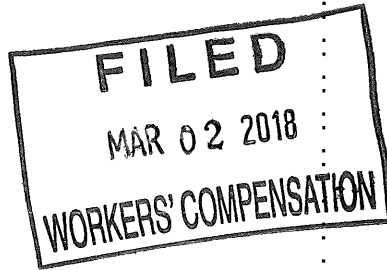


BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BILL MASON,
Claimant,
vs.

GRIFFIN WHEEL,
Employer,
Self-Insured,
Defendant.



File No. 5055384

ARBITRATION
DECISION

Head Notes: 1803

STATEMENT OF THE CASE

Claimant, Bill Mason, filed a petition in arbitration seeking workers' compensation benefits from Griffin Wheel, self-insured defendant. This matter was heard in Des Moines, Iowa on January 22, 2018 with a final submission date of February 12, 2018.

The record in this case consists of Joint Exhibits 1 through 6, and the testimony of claimant.

Following the hearing, defendant was requested to show proof of self-insurance. On or about February 12, 2018 defendant filed a notice of self-insurance. The notice indicated Amsted Industries, Inc. as the actual employer. The notice also indicates the plant where claimant is employed is often referred to as Griffin Wheel. Amsted Industries is listed on the State of Iowa's registry as being a self-insured employer.

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.

ISSUE

The extent of claimant's entitlement to permanent partial disability benefits.

FINDINGS OF FACT

Claimant was 50 years old at the time of hearing. Claimant graduated from high school. He works as a maintenance person at Griffin Wheel.

On November 13, 2015 claimant was repairing a hot wheel transfer crane. The crane was supposed to be turned off. The crane came down and crushed claimant. Claimant testified the top part of the crane has a temperature of approximately 475 degrees. Claimant said he was crushed and his back was burned in the accident.

Claimant was taken to the Keokuk area hospital. Claimant indicated he was unable to breathe by being crushed and had a near syncope. Claimant was assessed as having first and second-degree burns on most of his back, a soft tissue injury to the right ribs without fracture, fracture of the L1 and L2 transverse process, bilateral subconjunctival hemorrhage and rhabdomyolysis without change in renal function. (Exhibit 2)

Claimant was evaluated by Rachel Oliverio, D.O. on November 17, 2015. Claimant had pain in the neck, head and trunk. Claimant was assessed as having a fracture of the lumbar spine, second-degree burns and a crush injury. He was treated with medication and kept off work. (Ex. 3, pp. 16-17)

Claimant returned to Dr. Oliverio on November 24, 2015 with continued complaints of neck and shoulder pain. Claimant was kept off of work. (Ex. 3, p. 19)

Claimant underwent physical therapy from December 24, 2015 through September 20, 2016. Records indicate claimant had steady improvement with physical therapy. (Ex. 1) Physical therapy records from September 30, 2016, over 300 days after the date of injury, indicate claimant had still not returned to work at full duty. (Ex. 1, p. 13)

As of December 30, 2015 claimant was still restricted from work by Dr. Oliverio. (Ex. 3, pp. 23-24)

Claimant returned to Dr. Oliverio on January 12, 2016. Claimant complained of constant back pain. Records suggest this pain was due, in part, to the large burns on claimant's back. Claimant was continued on pain medication and kept off work. (Ex. 3, pp. 26-30)

On March 25, 2016 claimant saw Dr. Oliverio with complaints of right shoulder pain. Claimant was referred to an orthopedic specialist. (Ex. 3, pp. 31-32)

On May 9, 2016 claimant was evaluated at the University of Iowa Hospitals and Clinics (UIHC) for burns to his back. Records from this visit also refer to arthroscopic repair of the rotator cuff injury related to the November 13, 2015 accident. Claimant was evaluated as having 8 percent burns over the total body surface area (TBSA) on his body. Claimant was returned to work with no use of the right arm. (Ex. 4, pp. 37-41)

On January 26, 2016 claimant was evaluated by Matthew Bollier, M.D. Dr. Bollier specializes in orthopedics regarding the shoulder. Claimant had improvement with his right shoulder. Claimant was found to be at maximum medical

improvement (MMI) and returned to full-duty work, as to his right shoulder injury. (Ex. 4, pp. 46-49)

In a December 22, 2016 note Dr. Bollier found claimant had no permanent impairment to his right shoulder. He released claimant to return to work with no restrictions for the right shoulder. (Ex. 4, p. 50)

In an October 31, 2016 report, Richard Neiman, M.D. gave his opinions of claimant's condition following an independent medical evaluation (IME). Dr. Neiman opined claimant had a 15 percent permanent impairment due to the skin condition based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. He opined claimant had a 1 percent permanent impairment to the left shoulder, based on the Guides. Claimant was to avoid excessive heat. (Ex. 5, pp. 48-72)

In a November 16, 2016 note, Dr. Neiman indicated he reviewed CT scans of the fracture of the transverse process and found claimant had a 10 percent permanent impairment to the body as a whole based on those fractures. He opined the combined permanent impairment values for the skin, shoulder and transverse process fractures resulted in a 24 percent permanent impairment to the body as a whole. (Ex. 5, p. 73)

