

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEE DELANEY,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Employer,
Defendant.

File No. 19005645.04

ARBITRATION DECISION

Head Note No.: 3203, 1803.01

STATEMENT OF THE CASE

Dee Delaney, claimant, filed a petition in arbitration seeking workers' compensation benefits from the Second Injury Fund of Iowa as defendant. Hearing was held on September 21, 2021. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. At the commencement of the hearing, there were technical problems with CourtCall. The parties agreed to proceed via Zoom. Accordingly, this case proceeded to a live video hearing via Zoom with all parties and the court reporter appearing remotely.

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.

Claimant, Dee Delaney, was the only witness who testified live at trial. The evidentiary record also includes joint exhibits 1-8, Claimant's exhibits 1-4, and the Second Injury Fund of Iowa's exhibits A-D. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs which were submitted on October 22, 2021.

ISSUES

The parties submitted the following issues for resolution:

1. Whether the March 12, 2019 work injury is an injury to the body as a whole or a scheduled member injury. In other words, does the March 12, 2019 constitute a second qualifying injury for purposes of qualifying for benefits from the Second Injury Fund of Iowa.
2. If claimant does qualify for benefits from the Second Injury Fund of Iowa, the extent of industrial disability, if any, claimant has shown entitlement to.

FINDINGS OF FACT

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

Claimant, Dee Delaney, is seeking workers' compensation benefits from the Second Injury Fund of Iowa ("the Fund"). She has alleged a first qualifying injury to her left lower extremity with an injury date of July 22, 1986. At the time of the hearing, the Fund disputed whether claimant sustained a prior qualifying loss to the left lower extremity on July 22, 1986. However, in the Fund's post-hearing brief, the Fund now stipulates that Delaney's asserted first qualifying injury of the left lower extremity is a qualifying injury for purposes of a claim against the Fund; therefore, this is no longer an issue in this case.

The parties stipulate that Ms. Delaney sustained an injury, which arose out of and in the course of her employment with Nordstrom, Inc. on March 12, 2019. (Hearing Report) Prior to the hearing, Ms. Delaney and Nordstrom, Inc., entered into an Agreement for Settlement (AFS) of the March 12, 2019 work injury. Ms. Delaney and Nordstrom, Inc., stipulated that she sustained a work related injury to her right lower extremity. They further stipulated that as the result of that injury she sustained permanent partial disability for 40 percent loss of the right leg. The Fund was not a party to that settlement and is not bound by the terms of the settlement. (Fund Ex. D)

The central dispute in this case is whether the March 12, 2019 injury was a scheduled member injury to the right lower extremity or whether the injury extended into the body as a whole and is therefore an unscheduled injury. If the March 12, 2019 injury extends into the body as a whole, then that injury would not constitute a second qualifying injury for purposes of a claim against the Fund.

Following the March 12, 2019 right knee injury Ms. Delaney eventually underwent an MRI of her right knee. She was referred to Nicolas O. Noiseux, M.D., an orthopedic surgeon at the University of Iowa Hospitals and Clinics (UIHC). Dr. Noiseux felt the work injury substantially aggravated Ms. Delaney's underlying right knee osteoarthritis. On August 2, 2019, he performed a right total knee arthroplasty. Ms. Delaney was restricted from returning to work until further notice. Dr. Noiseux placed

her at maximum medical improvement (MMI) on January 2, 2020. Dr. Noiseux assigned thirty-seven percent impairment of the right lower extremity. He released Ms. Delaney to return to work without restrictions. (Cl. Ex. 1; JE6)

In June of 2020, Ms. Delaney began to experience pain and swelling in her right foot. She saw Dale Beiber, M.D., at UIHC. Dr. Beiber diagnosed post-surgical lymphedema. He felt this was likely due to destruction of Ms. Delaney's lymph from the total knee replacement surgery. (JE8, pp. 102-05) In August of 2020, Dr. Noiseux agreed with Dr. Bieber's diagnosis of right foot swelling as post-surgical lymphedema resulting from the August 2, 2019 work-related knee replacement surgery. (Cl. Ex. 2, p. 24)

