

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

KARENJEANNE “CJ” DUNBAR, Petitioner, v. MENARDS, INC. and GALLAGHER BASSETT SERVICES, INC., Respondents.	CVCV063514 ORDER ON JUDICIAL REVIEW
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This is a petition for judicial review from a final decision of the Iowa Workers’ Compensation Commission. Hearing was held through by videoconference on 12/2/2022. The Parties appeared through counsel.

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND.

Karenjeanne “CJ” Dunbar (Dunbar) sustained stipulated work-related injuries on September 21, 2018 and October 5, 2018. On September 21, 2018, Dunbar was lifting a wooden pallet and felt a pull in her shoulder. She reported the injury but did not require medical treatment. On October 5, 2018, Dunbar was lifting a box of artificial Christmas trees and felt a tear in the same shoulder. Dunbar reported the injury. Respondents did not authorize Dunbar to see a medical provider other than a chiropractor initially.

Eventually, Dunbar was allowed to be seen in urgent care on October 19, 2018 and received an MRI, which revealed tearing. Dunbar was then treated by Matthew Bollier, M.D., an orthopedic surgeon at the University of Iowa Hospitals and Clinics. Dr. Bollier recommended surgery to address Dunbar’s “rotator cuff tear, biceps tendon as well as the AC joint, which is a pain generator on exam.” (JE 4 at 28). He opined that the work injury was a “significant factor in current shoulder findings.” (Id.).

Dr. Bollier performed surgery on Dunbar that included: right shoulder arthroscopy with rotator cuff repair, capsular release, extensive debridement, arthroscopic biceps tenodesis, subacromial decompression, and distal clavicle excision. (JE 4 at 30). Dr. Bollier placed Dunbar at maximum medical improvement (MMI) as of September 20, 2019, referred her to a functional capacity evaluation to determine permanent restrictions, and assigned a 5% upper extremity impairment rating. (JE 4 at 52). Dr. Bollier also provided an opinion that “Ms. Dunbar’s work comp case is clearly an isolated shoulder injury and not a whole body injury.” (Respondent Ex. 3-1).

Dunbar obtained an IME with Mark Taylor, M.D. Dr. Taylor found that the entire shoulder surgery performed by Dr. Bollier, including the distal clavicle excision were related to the work injury. Dr. Taylor assigned right upper extremity impairment of 10% related to decrements in range of motion and 10% for the distal clavicle excision, which combined for a right upper extremity impairment of 19%. Dr. Taylor noted that his impairment rating would convert to an 11% whole person impairment. He declined to provide an opinion regarding whether Dunbar’s impairment fell within the statutory term of “shoulder” or extended to the body as a whole. (C 1 at 24-25). Instead, Dr. Taylor provided his opinion that the glenohumoral joint should be a bright line dividing point between the arm and the whole person. (C 1 at 25). Dr. Taylor noted Dunbar experiences pain in multiple areas, including the mid to upper right scapula and part of the superior trapezius. (C 1 at 28).

The Parties disputed whether the distal clavicle excision was work-related, the percentage impairment, and whether the injury should be treated as a scheduled member shoulder or injury to the body as a whole. The Arbitration Decision found that the entirety of Dunbar’s surgery, including the distal clavicle excision, was caused by her work-related injuries and assigned Dr.

Taylor's impairment rating of 19% right upper extremity. (Arb. Dec. at 5, 7). The Arbitration Decision also held that the distal clavicle excision did not extend beyond the scheduled member of the shoulder and, therefore, the injury should be compensated as a shoulder under section 85.34(2)(n). (Arb. Dec. at 6). The Arbitration Decision also held that Dunbar failed to carry her burden to prove that her injury extended beyond the shoulder based on a complaint of trapezius pain because no physician assigned any permanent impairment for this alleged pain. (Arb. Dec. at 6). The Appeal Decision affirmed the Arbitration Decision.

Dunbar appeals, challenging the determination that her injury should be treated as a scheduled shoulder injury instead of injury to the body as a whole.

