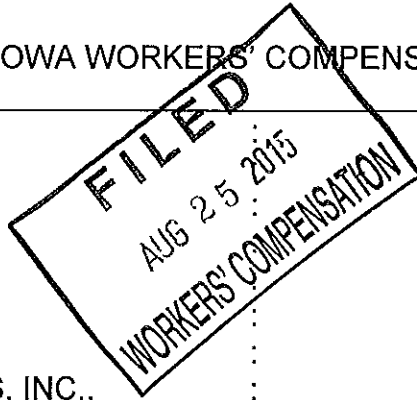


BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARISOL IGLESIAS,  
Claimant,

vs.

TYSON FRESH MEATS, INC.,  
Employer,  
Self-Insured,  
Defendant.



File No. 5048437

ARBITRATION  
DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Marisol Iglesias has filed a petition in arbitration and seeks workers' compensation benefits from Tyson Fresh Meats, Incorporated, employer, self-insured defendant.

This matter was heard by Deputy Workers' Compensation Commissioner Ron Pohlman in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1-18; defendant's exhibits A through C, as well as the testimony of the claimant through interpreter, Darcy Lopez and Brian Jackson.

ISSUE

The parties submitted the following issue for determination:

The extent of claimant's entitlement to permanent disability pursuant to Iowa Code section 85.34(2)(u).

FINDINGS OF FACT

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

The claimant at the time of the hearing was 37 years old. She was born in El Salvador and completed approximately nine years of schooling there. She is able to speak some English and can understand basic instructions in English in her job but is not otherwise conversant in English. She relies on others to assist her in understanding written documents in English. The claimant began working for the employer in 2001. At that time she had no physical limitations or restrictions with respect to her arms,

shoulders or neck. She underwent a physical examination at the time of hire, and she was cleared to work without restrictions.

On July 17, 2012 the claimant suffered a cumulative injury to her right arm, right shoulder and neck from repetitive upper extremity work. This injury is admitted and it is admitted that the injury was cause of a permanent disability. The question remains as to the extent of that disability. At the time of the injury she was working in a carcass trimmer job, which she had been performing for about nine years. This job involved checking and removing contaminated portions inside hog carcasses. The claimant is five feet one inch tall and stood as carcasses came to her hanging from a line overhead. She would grab a carcass with a hook in her left arm pulling it into position so she could cut out the contaminated portions with a knife using her right hand.

The claimant's course of treatment has been conservative. She has not had surgery. The claimant's most recent treatment has been with Timothy Vinyard, M.D. who has diagnosed the claimant with rotator cuff tendinitis/bursitis, right shoulder impingement and bursitis. Dr. Vinyard treated the claimant with physical therapy, work restrictions and a right shoulder injection.

Dr. Vinyard ordered the claimant to have a functional capacity evaluation, which was performed on May 31, 2013. The results of the functional capacity evaluation indicated the claimant had failed four of the seven validity criteria and indicated the claimant had met the medium demand category. The claimant had an EMG study performed on August 26, 2013 by Todd Troll, M.D., which was abnormal indicating mild right median neuropathy at the wrist but no evidence of plexopathy or radiculopathy involving the right arm. The claimant had an independent medical evaluation with Sunil Bansal, M.D. on December 20, 2013. Dr. Bansal diagnosed the claimant with chronic myofascial pain syndrome in the neck; right rotator cuff tendinopathy, right shoulder and right wrist right carpal tunnel syndrome. Dr. Bansal placed the claimant at maximum medical improvement on November 13, 2013 and causally connected the claimant's problems to her repetitive work.

With respect to permanent impairment Dr. Bansal assigns a five percent impairment of the whole person for the neck; seven percent impairment of the whole person for the right shoulder and a three percent upper extremity impairment for the right carpal tunnel. With respect to restrictions Dr. Bansal opines:

Combining the information from the medical records, subjective, objective portions of my exam as well as the findings of the FCE, I recommend the following restrictions:

I would place a restriction of no lifting greater than 25 pounds occasionally, 10 pounds frequently. I would restrict right arm lifting to 7 pounds.

No overhead lifting greater than 10 pounds with both hands, no frequent overhead lifting.

Avoid tasks that require frequent overhead gazing and neck motion.

(Exhibit 10, page 220)

The claimant also treated with Jose Angel, M.D. who indicated his agreement with Dr. Bansal's proposed restrictions. See Exhibit 11, page 241.

Dr. Vinyard's notes at the time of his last evaluation of the claimant indicate:

I had a comprehensive discussion with the patient. We went over her evaluation results in detail. I apologized to the patient that I am not able to offer her a great explanation for the continued pain that she is having. She has tried multiple modalities with no significant relief whatsoever. I explained to the patient that I would be happy to offer her a surgery if I thought one was indicated and that the potential benefits of such surgery would outweigh the risks. Unfortunately, I do not think this is the case. I discussed with the patient placing her at maximal medical improvement. I will remove her from any work restrictions. She may continue to be under restrictions at the discretion of Dr. Jackson and any other doctor she is seeing. We discussed the possibility of a 2<sup>nd</sup> opinion or referral to other providers. Patient is in agreement with this plan. She indicated that she is very frustrated. I would be happy to see her back on an as-needed basis.

(Ex. 6, pp. 177, 178)

The claimant is currently performing a full-duty job of batch condemn at the employer's Perry, Iowa plant. After her injury she also performed some work in internal quality control referred to as SPC monitoring, which involved checking specific lines and areas for contamination and communicating those problems to supervisors so that the issues or contamination can be resolved. The claimant testified that she can still do both the SPC monitoring and batch condemn jobs without difficulty and can do her carcass trimming job but would have problems if there was more contamination.

The claimant's supervisor, Brian Jackson, testified that the carcass trimming job, as it is performed today with available ergonomic stands, would fall between the claimant's shoulder and waist area.

#### REASONING AND CONCLUSIONS OF LAW

The issue in this case is the extent of claimant's entitlement to permanent partial disability.

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.

The claimant has significant restrictions recommended by her independent medical evaluator. The functional capacity evaluation in this case was somewhat equivocal according to the treating physician but would have placed the claimant in the medium category. The claimant does have significant permanent impairment. The record indicates that the claimant has been able to continue working full time in different jobs that require more skill than her old job. The claimant has sustained some industrial disability though it is not substantial. It is concluded based on this record that the claimant has sustained a 30 percent industrial disability entitling her to 150 weeks of permanent partial disability benefits pursuant to Iowa Code section 85.34(2)(u).

#### ORDER

#### THEREFORE IT IS ORDERED:

Defendant shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits commencing November 13, 2013 at the weekly rate of three hundred sixty-three and 25/100 dollars (\$363.25).

Defendant shall receive credit for sixty-seven (67) weeks of benefits paid at the weekly rate of three hundred sixty-three and 25/100 dollars (\$363.25).

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury filed as directed by this agency.

Costs of this action are taxed to the defendant pursuant to Rule 876 IAC 4.33.

Signed and filed this 25<sup>th</sup> day of August, 2015.



RON POHLMAN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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RRP/sam

**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.