

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MELISSA BURK,

Claimant,

vs.

ELLIOTT OIL COMPANY,

Employer,

and

EMC INSURANCE COMPANIES,

Insurance Carrier,
Defendants.

File No. 22000068.01

ARBITRATION DECISION

Headnotes: 1803; 1803.1; 2700

STATEMENT OF THE CASE

Melissa Burk, claimant, filed a petition for arbitration seeking workers' compensation benefits against Elliott Oil Company, employer, and its insurer, EMC Insurance Companies. This case came before the undersigned for an arbitration hearing on February 24, 2023. The case proceeded to a live video hearing via Zoom.

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 5, Claimant's Exhibits 1 through 9, and Defendants' Exhibits A through B. All exhibits were received without objection.

Claimant testified on her own behalf. No other witnesses testified at hearing. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties served their post-hearing briefs on April 14, 2023, 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 disability benefits, if any;
2. Whether the disability is a scheduled member disability to the bilateral feet or whether claimant is entitled to an assessment of industrial disability; and
3. Whether claimant is entitled to Alternate Medical Care pursuant to Iowa Code section 85.27;

On the Hearing Report, the parties stipulated that claimant's gross weekly earnings were \$407.00. The parties also stipulated that the claimant was married and entitled to three (3) exemptions on the alleged date of injury of December 5, 2021. Based upon this information, the parties represented to the agency that they believed the applicable weekly rate is \$300.52.

Review of the Iowa Workers' Compensation Manual (rate book) with effective dates from July 1, 2021, through June 30, 2022, reveals that the applicable weekly rate for a married individual with gross weekly earnings of \$407.00 and entitlement to three (3) exemptions is \$295.05. Rather than speculating as to the parties' intentions, or adopting a stipulation that may be inaccurate, the undersigned issued an Order to Show Cause regarding the proper rate.

In response to the Order to Show Cause, the parties confirmed that claimant's gross weekly wages were \$407.00; however, the parties clarified that claimant was married and entitled to four (4) exemptions on the alleged date of injury. As such, the parties represented to the undersigned that they believed the applicable weekly rate is \$295.67.

FINDINGS OF FACT

Missy Burk was 41 years old on the date of hearing. (Hearing Transcript, page 12) In terms of her education, Missy graduated from Eddyville-Blakesburg High School in 2001. (Hr. Tr., p. 14) She subsequently attended Indian Hills Community College; however, she did not graduate or receive a certificate from the same. (Id.)

Claimant's employment history largely consists of work involving food preparation. Claimant prepared sandwiches in the deli and ran the cashier at a BP Gas Station in Ottumwa, Iowa, from 2014 to 2016. (Hr. Tr., p. 15-16) She then worked as a cook for a restaurant called White Buffalo from 2016 to 2018. (Hr. Tr., pp. 16)

Claimant began her first stint with the Eddyville BP in 2018. (Hr. Tr., p. 17) She worked in the deli and as a cashier on a part-time basis for roughly one and a half years. (See Hr. Tr., p. 17-18) Claimant was then unemployed until September 8, 2021, when she returned to work for defendants. (Ex. A, p. 3; see Hr. Tr., p. 18) She became a full-time employee on November 1, 2021. (Hr. Tr., pp. 14, 18-19). As part of her job duties, Missy was in charge of breakfast preparation, which entailed creating a variety of items such as breakfast sandwiches, appetizers, sausage links, and pizzas. (Hr. Tr., p. 20)

Additionally, Missy cleaned the fryers, the oven, and anything the second shift workers were unable to clean during their shift. (Hr. Tr., p. 14) She asserts the job required her to be on her feet at all times. (Hr. Tr., p. 21) Claimant had no physical limitations or difficulties performing any of her job duties prior to the December 5, 2021, work injury. (Hr. Tr., pp. 19-20)

