

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

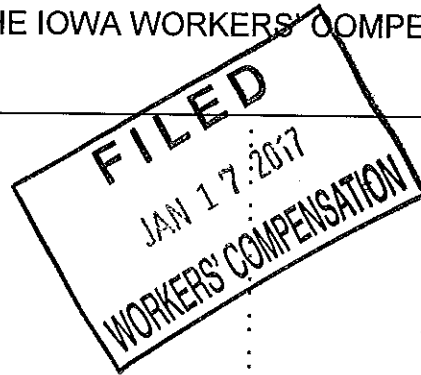
IDALIA HERNANDEZ,

Claimant,

vs.

TYSON FOODS, INC.,

Employer,
Self-Insured,
Defendant.



File No. 5051333

ARBITRATION

DECISION

Head Note No. 1803.1

STATEMENT OF THE CASE

Claimant, Idalia Hernandez, filed a petition for arbitration seeking workers' compensation benefits from Tyson Foods, Inc.

The matter came on for hearing on February 5, 2016, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Waterloo, Iowa. The record in the case consists of claimant's exhibits 1 through 8; defense exhibits A through D; as well the sworn testimony of claimant, Idalia Hernandez. Dwight Van Wyngarden was appointed as the court reporter for the proceedings. The parties briefed this case and the matter was fully submitted on February 15, 2016.

ISSUES AND STIPULATIONS

The following issues were submitted for determination.

1. The nature and extent of the claimant's disability is the fighting issue in the case. The defendant concedes claimant sustained an injury which arose out of and in the course of employment on December 10, 2013, and further concedes that the injury is a cause of both temporary and permanent disability. The defendant, however, contends that the situs of the disability is limited to the claimant's third and fourth fingers on her right hand, while the claimant contends she has proven entitlement to industrial disability.
2. The claimant seeks payment of an independent medical evaluation. This is uncontested, although it is unpaid as of the date of hearing.
3. Other issues are stipulated, including the elements which comprise the rate of compensation and credit. Claimant is not seeking medical benefits (other

than IME) and affirmative defenses have been waived.

FINDINGS OF FACT

Idalia Hernandez is a 39-year-old resident of Waterloo, Iowa. She has two dependents. She was born in 1976 in El Salvador where she graduated high school. She came to the United States in 1997. Her primary language is Spanish. She cannot read English at all. She testified that she speaks very little English. An interpreter was used at hearing.

Idalia testified live at hearing. She was generally credible although she was not a great witness. She is a fairly poor historian, and the language gap probably contributes to this. I was, at times, unsure whether the claimant was truly understanding the proceedings. Nevertheless, there was nothing about her demeanor which caused the undersigned any concern.

She testified she does not use a computer but that she accesses Facebook. She cannot key very well due to her injury to her fingers. She began working for Tyson in 2007 and she has held a number of different positions.

On December 10, 2013, Idalia was working on a Biro saw cutting meat on the picnic line. She attempted to retrieve some pieces of meat, and her right hand crossed the blade partially amputating her right middle and ring fingers. (Defendant's Exhibit 1) She first treated at Allen Memorial Hospital. (Cl. Ex. 2) Arnold Delbridge, M.D., performed surgery on that date described as amputation "revision and flap closure of long and ring finger." (Cl. Ex. 3, p. 1) She continued treating with Dr. Delbridge on numerous occasions through May 15, 2014, when he placed her at maximum medical improvement. (Cl. Ex. 3, pp. 3-14) Dr. Delbridge undoubtedly provided excellent medical care; however, his medical notes are quite brief with little detail. None of Dr. Delbridge's medical notes observed claimant suffered from "phantom pain" nor is there any description of the pain which might lead one to that conclusion. Her active medical treatment pretty much ceased in May 2014.

In July 2014, Dr. Delbridge provided impairment ratings: 75 percent of the right 3rd digit and 68 percent of the right 4th digit. (Cl. Ex. 5, p. 15) He also advised against gripping of large objects in the right hand and no using the computer with her right fingers. (Cl. Ex. 5, p. 15)

As of the date of her injury, Idalia's hourly wage was \$13.90 per hour. Following her injury, Idalia tried to return to jobs at Tyson and did actually return to work. She was off work for a period of time for personal health problems but she had returned to work prior to the hearing. She was earning \$14.70 per hour as of the date of hearing performing a job entitled "Labeling."

In March 2015, Benjamin Paulson, M.D., evaluated Idalia. He noted her problems were anxiety, injury of finger and history of depression. (Cl. Ex. 4, p. 4)

Based upon his medical note, it does not appear he took a lengthy history from her. (Cl. Ex. 4) He noted that she had tenderness in her fingers but provided no other description of her symptoms. He prescribed her Lyrica and a topical pain cream and recommended no restrictions. (Cl. Ex. 4, p. 4)

In July 2015, Idalia saw Farid Manshadi, M.D., for an independent medical evaluation. Dr. Manshadi reviewed all of the records and took a more thorough history of her symptoms than any of the other physicians. He described her ongoing problems as follows:

Currently Ms. Hernandez is unable to lift heavy or grip large objects with the right hand. She does okay with her ADLs but she does compensate quite a bit with the left upper extremity. She is able to do chores, but it takes her much longer. Also the tips of the stumps are very sensitive when they are hit by any object. She also complains of pain over the right hand dorsally constantly. She also complains of mild depression due to the loss of her fingers and does report crying at times. She also complains of phantom pain in both fingers about twice per day.

