BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LOREN MURDOCK, Claimant, vs. ADVENTURELANDS OF AMERICA, INC., Employer, and THE INSURANCE COMPANY, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	FILED MAR 22 2019 WORKERS' COMPENSATION File No. 5055603 APPEAL DECISION Head Note Nos: 1402.40; 1703; 1803 1803.1, 2907, 3202

Claimant Loren Murdock appeals from an arbitration decision filed on November 16, 2017. Defendants Adventurelands of America, Inc., employer, its insurer, THE Insurance Company, and the Second Injury Fund of Iowa (the Fund), respond to the appeal. The case was heard on September 15, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the arbitration hearing.

The deputy commissioner found claimant sustained scheduled member functional disability of ten percent of the left lower extremity as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on July 3, 2015. The deputy commissioner found claimant's permanent disability resulting from the work injury is confined to the left lower extremity and does not extend into claimant's body as a whole. The deputy commissioner found claimant failed to prove he is entitled to receive industrial disability benefits. The deputy commissioner found claimant failed to prove he sustained a first qualifying injury which, when combined with the work injury, would entitle claimant to receive benefits from the Fund. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding in the amount of $1,032.00.

On appeal, claimant asserts the deputy commissioner erred in finding claimant's injury does not extend beyond the left lower extremity into the body as a whole. Claimant asserts the deputy commissioner erred in failing to award claimant industrial disability benefits. In the alternative, if it is affirmed on appeal that claimant's injury is confined to the left lower extremity, claimant asserts the deputy commissioner erred in failing to find claimant sustained a first qualifying injury which, when combined with the work injury, would entitle claimant to receive benefits from the Fund.

Defendants employer, insurer and the Fund assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on November 16, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant's permanent disability resulting from the July 3, 2015, work injury is confined to the left lower extremity and does not extend into claimant's body as a whole. I affirm the deputy commissioner's finding that claimant sustained scheduled member functional disability of ten percent of the left lower extremity as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove he sustained a first qualifying injury which, when combined with the work injury, would entitle claimant to receive benefits from the Fund. I provide the following analysis for my decision in this matter:

Claimant's work injury occurred on July 3, 2015, when he stepped off the sidewalk, tripped and fell forward onto his knees. He did not seek immediate medical attention but, by July 28, 2015, claimant's left knee was infected and swollen and he was seen at Mercy East Family Practice & Urgent Care. (Joint Exhibit 3, pages 5-8) He was treated and instructed to go to the emergency room if his condition did not improve. (Hearing Transcript, p. 18)

Claimant's knee did not improve and he went to the Mercy Medical Center ER on July 31, 2015, and he was taken to surgery. Chinedu C. Nwosa, M.D. diagnosed claimant with a septic left knee and septic left pre-patellar bursitis. (Jt. Ex. 4, p. 17) Dr. Nwosa debrided and cleaned the left knee. (Id.) Following a slow recovery process,

claimant returned to Dr. Nwosa on January 20, 2016, with reports that he only had mild symptoms remaining. (Jt. Ex. 5, p. 19) Dr. Nwosa noted claimant was able to do everything he would like to be doing and that claimant had pain free range of motion of the left knee. (Jt. Ex. 5, pp. 19-20) Claimant was using a cane for balance issues unrelated to the work injury. (See Ex. 1, p. 2)

On January 20, 2016, Dr. Nwosa declared claimant to be at maximum medical improvement. (Jt. Ex. 5, p. 22) Claimant was released to return to work without restrictions. (Jt. Ex. 5, p. 23) As a result of the fall, Dr. Nwosa opined claimant had sustained ten percent impairment of the left leg related to the July 3, 2015, work injury. (Jt. Ex. 5, p. 25)

On July 13, 2016, John Kuhnlein, D.O. performed an independent medical evaluation (IME) of claimant at the request of claimant's attorney. The subjective history recorded by Dr. Kuhnlein is different from that of Dr. Nwosa. Claimant had decreased extension and a toe-leading gait on the left side. (Ex. 1, p. 5) Due to fresh abrasions on claimant's right elbow and right knee, Dr. Kuhnlein concluded claimant had recently fallen.

