

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARTEN HUFFEY, SR.,

Claimant,

vs.

MAIL CONTRACTORS OF
AMERICA, INC.,

Employer,

and

CHARTIS,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

FILED

JUN 12 2017

WORKERS' COMPENSATION

File No. 5042767

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

Head Note No.: 1803

MARTEN HUFFEY, SR.,

Claimant,

vs.

MAIL CONTRACTORS OF
AMERICA, INC.,

Employer,

and

ACE PROPERTY AND CASUALTY,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5042768

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

Head Note Nos.: 1402.40, 3202

STATEMENT OF THE CASE

Defendant Second Injury Fund of Iowa (Fund), filed a notice of appeal in this matter on July 30, 2015. Claimant filed a notice of cross-appeal on August 24, 2015 and a notice of appeal on September 2, 2015. This case was heard on October 6, 2014. An arbitration decision was filed on July 14, 2015. That decision held, in part, that claimant was permanently and totally disabled. The arbitration decision found that claimant failed to carry his burden of proof regarding entitlement to benefits for a left knee injury of July 1, 2007. (File No. 5042766) The arbitration decision found that claimant was entitled to 15.4 weeks of permanent partial disability benefits to the left knee for a March 8, 2011 injury. (File No. 5042767) The arbitration decision also found that claimant was entitled to 110 weeks of permanent partial disability benefits for a left knee injury of February 24, 2012, and that claimant was entitled to permanent partial disability benefits from the Fund for the combined effects of the right and left knee injury. (File No. 5042768) Only File No. 5042767 and 5042768 have been appealed.

Detailed arguments of the parties have been considered and the record of the evidence has been reviewed de novo. Upon written delegation of authority by the Workers' Compensation Commissioner under Iowa Code section 86.3, I render this decision as a final agency decision on the behalf of the Iowa Workers' Compensation Commissioner.

ISSUES

1. Whether the deputy erred in determining claimant's March 8, 2011 injury was a qualifying first injury for the purposes of Fund benefits.
2. Whether the deputy erred in determining claimant's February 24, 2012 injury was a qualifying second loss for the purposes of Fund benefits.
3. Whether the deputy erred in determining that claimant is entitled to permanent and total disability benefits from the Fund.
4. Whether the deputy erred in determining the Fund's liability commences 125.4 weeks after February 24, 2012.

CONCLUSIONS OF LAW

Claimant was 63 years old at the time of hearing. He graduated from high school. Claimant attended 1 semester at a bible college.

Claimant has worked as a dock worker from 1969 through 1973. From 1973 through 1991 and 1995 through 1997, claimant worked as a studio driver for movie studios in California and drove small semi-trucks, motor homes, camera trucks, and forklifts. Claimant also worked part time as a bus driver from 1982 through 1985 with

the Des Moines School District and part time as a truck driver with a trucking company in Des Moines. (Exhibit 17, pages 234-235, Transcript, p. 21)

Claimant began working with Mail Contractors of America (MCA) in 1997. (Ex. 35, p. 41) Claimant's job as a driver for MCA required driving a truck, and loading and unloading the truck. Claimant testified that 60 to 80 percent of his time was spent driving the truck. (Ex. 20, p. 277)

Claimant's prior medical history is relevant. In July of 1994, claimant injured his left knee in a slip and fall accident. (Ex. 3, p. 6) Claimant had arthroscopic surgery for this injury on October 20, 1994. (Ex. 3, pp. 10-12) Claimant was released to work with no restrictions in January of 1995. (Ex. 3, p. 16) In December of 1997, claimant was found to have a two percent permanent impairment to the left lower extremity as a result of the October of 1994 knee surgery. (Ex. 9, p. 37)

Claimant twisted his left knee in July of 2003. (Ex. 35, p. 350) Claimant had a second left knee arthroscopic surgery in August of 2003. (Ex. 9, p. 39) Claimant was returned to work full duty on or about October 13, 2003. (Ex. 9, p. 40) Claimant was found to have a two percent permanent impairment to the left lower extremity for this injury. (Ex. 16, p. 169)

Claimant injured his right arm on October 14, 1999 while working for Sony Studios. (Ex. 2, pp. 2-4) The record suggests, but is not entirely clear, that claimant underwent a bicep and later a wrist surgery. (Ex. 2, pp. 2-4)

In a September 5, 2014 independent medical evaluation (IME) report, Robin Sassman, M.D., opined that claimant had a seven percent permanent impairment to the right upper extremity regarding this injury. (Ex. 16, p. 178)

Claimant pled this injury as a first injury for the purposes of Fund benefits. The arbitration decision did not address whether claimant's pled first injury, the alleged 1999 right arm injury was a qualifying injury for the purposes of Fund benefits.

