

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLOTTE RICHARD,

Claimant,

vs.

ARCONIC, INC.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

File No. 5066894.01

ARBITRATION DECISION

Head Note No: 1803

STATEMENT OF THE CASE

Charlotte Richard, claimant, filed a petition for arbitration against Arconic, Incorporated, as the employer, and Indemnity Insurance Company of North America as the insurance carrier. This case came before the undersigned for an arbitration hearing on September 10, 2020, via CourtCall.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 3, and Defendants' Exhibits A through B. All exhibits were received without objection.

Claimant testified on her own behalf. No other witnesses were called to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

All parties served their post-hearing briefs on October 16, 2020, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to permanent partial disability benefits for a scheduled member injury to the right arm; and,

2. Whether costs should be assessed against either party.

FINDINGS OF FACT

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

Charlotte Richard is a 52-year-old right-hand dominant woman who sustained a stipulated injury to her right upper extremity on October 20, 2017. (Hearing Transcript, page 13) On the date of injury, Ms. Richard was working for Arconic, Incorporated as an equipment operator in the Ingot Department. (Hr. Tr., p. 9) Ms. Richard drove her forklift to the dock to begin unloading a railcar. She approached the center of the railcar door and, with both of her hands on the handle, she turned it counterclockwise. (Hr. Tr., p. 12) Thereafter, the door handle swung back towards claimant, striking her right elbow. (Hr. Tr., pp. 12-13; Joint Exhibit 1, p. 1) Claimant experienced immediate pain and was transported to Arconic's onsite medical clinic where she received ibuprofen and ice. (Hr. Tr., pp. 13-14) Shortly thereafter, an Arconic staff member drove Ms. Richard to Genesis Medical Center for further evaluation. (Hr. Tr., p. 14)

Imaging taken of Ms. Richard's right elbow revealed no fractures or breaks. (JE7, pp. 48-49)

Ms. Richard returned to work on October 24, 2017, and continued in her normal position until approximately October 26, 2017, when she sustained a non-work-related injury to her left knee. (See JE9, p. 54; Hr. Tr., p. 15) Claimant was off work for the left knee injury from October 26, 2017 to January 22, 2018. (See JE9, p. 56)

When claimant's right upper extremity symptoms did not resolve over time, it was recommended that she present for an EMG/nerve conduction study. (See JE3, p. 10) The EMG, dated November 27, 2017, revealed ulnar neuropathy at the right elbow with meaningful slowing of the right ulnar motor conduction velocity across the elbow. (JE4, p. 36) The EMG also revealed very mild median neuropathy at the right wrist – carpal tunnel syndrome, electrodiagnostically with borderline prolonged both sensory and motor median latencies across the right wrist. (JE4, p. 37)

When she returned to work from the left leg injury on or about January 22, 2018, claimant requested treatment for her right elbow. (See Hr. Tr., p. 16)

Defendants subsequently scheduled Ms. Richard for an independent orthopedic evaluation with Jonathan Winston, M.D. of ORA Orthopedics. The evaluation occurred on March 21, 2018. (JE3, p. 9) After reviewing all medical records and physically examining claimant, Dr. Winston opined the work injury caused the condition in claimant's right elbow, including the numbness and tingling in the small and ring fingers. (JE3, p. 11) Dr. Winston concluded that the injury represented neurapraxia for which a follow-up EMG would be appropriate. (JE3, p. 12) The two discussed the possibility of surgical intervention, but no recommendation for the same was made. (Id.) Dr. Winston

did not recommend any work restrictions; however, he did recommend that claimant wear a protective elbow pad for comfort during her period of recovery. (JE3, pp. 11-12)

In total, claimant would undergo three EMG studies. The follow-up EMGs, dated April 5, 2018, and December 4, 2018, continued to demonstrate ulnar neuropathy and slowing of the right ulnar motor conduction velocity across the elbow. (JE4, pp. 38-42) Borderline median sensory nerve conduction studies across the wrist appeared slightly better on the April 5, 2018, EMG, when compared to the November 27, 2017, EMG. (Id.) However, the December 4, 2018, EMG revealed an evolution of median neuropathy at the right wrist, carpal tunnel syndrome, electrodiagnostically of mild degree with worsening of findings compared to the April 5, 2018, study. (JE4, p. 41)

At some point in time, defendants authorized Dr. Winston to continue on as claimant's treating physician; however, medical care through Dr. Winston was discontinued following a November 14, 2018, follow-up appointment in which claimant aired her frustrations with respect to her medical treatment. (JE3, pp. 13-14)

Ms. Richard's care was subsequently transferred to Suleman Hussain, M.D. (Ex. B, p. 5; See JE3, p. 17) Ms. Richard first presented to Dr. Hussain on January 9, 2019, reporting that her symptoms were unchanged since onset. (JE3, p. 17) Dr. Hussain assessed claimant with traumatic ulnar nerve neuritis and mild right cubital tunnel syndrome. (Id.) It should be noted that Dr. Hussain initially diagnosed claimant with carpal tunnel syndrome; however, it appears this was a mistake. (See JE3, pp. 21-22) He recommended claimant pursue an MRI of the right elbow and released claimant to full duty work. (JE3, pp. 17-18)

