

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSE MENDEZ-MARQUEZ,

Claimant,

vs.

CRAMER & ASSOCIATES,

Employer,

and

THE TRAVELERS INSURANCE CO.
OF CT.,Insurance Carrier,
Defendants.

File No. 5058544.01

A P P E A L
D E C I S I O N

Head Notes: 1402.40; 1803; 1803.1; 2907

Defendants Cramer and Associates, employer, and its insurance carrier, The Travelers Insurance Company of Connecticut, appeal from an arbitration decision filed on October 25, 2021. Claimant Jose Mendez-Marquez responds to the appeal. The case was heard on March 1, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 22, 2021.

In the arbitration decision, the deputy commissioner found claimant failed to meet his burden of proof to establish the stipulated injury he sustained to his left upper extremity on January 23, 2012, caused sequela complex regional pain syndrome. The deputy commissioner found claimant sustained 85 percent functional loss of his left upper extremity and awarded claimant 212.5 weeks of permanent partial disability (PPD) benefits at the weekly rate of nine hundred forty-six and 91/100 dollars (\$946.91) commencing on August 25, 2017. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$205.00.

On appeal, defendants assert the deputy commissioner erred in finding claimant sustained 85 percent functional impairment of his left upper extremity. Defendants assert it should be found that all PPD benefits owed have already been paid consistent with the impairment ratings assigned by the authorized treating physicians.

On appeal, claimant asserts the arbitration decision should be affirmed in its entirety.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on October 25, 2021, is affirmed in part, modified in part, and reversed in part, with the following additional analysis:

I affirm the deputy commissioner's finding that claimant failed to prove he sustained sequela complex regional pain syndrome. I also affirm the deputy commissioner's award of costs. I modify and reverse the deputy commissioner's findings and conclusions concerning the extent of permanent disability.

In the findings of fact in the arbitration decision, at page four, the deputy commissioner found treating physician John Gaffey, M.D., an orthopedic surgeon, determined on August 28, 2013, that claimant sustained an eight percent loss of his right upper extremity from the work injury. My de novo review reveals Dr. Gaffey opined on June 13, 2013, that claimant sustained an eight percent loss of his left upper extremity. (JE 3, pp. 37-38) The deputy commissioner's finding that Dr. Gaffey found claimant sustained an eight percent loss of his right upper extremity is reversed. Dr. Gaffey found claimant sustained an eight percent loss of his left upper extremity and imposed a permanent restriction of 20 pounds with both hands. (JE 3, p. 34; Ex. E, p. 1)

This case involves an injury to a scheduled member occurring before the changes to Iowa Code section 85.34 in 2017. Permanent partial disabilities are divided into scheduled and unscheduled losses. Iowa Code § 85.34(2) (2012). If the claimant's injury is listed in the specific losses found in Iowa Code section 85.34(2)(a)-(t), the injury is a scheduled injury and is compensated by the number of weeks provided for the injury in the statute. Second Injury Fund v. Bergeson, 526 N.W.2d 543, 547 (Iowa 1995). "The compensation allowed for a scheduled injury 'is definitely fixed according to the loss of use of the particular member.'" Id. (quoting Graves v. Eagle Iron Works, 331 N.W.2d 116, 118 (Iowa 1983)). If the claimant's injury is not listed in the specific losses in the statute, compensation is paid in relation to 500 weeks as the disability bears to the body as a whole. Id.; Iowa Code § 85.34(2)(u).

Under the schedule, compensation for loss of an arm is limited to 250 weeks. Iowa Code § 85.34(2)(m). Under the common law in effect at the time of this injury, when determining extent of disability for the loss of a scheduled member, the trier of fact could consider medical and nonmedical evidence, including lay testimony to buttress medical testimony. Sherman v. Pella Corp., 576 N.W.2d 312, 322 (Iowa 1998).

In reaching her conclusion that claimant sustained an 85 percent loss of his left upper extremity, the deputy commissioner found:

Claimant has significant limitations. Dr. Fowler recommend the claimant return to work with no lifting greater than 5 pounds constantly and no driving or undertaking any activity requiring alertness while taking sedating medication. Claimant continues to take narcotics to manage his pain. As such, claimant is entitled to an 85% functional loss of his upper extremity.

(Arb. Dec. p. 13)

Dr. Fowler at UIHC did not impose a permanent restriction of five pounds. Following a valid functional capacity evaluation, Dr. Fowler imposed the following permanent restrictions:

2-handed floor to waist lifting of no more than 40 pounds rarely, 30 pounds occasionally, 15 pounds frequently, and 5 pounds constantly; 2-handed waist to shoulder lifting of no more than 25 pounds rarely, 20 pounds occasionally, 10 pounds frequently, and 5 pounds constantly; 2-handed overhead lifting of no more than 15 pounds rarely, 10 pounds occasionally, 5 pounds frequently, and 3 pounds constantly; 2-handed carrying of no more than 20 pounds rarely, 15 pounds occasionally, 10 pounds frequently, and 5 pounds constantly; left arm unilateral carrying of no more than 15 pounds rarely, 10 pounds occasionally, 5 pounds frequently, and 3 pounds constantly; push/pull of no more than 20 pounds rarely, 15 pounds occasionally, 5 pounds frequently, and 5 pounds constantly; rare crawling; left arm forward and overhead reaching limited to occasionally; left arm "arm controls" limited to "light" only.

(JE 8, p. 80)

Sunil Bansal, M.D. who performed an independent medical evaluation at claimant's request, agreed with the restrictions Dr. Fowler assigned to claimant. (Ex. 6, pp. 32-33) At the time of the hearing Cramer was not taking narcotics while working given the employer's work policy prohibiting the use of narcotics at work. (Ex. 4, p. 1) Claimant was taking tramadol. (Tr., pp. 33-34)

I agree with the deputy commissioner's finding that claimant sustained a significant injury to his left upper extremity. Claimant continues to have ongoing pain that is not well-controlled by the tramadol he is taking. Claimant continues to work for defendant-employer in the same position he held at the time of the work injury. Defendant-employer is accommodating claimant's permanent work restrictions. Based on my de novo review of the case, I find claimant has sustained 55 percent loss of his left upper extremity. Defendants shall pay claimant 137.5 weeks of PPD benefits at the stipulated weekly rate of \$946.91, commencing on the stipulated commencement date of August 25, 2017.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 25, 2021, is affirmed in part, modified in part, and reversed in part, with the above-stated additional analysis.

Defendants shall pay claimant 137.5 weeks of permanent partial disability benefits at the stipulated weekly rate of nine hundred forty-six and 91/100 dollars (\$946.91), commencing on the stipulated commencement date of August 25, 2017.

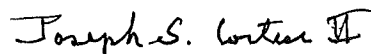
Defendants shall receive credit for all benefits previously paid.

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. Gamble v. AG Leader Tech., File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two hundred five and 00/100 dollars (\$205.00), and parties shall split 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 8th day of February, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Greg Egbers (via WCES)

Julie Burger (via WCES)