BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JERONIMO VAZQUEZ, Claimant, vs. JOHN MORRELL & CO., Employer, Self-Insured, Defendant.	:	File No. 5039388 APPEAL DECISION Head Note Nos.: 1802, 1804, 4100

FILED
APR - 2 2015
WORKERS' COMPENSATION

STATEMENT OF THE CASE

Claimant, Jeronimo Vazquez, appeals from a remand decision filed May 7, 2014, in which the presiding deputy workers' compensation commissioner found claimant had a 30 percent industrial disability or loss of earning capacity. Defendant has also filed a cross-appeal.

This appeal arises from an arbitration decision filed on July 5, 2013, by the presiding deputy workers' compensation commissioner for File No. 5037850 (concerning a right lower extremity injury on September 26, 2006, November 25, 2009, or April 9, 2010); File No. 5039388 (regarding a right upper extremity injury occurring on February 10, 2010) and File No. 5039389 (concerning a left upper extremity injury occurring on April 2, 2010). The four-page decision found claimant had been fully compensated for File Nos. 5037850 and 5039389 (Arbitration Decision, page 3).

Regarding File No. 5039388, concerning the right upper extremity, all the other issues were found moot other than the payment of medical bills and reimbursement for an independent medical evaluation (IME). (Arb. Dec., p. 3)

In an appeal decision dated March 3, 2014, the then workers' compensation commissioner remanded the arbitration decision of July 5, 2013, for File No. 5039388, back to the presiding deputy to make more specific and supportive findings, to provide analysis necessary for conclusions of law, and to rule upon the issues presented in claimant's application for rehearing specifically related to disability resulting from his right shoulder condition.

In a May 7, 2014, remand decision the presiding deputy workers' compensation commissioner found claimant was due healing period benefits and that claimant had a 30 percent industrial disability regarding the right shoulder injury (File No. 5039388).

Claimant asserts on appeal that the evidence indicates claimant is permanently and totally disabled. Defendant contends on cross-appeal that claimant did not incur an injury to his right upper extremity on February 10, 2010, and that claimant is not entitled to any benefits.

ISSUES ON APPEAL AND CROSS-APPEAL

1. Whether claimant sustained an injury to his right upper extremity that arose out of and in the course of employment on February 10, 2010.

2. The extent of claimant's entitlement to temporary benefits.

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

FINDINGS OF FACT

The presiding deputy made factual findings in the arbitration and remand decisions. An additional exam of the record is useful for the purposes of the de novo review.

Claimant was 53 years old at the time of hearing. He was born in Mexico. Claimant had six years of education in Mexico. He does not have a GED. Claimant speaks a little English. He cannot read or write English. Claimant required an interpreter when visiting doctors or with his attorney. (Exhibit 1; Ex. L, pp. 67-68; Transcript page 31)

Claimant worked on farms and did construction work in Mexico. Claimant moved to California in 1985. From 1985 to 1995 claimant worked on farms in California. He moved to Iowa in 1995. Claimant worked for a short period of time at a lamb processing plant. Claimant began with Morrell in October of 1995. (Ex. 1; Ex. 2; Tr. pp. 12-13)

Claimant worked on the kill floor at Morrell. (Tr. p. 14) Claimant testified that for the first nine years he worked at Morrell he was moved to different jobs on the production floor. (Tr. pp. 15-16) Beginning in 2005 claimant began working in a position where he cut the hearts and lungs out of hogs. The job required repetitive use of both hands and upper extremities. Claimant used a knife with his right hand to cut and pulled out cut lungs and hearts with his left. (Tr. pp. 18-19)

In 2000 claimant was treated for left shoulder pain. Claimant ultimately underwent left shoulder surgery in 2000. (Ex. 9) In a February of 2001 opinion Douglas Martin, M.D. found claimant had a six percent permanent impairment to the left

upper extremity, converting to a four percent permanent impairment to the body as a whole. Claimant was restricted to occasional use of the left arm above his shoulder. (Ex. 9, p. 6) Claimant indicated he was paid permanent partial disability benefits based on an eight percent permanent impairment to the body as a whole. (Claimant's post-hearing brief, p. 6)

