

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANNY L. SPARKS,

Claimant,

vs.

P & J EQUIPMENT CORP.,

Employer,

and

ACCIDENT FUND INS. CO.,

Insurance Carrier,
Defendants.

File No. 5058524

A P P E A L

D E C I S I O N

Head Notes: 1403.40; 1803; 1803.1; 2501;
2701; 2907; 5-9999

Defendants P & J Equipment Corporation, employer, and its insurer, Accident Fund Insurance Company, appeal from the arbitration decision filed on April 10, 2019. Claimant Danny L. Sparks responds to the appeal. The case was heard on April 16, 2018, and it was considered fully submitted before the deputy workers' compensation commissioner on May 1, 2018.

The deputy commissioner found claimant's disability resulting from the stipulated work-related injury which occurred on October 17, 2013, extends into claimant's body as a whole, and therefore must be evaluated industrially. The deputy commissioner found the report of John Kuhnlein, D.O., to be highly credible, and adopted Dr. Kuhnlein's impairment ratings related to claimant's right leg, left leg, and left hand. The deputy commissioner found claimant also sustained a permanent injury to his low back as a sequelae of the original injury. The deputy commissioner found that in addition to the low back injury, claimant also suffers from phantom pain syndrome as a result of his right leg amputation, which is independently disabling and further establishes industrial disability. The deputy commissioner found claimant established impairment to three scheduled members (right leg, left hand, and left leg) occurring in the same incident, which also independently establishes entitlement to industrial disability. The deputy commissioner found claimant sustained 55 percent industrial disability as a result of the work injury, which entitles claimant to receive 275 weeks of permanent partial disability benefits. The deputy commissioner found claimant is entitled to receive ongoing medical care for his low back, left leg, and left hip conditions, as those conditions are

causally related to the work injury.¹ The deputy commissioner found defendants are entitled to a credit in the amount of \$8,957.36 for an overpayment of temporary disability benefits. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding the work injury caused permanent disability of claimant's back and left leg, and in finding claimant is entitled to receive ongoing medical care for those body parts and for the left hip. Defendants further assert the deputy commissioner erred in finding claimant sustained 55 percent permanent partial disability.

Claimant asserts on appeal that the deputy commissioner's decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on April 10, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues with additional comment and analysis.

I affirm the deputy commissioner's finding that claimant's disability extends into his body as a whole, and therefore must be evaluated industrially. I affirm the deputy commissioner's finding that Dr. Kuhnlein's report is most credible, and I affirm the adoption of Dr. Kuhnlein's impairment ratings related to claimant's right leg, left leg, and left hand. I affirm the deputy commissioner's finding that claimant also sustained permanent disability of his low back as a sequelae of the original injury. I affirm the deputy commissioner's finding that claimant established permanent disability of three scheduled members (right leg, left hand, and left leg) occurring in the same incident, which also independently establishes entitlement to industrial disability. I affirm the deputy commissioner's finding that claimant sustained 55 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive ongoing medical care for his low back, left leg, and left hip conditions,

¹ While the left hip symptoms were not found to rise to the level of permanent functional impairment, the deputy commissioner determined the left hip symptoms are causally related to the work injury, and therefore claimant is entitled to medical treatment for those symptoms.

as those conditions are causally related to the work injury. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above issues.

With respect to claimant's diagnosis of phantom pain, the deputy commissioner found that condition to be independently disabling, further establishing entitlement to industrial disability. While it does not appear defendants are appealing this finding, I provide the following additional analysis.

As the deputy commissioner correctly stated, when an injury causes severe pain requiring medical treatment and there is sufficient evidence to find that the pain is disabling, the disabling pain is compensable and treated as an unscheduled injury. This includes phantom pain from the loss of a limb. Dowell v. Wagler, 509 N.W.2d 134 (Iowa App. 1993). In Dowell, the Court of Appeals stated:

We believe the approach to phantom pain taken by these courts is in line with the language and intent of our statutory workers' compensation scheme. We therefore hold that phantom pain syndrome or phantom limb syndrome **may** be compensable under Iowa Code section 85.34(2)(u) as an unscheduled disability. . . .

509 N.W.2d at 138 (emphasis added).

The holding in Dowell does not mandate an award of industrial disability. Rather, the court stated phantom pain "may" be compensable industrially - not "must" or "shall." Id. at 138. The Dowell court relied on two cases in coming to its decision. In the first case, from New Mexico, the claimant's phantom pain was so severe that the claimant received specific medical treatment for it. See Id. (citing Gordon, 845 P.2d at 864). In the second case, from Pennsylvania, the claimant's symptoms extended "to parts of the body other than the injured [part]." See Id. at 138 (citing Penn Mar Foundries, Inc., 464 A.2d at 671).

This agency has addressed the issue of phantom pain on several occasions, and has held both that phantom pain can be an industrial disability, and that the injury is a scheduled injury. It is a case specific, factual analysis, but the central question in every case is whether the phantom pain is sufficiently disabling to be considered a separate and distinct impairment. See Id. at 137-138.

In this case, the evidence supports the deputy commissioner's finding that claimant's phantom pain syndrome is sufficiently disabling to be considered a separate and distinct impairment. Claimant received specific medical treatment related to the phantom pain, including medications prescribed by the University of Iowa Pain Clinic and a consultation with a pain psychologist. (Joint Exhibit 5, p. 32-34; Claimant's Exhibit 2, p. 5) Claimant has consistently maintained he frequently experiences sharp pains

shooting out from the heel that is no longer there, and constantly feels as though his foot is being squeezed in a vice and his toes are being twisted around. (Ex. 2, p.7; Ex. A, pp. 2-3; Deposition Transcript, p. 7-10) Claimant also feels as though his amputated right knee is flexed at all times. (Ex. 2, p.7) None of the various treatments claimant has tried for the phantom pain have provided relief, so he has learned to deal with it and work through it. (Ex. A, p. 2-3; Depo Tr., p. 7-10) At times, he will need to sit down to attempt to relieve the phantom pain, although he testified that sometimes sitting makes it worse due to the prosthetic pressing on the nerve in his leg. Id. He has been provided with a TENS unit in an attempt to alleviate the pain, which has not been helpful. Id. He has also attempted methods on his own, including mirror therapy and "tapping" in order to find relief, again with no success. Id. Given claimant's specific medical and psychological treatment related to the phantom pain, as well as his ongoing symptoms, there is ample evidence in this case to support the deputy commissioner's finding. I therefore affirm the deputy commissioner's finding that claimant's phantom pain syndrome is independently disabling and further establishes industrial disability.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 10, 2019, is affirmed in its entirety.

Defendants shall pay claimant two hundred seventy-five (275) weeks of permanent partial disability benefits at the stipulated weekly rate of seven hundred fifteen and 19/100 dollars (\$715.19), at the dates stipulated by the parties.

Defendants shall receive credit in the amount of eight thousand nine hundred fifty-seven and 36/100 dollars (\$8,957.36) for an overpayment of temporary disability benefits.

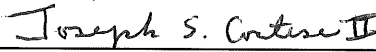
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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).

Within thirty (30) days of the date of this appeal decision, defendants shall authorize a physician other than R. L. Broghammer, M.D. or Kenneth McMains, M.D., to provide treatment for claimant's back, left hip and left knee conditions consistent with the arbitration decision.

Pursuant to 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 18th day of May, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jordan M. Talsma Via WCES

Charles A. Blades Via WCES