On March 8, 2011, claimant tripped on a railroad tie and fell to his right knee. (Ex. 16, p. 170, Tr., pp. 37-38) Claimant eventually had a right knee arthroscopic surgery with a partial medical meniscectomy. Surgery was performed by Dr. Sullivan on May 12, 2011. (Ex. 9, p. 47)

On June 13, 2011, claimant was returned to work with no restrictions. (Ex. 9, p. 52, Tr., p. 137) On the same day, claimant underwent a DOT physical. Claimant was allowed to drive for two years without restrictions. Claimant was found to be at maximum medical improvement (MMI) on June 29, 2011 and found to have a two percent permanent impairment to the right lower extremity. (Ex. 9, pp. 52-53)

After his March 8, 2011 right knee injury, claimant testified he began to experience continued problems with his left knee. (Tr., p. 40) On April 20, 2011, claimant was assessed as having a severe tricompartmental left knee arthritis. (Ex. 9, p. 45)

On June 1, 2011, claimant was evaluated by Patrick Sullivan, M.D. Claimant complained of pain in the left knee. Claimant was assessed as having degenerative arthritis in the left knee. Dr. Sullivan opined that claimant would have to give consideration to a total knee replacement (TKR) on the left. Dr. Sullivan did not believe claimant's left knee problem was related to the right knee injury of March 8, 2011. (Ex. 9, p. 51)

On February 24, 2012, claimant climbed off a truck tire, after repairing a wiper blade, when he injured his left knee again. Claimant said he jumped off the truck tire and then when he hit the ground, his left leg slid off in snow. Claimant underwent conservative care for the February 24, 2012 injury with Daniel Miller, M.D. Claimant was found to be at MMI for the February 24, 2012 injury on March 22, 2012. Claimant was returned to full duty. (Ex. 11, pp. 91-92, Tr., pp. 121-122)

Claimant testified that after the February of 2012 injury, Dr. Miller told him he was going to need a knee replacement. Claimant said he waited until 2013 to have surgery for his knee because he was told he had problems qualifying for FMLA leave and problems with health insurance regarding the surgery. Claimant said he had an appointment to discuss the surgery, but the appointment was canceled because of the potential the surgery was work related. (Tr., pp. 50-53)

Claimant returned at MCA on full duty with no restrictions on March 22, 2012. (Ex. 11, pp. 91-92) On November 29, 2012, claimant was evaluated by Craig Mahoney, M.D. with complaints of left knee pain. Claimant indicated he had years of pain. Records indicate there was no injury connected with this visit. Claimant's onset of left knee pain was ten years prior. A total knee replacement (TKR) was discussed and chosen as a treatment option. (Ex. 12, pp. 98-100) Claimant was assessed at this time as having severe left knee joint disease and acute left knee arthritis.

On January 15, 2013, claimant underwent a total knee replacement on the left. Surgery was performed by Dr. Mahoney. (Ex. 12, p. 105)

On January 27, 2013, claimant applied for short-term disability (STD) benefits with MCA due to the left knee replacement. On the application for benefits claimant indicated the TKR on the left was not work related. (Ex. 31, p. 32, Tr., p. 59) In a physician statement, Dr. Mahoney indicated claimant's left total knee replacement was also not work related. (Ex. 31, p. 322)

Claimant did not return to work with MCA following his total knee replacement on the left.

