

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERRENCE DEFFEBAUGH,

Claimant,

vs.

1ST INTERIORS, INC.,

Employer,

and

SFM MUTUAL INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

MAY 30 2019

WORKERS' COMPENSATION

File No. 5047330

A P P E A L

D E C I S I O N

Head Note Nos.: 1803, 1803.1

Defendants 1st Interiors, Inc., employer, and SFM Mutual Insurance Company, insurer, appeal from an arbitration decision filed on April 25, 2018.

On May 22, 2019, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

In the arbitration decision, the deputy commissioner determined claimant's disability from his March 3, 2014 work injury was limited to his right leg and did not extend into his low back or buttock. The deputy commissioner then found claimant sustained a 20 percent loss of function to his right leg.

Defendants assert on appeal that the evidence does not support the deputy commissioner's finding that claimant sustained a 20 percent loss of function to his right leg. More specifically, defendants assert claimant sustained little or no functional loss of his right leg.

On cross-appeal, claimant asserts the deputy commissioner erred by finding claimant's disability was limited to a scheduled member.

I performed a de novo review of the evidentiary record before the presiding deputy workers' compensation commissioner and the detailed arguments of the parties. Pursuant to Iowa Code section 86.24 and 17A.15, those portions of the proposed arbitration decision filed on April 25, 2018 that relate to issues properly raised on intra-agency appeal and cross-appeal are affirmed in part without additional comment and modified in part.

The deputy commissioner's determination that claimant failed to prove his entitlement to industrial disability by a preponderance of the evidence is affirmed without additional comment.

However, for the reasons that follow, the deputy commissioner's determination regarding the extent of the loss of function in claimant's right leg is modified.

In support of their assertion that claimant sustained little to no functional impairment of his right leg, defendants rely heavily on the statements from several physicians that claimant's burn wounds were healed. While defendants are correct that several physicians indicated the wounds themselves had healed, defendants overlook claimant's ongoing symptoms, such as swelling and pain.

For example, despite being told by Broadlawns physicians on June 16, 2014 that his burn wounds had healed, claimant returned to Broadlawns on August 6, 2014, with swelling, pain, and burning in his right leg. (Joint Exhibit 8, page 25) He was prescribed gabapentin and a lidocaine patch. (JE 8, p. 26)

On October 15, 2014, during an evaluation with Mirza Baig, M.D., claimant similarly reported swelling of the right leg despite his well-healed wounds. (JE 12, p. 9)

When claimant was evaluated for his independent medical examination (IME) by Robin Sassman, M.D., on August 10, 2015, he reported "loss of sensation and some pain over the anterior aspect of the right ankle," "decreased range of motion of the right ankle," and "some swelling of the right lower extremity." (Claimant's Ex. 1, p. 5)

As of March 10, 2016, claimant continued to complain of right leg swelling and pain despite use of a compression stocking. (JE 8, p. 50) At his referral with the Broadlawns vein center a few weeks later on March 30, 2016, claimant was again prescribed gabapentin and lidocaine ointment for his right leg. (JE 8, p. 64)

The complaints noted in the medical records are consistent with claimant's testimony at hearing. Claimant testified he continued to experience tight skin, burning sensations and cramping in his right leg. (Hearing Transcript, pp. 35-36) He also

testified he continued regular use of a compression stocking for swelling and lidocaine ointment for pain. (Hrg. Tr., pp. 38-40)

Defendants' expert Peter Matos, D.O., was asked to provide a functional impairment rating for claimant's burn injury. He opined, with no analysis or explanation, "I would assign zero percent impairment." (Defendants' Exhibit A, p. 3)

Dr. Sassman, on the other hand, assigned 10 percent impairment to the whole person after placing claimant in "Class 2" of the "Criteria for Rating Permanent Impairment Due to Skin Disorders." (Cl. Ex, 1, p. 7; AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, p. 178) Consistent with the criteria for Class 2 impairment in Table 8-2 of the Guides, Dr. Sassman noted claimant's burns limited some of claimant's activities of daily living and required ongoing treatment in the form of petroleum jelly for dryness and use of compression stockings for swelling. (Cl. Ex, 1, p. 7; Guides, p. 178)

I find Dr. Sassman's rating to be more persuasive than Dr. Matos' rating. Dr. Matos' opinion that claimant sustained no impairment is not consistent with claimant's ongoing complaints in the medical records and consistent testimony at hearing.

As noted by the deputy commissioner, claimant's impairment is a scheduled member injury, meaning the whole body rating used by Dr. Sassman should not be applied. Per the conversion chart in Table 17-3 of the Guides, a 10 percent whole person impairment rating is the equivalent of 24 to 26 percent impairment of the lower extremity. (Guides, p. 527) The presiding deputy commissioner cited Table 17-3 but found a 20 percent loss of function of the right leg.

The 20 percent loss of function used by the deputy commissioner actually equates to an 8 percent whole person impairment—not the 10 percent whole person impairment assigned by Dr. Sassman. (Guides, p. 527) Furthermore, an 8 percent whole person impairment falls under "Class 1" impairment under the impairment table for skin disorders, but Dr. Sassman opined claimant was in "Class 2." (Guides, p. 178) In other words, affirming the deputy commissioner's finding of 20 percent loss of function would require me to ignore, or at least modify, Dr. Sassman's rating. Instead, because I found Dr. Sassman's opinion to be most persuasive, I conclude the deputy commissioner's opinion must be modified to reflect the appropriate conversion per the Guides.

As mentioned, the Guides provide that a 10 percent whole person impairment rating is the equivalent of 24 to 26 percent impairment of the lower extremity. (Guides,

p. 527) I therefore find claimant sustained a 24 percent impairment of the lower extremity due to his work-related burn injury. This entitles claimant to 52.8 weeks of permanent partial disability benefits.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 25, 2018 is affirmed in part and modified in part.

Defendants shall pay claimant 52.8 weeks of permanent partial disability benefits at the weekly rate of six hundred three and 75/100 dollars (\$603.75) commencing March 4, 2014.

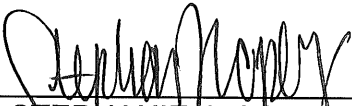
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 pay claimant's costs of one thousand nine hundred ten and 00/100 dollars (\$1,910.00).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

The parties shall share equally the costs of the appeal, including the costs of preparation of the hearing transcript.

Signed and filed this 30th day of May, 2019.



STEPHANIE J. COPLEY
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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