants' Exhibit I, pages 52-53) Mr. Blancas required the use of an interpreter for the hearing.

Mr. Blancas has a limited education, having completed only the sixth grade in Mexico. He has not obtained any additional education since coming to the United States in the 1990s. (Transcript, p. 7) Mr. Blancas also has a limited work history, which includes agricultural field work in California in the 1990s. After moving to Iowa, Mr. Blancas worked for a turkey processing plant and then took a position with Smithfield Foods in Denison, Iowa in 2001. (Claimant's Ex. 8)

Mr. Blancas has worked on the kill floor for Smithfield. All of his prior employment required physical labor and was physically demanding.

On April 23, 2015, claimant's supervisor instructed him to clean a grease line used in the meat processing facility. As claimant attempted to comply with his supervisor's instructions, a valve on the grease line malfunctioned and hot grease sprayed over claimant's body. Mr. Blancas sustained first and second degree burns over numerous parts of his body, including his hands, arms, chest, right leg, and back. (Defendant's Ex. I, p. 62) The treatment records indicate that claimant sustained burns over approximately 24 percent of his body as a result of this accident. (Claimant's Ex. 3, p. 63)

The employer took claimant to its nurse's stations and later transported him to the emergency room. From the emergency room in Denison, claimant was transported via ambulance to Omaha for burn care. He spent three days in the hospital and required painful treatment for his burns. Ultimately, however, claimant experienced an excellent physical recovery from his burns.

Mr. Blancas last treated for his burn injuries in April 2016. He requires no use of prescription medications for his physical injuries and there are no pending future appointments or treatment recommendations. Claimant has clearly achieved maximum medical improvement from his physical injuries.

Mr. Blancas concedes that he has no ongoing pain. (Defendants' Ex. I, p. 66) He concedes that he has no physical limitations as a result of the injuries. (Defendants' Ex. I, pp. 63-64) His treating physician has released him to return to work without restrictions from a physical standpoint, other than requiring use of sunscreen if exposed to the sun. (Claimant's Ex. 3, p. 63)

Claimant obtained an independent medical evaluation performed by Jacqueline M. Stoken, D.O., on May 20, 2016. (Claimant's Ex. 6) Dr. Stoken recommended claimant return to work in a less hazardous job, but offered no specific physical limitations. (Claimant's Ex. 6, p. 98) It is found that claimant has no permanent physical restrictions as a result of the injuries he sustained on April 23, 2015.

Dr. Stoken is the only physician offering an opinion about whether claimant sustained permanent impairment related to his physical injuries. Dr. Stoken opines that claimant sustained nine percent permanent impairment of the whole person as a result of his skin disorders resulting from the April 23, 2015 work injuries. (Claimant's Ex. 6, p. 98) Defendant challenges the accuracy of Dr. Stoken's impairment rating under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Realistically, however, Dr. Stoken's impairment rating is not rebutted in this evidentiary record.

Claimant has clearly sustained changes in the pigmentation of his skin as a result of his physical injuries. Dr. Stoken is clearly more qualified to provide an impairment rating than is defense counsel or the undersigned. Dr. Stoken's unrebutted impairment rating is accepted as accurate. It is found that claimant sustained a nine percent permanent impairment of the whole person as a result of his physical injuries.

Although claimant has no physical restrictions, he has not returned to work since the date of injury. The employer made light duty offers and William Mischnick testified that the employer had alternate work that claimant could perform after he was released to return to work, including shag truck driving, which is something claimant professes he would like to perform for future employment. Mr. Mischnick's testimony was not rebutted, was reasonable, and is accepted as accurate in this regard.

Claimant had significant seniority with the employer and clearly could have bid to alternate employment options. However, claimant testified that he will not return to the employer or other meat processing facilities for employment because of the mental ramifications of this injury.

During the course of treating his physical injuries, the treating surgeons deemed it necessary to refer claimant to a psychologist for treatment. Kelly Fairbanks, Psy.D., provided psychological counseling and treatment for claimant. Although no medical records are in evidence, it also appears that claimant obtained psychotropic medications for depression from his personal physician. That being said, claimant acknowledged that he does not comply with or take the medications prescribed for depression because he does not like how they make him feel. Claimant was not taking prescription medications for any psychological conditions at the time of hearing.

