

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KELLY FRANCIS,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Defendant.

:
:
:
:
:
:
:
:
:
:
:

File No. 5067800.01

ARBITRATION DECISION

Headnotes: 3202, 3203

STATEMENT OF THE CASE

Claimant, Kelly Francis, filed a petition in arbitration seeking workers' compensation benefits from defendant, Second Injury Fund of Iowa (Fund), defendant. This matter was heard on November 17, 2022, with a final submission date of January 6, 2023.

The record in this case consists of Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 14, Defendants' Exhibits A-G, Second Injury Fund Exhibits AA through EE, and the testimony of claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether claimant had a qualifying first loss for the purposes of Fund benefits.
2. Whether claimant had a qualifying second loss for the purposes of Fund benefits.
3. The extent of claimant's entitlement to permanent partial disability benefits.
4. Credit.

FINDINGS OF FACT

Claimant was 61 years old at the time of hearing. Claimant graduated from high school. Claimant took some classes at Hawkeye Tech in building trades. (Hearing Transcript, pages 13-14; Second Injury Fund Exhibit EE, page 4)

Claimant has worked in construction. Claimant worked at Tyson, formerly known as IBP, a meat packing facility. Claimant worked for a security company. Claimant worked as a temporary laborer. Claimant has plowed snow. (Tr., pp. 29-30; Ex. EE, pp. 5-6)

Claimant began with Menards in March of 2015. Claimant worked as a forklift driver for Menards. At the time of hearing, claimant's job title was yard fork truck driver. Claimant's job duties included loading and unloading materials from trucks, stacking lumber, and sweeping and helping customers. Claimant worked part time with Menards. (Tr., pp. 20-21)

Claimant testified that while working at IBP, he developed a locking in his middle and ring fingers while trimming loins on a production line. Claimant said this injury was assessed as a trigger finger. Claimant said he eventually underwent surgery for the trigger finger and was off work at IBP for a few weeks. (Tr., pp. 25-27)

Claimant returned to work at IBP after his surgery and moved from cutting meat to boxing. Claimant had no restrictions regarding use of his hands on his return to work. Claimant worked at IBP for another year following surgery and left IBP to work for another employer. (Tr., p. 39)

Claimant testified he injured his left knee at Menards on July 16, 2018, while stepping on a fork truck. Claimant said he felt his knee pop. Claimant said he felt immediate pain and had difficulty standing on his left leg. (Tr., pp. 16-17)

Claimant testified he went home that night to see if the knee would improve. Claimant said his pain continued the next morning and he went to occupational health. (Tr., pp. 17-18)

On July 17, 2018, claimant was evaluated at Covenant Clinic. An MRI showed a multi-directional tear of the posterior horn of the medial meniscus. (Joint Exhibit 2, pages 17-18) Claimant was assessed as having a complex tear of the medial posterior meniscus. He was referred to an orthopedic specialist. (JE 1, p. 13)

On August 13, 2018, claimant was evaluated by Richard Naylor, D.O., an orthopedic specialist. Surgery was recommended. (JE 6, pp. 87-89)

Claimant's workers' compensation claim was initially denied by defendants' third-party administrator (TPA). (Claimant's Exhibit 3, page 50)

On December 4, 2018, claimant underwent an independent medical evaluation (IME) with Thomas Gorsche, M.D. Dr. Gorsche assessed claimant as having a medial meniscus tear of the left knee. Dr. Gorsche opined claimant's knee injury was caused by his accident on the fork truck at work. (JE 7, pp. 123-124)

On April 23, 2019, claimant returned to Dr. Naylor. Surgery was discussed and chosen as a treatment option. (JE 6, pp. 101-102)

On April 25, 2019, claimant had a left knee arthroscopic surgery consisting of a partial medial and lateral meniscectomy. (JE 6, pp. 103-104)

Claimant continued with Dr. Naylor in follow-up care. (JE 6, pp. 105-111) On June 3, 2019, Dr. Naylor found claimant at maximum medical improvement (MMI). (JE 6, p. 113)

In a July 2, 2019, letter, Dr. Naylor found claimant had a 4 percent permanent impairment to the left lower extremity, converting to a 2 percent permanent impairment to the body as a whole. (Defendants' Exhibit B, p. 18)

In a November 14, 2019, report, Farid Manshadi, M.D., gave his opinion of claimant's condition following an IME. Regarding claimant's trigger finger, Dr. Manshadi found that claimant had a 5 percent permanent impairment to the right hand or a 5 percent permanent impairment to the right upper extremity. (Ex. 1, pp. 4-5) He also found that claimant had a 10 percent permanent impairment to the left lower extremity due to the July 2018 knee injury. (Ex. 1, p. 4) Dr. Manshadi restricted claimant to avoid squatting or kneeling on the left, to avoid ladders and to avoid repetitive gripping actions. (Ex. 1, pp. 4-5)

In a follow-up letter, Dr. Naylor indicated he reviewed Dr. Manshadi's report. Dr. Naylor indicated Dr. Manshadi's higher permanent impairment rating was due to progression in claimant's arthritis. Dr. Naylor opined that claimant's accident only caused a short-term material aggravation of claimant's arthritis. (Ex. B, p. 26)

In a September 20, 2022 report, Jonathon Fields, M.D., gave his opinions of claimant's condition following an IME on September 14, 2022. Dr. Fields found that claimant had a 10 percent permanent impairment to the left lower extremity based on Table 17-33 of the AMA Guides to the Evaluation of Permanent Impairment. (Ex. A, pp. 7-8) Dr. Fields found that claimant had no permanent restrictions. (Ex. A, pp. 7-8)

