BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUL 24 2018
WORKERS COMPENSATION

MELISSA NOE,	:	
Claimant,	:	File No. 5056973
vs.	:	ARBITRATION
SECOND INJURY FUND OF IOWA,	:	DECISION
Defendant.	:	Head Note Nos.: 1803, 3200

STATEMENT OF THE CASE

Claimant, Melissa Noe, filed a petition in arbitration seeking workers' compensation benefits from VT Industries, Inc., employer, Travelers Indemnity Company of Connecticut, insurance carrier, and Second Injury Fund of Iowa (Fund), as defendants, as a result of a stipulated injury sustained on October 21, 2015. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on August 28, 2017, in Des Moines, Iowa.

On August 28, 2017, prior to commencement of evidentiary hearing, claimant entered into an agreement for settlement with defendants VT Industries, Inc. and Travelers Indemnity Company of Connecticut. Thereby, claimant and these two defendants stipulated claimant sustained a work related injury on October 21, 2015 and the injury resulted in a permanent partial disability of 10 percent of claimant's right foot. This stipulation entitled claimant to 15 weeks of permanent partial disability benefits commencing on the stipulated date of July 12, 2017. The parties to the agreement for settlement also stipulated that at the time of the work injury, claimant's gross average weekly wage was $795.78 and she was married and entitled to three exemptions; accordingly, the proper rate weekly rate of compensation was $527.03. The agreement for settlement was approved by this agency on August 31, 2017.

As claimant and defendants VT Industries, Inc. and Travelers Indemnity Company of Connecticut entered into the above-described agreement for settlement prior to hearing, evidentiary hearing proceeded on August 28, 2017 and involved only claimant's claim against defendant-Second Injury Fund of Iowa. The record in this case consists of Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 9, Defendant's Exhibits AA through EE, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on October 6, 2017.

ISSUE

The parties submitted the following issue for determination:

1. Whether claimant is entitled to benefits under the Second Injury Compensation Act, and if so, the extent of claimant's industrial disability.

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.

FINDINGS OF FACT

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

Claimant's testimony was direct and consistent as compared to the evidentiary record and her deposition testimony. Claimant's demeanor and eye contact during the course of evidentiary hearing were excellent and gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 35 years of age at the time of hearing. She lives on an acreage outside Schaller, Iowa with her husband and minor daughter. Claimant is right-hand dominant. (Claimant's testimony) While in high school, claimant worked for two employers as a telemarketer. (DEAA, page 2)

During high school, claimant experienced painful symptoms about her left wrist. (Claimant's testimony) In late 2000, claimant sought evaluation with personal physician, David Crippin, M.D., for complaints of soreness of her left extensor wrist. Dr. Crippin noted these complaints had been ongoing and worsening for months to years. On October 24, 2000, he assessed a ganglion cyst of the left extensor wrist. In terms of conservative care, Dr. Crippin recommended over-the-counter NSAIDs and rest with splints. However, he cautioned claimant may wish to pursue removal of the cyst by an orthopedist in order to avoid flares. (JE8, p. 1) Thereafter, claimant was seen by John Clark, M.D. Dr. Clark performed an injection of the wrist in November 2000. On January 3, 2001, Dr. Clark performed a resection of the left wrist dorsal ganglion. A follow up medical record from Dr. Clark dated January 25, 2001, noted claimant was doing well post-surgery. (JE8, p. 3; JE9, p. 1) Pursuant to the medical provider's data retention policy, all medical records over 10 years old were destroyed. (JE8, p. 4)

Following surgery, claimant testified she continued to experience activity-dependent left hand pain. As a result, claimant testified she attempted to avoid using her left hand in work duties, would attempt to switch between use of her hands in order to avoid soreness and pain, pushed items with her arm as opposed to her hand/wrist, and positioned herself to allow most lifting to be done with the right arm. She denied ever requesting formal accommodations from an employer. (Claimant's testimony; DEDD, p. 26)