II. ANALYSIS AND CONCLUSIONS OF LAW.

A. Standard of Review.

This Court's review of a workers' compensation action is governed by Iowa Code chapter 17A. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 748 (Iowa 2002); see Iowa Code § 86.26. The commissioner's factual determinations are "clearly vested by a provision of the law in the discretion of the agency" and this Court will defer to those factual determinations if they are based on "substantial evidence in the record before the court when that record is viewed as a whole." Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 557 (Iowa 2010) (quoting Iowa Code § 17A.19(10)(f)).

If a party challenges the commissioner's ultimate conclusion, "then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." Meyer v. IBP, 710 N.W.2d 213, 219 (Iowa 2006); Iowa Code § 17A.19(10)(i), (j).

If a challenge is to the interpretation of law, the standard of review depends upon whether interpretation of the provision of law at issue has been clearly vested in the discretion of the agency. Compare Iowa Code §17A.19(c) with §17A.19(l). The Iowa Supreme Court has repeatedly found the Iowa Workers' Compensation Commission is not vested with authority to interpret Iowa's workers' compensation statutes. See e.g. Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (finding legislature did not vest commission with authority to interpret provision at issue and noting the Court has declined to defer to the commissioner's interpretations of various provisions in recent years). Therefore, review is for correction of errors at law. Id. at 768; Iowa Code §17A.19(c) (court reviews whether agency action was "based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.")

B. Whether Dunbar's Injury Is Considered a Scheduled or Unscheduled Injury.

Iowa workers' compensation law classifies permanent partial disabilities as either scheduled or unscheduled. A scheduled disability is evaluated under the functional method, which provides a schedule of benefits for injuries to specific members of the body. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). An unscheduled disability is an injury to body parts other than those listed and is considered an injury to the body as a whole and evaluated according to the industrial method. Id.; see also Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983). "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." Sandberg v. Rubbermaid Home Prod., 760 N.W.2d 210 (Iowa Ct. App. 2008).

In 2017, the Iowa legislature amended Iowa Code §85.34 to add "shoulder" to the list of scheduled injuries. Iowa Code section 85.34(2)(n) provides: "For the loss of a shoulder, weekly

compensation during four hundred weeks.” The argument in this case surrounds whether section 85.34(2)(n) applies to Dunbar’s injury.

When the legislature amended chapter 85 to include shoulder as a scheduled member, it did not include a definition. In Chavez v. MS Technology LLC, 972 N.W.2d 662 (Iowa 2022), the Iowa Supreme Court held that shoulder “must be defined in the functional sense to include the glenohumeral joint as well as all of the muscles, tendons, and ligaments that are essential for the shoulder to function.” Id. at 668. “The functional shoulder is ... not confined to the single anatomical joint known as the shoulder or glenohumeral joint, but is a system which in its entirety has the largest range of motion of any joint in the human body.” Id. at 669.

Here, the Worker’s Compensation Commission held that Dunbar failed to meet her burden to demonstrate her injury extended to the body as a whole, instead of being limited to the scheduled shoulder. Dunbar argues that two facts should move her injury into a body as a whole analysis. First, part of the surgery included a distal clavicle excision. Second, she reports pain in her trapezius. After considering both of these arguments, this Court concludes that, based on the evidence in the record presented in this case, the Commission’s decision did not contain an erroneous interpretation of law, was supported by substantial evidence, and was not an abuse of discretion, wholly irrational, or ignorant of important and relevant evidence. Meyer v. IBP, 710 N.W.2d 213, 219 (Iowa 2006); Iowa Code § 17A.19(10)(i), (j).

“The clavicle bone, or collarbone, originates at the sternum and extends over to or near the shoulder joint where the AC, or acromioclavicular, joint is found.” (C 1 at 26). As part of the shoulder surgery, Dr. Bollier resected part of the clavicle on the AC side to provide adequate space between the end of the clavicle and the acromion. (JE 4 at 33). The Arbitration Decision held that the only portion of claimant’s clavicle that was affected was the portion that is closely

interconnected in location to Dunbar's glenohumeral joint. (Arb. Dec. at 5). The decision further held that the clavicle was resected to minimize impingement and intended to treat claimant's shoulder pain and function by creating additional space in the subacromial area to minimize the chances of impingement and resulting pain. (Arb. Dec. at 5).