The MRI of claimant's right elbow, dated January 28, 2019, revealed increased T2 signal in the ulnar nerve, which can be seen in neuropathy. (JE5, pp. 43-44)

Surgical intervention was subsequently recommended and ultimately performed on April 16, 2019 by Dr. Hussain. (See JE6, pp. 45-46) Following surgery, claimant was fitted with a splint and released to light duty work. (See JE3, pp. 23, 25) After months of physical therapy and medication management, Dr. Hussain released claimant to return to full duty work on June 26, 2019. (JE3, p. 28) He placed her at maximum medical improvement (MMI) on August 26, 2019. (JE3, pp. 30-31) At the time of her final evaluation, claimant reported improvement in her right elbow; however, she did not feel as though it was back to being 100% healthy. (JE3, p. 30)

In a report, dated December 4, 2019, Dr. Hussain assigned two percent (2%) right upper extremity impairment pursuant to the American Medical Association Guides to Evaluation of Permanent Impairment, Fifth Edition. (JE3, p. 32)

In response to Dr. Hussain's impairment rating, claimant sought an independent medical examination (IME) with Sunil Bansal, M.D. The IME took place on January 29, 2020. (Ex. 1) Dr. Bansal diagnosed claimant with cubital tunnel syndrome, status post right elbow ulnar nerve neurolysis, cubital tunnel release. (Ex. 1, p. 7) He agreed with

Dr. Hussain that Ms. Richard reached MMI as of August 26, 2019. (Id.) He assigned impairment ratings to the right upper extremity as a result of sensory and motor deficits in the elbow. In total, Dr. Bansal assigned eleven percent (11%) right upper extremity impairment and recommended a ten-pound permanent lifting restriction with respect to the right hand. (Ex. 1, pp. 7-9) He did not recommend claimant pursue any additional medical treatment. (Ex. 1, p. 8)

In a June 24, 2020 letter, Dr. Hussain offered a critique of Dr. Bansal's report. (JE3, pp. 33-34) Dr. Hussain expressed the opinion that Dr. Bansal's impairment rating does not reflect claimant's clinical situation, and it is not an accurate assessment of her impairment based on the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition. (JE3, p. 34) Dr. Bansal responded to Dr. Hussain's critique on August 11, 2020. (Ex. 1, pp. 10-11) Dr. Bansal stood by his original opinions. (Id.)

Ms. Richard has not presented for any additional treatment related to her right elbow since she was released on August 26, 2019. (Hr. Tr., p. 19) She currently takes over-the-counter pain medication at least twice per week. (Hr. Tr., p. 24)

Following her full duty release from Dr. Hussain, claimant returned to the position she held on the date of injury. As of the date of the evidentiary hearing, Ms. Richard was still performing her regular, full duty job unloading rail cars for the defendant employer. Ms. Richard testified that her job duties have not changed. (Hr. Tr., pp. 21-22) It does not appear as though the work injury has significantly impacted the way in which Ms. Richard performs her job. When asked about the same, Ms. Richard simply provided that she is more cautious when opening rail cars now because she knows there is a possibility the handle could swing back and hit her arm again. (Hr. Tr., p. 22)

As I consider the impairment ratings offered by Dr. Hussain and Dr. Bansal, I note that Dr. Hussain is the orthopedic surgeon who performed claimant's right elbow ulnar nerve neurolysis and cubital tunnel release. Ultimately, when considering these impairment ratings in the context of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, as well as claimant's described ongoing symptoms, I find Dr. Hussain's impairment rating to be reasonable and most consistent with the described symptoms. Therefore, I find that claimant sustained two percent permanent impairment of the right upper extremity as a result of the October 20, 2017, work injury.

CONCLUSIONS OF LAW

The sole issue to be addressed in this decision is the extent of claimant's entitlement to permanent partial disability benefits for a scheduled member injury to the right arm.

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).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity. Iowa Code section 85.34(2)(x).

Having found the two percent upper extremity impairment rating offered by Dr. Hussain to be most accurate, I conclude that claimant is entitled to an award of permanent partial disability benefits equivalent to two percent of the right arm. The Iowa legislature has established a 250-week schedule for arm injuries. Iowa Code section 85.34(2)(m). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of her arm. Iowa Code section 85.34(2)(w).

Two percent of 250 weeks is equal to five weeks. Claimant is, therefore, entitled to an award of five weeks of permanent partial disability benefits against defendants. Iowa Code section 85.34(2)(m), (w).

Ms. Richard seeks to recover \$100.00 for her filing fee. In their post-hearing brief, defendants provide that they do not dispute claimant's entitlement to the \$100.00 cost at issue. (Defendants' Post-Hearing Brief, p. 2) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), expressly allows for the recovery of the filing fee. Using my discretion, I find Ms. Richard is entitled to recover the \$100.00 filing fee.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant five (5) weeks of permanent partial disability benefits commencing on August 26, 2019, at the stipulated weekly rate of six hundred thirty-three and 37/100 dollars (\$633.37).

Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall reimburse the claimant one hundred and 00/100 dollars (\$100.00) for the filing fee.

Defendants 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 20th day of July, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Nick Avgerinos (via WCES)

Jane Lorentzen (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.