

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

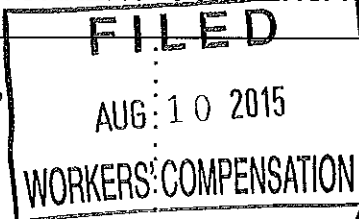
GEORGE NICHOLAS BRAGG,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Defendant,



File No. 5047619

ARBITRATION

DECISION

Head Note Nos.: 3202; 3203

STATEMENT OF THE CASE

Claimant, George Bragg, filed a petition in arbitration seeking workers' compensation benefits from the Second Injury Fund of Iowa (Fund). This case was heard in Des Moines, Iowa, on May 19, 2015. The record in this case consists of claimant's exhibits 1 through 7, defendants exhibits A through C, and the testimony of claimant.

ISSUES

1. Whether claimant has a compensable first second injury as it applies to the Fund.
2. The extent of claimant's entitlement to Fund benefits.

FINDINGS OF FACT

Claimant was 42 years old at the time of the hearing. He graduated from high school. Claimant testified he has post high school degrees in drafting, and sales and marketing. Claimant went through a four-year apprenticeship program to become a sheet metal worker. (Exhibit C, page 2)

Claimant has worked as a draftsman and for a lawn company. He worked, through the union, as a sheet-metal worker for different employers. (Ex. C, pp. 2-3)

Claimant began with Chicago Tube & Iron (CTI) in April 2014. Claimant worked as a saw operator for CTI. Claimant would cut steel for various jobs. Claimant also helped unload semi-trucks containing steel bars. Claimant said he worked 40 hours per week and earned approximately \$15.00 per hour.

Claimant's prior medical history is relevant. In 2011, claimant crushed his thumb while working on a steel bending machine. Claimant said he was treated for the injury by Teri Formanek, M.D. Records indicate claimant got his left thumb caught between two pieces of metal. Claimant had a large laceration on the volar side of his thumb. He had a comminuted fracture of the proximal phalanx of the thumb. In a February 1, 2012

note, John Gaffey, M.D., found claimant had a five percent permanent impairment to the hand based upon pain and loss of range of motion. (Ex. 4)

In a February 28, 2012 note, Dr. Formanek found that claimant had a laceration of the soft tissue on the volar side of the thumb and a fracture of the proximal phalanx. He found claimant had a 10 percent permanent impairment to the left upper extremity. (Ex.3)

In a physical evaluation in April 2013, for his job with CTI, claimant indicated he had no medical restrictions. (Ex. A)

On February 10, 2014, claimant was moving steel bar when his right thumb was cut between two pipes resulting in a crush injury to the right thumb. Claimant was assessed as having a fracture of the distal phalanx with soft tissue and nail bed injury. (Ex. 2, p.6)

On February 18, 2014, claimant was returned to work at normal duty. (Ex. 2, p. 1)

On June 9, 2014, claimant had surgery on the right thumb consisting of reconstruction of the volar advancement flap, and removal of the distal tip of the thumb due to continued pain. Surgery was performed by Ronald Bergman, D.O. (Ex. 1, Ex. 5)

On October 8, 2014, claimant was terminated from CTI for falsifying a bereavement leave request. (Ex. B, p. 2) Claimant testified that after leaving CTI, he got on, through the union, with Corn States. At the time of hearing, claimant testified he earned approximately \$30.86 per hour with Corn States.