Dr. Taylor did not provide an opinion that the distal clavicle excision caused injury or impairment that extended beyond the function of the shoulder or should be considered the body as a whole. The Commission's finding that the distal clavicle excision was performed as part of the shoulder surgery and for the purpose of treating the pain and function of the shoulder is supported by substantial evidence. (see JE 4-33, Dr. Bollier medical records noting "We resected distal clavicle so that there was adequate space between the end of the clavicle and the acromion."); (1-27, Dr. Taylor noting "These procedures allow for increased space in the subacromial area and helps to minimize the chances of friction and thus pain" and then noting "Ms. Dunbar required extensive debridement, including a subacromial bursectomy and decompression with acromioplasty, as well as a distal clavicle excision."). Dunbar has not provided a medical opinion to demonstrate that the distal clavicle excision impacts the function of her torso, back, neck or other part of her body.

With regard to the issue of pain in the trapezius, Dr. Taylor stated that Dunbar has "continued to experience pain in multiple areas, including over the mid to upper right scapula, and into parts of the superior trapezius." (C 1 at 28). However, Dr. Taylor did not provide any opinion regarding whether this contributes to a finding of impairment either in the upper right extremity or to the body as a whole. The Arbitration Decision held that the trapezius pain was not a basis for finding an injury to the body as a whole because "no physician assigned any permanent impairment

for this alleged pain.” (Arb. Dec. at 6). Dr. Taylor’s report does not provide an opinion regarding how this alleged pain would impact an impairment rating.

Dunbar points the Court to two agency decisions that have found a shoulder injury extended beyond the shoulder and resulted in injury to the body as a whole. Each of these cases involved specific expert testimony not in the record here. In Bolinger v. Trillium Healthcare Group, LLC, et al., 2021 WL 2624176, File No. 5060856 (Iowa Workers’ Comp. Com’n June 17, 2021), the Arbitration Decision relied on the expert Dr. Stoken’s opinion that claimant’s reverse shoulder replacement surgery extended to the body as a whole. Dr. Stoken opined that the surgery impacted and involved not only the muscles of the shoulder, but the muscles of the back. Id. at *5. In Paric v. Des Moines Public Schools, 2022 WL 274693, File No. 1649535.01 (Iowa Workers’ Comp. Com’n Jan. 24, 2022) the Arbitration Decision relied on Dr. Kuhnlein’s opinion that the claimant had trapezius and neck pain related to the shoulder area injury and explained that this would support that this was a whole person injury but that the impairment percentage was properly included in the shoulder area pathology rating so as to avoid double-dipping. Id. at *8.

In this case, Dunbar did not provide a medical expert opinion that her injury extended to the body as a whole. Unlike Bolinger there was no expert opinion that her shoulder injury or surgery extended to the body as a whole. Unlike Paric, there was no expert opinion explaining how trapezius pain would support a whole person injury and be factored into an impairment percentage.

Based on the record presented in this case, the Court finds the Commission’s decision that Claimant failed to meet her burden to demonstrate her shoulder injury extended into the body as a whole does not contain an erroneous interpretation of law, is supported by substantial evidence, and was not an abuse of discretion, wholly irrational, or ignorant of important and relevant evidence.

IT IS HEREBY ORDERED that the Appeal Decision issued by the Workers' Compensation Commissioner in this matter is AFFIRMED. Costs are assessed to Petitioner.

IT IS SO ORDERED.



State of Iowa Courts

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ORDER FOR JUDGMENT

So Ordered

A handwritten signature in cursive script, appearing to read "Sarah Crane", written over a horizontal line.

Sarah Crane, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2023-01-30 14:53:05