Claimant graduated high school in 2000 with a grade point average of 2.628. (Claimant's testimony; CE2, p. 1; CE5, p. 1) Thereafter, she worked as a veterinary assistant. (CE2, p. 3) In July 2001, claimant applied for employment at VT Industries (VT). (CE3, p. 7) VT manufactures interior wood doors used in commercial applications. (CE3, p. 1) On July 27, 2001, claimant successfully passed a post-offer

nurse health assessment. (DEBB, p. 3) Claimant disclosed her history of left wrist ganglion removal. The nurse noted a small raised area about the volar area of the left wrist; claimant denied associated problems. On examination, wrist range of motion was noted as falling within normal limits. (DEBB, pp. 4-5) Claimant testified at the time of her application, she did not experience left wrist difficulties, as she had not been using her left wrist regularly. At VT she held positions cleaning doors and nailing wood stops. Claimant worked for VT for approximately one year, at which point she was terminated due to absenteeism related to a prolonged illness. (Claimant's testimony)

During the 2002 to 2003 timeframe, claimant worked as assistant manager/feed coordinator at a pig nursery and for a very short time, claimant sewed tarps for boat slips. (Claimant's testimony; CE2, p. 2; DEAA, p. 2) From approximately 2002 to 2004, claimant participated in online college courses and earned a certificate as a veterinary assistant/technician. (CE2, p. 1; DEDD, p. 18) Claimant did not utilize her certification in the labor market. (Claimant's testimony)

Claimant reapplied for work at VT in December 2003. (CE2, p. 2) Claimant successfully participated in a nurse health assessment. (DEBB, pp. 7, 9) Claimant again disclosed a history of left wrist ganglion surgery; she denied associated problems since the surgery. Claimant's wrist range of motion was noted as falling within normal limits. (DEBB, pp. 8, 10) Claimant began work on December 29, 2003. (Claimant's testimony; CE3, p. 9) Claimant testified she consistently experienced difficulties with certain uses of her left wrist; claimant testified her condition was tolerable as long as she avoided such tasks. Claimant held and applied for a number of positions at VT. (Claimant's testimony) In 2011, claimant participated in call center training offered by VT. Claimant received a rating of 5 on a 5-point scale, classified as high overall performance. (DECC, p. 12)

For approximately nine years prior to her stipulated work injury, claimant held the position of hardware coordinator. (Claimant's testimony) As hardware coordinator, the employee is tasked with directing doors to the correct production department, pushing stacks of doors, cleaning, and managing the flow of doors through the hardware department. VT classified the position as medium demand, with lifting of 36 to 75 pounds. (CE3, p. 1) A job demand sheet for the position notes required occasional carrying and lifting of 75 to 100 pounds. (CE3, p. 2) On the date of her injury, claimant earned approximately $16.40 per hour and worked approximately 50 hours per week. During busy times, claimant testified she could work 60 to 70 hours per week. (Claimant's testimony)

On October 21, 2015, claimant was performing her duties as a hardware coordinator, pushing a stack of doors. At the time she began to push, claimant testified she felt an instant tearing and pain in her right foot. (Claimant's testimony) Claimant reported the work injury. (CE3, p. 8)

Claimant presented to R.L. Crampton, DPM, for evaluation. On November 3, 2015, Dr. Crampton began a course of conservative care, including use of a CAM boot and light duty work restrictions. (JE1, pp. 1-2) Dr. Crampton subsequently ordered an MRI of claimant's right lower extremity and removed claimant from work pending the

results. (JE1, p. 4) Claimant underwent the right lower extremity MRI on December 4, 2015; the radiologist noted findings consistent with a partial tear of the plantar fascia. (JE2, p. 1) Dr. Crampton performed a surgical release of claimant's plantar fascia band on December 22, 2015. (JE3, pp. 1-2) Following surgery, claimant was removed from work for a time. Dr. Crampton released claimant to return to work light duty on April 6, 2016. (JE1, p. 4)

Due to ongoing symptomatology, on June 22, 2016, claimant presented to Paul Dayton, DPM. Dr. Dayton noted continued complaints of right foot and heel pain. He assessed postoperative scarring of the right heel and ordered aggressive physical therapy and use of orthotics. Due to claimant's pain levels following long work hours, Dr. Dayton limited claimant's work schedule to 8 hours per day, 5 days per week. (JE5, pp. 1-3)

