

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL J. MARTINSEN,

Claimant,

vs.

ENERGY MANUFACTURING,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT,

Insurance Carrier,
Defendants.

FILED

MAY 18 2018

WORKERS COMPENSATION

File No 5058391

ARBITRATION DECISION

Head Note Nos.: 1402.40, 1803, 2907

STATEMENT OF THE CASE

Michael J. Martinsen, claimant, filed a petition in arbitration seeking workers' compensation benefits from Energy Manufacturing Company, employer, and Travelers Indemnity Company of Connecticut, insurance carrier, as defendants. Hearing was held on May 1, 2018 in Des Moines, Iowa.

Claimant, Michael Martinsen, was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits JE1-JE5, Defendants' Exhibits A-F and H-I. Defendants withdrew Exhibit G because it was no longer necessary. Claimant did not offer any separate exhibits.

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 parties submitted post-hearing briefs on May 8, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. The extent of permanent disability claimant sustained as a result of the stipulated November 4, 2016 work injury.

2. Assessment of costs.

FINDINGS OF FACT

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

The parties have stipulated that claimant, Michael Martinsen, sustained a work-related injury to his right wrist on November 4, 2016. The central dispute is claimant's entitlement to permanent partial disability benefits that Mr. Martinsen sustained to his right upper extremity as a result of the work injury.

Mr. Martinsen received treatment for his injury. He was eventually referred to see Meiying Kuo, M.D., an orthopaedic surgeon at Physicians' Clinic of Iowa, P.C. Dr. Kuo performed three surgeries on Mr. Martinsen. On February 16, 2017, Dr. Kuo performed a right wrist arthroscopy, debridement of the scapholunate ligament. On March 8, 2017, Dr. Kuo performed a right carpal tunnel release. On July 3, 2017, Dr. Kuo performed a right proximal row carpectomy, capsular interposition. There is no dispute that these procedures were related to the work injury. (JE2)

On February 19, 2018, Dr. Kuo stated that Mr. Martinsen reached maximum medical improvement (MMI) as of January 16, 2018. She assigned Mr. Martinsen permanent functional impairment according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. She opined that he had a cumulative right upper extremity impairment of 30 percent. (JE2, pages 16-17)

Mr. Martinsen testified that Dr. Kuo did place permanent restrictions on his work activities. The restrictions were to return to work with limitations; left hand activity; desk type activity only. (JE2, p. 15)

At the request of his own attorney, Mr. Martinsen was seen by Sunil Bansal, M.D. for an independent medical examination on February 27, 2018. Dr. Bansal reviewed the treatment records provided to him and also examined Mr. Martinsen. Dr. Bansal issued a report setting forth his opinions. Dr. Bansal assigned 30 percent permanent functional impairment to Mr. Martinsen's right upper extremity as a result of the work injury. Dr. Bansal restricted Mr. Martinsen to no lifting greater than 10 pounds occasionally, 5 pounds frequently with the right arm. (JE4)

On April 11, 2018, Teri S. Formanek, M.D. issued a report based on a review of Mr. Martinsen's records. Dr. Formanek never saw nor evaluated Mr. Martinsen in person. Dr. Formanek noted that Mr. Martinsen had sustained a sprain of the right wrist and had multiple procedures for the sprain. Dr. Formanek felt that he had sustained 12 percent permanent functional impairment. He stated that his rating was for a proximal row carpectomy which inherently results in abnormal range of motion and thus no additional impairment was warranted for the loss of range of motion. (JE5)

Mr. Martinsen testified that he continues to have problems with his right wrist. He has pain in his right wrist that comes and goes. His pain seems to be related to activity. For example, picking up a gallon of milk with his right hand causes pain. He also has a loss of range of motion in his right wrist. At hearing he demonstrated what he described as normal range of motion in his left wrist. However, when he attempted to demonstrate the same thing in his right wrist he was unable to demonstrate the same motion. Mr. Martinsen is limited in his ability to move his right hand from side to side. He can move his right hand forward a bit. He can hardly move his left hand backward at all. Mr. Martinsen testified that he enjoys shooting handguns at the firing range. However, since the accident he is afraid to shoot because of recoil pain. Additionally, he is concerned about his grip strength. He also enjoys woodworking. He is still able to perform woodworking but he must be very careful around saws due to his limited range of motion in his right wrist. Prior to the injury, Mr. Martinsen had planned on building a woodworking shed but he had to hire this work done because of his right hand. He also cannot pick up his granddaughters and has difficulty pushing them in the swings. (Testimony)

It is noted that since the time of the injury, Mr. Martinsen has experienced other health related issues which are not related to his work injury. (Testimony)

I find the opinions of Dr. Kuo and Dr. Bansal to carry greater weight than those of Dr. Formanek because those two doctors had the advantage of physically examining Mr. Martinsen. Furthermore, the opinions of Dr. Kuo and Dr. Bansal are consistent with one another. Therefore, I find that claimant has shown by a preponderance of the evidence that he sustained 30 percent permanent functional impairment to his right upper extremity as a result of the work injury. As such, he is entitled to 75 weeks of permanent partial disability benefits.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy hearing the case. I find that claimant was successful in his claim. Therefore, I exercise my discretion and find that an assessment of costs is appropriate. Claimant is seeking costs of the filing fee in the amount of one hundred and no/100 (\$100.00) dollars. I find that this is an appropriate cost under 876 IAC 4.33(7). Thus, defendants are assessed costs in the amount of one hundred and no/100 (\$100.00) dollars.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6)(e).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa

1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

A wrist injury is an injury to the arm, not the hand. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008). The claimant's disability is located in his right arm. Permanent disability benefits are therefore governed by Iowa Code section 85.34(2)(m). Having reviewed all of the medical and lay evidence, I find claimant has suffered a 30 percent loss of function of his right arm, which entitles him to 75 weeks of benefits commencing on the stipulated commencement date of December 4, 2017.

Claimant is also seeking an assessment of costs. Based on the above findings of fact, I conclude defendants are assessed costs in the amount of one hundred and no/100 dollars (\$100.00).

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of six hundred eighty-five and 99/100 dollars (\$685.99).

Defendants shall pay seventy-five (75) weeks of permanent partial disability benefits commencing on the stipulated commencement date of December 4, 2017.

Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall reimburse claimant's costs in the amount of one hundred and no/100 dollars (\$100.00).

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.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) 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 (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Signed and filed this 18th day of May, 2018.


ERIN Q. PALS
DEPUTY WORKERS'
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EQP/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.