In March of 2006 claimant was treated for right shoulder pain. Claimant had no surgery on the right. He was found by Dr. Martin to have a seven percent permanent impairment to the right upper extremity converting to a four percent permanent impairment to the body as a whole. Claimant was restricted to only occasionally pushing/pulling/lifting no more than ten pounds on the right. He was also limited to lifting above his shoulder. (Ex. 9, pp. 1-2) Claimant indicated he was paid benefits based on an eight percent body as a whole rating. (Claimant's post-hearing brief, p. 6)

In November of 2006 claimant was treated for a traumatic right knee injury. Claimant underwent knee surgery. In July of 2007 Dr. Martin opined claimant had a ten percent permanent impairment to the right leg with no restrictions. (Ex. 9, pp. 26-27; Ex. 10, p. 8)

Claimant testified in deposition and at hearing that after every injury and every surgery he was returned to work that was not within his restrictions. He testified he continued to do his main jobs of cutting hearts and lungs out of carcasses, which he did from 2005 through 2010. He also testified he did different jobs throughout the plant because of experience at Morrell with different work stations. Claimant testified that every job he did he exceeded his work restrictions. (Ex. L, p. 85; Tr. pp. 18-20) Claimant testified he complained about being forced to exceed his restrictions to union officials, but nothing was done and he continued to work at jobs outside of his restrictions. (Tr. p. 44)

Claimant testified he was able to continue to work, at jobs exceeding his work restrictions, between 2006 through 2007. He said at some point his shoulder pain worsened and he eventually had to see a plant nurse for right shoulder pain. (Tr. p. 35)

On February 10, 2010, claimant was seen by the plant nurse for right shoulder pain. Claimant returned to the plant nurse for right shoulder pain again on February 12, 2010 and February 16, 2010. (Ex. 4, p. 6)

On April 9, 2010, the Morrell plant closed. (Tr. pp. 13-14)

In the summer of 2010 claimant treated with Rodney Cassens, M.D. for paresthesia in his fingers of his right hand. EMGs and nerve conduction studies indicated a severe carpal tunnel syndrome on the right. (Ex. 11, pp. 12-15)

In November of 2010 claimant had a left carpal tunnel release. (Ex. 14, p. 11) He was assessed as having a five percent permanent impairment to the left upper extremity as a result of the carpal tunnel release. (Ex. 14, p. 18; Ex. D, p. 21)

In March of 2011 claimant was evaluated by Mark Morishige, M.D. for right shoulder pain. The date of the injury for the right shoulder is noted as February 10, 2010. An MRI was recommended. (Ex. 15, p. 1)

In March of 2011 claimant underwent a partial medial menisectomy on the right knee. (Ex. 13, p. 11) Claimant was assessed by Brian Johnson, M.D. as having a two percent permanent impairment to the right lower extremity. (Ex. 13, p. 20) Michael O'Neil, M.D. opined claimant had a ten percent permanent impairment to the right lower extremity. (Ex. 19, p. 9)

Claimant returned to Dr. Morishige on April 26, 2011, for a followup for the February 10, 2010 right shoulder injury. Claimant was assessed as having a subacromial impingement on the right. He was given an injection in the right shoulder. (Ex. 15, p. 3)

Claimant returned in follow-up with Dr. Morishige for the February 10, 2010 right shoulder injury. Claimant was given permanent restrictions of no lifting more than ten pounds and no reaching above the shoulder. (Ex. 15, pp. 5-6)

Claimant returned to Dr. Morishige with continued complaints of right shoulder pain caused by a February 10, 2010 injury. Surgery was discussed and chosen as a treatment option. (Ex. 15, pp. 7-8)

On June 29, 2011, claimant underwent a right subacromial decompression, a distal clavicle resection and a biceps tenodesis. Surgery was performed by Dr. Morishige. (Ex. 15, pp. 9-10)