In July of 2013, claimant applied for Social Security Disability benefits. Claimant indicated he was eligible for benefits based on a total knee replacement on the left, right knee surgery, bilateral carpal tunnel, a biceps tear on the right, sleep apnea and anxiety. (Ex. 32, pp. 326) Claimant was found to have qualified for Social Security Disability benefits in July of 2013. (Ex. 32, pp. 323)

In a September 5, 2014 report, Dr. Sassman gave her opinions of claimant's condition following an IME. Dr. Sassman opined that the March 8, 2011 incident was directly related to claimant's medical meniscal tear and need for surgery. (Ex. 16, p. 177)

Dr. Sassman also noted:

With regard to the February 24, 2012 injury, it is my opinion that this injury aggravated the underlying degenerative changes in his left knee and accelerated the need for the knee replacement. Mr. Huffey's left knee replacement on January 15, 2013 was reasonable and necessary care for his left knee condition.

In my opinion, the need for the left knee replacement was accelerated to some degree by both injuries of March 8, 2011, and February 24, 2012. In other words, although Mr. Huffey may eventually have needed the left knee replacement absent these injuries, the injuries brought about the need for the knee replacement at the time it was done. This is due to the fact that the trauma occurred with these injuries accelerated this knee.

(Ex. 16, p. 177)

Dr. Sassman found that claimant had a 20 percent permanent impairment to the left knee, a 7 percent permanent impairment to the right knee, and a 7 percent permanent impairment to the right upper extremity. (Ex. 16, p. 178)

Dr. Sassman testified in deposition that claimant's degenerative joint disease was the root cause for his total knee replacement. (Ex. 36, p. 396, Deposition pp. 15-16) Dr. Sassman could not opine if there were structural changes in claimant's left knee between April 2011 and January 2013. (Ex. 36, p. 396, Depo. pp. 15-16) She opined that claimant's February of 2012 incident was an aggravating factor for claimant's need for a total knee replacement. (Ex. 36, p. 397, Depo. p. 17)

Dr. Sassman opined that the March 8, 2011 injury and February 24, 2012 injury accelerated the need for a total knee replacement. (Ex. 36, pp. 399, 402)

Dr. Sassman testified that there was no objectionable medical evidence that the February 2012 incident resulted in any permanent trauma. (Ex. 36, p. 404, Depo. p. 45)

In a September 14, 2014 letter, Dr. Miller gave his opinions of claimant's condition. Dr. Miller opined that claimant's February 24, 2012 left knee incident was temporary in nature. Dr. Miller did not believe the February 24, 2012 injury advanced or made claimant's knee condition worse. He noted that claimant was returned to full duty on March 22, 2012. (Ex. 11, pp. 93-94)

Dr. Miller opined that the two meniscectomies to the left knee were most likely the contributing factors of claimant's severe arthritis regarding a total knee replacement. He noted claimant's left knee x-rays of 2011 showed severe tricompartmental left knee arthritis and that there was a low probability the February 24, 2011 injury caused further injury to the left knee. Dr. Miller noted that on March 21, 2012, claimant indicated his knee was back to pre-existing condition prior to the March 24, 2012 date of injury. (Ex. 11, p. 94)

Claimant testified that he continues to have left knee pain at the time of hearing. He said that he has difficulty doing yard work. (Tr. pp. 70-72) Claimant testified he no longer goes boating due to his physical limitations. (Tr. p. 75)

Claimant testified he did not believe he could return to work as a bus driver or driving for movie studios. (Tr. pp. 81-82) He said he could not return to work as a driver for MCA. (Tr. pp. 81-83)

Claimant testified he has not looked for work since leaving MCA. (Tr. pp. 83, 141)

Claimant testified his left knee never felt normal after his 2003 injury and that between 2003 and 2011 his left knee got worse. Claimant testified he told Dr. Miller, on March 21, 2012, he thought his knee pain was back to pre-February 2012 levels. (Tr. p. 121) Claimant said he returned to work full duty with no restrictions on March 22, 2012 until his total knee replacement in January 2013. (Tr. p. 122)

CONCLUSIONS OF LAW

The first issue to be determined is did the deputy err in finding that 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 Rule of Appellate Procedure 6.14(6).

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); Iowa Practice, Workers' Compensation, Lawyer and Higgs, section 17-1 (2006).