Claimant testified he wears a knee brace while working. He testified he feels his knee will buckle when he is not using his brace. Claimant said his knee always aches. Claimant said he has difficulty kneeling and using stairs. (Tr., pp. 20, 23, 44-45)

Claimant said he has difficulty gripping with his right hand in cold weather. (Tr., p. 28) He testified his supervisors at work accommodate his limitations regarding lifting. Claimant said he has no formal restrictions on his job at Menards. (Tr., pp. 31-32, 44)

Claimant testified that since he has returned to work from his knee injury, his hours and his hourly wage has increased. (Tr., p. 41) At the time of hearing, claimant worked nine-hour shifts and earned \$19.30 per hour. (Tr., p. 42; Ex. BB, p. 3) Claimant testified he has no plans on quitting or retiring.

On December 9, 2022, this agency approved an agreement for settlement between claimant and his employer and the insurer (Defendants). The agreement for settlement indicates defendants paid claimant 22 weeks of permanent partial disability benefits based on a 10 percent loss to the left lower extremity regarding the July 16, 2018, date of injury. (Ex. 14)

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant had a qualifying first injury for the purposes of Fund benefits.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

Defendant, Fund, contends claimant failed to carry his burden of proof he has a qualifying first injury for the purposes of Fund benefits. (Fund's Post-Hearing Brief, pages 8-9)

The record indicates claimant did have a right trigger finger injury in 2009 while working on the production line at IBP trimming loins. Claimant had surgery to his right hand. Dr. Manshadi's notes indicate claimant had a surgical scar on his right hand consistent with a trigger finger surgery. (Ex. 1, pp. 3-4)

The record reflects claimant returned to work at IBP after surgery without restrictions. The record also indicates that when claimant returned to work at IBP, it was to a different job where he had less repetitive use of his right hand. (Tr., pp. 25-26)

Dr. Manshadi found claimant had a 5 percent permanent impairment to the right hand. (Ex. 1, p. 5) There is no expert that rebuts that opinion.

Claimant had a trigger finger surgery in approximately 2009. Following surgery, claimant was moved to a job at IBP that required less use of his right hand. Dr. Manshadi's un rebutted opinion found that claimant had a 5 percent permanent impairment to the right hand. Claimant has carried his burden of proof he sustained a qualifying first injury for the purposes of Fund benefits.

The next issue to be determined is whether claimant sustained a qualifying second injury for the purposes of Fund benefits.

Claimant had a work-related injury to his left leg in July 2018. Claimant underwent a knee surgery for that accident. All three experts opined that claimant had a permanent impairment to the left knee. Given this record, claimant has carried his burden of proof he sustained a qualifying second injury for the purposes of Fund benefits.

The next issue to be determined is the extent of claimant's entitlement to Fund benefits.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 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 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.

Industrial disability can be equal to, less than, or greater than functional impairment. Taylor v. Hummel Insurance Agency, Inc., 2-2, Iowa Industrial Comm'r Dec. 736 (1985); Kroll v. Iowa Utilities, 1-4, Iowa Industrial Comm'r Dec. 937 (App. 1985); Birmingham v. Firestone Tire & Rubber Company, II, Iowa Industrial Comm'r Rep., 39, (App. 1981).

Claimant was 61 years old at the time of the hearing. He graduated from high school. Claimant has taken some classes in building trades. Claimant has worked in construction. He worked at IBP on a production line. Claimant has worked for a security company. He has worked as a temporary laborer. Claimant has plowed snow.

Claimant has a 10 percent permanent impairment to his left lower extremity and a 5 percent permanent impairment to his right hand.

Claimant was given permanent restrictions for his hand and knee by Dr. Manshadi. Those restrictions are not applied to his job. Claimant does wear a knee brace at work. Claimant is accommodated by his employer regarding lifting. Claimant does have difficulty using stairs, and squatting and kneeling.

Since the date of injury, claimant's hourly earnings have increased. At the time of injury claimant was a part-time employee. At the time of hearing, claimant was a full-time employee.

When all relevant factors are considered, it is found that claimant has a 10 percent industrial disability.

Claimant was paid 22 weeks of permanent partial disability benefits by defendants Menards and the insurer. He was found to have a 5 percent permanent impairment for the right hand injury, which entitles him to 9.5 weeks of permanent partial disability benefits (5 percent x 190 weeks). The combined credit to the Fund is 31.5 weeks (22 weeks plus 9.5 weeks).

Claimant is entitled to permanent partial disability benefits, less the Fund's credit or 18.5 weeks of Fund benefits (50 weeks minus 31.5 weeks). In the Agreement for Settlement, claimant and defendants stipulated that claimant's permanent partial disability benefits commenced as of June 4, 2019. The commencement date for Fund benefits is 22 weeks after June 4, 2019.

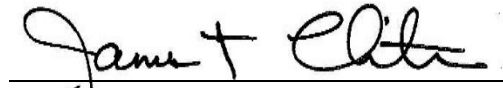
ORDER

THEREFORE IT IS ORDERED:

That defendant Fund shall pay claimant eighteen point five (18.5) weeks of permanent partial disability benefits at the rate of three hundred sixty-seven and 73/100 dollars (\$367.73) per week, commencing twenty-two (22) weeks after June 4, 2019.

That both parties shall pay their own costs.

Signed and filed this 19th day of April, 2023.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Lyons (via WCES)

Jennifer Beckman (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.