

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 ETHAN RONEY,

Claimant,

vs.

PITT'S LAWN & TREE SERVICE,

 Employer,
 Defendant.

File No. 20700179.01

ARBITRATION DECISION

 Head Note Nos.: 1803, 2700, 2910,
 3000

 STATEMENT OF THE CASE

Claimant, Ethan Roney, filed a petition in arbitration and seeks workers' compensation benefits from Pitt's Lawn and Tree Service (Pitt's), employer, as defendant, as a result of an alleged injury sustained on February 17, 2019. Claimant's original notice and petition in arbitration was filed February 21, 2020. Claimant filed a proof of service indicating the petition was received by Pitt's via Sheriff's service on February 28, 2020. On August 7, 2020, claimant filed a motion for default judgment, after properly serving defendant with notice of intent to do so. As defendant failed to file any appearance, motion, answer, or other response, the undersigned entered a default against defendant on September 2, 2020.

By an order dated November 20, 2020, I set the matter for telephonic default hearing on December 9, 2020 at 8:30 a.m. The matter proceeded to hearing before Deputy Workers' Compensation Commissioner, Erica J. Fitch, as scheduled on December 9, 2020. Defendant failed to appear and participate in hearing. Defendant did not file an appearance, motion, answer, or other pleading with the agency. The evidentiary record consists of claimant's exhibits 1 through 2 and the testimony of the claimant. The matter was recorded by means of digital audio recorder.

ISSUES

The following issues were submitted for determination:

1. Whether the February 17, 2019 injury is a cause of permanent disability;
2. The extent of permanent disability to the scheduled member middle finger;
3. The proper commencement date for permanent disability benefits;
4. The proper rate of compensation; and
5. Whether claimant is entitled to an award of alternate medical care pursuant to Iowa Code section 85.27, specifically an order finding defendant responsible for a paramedical tattoo.

As an entry of default has been entered against defendant, the issues of existence of an employer-employee relationship and whether claimant sustained an injury on February 17, 2019 that arose out of and in the course of employment will not be discussed.

FINDINGS OF FACT

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

Claimant's testimony was clear, direct, and consistent as compared to the evidentiary record. The undersigned was presented with no reason to doubt claimant's veracity. Claimant is found credible.

On February 17, 2019, claimant was working for defendant in Ames, Iowa. Over the course of his greater than one year of employment, claimant earned \$12.00 per hour and worked 40 hours per week. While performing snow removal that date, claimant's left middle finger was cut by a snowblower. (Claimant's testimony) Photographs taken following the incident appear to show a traumatic amputation of the tip of the left middle finger, at a level near the bottom of the fingernail. (CE2, pp. 77-80, 82-83)

Immediately following the injury, claimant presented to the emergency department at Mary Greeley Medical Center (MGMC) and was examined by Mary Jane Mills, PAC. Ms. Mills noted claimant presented with a middle digit laceration sustained after reaching into a snowblower to clean it while the motor continued to run. (CE1, pp. 33-34) Claimant underwent x-rays, which revealed amputation of bone. (CE1, p. 36) Ms. Mills noted the amputation occurred just above the nail bed. (CE1, p. 4) She assessed amputation of the distal third of the distal phalanx of the left third finger. Ms. Mills consulted with James Friederich, M.D., who recommended loose closure of the wound and follow up with him the following day. (CE1, p. 34) Ms. Mills complied and directed claimant to present to Dr. Friederich the next day. In the interim, Ms. Mills provided hydrocodone. (CE1, pp. 3-4, 33)

The following day, February 18, 2019, claimant returned to MGMC for evaluation by Dr. Friederich. On examination, Dr. Freiderich noted absence of approximately 80 percent of the nail bed, as well as the underlying tissue and bone. Dr. Freiderich opined claimant's x-rays revealed the absence of the tuft of the distal phalanx of the left middle finger. Dr. Friederich recommended revision of the amputation. (CE1, p. 4)

That same date, claimant underwent surgery with Dr. Friederich. The procedure consisted of revision amputation of the left middle finger with nail bed obliteration. He noted a final diagnosis of complete traumatic metacarpophalangeal amputation of the left middle finger. (CE1, p. 6)

The record is devoid of further treatment of the amputation. Claimant testified he is interested is undergoing medical tattooing of his amputated digit. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is whether the February 17, 2019 injury is a cause of permanent disability.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The work injury of February 17, 2019 resulted in amputation of the tip of claimant's left middle finger. The physical removal of a portion of claimant's anatomy results in a permanent loss to that body part. Accordingly, claimant has proven the work injury was a cause of permanent disability.