Claimant saw Dr. Morishige in follow-up for his right shoulder injury from July 2011 through February of 2012. During this period of time claimant was evaluated approximately eight times for followup to a February 10, 2010, right shoulder injury. (Ex. 15, pp. 11-26)

On October 27, 2011 claimant underwent a functional capacity evaluation (FCE) performed by Tim Saulsbury, M.S.P.T. Claimant was found to be able to work in the light physical demand category. (Ex. 16)

On January 3, 2012, claimant was found to be at maximum medical improvement (MMI) for the right shoulder injury of February 10, 2010. (Ex. 15, p. 23)

On January 24, 2012 claimant underwent a second FCE performed by Physical Therapist Saulsbury. Claimant was found to have given good effort. He was able to

work in the medium physical demand level. This was for his right shoulder injury of February 10, 2010. Claimant was found to be able to occasionally lift 20 pounds on the right. (Ex. 17)

In a report dated June 8, 2010, Dr. Morishige found claimant had a 15 percent permanent impairment to the right upper extremity, converting to a 9 percent permanent impairment to the body as a whole for an injury occurring on February 10, 2010. (Ex. 26, p. 5)

On July 22, 2012 claimant underwent an independent medical evaluation (IME) performed by Michael O'Neil, M.D. Dr. O'Neil found claimant's repetitive work duties at Morrell led to the need for right shoulder surgery in June of 2011. He believed claimant had reached MMI on January 3, 2012. Dr. O'Neil found claimant had a ten percent permanent impairment to the right upper extremity. He limited claimant to no repetitive use of the right arm above chest level. (Ex. 19)

In a September 4, 2012, vocational report, Michael Newman, M.S., L.P.C. gave his opinions of claimant's vocational opportunities. Claimant's work history had been in unskilled manual labor. Claimant had contacted 111 different employers from December 10, 2011, through April 13, 2012. Claimant was not called back for jobs or offered a job with any of these employers. Mr. Newman found claimant had no direct skill transferability to other work. Claimant had no GED. He spoke limited English. He found claimant's permanent restrictions, age, education, language barrier, lack of skill transferability and one-dimensional work history, resulted in a profound vocational handicap to claimant. Mr. Newman found claimant's ability to compete in the labor market was essentially eliminated. (Ex. 21)

Claimant testified that since leaving Morrell he has applied for jobs, but no employers have contacted him. Exhibit 22 is a list of approximately 200 jobs claimant has applied for. Claimant has not been given an interview or offered a job for any of these employers. (Ex. 22)

At the time of hearing claimant testified he was studying English and computers. He was also taking classes to attempt to get citizenship. (Tr. p. 30)

CONCLUSIONS OF LAW

The first issue to be determined is if claimant sustained an injury to his right shoulder that arose out of and in the course of his employment on February 10, 2010.

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).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the

employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant

medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Claimant contends he sustained a cumulative injury occurring on February 10, 2010. Defendant contends claimant had a chronic injury to his right shoulder in 2002. Defendant argues claimant did not sustain a new injury, but was suffering from the results of the chronic injury to the right shoulder dating back to 2002. (Defendant's brief, pp. 13-16)

It is true claimant had a prior right shoulder injury dating back to 2002. (Ex. A, p. 2) However, no expert has opined that claimant's February 10, 2010, injury is not a new injury, but merely a result of his 2002 right shoulder injury. All of Dr. Morishige's records indicate claimant had a February 10, 2010, date of injury for his most recent right shoulder problems. (Ex. 15, pp. 1-23) Dr. Morishige opined claimant had a permanent disability as a result of a February 10, 2010, date of injury. (Ex. 26, p. 5) Dr. Morishige is a physician authorized by defendant, who treated claimant and performed surgery on his right shoulder. Dr. O'Neil also opined claimant's most recent right shoulder problem was caused by an injury occurring in February of 2010. (Ex. 19, p. 7)

