

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SCOTT PETERSON,

Claimant,

vs.

PARKER HANNIFIN CORP.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,

and

UNDERWRITERS SAFETY & CLAIMS,

Defendants.

**FILED**

SEP 24 2015

WORKERS' COMPENSATION

File No. 5043257

A P P E A L

D E C I S I O N

Head Note No.: 1803

Defendants Parker Hannifin Corp., Old Republic Insurance Company and Underwriters Safety & Claims appeal from an arbitration decision filed on September 12, 2014. The case was heard on February 26, 2014, and it was considered fully submitted on April 21, 2014, in front of the deputy workers' compensation commissioner.

The deputy commissioner determined that the work injury sustained by claimant on January 28, 2010, extends beyond claimant's left lower extremity into claimant's body as a whole and the injury should be compensated industrially. The deputy commissioner awarded claimant 15 percent industrial disability for the injury.

Defendants assert on appeal that the deputy commissioner erred in determining that claimant's injury extends beyond the left lower extremity into the body as a whole. Defendants also assert that the deputy commissioner erred in awarding 15 percent industrial disability. Claimant asserts that the decision of the deputy commissioner should be affirmed in its entirety.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of September 12, 2014, filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis:

Defendants challenge both the nature and extent of claimant's permanent disability. The deputy commissioner concluded that claimant's injury was situated in the low back and should be compensated industrially. Having reviewed the evidentiary record, I concur with the deputy commissioner's conclusion in this regard.

Dean Wampler, M.D., declared maximum medical improvement as of June 30, 2011, and opined that claimant sustained a four percent (4%) permanent impairment of the left leg. (Exhibit 2, pages 22-23) Although the impairment rating given by Dr. Wampler is stated as impairment of the left lower extremity, Dr. Wampler attributed the impairment of the left lower extremity to altered sensation in the L5 nerve root. (Ex. 2, p. 23)

Even after MMI was reached, claimant continued to experience symptoms and sought additional medical care. In June 2012, Dr. Wampler noted persistent L5 radiculopathy. (Ex. 2, p. 29) In a report dated February 7, 2014, Dr. Wampler opined, "he sustained a contusion and injury to part of his sciatic nerve when he fell onto his left buttock. The injured part of this large nerve refers pain and numbness in an S1 distribution to his leg." (Ex. 2, p. 50)

Claimant obtained an independent medical evaluation performed by Sunil Bansal, M.D. Dr. Bansal diagnosed claimant with an L5-S1 disc protrusion with S1 radiculopathy. Dr. Bansal assigned a ten percent permanent impairment of the body as a whole for claimant's low back condition.

All physicians opine that claimant's difficulties arise as a result of an injury to the low back spinal nerves. It appears claimant's symptoms in the left leg are related to an injury to the sciatic nerve and result in symptoms that follow the S1 nerve root distribution into claimant's left leg.

Although Dr. Wampler issued a permanent impairment rating to the left leg, he clearly believes the symptoms claimant experiences in the left leg are caused by an injury to the sciatic nerve and that the symptoms follow the S1 nerve root distribution in claimant's left leg. (Ex. 2, p. 50) Timothy Burd, M.D., spine surgeon, offers the same opinion. (Ex. 4, p. 5)

Claimant testified that he has ongoing symptoms in the low back and left hip. However, even if only the left leg symptoms are considered, the situs of the injury is in

the low back and resulted in an injury that demonstrates itself by following the S1 nerve root distribution down claimant's left leg.

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 Co. v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lbr. Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). In this case, the anatomical situs of the permanent injury is the sciatic nerve located in the lower back that is causing the symptoms into claimant's left leg.

Therefore, I agree with the deputy commissioner's conclusion that the situs of claimant's injury is in the low back and that this is an unscheduled injury. This injury should be compensated industrially pursuant to Iowa Code section 85.34(2)(u).

With respect to defendants' challenge to the extent of permanent disability, I concur with the findings and conclusions entered by the deputy commissioner as well. Claimant received a permanent impairment rating of four percent (4%) of the left leg from Dr. Wampler. Dr. Bansal opined that claimant sustained a ten percent (10%) permanent impairment of the whole person.

Although claimant has successfully returned to his pre-injury job without restrictions and continues to operate his own small farm, he has believable ongoing symptoms more than four years after the date of the injury. Although the applicability of Dr. Bansal's permanent restrictions is questionable, I find that claimant has proven permanent disability in some amount. Considering all of the industrial disability factors outlined by the Iowa Supreme Court, I reach the same conclusion reached by the deputy commissioner. I find that claimant sustained an additional fifteen percent (15%) loss of future earning capacity. Therefore, claimant is entitled to fifteen percent (15%) industrial disability, or 75 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u). The findings and conclusions of the deputy commissioner are affirmed in this respect.

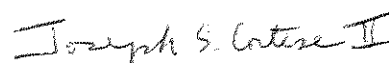
#### ORDER

THEREFORE IT IS ORDERED:

The September 12, 2014, arbitration decision is affirmed in all respects.

All costs associated with this appeal are taxed to defendants.

Signed and filed this 24<sup>th</sup> day of September, 2015.



JOSEPH S. CORTESE II  
IOWA WORKERS'  
COMPENSATION COMMISSIONER

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