Due to lack of relief with conservative care, on September 9, 2016, Dr. Dayton performed a gastrocnemius recession. (JE5, p. 4; JE6, pp. 1-3) Claimant did not experience complications following surgery and was released to light duty work on September 27, 2016. (JE5, pp. 4, 6) However, claimant continued to struggle with scar tissue in her right heel, leading Dr. Crampton to continue orders for conservative measures, physical therapy, and work restrictions. (JE5, pp. 7-12)

On December 1, 2016, claimant underwent an independent medical examination with Eric Barp, DPM. Dr. Barp noted improvement in claimant's complaints following gastrocnemius recession, but continued right plantar heel pain. (JE7, p. 2) Dr. Barp opined claimant had received reasonable care to date with respect to the partial plantar fascia tear. (JE7, p. 3) Following physical examination, Dr. Barp expressed belief claimant could perform work activities, as long as she participated in physical therapy as well. (JE7, pp. 2-3) Dr. Barp noted claimant demonstrated full range of motion, full function, no gait derangement, no muscle atrophy, and good muscle strength. Despite some paresthesias of the plantar aspect of claimant's right foot, Dr. Barp opined claimant sustained no ratable permanent impairment by Chapter 17 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. He noted claimant presented with scar tissue, but opined the scar tissue should subside over time with physical therapy and expressed belief claimant should eventually heal without problems. (JE7, pp. 3-4)

Claimant returned to work on light duty at VT and was assigned to run a hardware machine. (Claimant's testimony) As Heian operator or Heian X operator, an employee operates a hardware machine. The ability to lift, push, and pull 75 pounds is noted as a specific requirement. VT classified the positions as medium demand, with lifting of 36 to 75 pounds. (CE3, pp. 3, 5) A job demand sheet for the position notes required occasional carrying and lifting of 75 to 100 pounds. (CE3, pp. 4, 6) Claimant testified she progressively worked up to 8-hour workdays, but continued to experience foot problems. (Claimant's testimony)

On March 27, 2017, claimant underwent a cortisone injection of the right foot. Claimant suffered an acute inflammatory reaction and utilized a Medrol Dosepak. (JE5, pp. 13-14) Thereafter, claimant experienced approximately 50 percent improvement in

symptoms. On April 3, 2017, Dr. Dayton assessed pain secondary to significant fibrosis at the plantar fascial site and recommended surgical intervention. (JE5, p. 16) Claimant underwent surgery on April 14, 2017, consisting of a plantar fasciotomy of the right foot. (JE5, p. 18; JE6, pp. 5-7) Following surgery, claimant experienced near complete resolution of pain and was returned to light duty work. (JE5, pp. 20-21, 23)

Following her return to work, claimant experienced increased symptoms. On June 20, 2017, claimant returned to Dr. Dayton for evaluation. He opined claimant's increased symptoms were likely due to increased activity and/or a compensatory gait. Dr. Dayton recommended claimant increase her activity levels, but limited her temporarily to 4-hour workdays. (JE5, pp. 24-26)

On July 11, 2017, claimant returned to Dr. Dayton and reported increased symptoms related to the amount of time spent on her feet. Dr. Dayton indicated claimant might require a change in the amount of standing during work hours and recommended claimant find a seated job. Accordingly, he imposed restrictions stating claimant was unable to work a full day on her feet and recommended a shift to a seated position in order to allow claimant to perform a 40-hour work week. Dr. Dayton also recommended weaning from the CAM boot and use of a prefabricated orthotic. (JE5, pp. 28-29)

At the arranging of claimant's counsel, on July 26, 2017, claimant presented to board certified occupational medicine physician, Sunil Bansal, M.D., for an independent medical examination (IME). (CE1, p. 20) Dr. Bansal authored a report containing his findings and opinions dated July 28, 2017. Dr. Bansal performed a medical records review and interviewed claimant. During interview, claimant described her work-related right foot injury and non-work related left wrist condition. Specifically, claimant informed Dr. Bansal that during her high school years, she developed a lump on the top of her left wrist. She explained she underwent conservative treatment and ultimately, surgery. Thereafter, claimant indicated she wore a wrist wrap for a time, but received no other treatment for her left wrist condition. (CE1, p. 11)