Claimant testified in hearing and in deposition, that he was given restrictions for his right shoulder, but those restrictions were not recognized by his employer. (Tr. pp. 18-19; Ex. L, p. 83) There is no evidence that rebuts this testimony. Claimant's job was highly repetitive. Claimant testified he was able to do his job, outside of his restrictions, from approximately 2006 through 2007. He said that at some point he began to have more difficulty with his right shoulder. Morrell records indicate claimant did see a plant nurse for shoulder pain on February 10, 2010. (Ex. 4, p. 6)

Claimant's job was highly repetitive. He was able to perform his job after his 2002 right shoulder injury. The plant records indicate claimant saw a plant nurse on February 10, 2010 for a right shoulder injury. Records from the treating physician, authorized by defendant, all refer to a February 10, 2010, date of injury. Dr. O'Neil opined claimant needed right shoulder surgery based on a February of 2010 injury date. No expert has opined claimant's February 10, 2010, right shoulder injury is merely the effect of the 2002 injury. Based on this, claimant has carried his burden of proof he sustained an injury on February 10, 2010, that arose out of and in the course of employment.

The next issue to be determined is if claimant is due healing period benefits from April 10, 2010 through February 21, 2012.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

The record in this case indicates the Morrell plant closed down on April 9, 2010. (Tr. pp. 13-14) In the hearing report, the parties stipulated a commencement date for permanent partial disability benefits beginning on February 22, 2012. Claimant is due healing period benefits from April 10, 2010, through February 21, 2012.

The final issue to be determined is the extent of claimant's entitlement to permanent partial disability 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 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.

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled

if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

The Iowa Supreme Court has adopted the full-responsibility rule. Under that rule, where there are successive work-related injuries, the employer liable for the current injury also is liable for the preexisting disability caused by any earlier work-related injury if the former disability when combined with the disability caused by the later injury produces a greater overall industrial disability. Venegas v. IBP, Inc., 638 N.W.2d 699 (Iowa 2002); Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 265 (Iowa 1995); Celotex Corp. v. Auten, 541 N.W.2d 252, 254 (Iowa 1995). The full-responsibility rule does not apply in cases of successive, scheduled member injuries, however. Floyd v. Quaker Oats, 646 N.W.2d 105 (Iowa 2002).

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

Defendant contends, on cross-appeal, that error occurred in finding claimant has a 30 percent industrial disability. Defendant argues on appeal that even if claimant has an industrial disability, he is not permanently and totally disabled. Claimant, on appeal, contends that the deputy failed, in both the arbitration decision and the remand decision, to consider or even discuss if claimant is an odd-lot employee, even though this matter was briefed both at hearing and on appeal.

Claimant was 53 years old at the time of hearing. He was born in Mexico. He had six years of education in Mexico. Claimant does not have a GED. He speaks a little English. He cannot read or write English. He requires an interpreter when visiting with physicians.

Claimant worked on farms and did construction work in Mexico. For ten years while in California he worked on farms. Beginning in October of 1995 he began on the kill floor at Morrell.

Claimant's job on the kill floor required repetitive use of both upper extremities. In 2000 claimant had a left shoulder injury. Claimant had surgery. He was found to have a four percent permanent impairment to the body as a whole. He was restricted to only occasionally lifting above his left shoulder. (Ex. 9, pp. 1-6)

In 2002 claimant had a right shoulder injury. He did not have surgery. Claimant was found to have a four percent permanent impairment to the body as a whole. He was restricted to occasionally pushing and pulling and lifting no more than ten pounds. He is also restricted from lifting above his shoulder on the right. (Ex. A, pp. 1-3)

In 2006 claimant had a right knee injury. Claimant underwent surgery. He was found to have a ten percent permanent impairment to the left lower extremity. He was not given any restrictions. (Ex. 5; Ex. 10, pp. 1-8)

In 2009 claimant had another right knee injury. He underwent surgery. Claimant was found to have a two percent and a ten percent permanent impairment to the right lower extremity. (Ex. 13; pp. 8-11, 20; Ex. 19, p. 9)