Records indicate claimant continued to treat at the UIHC from January of 2017 through June of 2017 for treatment for burns on his back. Claimant had multiple laser treatments and a tissue rearrangement. Records indicate by June 8, 2017 claimant's pain was well controlled and claimant was returned to work. (Ex. 4, pp. 51-61)

On February 2, 2017 claimant returned in followup with Dr. Oliverio. Claimant had pain in the lower back. Claimant's lower back pain was thought to be non-work related. He was kept on regular duty and dismissed from care. (Ex. 3, pp. 35-36)

Claimant returned to the UIHC for further laser treatments for his burns in July and August of 2017. According to those records, claimant indicated he was doing well and returned to work without restrictions. Records indicate claimant received continued care at the UIHC on January 18, 2018 for his skin condition. Claimant was returned to work with no restrictions. (Ex. 4, pp. 62-67)

Claimant showed, at hearing, keloid scars that appear to cover between one-third and one-half of his back. Claimant testified he has had two surgeries on his back and ten to twelve laser procedures for the burns. Claimant said he cannot sweat where scarring occurs on his back. He said scarring on his back pulls his skin tight, and he has difficulty with flexibility and bending because of scarring. Claimant said his back is sensitive to sun and he has to routinely have creams and lotions on his scars.

Claimant said he had back pain and stiffness because of the fractures of his vertebra and lumbar spine. He says he has loss of strength in lifting due to his back and right shoulder. Claimant said he has lost some range of motion in his right

shoulder. Claimant testified he is taking medications for pain. He said he is also bothered by broken cartilage in his rib area.

Claimant testified he is not working under any restrictions at Griffin Wheel. He said his hourly wage has increased since the date of injury, because of a collective bargaining agreement.

CONCLUSIONS OF LAW

The only issue to be determined is the extent of claimant's entitlement to permanent partial disability 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. 6.14(6).

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 R. Co., 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 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.

Claimant was 50 years old at the time of hearing. Claimant graduated from high school. Claimant works as a maintenance person at Griffin Wheel.

Two experts have opined regarding permanent impairment ratings for claimant's injuries to his shoulder. Dr. Bollier rated claimant only for his shoulder. It appears from the records that Dr. Bollier treated claimant and performed surgery on his shoulder. Dr. Bollier opined claimant had no permanent impairment regarding the right shoulder. (Ex. 4, p. 50)

Dr. Neiman evaluated claimant on one occasion for an IME. Regarding the shoulder injury, Dr. Neiman found claimant had a 1 percent permanent impairment to the left shoulder. (Ex. 5, p. 70)

Treating doctors are not to be given greater weight as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994). However, as a factual matter, Dr. Bollier has a far greater familiarity with claimant's medical history and claimant's medical presentation, than does Dr. Neiman, who only evaluated claimant on one occasion. Because Dr. Bollier has a far greater familiarity with claimant's condition, than does Dr. Neiman, it is found the opinions of Dr. Bollier, regarding claimant's degree of permanent impairment to only his shoulder, are more convincing than that of Dr. Neiman. Based on this, it is found claimant has no permanent impairment to the right shoulder, due to the work injury.

Claimant did have a fracture to the transverse process in the lumbar spine. Dr. Neiman opines claimant has a 10 percent permanent impairment to the body as a whole due to the transverse fracture. (Ex. 5, p. 73) No opinion contradicts this finding. It is found claimant has a 10 percent permanent impairment to the body as a whole based on the transverse fracture.

Only Dr. Neiman has rated claimant's injury to his skin. He found claimant had a 15 percent permanent impairment to the body as a whole regarding impairment caused by the burns and the keloid scars. (Ex. 5, p. 70)

The combined values chart of the Guides indicates a 10 percent permanent impairment combined with a 15 percent permanent impairment results in a 24 percent permanent impairment to the body as a whole. (Guides, p. 604) Based on this, it is found claimant has a 24 percent permanent impairment to the body as a whole.

Claimant had a rotator cuff surgery. He has had two surgeries for his burns and scarring. Claimant has had approximately twelve laser procedures for his skin. Claimant returned to work at his regular job at Griffin Wheel with no permanent restrictions. Claimant credibly testified he has stiffness and pain in his back due to the fractures of the transverse process, and the large keloid scars on his back. Claimant credibly testified he has less strength in lifting due to his right shoulder and back problems. Claimant testified he earns more at the time of hearing than he did at the time of injury due to a collective bargaining agreement.

When all factors are considered, it is found claimant has a 20 percent loss of earning capacity or industrial disability.

ORDER

Therefore, it is ordered:

That defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the rate of eight hundred eighty-six and 22/100 dollars (\$886.22) per week commencing on November 16, 2017.

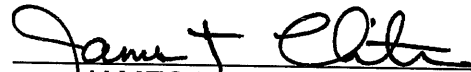
That defendant shall pay accrued weekly benefits in a lump sum.

That defendant shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendant shall pay the costs of this matter.

That defendant shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 2nd day of March, 2018.


JAMES F. CHRISTENSON
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.