In an October 7, 2014 report, Bryan Folkers, D.O., gave his opinions of claimant's condition following an evaluation. Based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Folkers found that claimant had a 13 percent permanent impairment to the right thumb based on the AMA Guides, figure 15-4, figure 15-6, and Table 16-6. (Ex. 2, pp. 6-9)

In a March 30, 2015 report Sunil Bansal, M.D., gave his impressions of claimant's condition following an independent medical evaluation (IME). Claimant complained of numbness in the right thumb and pain in the right hand directly below the thumb. Claimant's pain was aggravated by the use of a hammer. Claimant also indicated his left thumb was numb following his injury. Claimant was found to be at maximum medical improvement (MMI) for the right thumb on June 24, 2014. Dr. Bansal found claimant had a 14 percent permanent impairment to the right thumb and a 4 percent permanent impairment to the left thumb. (Ex. 6, pp. 3-10)

Claimant testified that, at his job with Corn States, he needs to use power tools and tin snips. He said that he is able to do the job, but it is difficult to do given the limitations with his thumbs. He said that he tries not to use his thumbs to operate tools with a grip. He said that he has pain below the thumb in the palm of his hand. Claimant testified he lacks range of motion and strength in his left thumb. He said he has

difficulty gripping on the left. He said that because of limitations in his thumb, he feels his work pace is slow.

CONCLUSIONS OF LAW

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 R. App. P. 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); 15 Iowa Practice, Workers' Compensation, Lawyer, section 17:1, p. 211 (2014-2015).

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).

The second qualifying loss must involve a permanent loss to another hand, arm, foot, leg, or eye arising out of and in the course of employment. Iowa Code section 85.64, Second Injury Fund of Iowa v. Shank, 516 N.W.2d 808, 812 (Iowa 1994). In Stumpff v. Second Injury Fund of Iowa, 543 N.W.2d 904 (Iowa 1996) the Iowa Supreme Court held that an injury to a finger should not be treated as a loss or loss of use to a hand, and should not be considered a qualifying injury for the purposes of Fund benefits. In Stumpff, the injury and the disability were to claimant's proximal phalanx of the right index finger. The Iowa Supreme Court noted:

The injury to an index finger and the injury to a hand are separately identified scheduled injuries... Obviously the loss of a finger or thumb, does, to some extent, affect the hand... Where the Iowa legislature has explicitly provided for workers' compensation benefits based on the loss of a finger, there is no merit in arguing this schedule for the loss of a hand should apply...

The Iowa legislature chose to allow a hand injury to qualify as a first injury against the Fund but not allow an injury to a finger to qualify.

Stumpff, 543 N.W.2d 906-907 (Iowa 1996).

The court in Stumpff indicated that a qualifying injury could be found when the site of an injury is at a point where the bones of the finger connects to the bones of the hands at the metacarpal joint. In Stumpff, the situs of claimant's injury was to a proximal phalanx. Based on that, the court found Mr. Stumpff's finger injury was not a qualifying injury for the purposes of Fund benefits. See also Evans v. Second Injury Fund, No. 5-098, filed April 28, 2005 (Iowa Ct. App.). Unpublished, 698 N.W. 2d 336 (Table); Patton v. Second Injury Fund, File No. 890255 (App. May 27, 1993); Stumpff v. Jeld-Wen, File No. 5012266, 5012267 (Arb. 2006)

Claimant, in this case, like that of Mr. Stumpff, had a fracture to a proximal phalanx. Claimant's first injury was a fracture to the proximal phalanx on the left thumb. (Ex. 4). Claimant had surgery on the left thumb. Claimant was given no permanent restriction to his hand for his first injury.

Regarding his second injury, claimant had a fracture to the distal phalanx on the right thumb. (Ex. 2, pg. 6)

Claimant's finger injuries, may to some extent, affect his hands. However, the record in this case indicates that the situs of claimant's first injury was to a proximal phalanx on the left thumb. The situs of his second injury was on the distal phalanx on the right thumb. He has not been given any permanent restrictions to his right hand for the 2011 injury to the right finger.

Based on the above, claimant has failed to prove that he has a qualifying first or second injury for the purposes of Fund benefits.

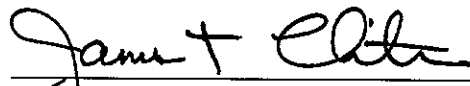
ORDER

THEREFORE, it is ordered:

That the claimant shall take nothing from this proceeding.

That both parties shall pay their own costs.

Signed and filed this 10th day of August, 2015.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFC/kjw

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.