

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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DANIAL L. KLATT,	:	
	:	
Claimant,	:	File No. 5064668
	:	
vs.	:	ARBITRATION
	:	
CITY OF CEDAR FALLS,	:	DECISION
	:	
Employer,	:	
Self-Insured,	:	
Defendant.	:	Head Note Nos.: 1803, 2907

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Claimant Danial Klatt filed a petition in arbitration seeking workers' compensation benefits from defendant City of Cedar Falls, self-insured employer. The hearing occurred before Deputy Workers' Compensation Commissioner Michelle A. McGovern on July 17, 2019, in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the arbitration hearing. In 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 consists of Joint Exhibits 1 through 24. Claimant testified on his own behalf, and there was additional testimony from Tyler Griffin, Danny Surratt, Rodney Smith, and Colleen Sole. The case was considered fully submitted to Deputy Commissioner McGovern upon receipt of the parties' briefs on August 16, 2019.

Deputy Commissioner McGovern recently retired from the agency. Therefore, pursuant to Iowa Code section 17A.15(2), Commissioner Cortese delegated this file to the undersigned for preparation and filing of an arbitration decision. Pursuant to Iowa Code section 17A.15(2), I asked of the parties whether they believed demeanor of a witness is a substantial factor in the case.

The undersigned offered to hear those portions of the testimony again for which demeanor was considered a substantial factor. On March 6, 2020, defense counsel confirmed to me via email that defendant has no objection to me drafting an arbitration decision without further evidentiary hearing. On March 10, 2020, claimant's counsel provided the same response. Therefore, pursuant to Iowa Code section 17A.15(2) and the Commissioner's Order of Delegation filed on March 2, 2020, I performed a review of the evidentiary record in this case and issue this arbitration decision at the direction of the Commissioner.

## ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's industrial disability.
2. Costs.

## FINDINGS OF FACT

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

Claimant sustained a stipulated work-related injury to his right shoulder on November 20, 2016. At the time of his injury, claimant performed the daily operation of the city's wastewater plant, which involved checking pumps, digesters, and other systems to make sure everything was operating smoothly. (Hearing Transcript, page 12)

After conservative treatment of claimant's right shoulder failed, an MRI was obtained that revealed a "massive, retracted tear of the rotator cuff with superior subluxation of the humeral head" for surgery was recommended (Hrg. Tr., pp. 20-21; Joint Exhibit 1, pp. 1-15; JE 2, p. 6) Claimant was referred to a shoulder specialist at University of Iowa Hospitals and Clinics. (JE 2, p. 6)

That specialist, Matthew Bollier, M.D., performed a rotator cuff repair with bicep tenotomy on February 14, 2017. (JE 4, pp. 5-6) At claimant's follow-up appointment on July 21, 2017, Dr. Bollier recommended "a final course of physical therapy to optimize strength and function," at which point claimant would be at maximum medical improvement (MMI). (JE 4, p. 23) Claimant was also released to return to work without restrictions. (JE 4, p. 23)

As instructed, claimant participated in physical therapy, which he finished on August 30, 2017. (JE 5, pp. 27-28)

Claimant also returned to work around the same time, on August 29, 2017. (Hrg. Tr., p. 34) Claimant continued to work for defendant without restrictions and without missing any time until he was terminated for tardiness in October of 2018. (Hrg. Tr., pp. 34-35) At the time of his termination, claimant was earning \$23.41 per hour. (JE 13, p. 11 [Deposition Tr., p. 42]) Claimant did not seek any additional right shoulder treatment after being released from Dr. Bollier's care. (Hrg. Tr., p. 35)

After being terminated by defendant, claimant found seasonal work as a dump truck driver. (Hrg. Tr., p. 10) At the time of the hearing, he was working 40 hours a week or more and earning roughly \$22.00 per hour. (Hrg. Tr., pp. 49-50) Claimant was also attending courses at Hawkeye Community College at the time of hearing with the goal of eventually obtaining a degree in the environmental sciences. (Hrg. Tr., p. 9)

Both parties obtained opinions regarding claimant's permanent impairment and work restrictions.