Based on the lack of extension in the left knee, Dr. Kuhnlein assessed a ten percent impairment; however, he was uncertain how much of that current left lower extremity impairment was due to the fall just two weeks prior to the IME and how much was due to the work injury. (Ex. 1, p. 8) Dr. Kuhnlein further noted that while claimant has a history of falling which would place him at severe risk in any work place, Dr. Kuhnlein was not able to conclude to a reasonable degree of medical certainty whether the recent fall, or claimant's propensity to fall, was related as a sequela to the July 2015 work injury. (Ex. 1, p. 8)

There are medical records in evidence documenting a history of falls prior to the work injury. In the medical records of Steven D. Schulz, M.D., claimant's treating physician, there was a fall reported on January 2, 2007. Four other falls were documented in the medical records including: April 4, 2012, January 6, 2013, December 21, 2014, and January 25, 2015. (Jt. Ex. 1, p. 3; Jt. Ex. 2, p. 1; Jt. Ex. 3. p. 1; Jt. Ex. 4, p.1)

These pre-injury falls coupled with the lack of any medical opinion to a reasonable degree of medical certainty tying the tendency to fall to the July 2015, work injury, support a finding that claimant failed to prove by a preponderance of the evidence that the falls were related to his work injury.

Claimant also argues he has altered gait which makes this a body as a whole claim rather than a scheduled member injury. However, there are no medical records to support that finding nor are there any medical opinions to a reasonable degree of medical certainty that would support that argument. Therefore I affirm the finding by the deputy commissioner that claimant sustained only ten percent impairment of the left lower extremity and nothing more as a result of the work injury.

The next issue is whether the Second Injury Fund is implicated by claimant's prior medical history.

The alleged first qualifying injury claimant points to appears to be either a rotator cuff surgery claimant had in the early 2000's, or a left shoulder injury which occurred as the result of the fall on January 25, 2015. The x-ray from January 2015 fall revealed a comminuted fracture of the proximal humerus. (Jt. Ex. 4, p. 4)

Claimant asserts that because the 2015 injury was to the humerus bone, the long bone in the upper arm, the injury is to claimant's upper extremity and not to the body as a whole. However, the medical records indicate claimant's injury extended into his shoulder and his shoulder was also treated. (See infra, Jt. Ex. 4, pp. 2-5; Jt. Ex. 5, pp. 1-7) While the humerus was fractured, the pain, discomfort and lack of motion extended into claimant's shoulder. In the medical records of January 25, 2015, Dr. Vinyard recommended either a sling or immobilization for the shoulder. (Jt. Ex. 4, p. 4) Dr. Kuhnlein refers to the January 2015 injury as a shoulder injury. (Ex. 1, p. 7)

Claimant argues it is inconsistent to find that the fracture of the long bone in the arm is an industrial injury whereas knee abrasions affecting one's gait is not an industrial injury. However, the key difference between the findings for the shoulder and the leg rest upon the opinions of the medical doctors. As it relates to the left lower extremity, there is no medical provider who has given an opinion based upon a reasonable degree of medical certainty that the left lower extremity has created problems that extend into the body as a whole. On the other hand, all of the medical records, as well as the opinion of Dr. Kuhnlein, refer to the January 25, 2015, injury which included the humerus fracture as a shoulder injury. Therefore, based upon the medical records, the finding of the deputy commissioner that claimant is not entitled to receive benefits from the Fund is consistent and that finding is affirmed.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 16, 2017, is affirmed in its entirety.

Defendants employer and insurer shall pay claimant twenty-two (22) weeks of permanent partial disability benefits commencing on August 10, 2016, at the weekly rate of two hundred thirty-nine and 05/100 dollars ($239.05).

Defendants employer and insurer shall receive the claimed credit noted on the hearing report for benefits paid to date, as documented in defendants' Exhibit A.

The employer and insurance carrier shall pay interest on all accrued benefits pursuant to Iowa Code section 85.30.

Claimant shall take nothing from the Second Injury Fund of Iowa in these proceedings.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding in the amount of one thousand thirty-two and no/100 dollars ($1,032.00), and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 22nd day of March, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Nathaniel R. Boulton
Sarah M. Baumgartner
Attorneys at Law
100 Court Ave., Ste. 425
Des Moines, IA 50309
nboulton@hedberglaw.com
sarah@hedberglaw.com

Joseph F. Moser
Attorney at Law
699 Walnut St., Ste. 1700
Des Moines, IA 50309
jmoser@finleylaw.com

Tonya A. Oetken
Dept. Of Justice-Special Litigation
Hoover State Office Bldg.
Des Moines, IA 50319
tonya.oetken@ag.iowa.gov