Dr. Fairbanks provided counseling for claimant for several sessions, but last provided care to claimant on August 14, 2015. In a report dated September 23, 2015, Dr. Fairbanks noted that claimant had returned to "near baseline functioning socially and emotionally" by the end of her treatment. (Defendants' Ex. B, p. 2) Dr. Fairbanks also clarified that claimant required "no current or permanent work restrictions at this point related to his posttraumatic stress." (Defendants' Ex. B, p. 2)

Defendants obtained an independent psychological evaluation performed by Rosanna M. Jones-Thurman, Ph.D., on September 7, 2016. (Defendants' Ex. E) Dr. Thurman noted that claimant was likely over-reporting his symptoms based on responses he provided to written testing she administered. (Defendants' Ex. E, p. 23) Dr. Jones-Thurman questioned whether claimant ever qualified for a diagnosis of post-traumatic stress disorder (PTSD) but opined that even if such a diagnosis was warranted at some point in time, the PTSD has resolved. (Defendants' Ex. E, p. 27)

Dr. Jones-Thurman opined that claimant has no significant impairments of his social or occupational functioning as a result of his psychological injuries. Dr. Jones-Thurman specifically opined that claimant was released to return to work without restrictions both from a physical and psychological standpoint. (Defendants' Ex. E, p. 28)

Claimant obtained an independent medical evaluation performed by psychiatrist, James L. Gallagher, M.D., on January 25, 2017. (Claimant's Ex. 7) Dr. Gallagher concurred that any PTSD was resolving and offered a diagnosis of a depressive disorder with concurrent anxiety. (Claimant's Ex. 7, p. 107) Dr. Gallagher did not impose or offer recommendations related to work restrictions or permanent impairment. However, he did suggest that claimant needs some ongoing psychiatric treatment and recommended additional medication management. (Claimant's Ex. 7, pp. 107-108) Claimant has not pursued any further psychiatric or psychological counseling, though defendants have offered such care, if needed. Claimant makes it clear that he does not desire to take psychiatric medications.

Ultimately, I find that claimant has not proven he sustained any permanent impairment as a result of his psychological injuries or that he requires any specific work restrictions as a result of his psychological injuries. On the other hand, I find that Mr. Blancas's desire to avoid working at Smithfield or another meat processing plant is reasonable given his nightmares and description of how smells and experiences can bring flashbacks of the accident and injuries. It is realistic and reasonable for claimant to desire to avoid similar situations.

On the other hand, claimant now testifies that he could not even perform manual jobs like agricultural field work because he lacks concentration as a result of his mental injuries. Mr. Blancas has made only a minimal work search since his release to return to work. He certainly has not made an extensive work search since the date of injury. I find that Mr. Blancas is not significantly motivated to find alternate work at this time. However, he has no physical or mental restrictions that preclude him from pursuing alternate employment.

Considering claimant's age, educational level, employment history, reasonable desire to avoid returning to prior employment in a meat processing facility, lack of physical or mental work restrictions, as well as his permanent physical impairment and all other relevant factors of industrial disability, I find that Mr. Blancas has proven he sustained a 15 percent loss of future earning capacity as a result of the May 23, 2015 work injury at Smithfield.

CONCLUSIONS OF LAW

The parties stipulated that claimant sustained a work related burn and subsequent mental injury that arose out of and in the course of claimant's employment activities on April 23, 2015. The parties further stipulate that the injury caused permanent disability and should be compensated industrially pursuant to Iowa Code section 85.34(2)(u). (Hearing Report) The primary dispute in this case is the extent of claimant's entitlement to permanent 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, 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 considered all of the relevant industrial disability factors outlined by the Iowa Supreme Court, I found that claimant has proven a 15 percent loss of future earning capacity. This is equivalent to a 15 percent industrial disability and entitles claimant to an award of 75 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u).

Claimant also seeks assessment of his costs and specifically his \$100.00 filing fee. (Statement of Costs) Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant has received an industrial disability award in this case, claimant's filing fee of \$100.00 shall be assessed pursuant to 876 IAC 4.33(7).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits commencing on August 14, 2015 at the stipulated weekly rate of six hundred fifty-six and 30/100 dollars (\$656.30).

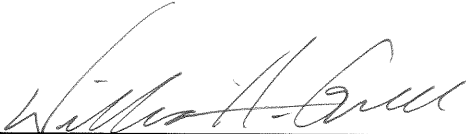
Defendants shall pay all accrued weekly benefits in lump sum, along with applicable interest calculated pursuant to Iowa Code section 85.30.

Defendants shall be entitled to the credits against this award as stipulated to in the hearing report.

Defendants shall reimburse claimant's filing fee totaling one hundred dollars (\$100.00) as a cost of this contested case proceeding.

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 27th day of October, 2017.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/srs

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.