(Cl. Ex. 6, p. 8) He went on to provide ratings of 81 percent of the 3rd right digit and 69 percent of the 4th right digit. (Cl. Ex. 6, p. 9) He also rated her phantom pain at 3 percent of the body as a whole and recommended work restrictions of no lifting more than 25 pounds with the right hand, avoid gripping large objects and avoid repetitive or continuous gripping. (Cl. Ex. 6, p. 9)

At hearing the claimant described significant pain that goes all the way up to the right shoulder. She described significant pain in the tendons of her fingers. She described her pain as a tearing sensation. In addition to Lyrica, she also takes ibuprofen. It never completely eliminates the pain.

Claimant has had emotional difficulty adjusting to the loss of her fingers. She has difficulty sleeping. She hears the sound of when she cut her fingers and that wakes her up. She testified that she has classic symptoms of phantom pain, that is, the feeling of significant pain where her amputated fingers used to be.

CONCLUSIONS OF LAW

The first question is the nature of the claimant's disability. Claimant contends her disability extends into her body as a whole. Defendant asserts that the disability is limited to the schedule.

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).

This agency has held that pain or other subjective complaints, even without objective findings, can establish permanent impairment or permanent disability. McGregor v. Jet Company, File No. 5011648 (App. August 30, 2006). The Iowa workers' compensation system has a long history of compensating pain complaints as industrial disabilities if they are found to be disabling. Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961) (complex regional pain syndrome formerly called Sudeck's atrophy, causalgia, or reflex sympathetic dystrophy); Ehteshamfar v. UTA Engineered Systems, 555 N.W.2d 450 (Iowa 1996) (tinnitus); Young v. EDS Distribution Services, File Nos. 5006837 & 5006838, (Arb. August 2, 2004) summarily affirmed (App. September 21, 2005) (permanent total disability and penalties awarded for chronic pain).

When an injury causes severe pain requiring medical treatment and there is sufficient evidence to find that the pain is disabling, the disabling pain is compensable and treated as an unscheduled injury. This includes phantom pain from loss of a limb. Dowell v. Wagler, 509 N.W.2d 134 (Iowa App. 1993). In Dowell, the Court of Appeals held:

We therefore hold that phantom pain syndrome or phantom limb syndrome may be compensable under Iowa Code section 85.34(2)(u) as an unscheduled disability. Applying the industrial disability test to a given case will require a determination both of the functional loss to the body as a whole and of the change in earning capacity of the individual.

Dowell, 509 N.W.2d at 138. The Court of Appeals suggested that the pain must be determined to be sufficient enough to be a separate and distinct impairment. Id. at 137.

Based upon the evidence before the undersigned, I find the claimant has not met her burden of proof at this time that she has a phantom pain syndrome that causes an independent industrial disability. The only evidence at all, at the present time, is the

independent medical evaluation of Dr. Manshadi. Dr. Manshadi took the most thorough history of any physician in this record, and I have no doubt that she has some pain as she describes. Based upon this limited record though, it is simply not enough to meet the test set forth in Dowell.

The claimant is entitled to lifetime medical care for her work injury. The employer has provided her with excellent doctors. Idalia would likely benefit by following up for symptoms of phantom pain, as well as for her symptoms of mild depression. Based upon the record before the agency at the time of this snapshot hearing, however, the disability is limited to her right third and fourth digits. Her disability is therefore evaluated on the basis of the schedule.

The AMA Guides, 5th edition, has been adopted as a guide for determining an injured worker's extent of functional disability. 876 IAC section 2.4. In making an assessment of the loss of use of a scheduled member, however, the evaluation is not limited to the use of the AMA Guides. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). Notwithstanding suggestions to the contrary in the AMA Guides, this agency has a long history of recognizing that the actual loss of use which is to be compensated is the loss of use of the body member in the activities of daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions, and other pertinent factors may all be considered when determining scheduled disability. Bergmann v. Mercy Medical Center, File Nos. 5018613 & 5018614, (App. March 14, 2008); Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Community Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Biegler v. Seneca Corp., File No. 979887 (Arb. February 8, 1994); Rutland v. Rose's Wood Products, File No. 937842 (Arb. January 13, 1994); Smith v. Winnebago Industries, File No. 824666 (Arb. April 2, 1991).

There is no appreciable difference between the ratings of Dr. Delbridge and Dr. Manshadi. I find no reason in this record to find that the claimant's actual loss of function is significantly higher than the rating set forth in the Guides. As such, the claimant is not entitled to any additional permanent partial disability for her injury at this time.

ORDER

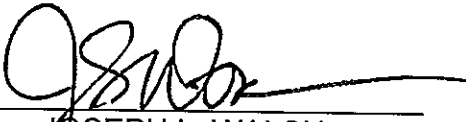
THEREFORE IT IS ORDERED:

Claimant shall take nothing at this time.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendant.

Signed and filed this 17th day of January, 2017.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.