Dr. Bansal noted claimant complained of continued right foot pain, increased when on her feet for extended periods; occasional swelling of the right foot and ankle; frequent tightness of the foot with snapping and popping; and numbness and tingling of the ankle, heel, side of foot, and fourth and fifth toes. Claimant also complained of continued left wrist pain caused by repetitive lifting or pushing; she noted her left hand became painful before her right hand with such activities. Dr. Bansal noted claimant expressed the following abilities: lifting 10 pounds occasionally and 5 pounds frequently with the left hand; lifting 20 pounds occasionally and 10 pounds frequently; standing in one place 10 to 20 minutes before needing to get off her feet; sitting or walking approximately 1 hour maximum; and difficulty descending stairs or uneven terrain. (CE1, p. 16)

Dr. Bansal performed a physical examination. (CE1, pp. 14-15) He noted claimant ambulated with an antalgic gait. On examination of the right foot and ankle, Dr. Bansal noted tenderness to palpation of the plantar fascia and heel, loss of two-point discrimination, and dysesthesias over the dorsum of the right foot in the

medial and lateral plantar nerve distributions. (CE1, p. 14) On examination of the left wrist and hand, Dr. Bansal noted tenderness to palpation over the dorsal aspect of the wrist. He also measured range of motion of the left wrist, as well as bilateral grip strength. (CE1, pp. 14-15)

Following records review, interview, and examination, Dr. Bansal issued assessments regarding claimant's right foot and left wrist. With respect to the right foot/ankle, Dr. Bansal diagnosed right plantar fasciitis, status post release and gastrocnemius recession; and postoperative scarring, status post right foot plantar fasciotomy. For the left wrist, Dr. Bansal diagnosed a ganglion cyst of the left extensor wrist, status post ganglion cystectomy. (CE1, p. 15) Dr. Bansal opined claimant achieved maximum medical improvement (MMI) relative to her right foot/ankle as of her final appointment with Dr. Dayton, July 11, 2017. With respect to claimant's need for further care, Dr. Bansal opined claimant would benefit from referral to a pain physician regarding ongoing right foot/ankle pain. (CE1, p. 18)

Dr. Bansal also offered opinions with respect to the extent of permanent impairment claimant sustained to her right foot/ankle and left wrist. Dr. Bansal noted plantar fasciitis is not a condition specifically rated in the AMA Guides, Fifth Edition. However, as the condition caused considerable pain in the bottom of claimant's foot which functionally impaired claimant's ability to stand and walk, Dr. Bansal located an analogous position for rating purposes. Specifically, Dr. Bansal opined an analogous position found within the AMA Guides rated for disturbance in sensation to the bottom of the foot, resulting in similar functional limitations as those experienced by claimant. On this basis, Dr. Bansal opined claimant sustained a permanent impairment of 10 percent right foot or 7 percent right lower extremity. He opined claimant sustained a permanent impairment of 2 percent upper extremity for deficits in extension of the left wrist. (CE1, p. 17) Dr. Bansal also recommended permanent restrictions relative to each condition. For the right foot/ankle, Dr. Bansal recommended: no prolonged standing or walking for greater than 60 minutes at a time or 2 hours cumulatively per work day; avoidance of multiple steps, stairs, or ladders; and avoidance of work on uneven ground. For the left hand/wrist, Dr. Bansal recommended: no lifting greater than 10 pounds occasionally or 5 pounds frequently with the left arm. (CE1, p. 18)

Claimant expressed agreement with the restrictions recommended by Dr. Bansal for her left wrist. (Claimant's testimony)

Claimant's counsel provided Dr. Dayton with a copy of Dr. Bansal's IME report for review. Thereafter, on August 14, 2017, Dr. Dayton issued responses to inquiries from claimant's counsel. Dr. Dayton assessed chronic plantar fasciitis, post gastrocnemius recession, and chronic right foot pain. Dr. Dayton expressed agreement with Dr. Bansal's opinions with respect to claimant's permanent impairment and need for permanent restrictions. Specifically, Dr. Dayton agreed with the permanent impairment rating of 10 percent right foot and the following permanent restrictions: only sitting/office work in order to maintain a 40-hour workweek; avoidance of multiple steps, stairs, or ladders; avoidance of uneven ground; and no prolonged standing or walking greater than 60 minutes at a time or 2 hours cumulatively in a work day. (JE5, pp. 30-31)