The next issue for determination is the extent of permanent disability to the scheduled member middle finger. The next issue for determination is the proper commencement date for permanent disability benefits. These issues will be considered together.

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)-(u) or for loss of earning capacity under section 85.34(2)(v). 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).

By rule 876 IAC 2.4, the agency has adopted the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, in determining the extent of loss or percentage of impairment for permanent partial disabilities. Chapter 16.2 of that publication addresses amputations of the upper extremities. Figure 16-3 describes impairments of the digits for amputations at various levels.

The evidentiary record clearly establishes amputation of the fingertip of claimant's left middle finger. While the nail bed was obliterated, there is no evidence the amputation extended beyond the first joint on the left middle finger. By Figure 16-3,

an amputation to the distal interphalangeal level, i.e. the top joint of the digit, warrants a permanent impairment rating of 45 percent of the digit.

I, therefore, find claimant has sustained a 45 percent permanent disability to his left middle finger. By section 85.34(2)(c), compensation for loss of the second (middle) finger is on the basis of 30 weeks. Accordingly, the award of 45 percent permanent disability entitles claimant to 13.5 weeks of permanent partial disability benefits (45 percent x 30 weeks = 13.5 weeks). As there is no evidence claimant missed work as a result of the injury, permanent partial disability benefits shall commence on the date of injury, February 17, 2019.

The next issue for determination is the proper rate of compensation.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings that fairly represent the employee's customary earnings, however. Section 85.36(6).

At the time of the work injury, claimant had worked for defendant for over one year. Claimant testified he worked full-time, 40 hours per week, and earned \$12.00 per hour. Claimant's testimony is the only evidence in the record regarding claimant's weekly earnings. Accordingly, I adopt claimant's testimony and determine claimant's weekly earnings at the time of the work injury were \$480.00 (40 hours x \$12.00 = \$480.00). Claimant testified at the time of the work injury he was single and entitled to 1 exemption; there is no contrary evidence on this point. Therefore, I determine claimant was single and entitled to 1 exemption at the time of the work injury. As claimant's gross earnings were \$480.00 and he was single and entitled to 1 exemption, the proper rate of compensation is \$311.59.

The final issue for determination is whether claimant is entitled to an award of alternate medical care pursuant to Iowa Code section 85.27, specifically an order finding defendant responsible for a paramedical tattoo.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. Section 85.27.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

“Determining what care is reasonable under the statute is a question of fact.” Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

In the instant matter, claimant desires to undergo a procedure known as a paramedical tattoo. In a paramedical tattoo, a tattoo artist tattoos the affected body part, generally in an attempt to make the body part resemble its original form. In claimant's case, a paramedical tattoo would involve tattooing a fingernail upon the remainder of the amputated finger. A realistic tattoo would make the digit appear complete.

The practice of paramedical tattooing is worthwhile and undoubtedly provides patrons with increased comfort with the appearance of the affected body part. There is an obvious relief that such a procedure could provide to individuals with a desire to feel “whole” again. That being said, no medical provider has recommended such a procedure to claimant and to my understanding, paramedical tattooing is generally seen as cosmetic in nature. As such, I cannot find that a paramedical tattoo would fall within the realm of reasonable and necessary medical care in treatment of claimant's work injury. While claimant has failed to establish entitlement to the alternate care he requests at this time, claimant does remain entitled to medical care as set forth in section 85.27.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay unto claimant thirteen point five (13.5) weeks of permanent partial disability benefits commencing February 17, 2019 at the weekly rate of three hundred eleven and 59/100 dollars (\$311.59).

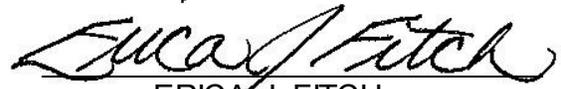
Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

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 18th day of March, 2021.


ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Pitt's Lawn & Tree Service (via regular and certified mail)
3714 S. Duff Avenue
Ames, IA 50010-8533

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.