At the request of her attorney, Ms. Delaney underwent an independent medical evaluation (IME) with Farid Manshadi, M.D., on March 4, 2021. Dr. Manshadi examined Ms. Delaney and reviewed the medical records provided to him. Dr. Manshadi stated that Ms. Delaney's right knee replacement was causally related to the March 12, 2019 work injury. He utilized the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition, Chapter 17, Table 17-33, to assign 37 percent impairment of the right lower extremity for her right knee injury. With regard to Ms. Delaney's right foot edema and pain, he diagnosed lymphedema which he stated was a complication of the right total knee arthroplasty. Dr. Manshadi placed her at MMI and opined she has permanent partial impairment due to lymphedema. He opined that under The Guides, Fifth Edition, Chapter 17, Table 17-38, Lower Extremity Impairment Due to Peripheral Vascular Disease, Ms. Delaney fit into class 1 and assigned 3 percent impairment of the whole person. (Cl. Ex. 1, pp. 7-10)

In 2021 Ms. Delaney continued to have right leg swelling despite her surgery and use of compression stocking. She also continued to have right leg soreness and left ankle pain and stiffness. (Testimony)

With regard to Ms. Delaney's lymphedema, I find the opinions of Dr. Beiber, Dr. Noiseux, and Dr. Manshadi to be persuasive. I find that her lymphedema was the result of the right total knee surgery. I further find that Ms. Delaney's right knee surgery was the result of the March 12, 2019 work injury. Thus, I find her lymphedema is a sequela of the March 12, 2019 work injury.

Based on the opinions of Dr. Manshadi, a doctor selected by Ms. Delaney, I find the March 12, 2019 work injury resulted in permanent impairment to her body as a whole.

CONCLUSIONS OF LAW

Iowa Code 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.

In the present case, the parties stipulate that Ms. Delaney sustained a first qualifying injury for purposes of the Fund. The central dispute is whether she has sustained a second qualified injury for purposes of the Fund. Under Iowa law, the second qualifying injury must be limited to a scheduled member. If the second injury occurred simultaneously with an injury to the body as a whole, industrial disability is implicated against the employer, and the employer is fully responsible. See Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467, 470 (Iowa 1990); see also Means v. Second Injury Fund, File Nos. 5033141, 5043335, 2015 WL 13306907 at **6-7 (Arb., January 8, 2015); Larson v. Second Injury Fund, File No. 5033159 (App., March 27, 2012).

This agency has held that lymphedema constitutes an injury to the vascular system, and thus is an injury to the body as a whole. See Derby v. The Dexter Co., File Nos. 1111978 et al. (App., December 3, 1999); Barker v. Cedar Valley Corp., File No. 1153401 (Arb. April 13, 2000); see also Anderson v. Broadlawns Medical Center & Second Injury Fund of Iowa, File No. 5064991 (Arb., December 16, 2019). The Iowa Supreme Court has considered vascular injuries to be whole body injuries that are to be compensated industrially. See Blacksmith v. All-American, Inc., 290 N.W.2d 248 (Iowa 1980); Architectural Wall systems v. Towers, 854 N.W.2d 74 (Table)(Iowa Ct. App. 2014). This agency has held that vascular injuries, even those located in extremities are body as a whole injuries. See Raymond v. Menard, Inc., File No. 5039009 (App., December 18, 2013); Briggs v. Second Injury Fund, File No. 5024615 (App., December 4, 2009); Andrade v. IBP, Inc., File No. 5013872 (App., August 29, 2006).

Based on the above findings of fact, I conclude Ms. Delaney's right lower leg condition constitutes lymphedema. Additionally, based on the expert opinions in this case, I conclude her lymphedema is causally connected to her right knee replacement surgery and thus is a sequela of her March 12, 2019 work injury. Based on the opinions of Dr. Marshadi, I conclude that Ms. Delaney's lymphedema resulted in permanent impairment to her body as a whole. Dr. Marshadi assigned 3 percent permanent impairment to the whole body due to peripheral vascular disease. As such, I conclude that the March 12, 2019 work injury is not limited to a scheduled member.

Because the March 12, 2019 work injury is not limited to a scheduled member injury, Ms. Delaney has failed to demonstrate entitlement to benefits from the Second Injury Fund of Iowa. Ms. Delaney has failed to demonstrate by a preponderance of the evidence that she qualifies for benefits from the Fund. Claimant shall take nothing from these proceedings.

Because claimant failed to demonstrate entitlement to any benefits from the Fund all other issues are rendered moot.


ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 11th day of February, 2022.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)

Jonathan Bergman (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.