VT agreed to accommodate Dr. Dayton's restrictions. (CE7, pp. 1-2) Claimant was placed in the position of finish line audit operator, tasked with inspecting doors for quality and documenting issues. VT allowed claimant to perform her work in a seated position, perform no lifting or carrying, and limited her to 40 hours per week. (CE7, pp. 1-3, 5, 7-8; DEEE, pp. 28-29) While the rate of pay for the position held by claimant typically ranged from $14.66 to $15.71 per hour, VT kept claimant's existing hourly rate of $16.81. (CE7, pp. 2-3)

Claimant testified she does not perform all tasks associated with the auditing position and some of her duties are performed by coworkers. She testified she is the only employee allowed to perform seated work in the plant. Claimant is not permitted to work overtime. Her job duties do not cause problems with her left hand. Claimant is thankful VT accommodated her right foot restrictions and has retained her as an employee. She has no plans to leave employment at VT. (Claimant's testimony)

From 2011 to 2014, claimant earned approximately $30,000.00 annually at VT. (CE4, p. 3) During 2015, the year of her October work injury, claimant earned $35,156.00 at VT. In 2016, claimant earned $24,199.00 at VT. (CE4, p. 3)

Claimant testified she continues to experience difficulty standing. She described a sensation of a minor bruise on the bottom of her foot upon standing, with that pain worsening over time. She wears a custom orthotic and buys footwear from brands specifically recommended by the podiatrist. Claimant testified her right foot throbs at the end of a day and impacts her ability to sleep extended periods. She is able to complete household and property chores, yet she relies more upon her daughter for assistance. If needed, claimant utilizes over-the-counter medication. (Claimant's testimony)

CONCLUSIONS OF LAW

The sole issue for determination is whether claimant is entitled to benefits under the Second Injury Compensation Act, and if so, the extent of claimant's industrial disability.

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

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury

Fund, 262 N.W.2d 789 (Iowa 1978); Iowa Practice, Workers' Compensation, Lawyer and Higgs, section 17-1 (2006).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

There is no dispute claimant suffered with a left hand/wrist condition which required surgery in 2001 and a work-related injury to her right foot. Both injuries are of the types enumerated in section 85.64 as forming the basis for a claim for Second Injury Fund benefits. The Fund does not argue claimant did not sustain permanent disability as a result of the work injury of October 21, 2015. The dispute in this matter is whether claimant suffered a first qualifying loss to her left hand on January 3, 2001; specifically, whether the left hand condition resulted in any permanent disability. Absent permanent disability attributable to the left hand injury, claimant is not entitled to benefits from the Fund.

Claimant underwent surgical resection of a left wrist dorsal ganglion in January 2001. Claimant did not require ongoing medical treatment and no permanent restrictions were imposed with respect to claimant's left wrist. Claimant worked for over 15 years following surgery without any formal restrictions or requests for accommodations. During this period, claimant passed two preemployment health assessments at VT and maintained medium to heavy physical demand work as a hardware coordinator for approximately 9 years. These facts supports the Fund's argument claimant did not suffer any permanent disability as a result of the left wrist ganglion cyst and resultant removal.

However, claimant credibly testified that following surgery, she continued to experience activity-dependent left hand/wrist pain. As a result, claimant testified she self-accommodated by avoiding use of her left hand and increasing reliance on her right hand, pushing with her arm as opposed to her hand, and positioning her body to allow for the majority of physical exertion to be borne by her right arm.

Claimant relayed these complaints of left wrist pain due to repetitive lifting or pushing to Dr. Bansal. On examination, Dr. Bansal noted tenderness to palpation of claimant's left wrist and found decreased range of motion of the wrist. On this basis, Dr. Bansal opined claimant sustained a 2 percent upper extremity impairment as a result of deficits in extension. Dr. Bansal also recommended permanent restrictions of no lifting greater than 10 pounds occasionally or 5 pounds frequently with the left arm. Claimant expressed specific agreement with the restrictions recommended by Dr. Bansal.

Following review of the entirety of the evidentiary record, it is determined claimant sustained permanent disability as a result of the left wrist ganglion cyst which required surgical removal in 2001. Dr. Bansal opined claimant sustained measurable decrements in range of motion of the wrist, attributable to the 2001 left wrist condition.