In 2010 claimant was assessed as having right carpal tunnel syndrome and triggering on his long and ring finger. Claimant underwent surgery. (Ex. 14, pp. 5, 15)

In April of 2010 claimant was assessed as having carpal tunnel syndrome on the left. He underwent surgery. Claimant was found to have a five percent permanent impairment to the left upper extremity. (Ex. 14, pp. 10-12; Ex. 18)

Claimant's unrebutted testimony is that he was given work restrictions for his 2000 and 2002 injuries, but those restrictions were ignored by his employer.

Claimant has been found to have a right shoulder injury occurring in February of 2010. Claimant underwent surgery. He was found by Dr. Morishige to have a nine percent permanent impairment to the body as a whole. (Ex. 15, pp. 9, 27; Ex. 17; Ex. 19, pp. 7-8)

The Morrell plant closed down in April of 2010. The record indicates claimant has applied for nearly 200 jobs and has not been given an interview or offered a job. (Ex. L, p. 69; Ex. 21, p. 16; Ex. 22)

In a September of 2012 report Mr. Newman gave his opinions of claimant's vocational opportunities. He found that based on claimant's limitations, age, work experience, education, and lack of English skills, claimant's ability to compete in the labor market was, for all practical purposes, eliminated. (Ex. 21)

In summary, claimant is 53 years old and has no GED. He has poor English skills. He has permanent impairments to both shoulders, both upper extremities, and both lower extremities. He has been limited to occasionally using his arm above his shoulder on the left, and to occasionally pushing, pulling, and lifting up to 10 pounds on his right. Since the Morrell plant closed in 2010 he has applied for approximately 200 jobs, but has yet to even have a job interview. A vocational expert found claimant had no ability to compete in the labor market. Given this record, claimant has carried his burden of proof he is an odd-lot employee.

The burden to produce evidence of the availability of suitable employment then shifts to the employer.

Defendant failed to provide an expert report regarding claimant's vocational opportunities or that claimant can be returned to employment. Defendant has not identified any potential employer for claimant. Defendant has not offered evidence of any job claimant can perform. Defendant has offered no evidence claimant can even return to any type of employment. For these reasons, it is found claimant has carried his burden of proof that he is entitled to a finding that he is an odd-lot employee.

Assuming for argument's sake that claimant is not considered to be an odd-lot employee, claimant would still be found to be permanently and totally disabled applying factors for determining industrial disability.

ORDER

IT IS THEREFORE ORDERED that the remand decision of May 7, 2014, is modified in that:

Defendant shall pay claimant healing period benefits at the rate of three-hundred fifty-five and 10/100 dollars ($355.10) per week from April 10, 2010, through February 21, 2012.

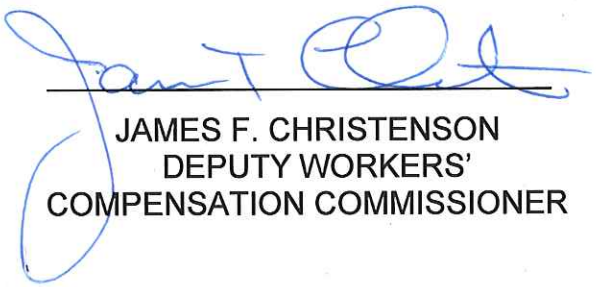
Defendant shall pay claimant permanent and total disability benefits commencing on February 22, 2012, at the rate of three-hundred fifty-five and 10/100 dollars ($355.10) per week.

Defendant shall pay accrued weekly benefits in a lump sum and shall receive a credit for all weekly benefits previously paid for claimant's work injury of February 10, 2010. Defendant shall also pay interest on unpaid weekly benefits as required by Iowa Code section 85.30.

Defendant is responsible for claimant's medical expenses under Iowa Code section 85.27, as set forth in the remand decision.

Defendant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 2nd day of April, 2015.



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