In a letter to defendant, Dr. Bollier opined claimant reached MMI as of August 30, 2017, when he finished physical therapy. (JE 4, p. 25) Dr. Bollier assigned a four percent whole person impairment rating for claimant's loss of range of motion in his right shoulder, and he again indicated claimant did not require work restrictions. (JE 4, p. 25)

Claimant subsequently participated in an independent medical examination (IME) with John Kuhnlein, M.D. Dr. Kuhnlein assigned a six percent whole body impairment rating and a 20- to 50-pound lifting restriction depending on the type of lift. (JE 9, p. 8)

As discussed, claimant worked for nearly 14 months at his job with defendant before he was terminated due to tardiness that was unrelated to his injury. Claimant described his job as sometimes "very physical," yet he was able to perform it without formal work restrictions or missing any work before his termination. (Hrg. Tr., p. 14) Claimant's supervisor and two co-workers testified claimant was able to perform his full-duty job without accommodation. (Hrg. Tr., pp. 59, 64, 69) For these reasons, I am not convinced claimant requires the 20- to 50-pound lifting restriction recommended by Dr. Kuhnlein.

That said, one of the claimant's co-workers indicated claimant complained of his shoulder hurting even though he was capable of performing his duties. (Hrg. Tr., p. 69) This is consistent with the physical therapy notes from August of 2017--around the time claimant was discharged from Dr. Bollier's care--wherein his right shoulder aches and soreness are indicated. (See JE 5, pp. 25, 27) Thus, although claimant may not require formal permanent restrictions, his pain may be a slight limiting factor to his functional abilities.

Claimant's past employment includes more wastewater and sewer facilities, along with some other miscellaneous positions. (Hrg. Tr., pp. 15-16) Given his ability to work with defendant without restrictions for more than a year after being released for his shoulder condition, I find claimant would likely be able to return to many, if not all, of his past jobs. Claimant, who was 41 at the time of the hearing, was also taking college courses at the time of the hearing, which suggests he is capable of retraining. Lastly, claimant was working at the time of the hearing at an hourly rate comparable to the hourly rate he was paid by defendant.

With these facts in mind, I find claimant sustained a 10 percent industrial disability due to his work-related right shoulder injury.

Defendant in its brief argues that claimant's testimony lacked credibility largely because "the City believes it is unlikely that the Claimant injured his shoulder as he described." (Defendant's Post-Hearing Brief, p. 7) Notably however, defendant accepted the claim as a work-related injury. Defendant also argues that claimant's testimony regarding his difficulties with certain tasks at work is not credible in light of his

ability to perform his job with defendant for more than a year before his termination. As noted, however, one of claimant's co-workers testified claimant complained of pain, and there are mentions of ongoing achiness and soreness in his final physical therapy sessions before being discharged from Dr. Bollier's care. For these reasons, I decline to find that claimant was not credible or that his credibility was "highly questionable," as asserted by defendant.

### CONCLUSIONS OF LAW

The parties agree that any disability is industrial in nature. 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 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 shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code § 85.34.

Having considered all of the appropriate industrial disability factors, I found claimant sustained a 10 percent industrial disability. This entitles claimant to 50 weeks of permanent partial disability benefits commencing on the stipulated commencement date of August 29, 2017, at the stipulated rate of \$598.98.

The final issue to be addressed is whether claimant should be assessed with defendant's costs. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

Defendant seeks costs in the amount of \$498.40, \$200.40 of which is for records retrieval, and \$298.00 of which is for claimant's deposition transcript. There is no provision under rule 876-4.33 by which to assess the costs of obtaining records, and I decline to assess the cost of the deposition transcript to claimant. No costs will therefore be assessed to claimant.

**ORDER**

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits commencing on the stipulated commencement date of August 29, 2017.

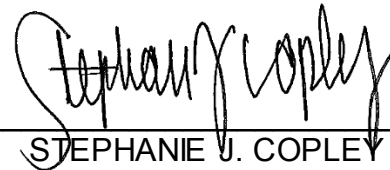
All weekly benefits shall be paid at the stipulated rate of five hundred ninety-eight and 98/100 dollars (\$598.98).

Defendant shall be entitled to the stipulated credit against this award.

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

Defendant 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 12<sup>th</sup> day of March, 2020.



STEPHANIE J. COPLEY  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Paul W. Demro (via WCES)

Bruce Gettman (via WCES)

**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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.