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 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

The arbitration decision found that claimant had a first qualifying injury, for the purposes of Fund benefits, with claimant's March 8, 2011 injury to the right lower extremity. Dr. Sullivan performed surgery on claimant for that injury. Dr. Sullivan found that claimant had a two percent permanent impairment to the right lower extremity. (Ex. 9, pp. 47, 52-53) Dr. Sassman also opined that claimant had a permanent impairment to the right lower extremity for the March of 2011 injury. (Ex. 16, p. 178) Two experts have found claimant had a permanent impairment for the March of 2011 right leg injury. There is no evidence suggesting claimant does not have a permanent impairment to the right lower extremity for the March of 2011 injury to the right lower extremity. Given this record, claimant has carried his burden of proof he sustained a qualifying first injury for the purposes of Fund benefits to the right lower extremity for the March 8, 2011 injury.

The next issue to be determined is did the deputy err in finding claimant had a qualifying second injury for the purposes of Fund benefits? The law detailed above concerning burden of proof and entitlement to Fund benefits is applicable here but will not be repeated.

Claimant contends he has a second qualifying injury based on his February 24, 2012 injury to his left knee. Claimant contends the left total knee replacement was causally related to his February 2012 knee injury. (Claimant's Brief, pp. 20-27)

As noted in the Findings of Fact, claimant had a history of left knee problems dating back to 1994. Prior to the February 24, 2012 incident, claimant had two meniscectomies to the left knee. (Ex. 3, pp. 10-12; Ex. 9, p. 39) In April 2011, claimant was assessed as having a severe tricompartmental arthritis on the left. (Ex. 9, p. 45) In June of 2011, he was counseled to consider a total knee replacement on the left. (Ex. 9, p. 51)

Claimant's February 24, 2012 left knee injury occurred when claimant jumped off a truck tire and his knee slipped on ice and snow. (Ex. 11, pp. 91-92, Tr. pp. 121-122)

Claimant received conservative treatment and did not have surgery for this injury. Claimant was eventually returned to full duty work with no restrictions on March 22, 2012. (Ex. 11, pp. 91-92, Tr. pp. 121-122) When he returned to work on March 22, 2012, claimant was not given any permanent impairment regarding the left knee incident of February 24, 2012.

Claimant did testify that he believed his left knee was worse after the February of 2012 incident. He also testified he wanted to have the knee replacement surgery performed after the February of 2012 incident, but did not because of issues with FMLA and insurance. However, other than claimant's testimony, there is little evidence to support this claim.

On November 29, 2012, approximately nine months after the February of 2012 incident, claimant was evaluated by Dr. Mahoney with complaints of left knee pain. Claimant indicated he had years of pain. Records indicate ". . . there was no injury . . ." that caused claimant's left knee pain. (Ex. 12, pp. 98-100) Claimant was assessed at this time as having left knee joint disease and acute left knee arthritis.

Claimant had a total knee replacement on January 15, 2013 performed by Dr. Mahoney. (Ex. 12, p. 105)

On January 27, 2013, claimant applied for STD benefits regarding the left knee replacement. Claimant indicated on the STD form the total knee replacement was not work related. (Ex. 31, pp. 321) Dr. Mahoney also indicated on the STD form that claimant's total knee replacement was not work related. (Ex. 31, p. 322)

Dr. Sassman has opined that claimant's need for a total knee replacement was accelerated by the March of 2011 accident and the February of 2012 incident. (Ex. 16, p. 177) However, even Dr. Sassman admits that there is no objective medical evidence that the February 2012 incident resulted in any permanent trauma. (Ex. 36, p. 404, Depo. p. 45)

Dr. Miller opined that there was a low probability that claimant's February 24, 2012 injury caused further permanent injury to claimant's left knee. Dr. Miller indicated that the two meniscectomies to claimant's left knee were most likely the contributing factors to claimant's severe arthritis, requiring a total knee replacement. (Ex. 11, pp. 93-94)

