

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ELIJAH WELCH,

Claimant,

vs.

SENECA TANK,

Employer,

and

FEDERATED INSURANCE,

Insurance Carrier,  
Defendants.

File No. 1647781.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1803.1; 2501;  
2907; 3002

Claimant Elijah Welch appeals from an arbitration decision filed on June 11, 2021. Defendants Seneca Tank, employer, and its insurer, Federated Insurance, respond to the appeal. The case was heard on January 21, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 26, 2021.

In the arbitration decision, the deputy commissioner found claimant's permanent disability resulting from the stipulated December 6, 2017, work injury is limited to the scheduled member right shoulder under Iowa Code section 85.34(2)(n) (post-July 1, 2017). As such, the deputy commissioner found claimant did not sustain any industrial disability under section 85.34(2)(v). The deputy commissioner found claimant sustained eleven percent functional permanent disability of his right shoulder, which entitles claimant to receive 44 weeks of permanent partial disability (PPD) benefits. The deputy commissioner found claimant's benefits should be paid at the weekly benefit rate of \$584.78. In calculating the weekly benefit rate, the deputy commissioner excluded a portion of claimant's pay because the deputy commissioner found it constitutes a welfare benefit. The deputy commissioner awarded claimant's claimed medical expenses but declined to award claimant's claimed costs.

On appeal, claimant asserts the deputy commissioner erred in finding claimant's injury is limited to a scheduled member. Claimant asserts he sustained a whole body injury and is entitled to receive significant industrial disability as a result. Claimant also asserts the deputy commissioner erred by excluding portions of claimant's pay from the rate calculation.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on June 11, 2021, is affirmed with additional analysis.

Turning first to claimant's injury, I affirm the deputy commissioner's finding that claimant's permanent disability is limited to his scheduled member right shoulder under section 85.34(2)(n). I offer the following additional analysis regarding claimant's distal clavicle excision:

In her report following her independent medical examination (IME) of claimant, Jacqueline Stoken, D.O., explained that a distal clavicle excision "is a procedure which involves removal of the outer end of the clavicle (collarbone) to treat shoulder pain and disability due to arthritis or impingement." (Claimant's Exhibit 1, p. 7) Dr. Stoken also indicated with an illustration the location of the clavicle that is impacted by the surgical excision. (Cl. Ex. 1, p. 8)

As noted in Dr. Stoken's report, the only portion of claimant's clavicle that was affected is the portion that is closely interconnected in location to claimant's glenohumeral joint. In other words, the portion of claimant's clavicle that was surgically altered was situated away from claimant's torso and chest. Furthermore, and also as noted by Dr. Stoken, the excision was performed not because claimant had an injury to his clavicle, but instead to treat claimant's shoulder pain and function by creating additional space in the subacromial area to minimize the chances of impingement and resulting pain.

In Deng v. Farmland Foods, File No. 5061883 (App. Sept. 29, 2020) and Chavez v. MS Technology, LLC, File No. 5066270 (App. Sept. 30, 2020), I found permanent disability resulting from a subacromial decompression and injuries to claimants' rotator cuff tears and labrum is limited to the shoulder under section 85.34(2)(n). In both cases, my rationale turned largely on whether the particular muscle, bone, or joint at issue was closely connected and/or intertwined both in function and location to the glenohumeral joint.

In Deng, for example, which focused on the claimant's rotator cuff muscles, I reasoned as follows

Given the entwinement of the glenohumeral joint and the muscles that make up the rotator cuff, including the infraspinatus, and the importance of the rotator cuff to the function of the joint, I find the muscles that make up the rotator cuff are included within the definition of 'shoulder' under section 85.34(2)(n).

In Chavez, I offered similar reasoning with respect to the claimant's labrum injury and subacromial decompression:

[U]nlike in other cases wherein the Supreme Court found the injured body parts in question to be clearly distinct from their corresponding scheduled members, I find the labrum is closely interconnected both in location and function to the glenohumeral joint. In fact, like the rotator cuff, the labrum is not only extremely close in proximity to the glenohumeral joint (if not wholly contained within the joint space), but it is crucial to the proper functioning of the joint.

With respect to the claimant's subacromial decompression, I noted the "acromion is closely entwined with the glenohumeral joint both in location and function" and the "subacromial decompression impacted two anatomical parts that are essential to the functioning of the glenohumeral joint; in fact, the procedure was actually performed to improve the function of the joint."

Thus, applying my rationale in Deng and Chavez to the present case, I conclude any permanent disability resulting from claimant's distal clavicle excision in this case should be compensated as a shoulder under section 85.34(2)(n). As in Deng and in Chavez, the procedure in this case was performed to improve the function of the glenohumeral joint, and the portion of the clavicle that was surgically altered was in close proximity to the joint.

Ultimately, the scenario presented in this case is different than if claimant had suffered a broken collarbone and the clavicle itself was injured and needed repair. Here, the clavicle was not injured but was instead altered to improve the functionality of the glenohumeral joint and shoulder (as it is commonly known).

As a result, with this additional analysis, I affirm the deputy commissioner and I find claimant failed to prove that any of his injuries or conditions are compensable as

unscheduled, whole body injuries under section 85.34(2)(v). Instead, claimant is entitled to compensation for his scheduled member shoulder under section 85.34(2)(n). Claimant's argument regarding his claimed entitlement to industrial disability benefits under section 85.34(2)(v) is therefore moot.

With respect to claimant's weekly benefit rate, I affirm the deputy commissioner's rate calculation with the following additional analysis regarding the exclusion of the \$185.00 portion of claimant's earnings.

As noted by the deputy commissioner, Iowa Code section 85.61(3) excludes from the definition of gross earnings "the employer's contribution for welfare benefits." In his direct examination at hearing, claimant's attorney asked claimant to confirm whether he elected to receive "something called benefit allowance" that he applied to his health insurance premium. (Hearing Transcript, pp. 62-63) (emphasis added) Claimant confirmed this to be accurate. (Tr., pp. 62-63) This is consistent with claimant's pay stubs, which indicate a payment of \$185.00 titled "Benefit Allow" that is separate and distinct from his hourly earnings. (Defendants' Ex. E, p. 20)

Claimant argues this \$185.00 should be deemed earnings and not a contribution for welfare benefits because it is not mandatory to deduct the \$185.00 towards payment of his health insurance premiums. In other words, claimant gets to choose whether to pocket the payment or use it as a contribution towards his health insurance premiums. In this case, however, claimant did choose to allocate that payment towards his health insurance premiums. Thus, in this case, the \$185.00 payment labeled as a benefit allowance was just that - an employer's contribution for welfare benefits. With this additional analysis, the deputy commissioner's weekly benefit rate calculation is affirmed.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 11, 2021, is affirmed with the above-stated additional analysis.

Defendants shall pay claimant forty-four (44) weeks of permanent partial disability benefits at the weekly rate of five hundred eighty-four and 78/100 dollars (\$584.78) from the stipulated commencement date of January 9, 2019.

Defendants shall receive a credit against the award as stipulated.

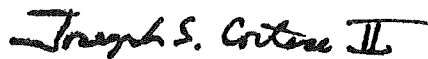
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File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

Defendants shall reimburse claimant three hundred eighty-five and 22/100 dollars (\$385.22) for outstanding medical bill payments.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, 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 shall file subsequent reports of injury as required by this agency.

Signed and filed on this 20<sup>th</sup> day of October, 2021.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

John Dougherty (via WCES)

Rene Lapierre (via WCES)