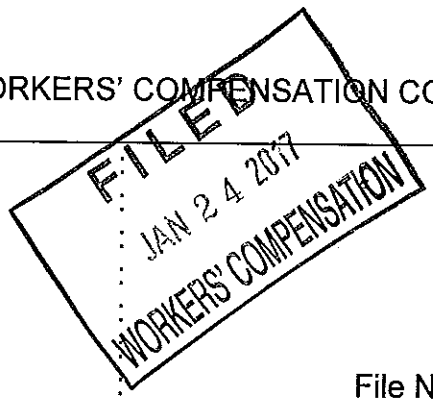
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



DAVID L. BLANCHARD, JR.,

Claimant,

vs.

STATE STEEL SUPPLY COMPANY,

Employer,

and

INSURANCE CO OF THE STATE OF PA/AIG,

Insurance Carrier,
Defendants.

File No. 5054333

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, David L. Blanchard, Jr., has filed a petition in arbitration and seeks worker's compensation benefits from, State Steel Supply Company, employer, and Insurance Company of the state of PA/AIG, insurance carrier, defendants.

Deputy Workers' Compensation Commissioner, Stan McElderry, heard this matter in Sioux City, Iowa.

ISSUES

The parties have submitted the following issues for determination:

The extent of permanent disability from the injury arising out of and in the course of employment on July 7, 2015.

FINDINGS OF FACT

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

The claimant was 54 years old at the time of hearing. He is a high school graduate, but has not attended college. He received some automotive training while working for Mazda. Post-high school the claimant worked as an auto mechanic for

various car dealerships for over a decade. He then worked in landscaping for a couple of years before going into welding. He then worked as a welder for various employers until 2001. He was a cell tower construction worker from about 2001 until 2011. He began work for the defendant employer in 2011 as an indoor overhead crane operator.

On July 7, 2015 the claimant was attempting to separate steel on a flatbed trailer with a large pry bar (6 foot long and about 20 pounds). This was so that the steel could be moved by crane. The pry bar slipped out and as a result the claimant was thrown off the trailer and landed flat on his back.

Claimant was diagnosed with a thoracic compression fracture or abnormality. Following chiropractic care and emergency room care the claimant was referred to Grant H. Shumaker, M.D., and orthopedic surgery. (Exhibit 2) Dr. Shumaker initially provided a back brace. On the third visit to Dr. Shumaker, August 11, 2015, the claimant was returned to work with limitations of four hours per day and no bending, twisting, and rest every 15 minutes. The claimant last saw Dr. Shumaker on September 15, 2015. (Ex. 2, p. 14) On that date the assessment was "progression of kyphotic deformity thoracolumbar junction with T12 compression deformity." (Ex. 2, p. 15) He recommended a T10-12 pedicle screw fusion.

The claimant requested a second opinion which was provided on September 29, 2015 by J.B. Gill, M.D. (Ex. 4) Dr. Gill opined that surgery was not necessary at that time and took the claimant off work. Physical therapy (PT) was ordered and done at Physical Therapy Specialists in Sioux City. On October 27, 2015 work hardening was started. The claimant was returned to light duty on December 14, 2015 with restrictions of no lifting over 20 pounds and no excessive or repetitive bending, twisting or stooping, and ability to change positions. (Ex. 4, p. 18)

Claimant was placed as a crank coil operator where he was to remove large (35-45,000 pound and 36-96 foot in diameter steel) coils from rail cars. Although the crane does the lifting he was required to maneuver the coils manually by spinning them, a task which the claimant testified required force in excess of his restrictions. The employer disagreed and testified that the spinning could be accomplished with as little as one finger. Both are right. The employer is correct when all goes well, and the claimant is correct when the coil does not cooperate. And nothing goes right all the time. The claimant last worked on July 28, 2016 because he did not believe he could handle the job with the pain he was having.

On March 20, 2016 Dr. Gill opined that the claimant had reached maximum medical improvement (MMI) on February 19, 2016 and had an impairment of 15 percent of the body as a whole (BAW). (Ex. 4, p. 46) Permanent restrictions imposed were a restriction to light duty and no lifting over 15 pounds. (Ex. 4, p. 45)

Sunil Bansal, M.D., saw the claimant on April 1, 2016 for independent medical evaluation/examination (IME). (Ex. 1) Dr. Bansal opined that the work injury caused permanent impairment of 15 percent the body as a whole. He also opined restrictions

of no lifting of over 30 pounds and no lifting over 15 pounds on a frequent basis. (Ex. 8, p. 11) He also generally adopted the functional capacity evaluation (FCE) of February 9, 2016 at Exhibit 6 and 7. (Ex. 8, p. 10) The FCE showed lifting capacities of 20-35 pounds. (Ex. 7, p. 1)

The claimant's restrictions prohibit the return to any past relevant employment. He is a 54-year-old man with limited training beyond high school and very significant restrictions. Considering the claimant's medical impairments, training, permanent restrictions, daily pain, as well as all other factors of industrial disability, the claimant has suffered a 60 percent loss of earnings capacity.

On the date of injury the claimant had gross weekly earnings of $726.01, was single, and entitled to one exemption. As such, his weekly benefit rate is $445.86. The commencement date for permanent disability was stipulated as December 22, 2015.

REASONING AND CONCLUSIONS OF LAW

The issue is the extent of permanent disability.

Since claimant has impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W.2d 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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 employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (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. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

Based on the finding that the claimant has suffered 60 percent loss of earnings capacity, he has sustained a 60 percent permanent partial industrial disability entitling him to 300 weeks of permanent partial disability pursuant to Iowa Code section 85.34(2)(u).

ORDER

Therefore it is ordered:

That the defendants pay claimant three hundred (300) weeks of permanent partial disability benefits commencing December 22, 2015 at the weekly rate of four hundred forty-five and 86/100 dollars ($445.86), and continuing for all periods of disability .

Costs are taxed to the defendants pursuant to 876 IAC 4.33.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Signed and filed this 24th day of January, 2017.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.