While Dr. Bansal's notes do not include measurements of range of motion of the right wrist for comparison, Dr. Bansal's measurements are unrebutted. The preemployment health screenings summarily noting motion within normal limits do not sufficiently counter Dr. Bansal's specific measurements. Dr. Bansal's opinion with respect to claimant's need for permanent restrictions is also unrebutted. Although claimant has functioned for a number of years without formal restrictions, claimant credibly testified she self-accommodated by performing various tasks in manners which limited the exertion of the left wrist.

It is also noteworthy that no medical provider has opined claimant sustained zero permanent impairment and/or does not require permanent restrictions. Therefore, I am left with the unrebutted opinions of Dr. Bansal which are consistent with claimant's credible testimony regarding ongoing limitations. I see no compelling reason to reject Dr. Bansal's unrebutted opinions and accordingly, find claimant sustained permanent disability as a result of the left wrist condition which required surgical fixation in January 2001.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. 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 the 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 for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant was 35 years of age on the date of hearing. She is right-hand dominant. Claimant suffered injury to her non-dominant left wrist which required surgical fixation in 2001; as a result of this injury, claimant has been left with permanent impairment and a need for permanent restrictions as set forth *supra*. Claimant graduated high school in 2000 and subsequently, successfully earned a certification as a veterinary assistant/technician. Claimant has learned additional skills through her employment and training at VT, including showing aptitude in customer service duties. Claimant has demonstrated the ability to learn and apply new skills; she is a potential candidate for retraining, if need be.

Claimant's work history consists of brief experiences as a telemarketer, veterinary assistant, feed coordinator, and sewing tarps. The vast majority of claimant's work history has been employment at VT. She initially worked at VT for approximately one year in 2001 and subsequently returned to VT in 2003. She has remained consistently employed by VT since 2003.

On October 21, 2015, claimant suffered an admitted work-related injury to her right foot. The injury ultimately required three surgical procedures: release of the plantar fascia band in December 2015; gastrocnemius recession in September 2016; and plantar fasciotomy in April 2017. Drs. Dayton and Bansal issued opinions regarding claimant's permanent impairment and need for permanent restrictions following completion of claimant's treatment. Both physicians opined claimant sustained permanent impairment of 10 percent of the right foot and imposed permanent restrictions of: only sitting/office work in order to maintain a 40-hour workweek; avoidance of multiple steps, stairs, or ladders; avoidance of uneven ground; and no prolonged standing or walking greater than 60 minutes at a time or 2 hours cumulatively in a work day.

On the date of her work injury, claimant was employed as a hardware coordinator. Following the work injury, claimant was precluded from this preinjury position by her work restrictions, most notably the amount of time claimant was capable of remaining on her feet. VT accommodated claimant's restrictions and assigned her to an existing job within the plant, performing audits at the line. VT allowed claimant to perform the job in a seated position, without lifting and carrying. As a result, claimant testified she does not perform all the tasks required of her position. VT also allowed claimant to retain her existing rate of pay of $16.81 per hour, which is higher than the typical range for her position and is also higher than on the date of claimant's work injury. Despite her hourly rate of pay increasing following the work injury, claimant is now precluded from performing overtime hours, resulting in decreased income. Claimant has showed motivation and desire to retain her employment at VT and has not applied for work elsewhere.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 40 percent industrial disability as a result of the stipulated work-related injury of October 21, 2015. Such an award entitles claimant to 200 weeks of permanent partial disability benefits (40 percent x 500 weeks = 200 weeks), commencing on the stipulated date of November 29, 2017. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were $795.78, and claimant was married and entitled to 3 exemptions. The proper rate of compensation is therefore, $527.03.

ORDER

THEREFORE, IT IS ORDERED:

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendant shall pay unto claimant two hundred (200) weeks of permanent partial disability benefits commencing November 29, 2017 at the weekly rate of five hundred twenty-seven and 03/100 dollars ($527.03).

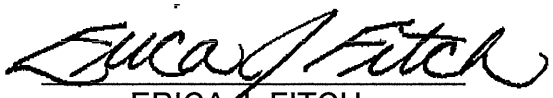
Defendant shall receive credit as stipulated by the parties.

Defendant shall pay accrued weekly benefits in a lump sum.

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 pursuant to 876 IAC 4.33.

Signed and filed this 24th day of July, 2018.



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EJF/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.