Claimant had no surgery immediately following the February 24, 2012 incident. Claimant was returned to work at full duty with no restrictions and no permanent impairment for the left knee on March 22, 2012. Nine months after the incident, claimant consulted with Dr. Mahoney regarding a total knee replacement. Records from that visit indicate claimant had pain with no specific injury. Dr. Mahoney's notes from the November 29, 2012 visit made no reference to a specific injury and only note that claimant was overweight and had degenerative joint disease. When claimant applied

for STD benefits, he indicated his total knee replacement was not work related. Dr. Mahoney also noted claimant's total knee replacement was not work related. Dr. Miller, who treated claimant for the February 24, 2012 incident, found a low probability that claimant's February of 2012 incident caused any permanent injury to claimant's left knee. Only Dr. Sassman opined that claimant's total knee replacement was accelerated by the February of 2012 work accident. Even Dr. Sassman admits that there is no objective medical evidence, indicating the February of 2012 incident, resulted in a permanent injury. Given this record, claimant has failed to carry his burden of proof he has a qualifying second injury for the purposes of Fund benefits.

Claimant also suggests that if the February of 2012 incident is not a qualifying second injury for the purposes of Fund benefits, that claimant's March of 2011 incident regarding his left knee is a qualifying injury for entitlement to Fund benefits. Case law indicates that a sequela injury, involving two scheduled members, does not qualify for Fund benefits, in these circumstances. Milbourne v. Second Injury Fund of Iowa, No. 02-0471, Filed February 28, 2003 (Iowa Court of Appeals), 622 N.W.2d 374 (Table) (Claimant's second injury arose from an aggravation of a pre-existing condition exacerbated by the original injury, and as such, claimant not entitled to Fund benefits); Aalbers v. Pioneer and Second Injury Fund, File No. 5042600 (App. Dec. March 24, 2016).

As noted on the Findings of Facts section of this decision, claimant pled a first injury to the right upper extremity occurring in October of 1999, for the purposes of Fund benefits. As noted, the arbitration decision did not address whether the 1999 right arm injury was a qualifying injury for the purposes of Fund benefits. There is no analysis in the decision why this alleged injury was ignored in determining Fund liability.

The record indicates claimant injured his right arm in October of 1999. (Ex. 2, pp. 2-4) Claimant indicated he had two surgeries for this injury. There is no documentation to support this testimony. Claimant was returned to work with no restrictions in March of 2000. (Ex. 1, p. 1) Other than claimant's testimony, there is no evidence claimant was given any permanent impairment after returning to work with no restrictions. There is no evidence claimant had any difficulty with the right arm following the return to work with no restrictions. The record indicates that after the right arm injury, claimant worked as a truck driver and was required to lift and carry 100 pounds, and push up to 2000 pounds. (Ex. 32, p. 326j)

Over 15 years after the alleged right arm injury, Dr. Sassman did opine claimant had permanent impairment to the right arm, in her September of 2014 IME report. (Ex. 16, p. 178) There is no explanation or analysis why claimant was returned to work in 2000 with no restrictions, how claimant worked for years on a job requiring heavy lifting and pushing, and yet, 15 years after the alleged injury, has a permanent impairment. Given this discrepancy in the record, Dr. Sassman's opinions regarding permanent impairment for the alleged 1999 right arm injury are found not convincing.

Claimant had a right arm injury in 1999. Other than claimant's testimony, there is no evidence claimant had surgery for this injury. Claimant was returned to work with no restrictions for this injury in 2000. Claimant worked a number of years performing heavy manual labor with no restrictions to his right arm. There is no record claimant had difficulty doing this work with his right arm. Dr. Sassman's opinion regarding permanent impairment to the right arm is found not convincing. Given this record, claimant has failed to prove he had an injury to his right arm in 1999 that qualifies him for Fund benefits.

As claimant failed to carry his burden of proof he sustained a qualifying second injury, for the purposes of Fund benefits, all other issues on appeal are moot.

ORDER

THEREFORE IT IS ORDERED:

Regarding File No. 5042767:

This file is affirmed in its entirety.

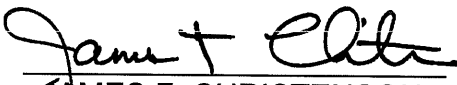
Regarding File No. 5042768:

The decision regarding this file is reversed in its entirety.

Claimant shall take nothing in the way of Fund benefits from this file.

Both parties shall pay their own costs.

Signed and filed this 12th day of June, 2017.


JAMES F. CHRISTENSON
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