

Iowa District Court for Hamilton County

Rick Pruisman,	:	
Claimant,	:	
Vs.	:	CVCV029459
Iowa Tank Lines Inc.,	:	Order
Employer,	:	
Zurich American Ins. Co.,	:	
Insurance Carrier,	:	
Defendants.	:	

On April 10, 2019, a judicial review hearing was held in regard to this matter. The Claimant was represented by Mr. Jerry Schnuur, attorney at law. The Defendants were represented by Ms. Valerie Foote, attorney at law.

Facts

The Claimant was employed by Iowa tank Lines, Inc. (Employer) in various capacities since 1992. For the past twenty years he worked at Employer as a mechanic. According to Employer's job description for the position of mechanic an employee must be able to walk, stoop, kneel, crouch, crawl, climb and balance at heights and frequently lift and/or move 10 lbs. and occasionally lift and/or move more than 100 lbs. (Claimant's Exhibit 12). Also, a mechanic employee must have full range of body motion and be able to access all areas of trucks and trailers. (Claimant's Exhibit 12).

On May 3, 2007, a boom from a forklift crushed Claimant's right ankle at work. After several surgeries the Claimant continues to wear an ankle brace and still experiences pain and numbness to that ankle. Prescribed treatment includes anti-inflammatories, occasional ankle injections, and the possibility of a future ankle fusion. (Claimant's Exhibit 2, p.10). Claimant's orthopedic surgeon, Dr. David Inda, opines that Claimant suffers a 16% permanent impairment to the right lower extremity as a result of the ankle injury. Dr. Sunal Bansal, a Board Certified Occupational Health Physician, performed an independent medical evaluation (IME) on Claimant and increased that permanency rating to 20%. (Claimant's Exhibit 9, p.15).

On November 19, 2014, Claimant injured his back at work. He was diagnosed with severe low back syndrome caused by herniated discs. (Claimant's Exhibit 4, p.1). He was also diagnosed with the non-work related disease of the onset of Alzheimers. (Claimant's Exhibit 4, p1). Claimant ultimately underwent surgery for his back injury on January 13, 2015. (Claimant's Exhibit 7. P.2). On May 11, 2015, Claimant's orthopedic surgeon, Dr. David Beck, determined that Claimant had reached maximum medical improvement and that he had an 8% permanent impairment to the whole body as a result of his back injury and surgery. (Claimant's Exhibit 6, p.1). Dr. Beck released Claimant to return to work without restrictions. Claimant did return to work with Employer, but was unable to perform tasks that he could have accomplished prior to his back injury. (Defendant's Exhibit A, p.13). On June 8, 2015, the Employer laid off the Claimant with his twenty years of mechanic experience for "Lack of Work."

Claimant unsuccessfully sought other work that was less strenuous without success. He applied for Social Security Disability benefits and was successful.

Other doctors have evaluated the Claimant and their opinions are consistent that Claimant suffers a 10% permanent impairment to the whole body as a result of his back injury. (Claimant's Exhibits 22, p.5, 9, p.16) In addition, each doctor, including Dr. Beck, who initially released Claimant to return to work without restrictions, have all placed restrictions on Claimant's physical abilities. Those restrictions include limiting movements such as prolonged walking or sitting, stooping, kneeling, crawling, bending, twisting, lifting objects exceeding 20 lbs. from some, and 50 lbs. from others.

The Claimant filed a Workers' Compensation Petition alleging that Claimant is an odd-lot employee who is permanently totally disabled. A hearing was held before the Deputy Workers' Compensation Commissioner on June 28, 2016. Time was allowed for post-trial briefs and the case was considered submitted on September 1, 2016. On February 7, 2017, an Arbitration Decision was filed. The Deputy Commissioner held that the Claimant failed to carry his burden of proof that he is permanently and totally disabled as a result of the work injury under an odd-lot analysis. Claimant appealed that ruling to the Workers' Compensation Commissioner who on June 8, 2018 affirmed the Deputy Commissioner's decision. Claimant then appealed for judicial review.

A reviewing court should accept the commissioner's factual findings when supported by substantial evidence. *Bluml v. Dee Jay's Inc.*, 920 NW2d 82, 84 (Iowa 2019). The Iowa Administrative Procedure Act defines "substantial evidence" as the "quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." *Iowa Code* section 17A.19 (10)(f)(1). "

In the Deputy Commissioner's conclusions of law she cites legal authority most relevant to this case:

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 employers offer of work or failure to so offer.* (emphasis added) *McSpadden v. Big Ben Coal Co.* 288 NW2d 181 (Iowa 1980); *Olson v. Goodyear Service Stores*, 255 Iowa 1112, 125 NW2d 251 (1963); *Barton v. Nevada Poultry Co.*, 253 Iowa 285, 110 NW2d 660 (1961).

Total disability does not mean a state of absolute helplessness. Permanent total Disability occurs where the injury wholly disables the employee from performing work that *the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform.* (emphasis added) See *McSpadden v. Big Ben Coal Co.*, 288 NW2d 181 (Iowa 1980); *Diederich v. Tri-City R. Co.*, 219 Iowa 587, 258 NW 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. *Chamberlin v. Ralston Purina*, File No. 661698 (App. October 1987); *Eastman v. Westway Trading Corp.*, II Iowa Industrial Commissioner Report 134 (App. May 1982).

At the time of the arbitration hearing the Claimant was 64 years old. He had a high school education, but nothing more. He had no specialized employment training or retraining. He had lost his CDL license years before and due to his physical impairments could not, with any likelihood, obtain a new CDL. He had tried dispatch for the Employer years before, but he felt it

was difficult and he was removed from that position in a short period of time. For the twenty years prior to his back injury he worked as a mechanic for the Employer. Each doctor that treated or evaluated Claimant for his back injury, including the doctor employed by the Social Security Administration, placed physical restrictions upon him that precluded his ability to continue his employment as a mechanic for the Employer. When he did attempt to return to work with the Employer he required accommodations to do his job and within three weeks he was laid off by the Employer. The Claimant continues to suffer pain in his right ankle and in his back that precludes physical agility and the ability to stand or walk for prolonged periods. And he has the onset of Alzheimer's disease.

In the Deputy Commissioner's findings she places emphasis on Claimant's statement that he intended to remain employed by the Employer had he not been laid off. The Deputy sees this as an apparent indication that he could still perform the work. That statement, however, appears to be wishful thinking on the part of the Claimant as it goes against the opinion of every physician who participated in this case who laid out physical restrictions that precluded such re-employment. Further, that statement from Claimant contradicts the Deputy Commissioner's second finding that Claimant wasn't interested in gaining employment..

After examining the transcript, the exhibits, the briefs from counsel, and considering Claimant's age, lack of education, lack of transferable job skills, and his physical detriments, enhanced by his work back injury which preclude his employment as a mechanic, this court questions who in their right mind would hire the Claimant for any task? This court concludes that the decision of the Appeal Decision of the Workers' Compensation Commissioner and the

Arbitration Decision of the Deputy Commissioner are without substantial evidence, and the charge that the Claimant is an odd-lot employee is supported by substantial evidence.

It Is Ordered that the decision of the Workers' Compensation Commissioner and the Deputy Commissioner are reversed and the Claimant is determined to be an odd-lot employee who is permanently totally disabled. Court costs are assessed to Defendants.

Copies to:

Counsel of Record



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV029459
Case Title RICK PRUISMANN V. IOWA TANKLINES, INC. & ZURICH

So Ordered

A handwritten signature in black ink, appearing to read "Kurt L. Wilke". The signature is written in a cursive, flowing style.

Kurt L. Wilke, Chief District Court Judge,
Second Judicial District of Iowa