Claimant's injury occurred while she was dumping fryer oil into a grease trap. (See Hr. Tr., pp. 21-24) The fryer oil spilled onto claimant's thumb, both of her thighs, her left knee, and her feet. (Hr. Tr., pp. 23-24) After reporting the injury to a co-worker, claimant called her husband to pick her up and take her to the emergency room. (Hr. Tr., pp. 25-26)

At the Mahaska Health Partnership Emergency Room, David Cornelder, D.O. assessed claimant with partial thickness burns of the bilateral thighs and feet, and a superficial burn of the left thumb. (JE4, p. 34) Dr. Cornelder took several photos of claimant's burns, which were entered into evidence. (See Ex. 5, pp. 13-28; see also JE4, pp. 29-33)

Claimant next presented to Elaine Assad, ARNP on December 7, 2021. (JE5, p. 65) Ms. Assad diagnosed 2nd and 3rd degree burns of the bilateral anterior thighs and feet. (JE5, p. 66) She then referred claimant to the Wound Healing & Hyperbaric Clinic and kept her off work. (JE5, pp. 66-67)

Pursuant to Ms. Assad's referral, claimant presented to Jessica Hicks, D.O. for an initial evaluation on January 11, 2022. (JE5, p. 69) Dr. Hicks recommended and performed a debridement of the burns on claimant's feet. (See JE5, pp. 69, 71) She then instructed claimant on daily dressing changes and wound care. (JE5, p. 71)

Dr. Hicks recommended and performed a debridement of claimant's toes at her January 18, 2022, and January 25, 2022, follow-up appointments. (JE5, pp. 77, 83)

By February 1, 2022, the wounds on claimant's thighs had healed; however, the skin was still sensitive and red. (JE5, p. 86) Dr. Hicks once again performed a debridement of claimant's toes and kept her off work. (JE5, p. 87)

Claimant returned to Dr. Hicks on February 8, 2022, reporting discomfort in her toes subsequent to an increase in her activity level. (JE5, p. 91) Dr. Hicks opined claimant's toe burns were nearly healed and did not require additional debridement. (Id.) Dr. Hicks estimated claimant's wounds would be fully healed within one week and she would be able to return to work at that time. (Id.)

As expected, claimant's wounds had healed by her February 15, 2022, follow-up appointment with Dr. Hicks. In terms of her ongoing issues, claimant reported that standing on her feet still bothered her, but walking caused no issues. (JE5, p. 95) Dr. Hicks discharged claimant from treatment and released her to return to work without restrictions. (JE5, pp. 95-96)

Following Dr. Hicks' release, the defendant employer notified claimant that she had been scheduled to work on February 16, 2022 and February 17, 2022. (See Ex. A, p. 1) Claimant did not believe she was ready to return to work because she still could not wear shoes or stand for long periods of time. (See Ex. A, p. 2; Hr. Tr., p. 35-36) As such, claimant did not present to work for her scheduled shifts. On February 17, 2022, claimant texted a representative of the defendant employer that she was in the process of obtaining prescription shoes. (See Ex. A, p. 2)

Claimant returned to Dr. Hicks on March 3, 2022, and relayed that her left second toe hurt too much to wear shoes or stand for long periods of time. (JE5, p. 97) She further reported that she had to turn her left foot to walk, or she would experience pain. (Id.) Dr. Hicks assessed claimant with left toe pain. She explained to claimant that she would need to see a different physician for her left toe pain as she was only authorized to treat claimant's burns. (Id.) Dr. Hicks opined that from a wound/burn perspective, claimant could return to work without restrictions or dressings. (Id.)

In response to Dr. Hicks' recommendations, defendants authorized Blake Hale, DPM of Iowa Orthopedics to examine claimant. (See JE2, p. 2) The evaluation occurred on March 31, 2022. Claimant reported skin discoloration of her left foot and burning pain in the medial aspect of her forefoot that was aggravated by increased activity. (JE2, p. 2) Dr. Hale assessed claimant with neuritis and referred her to physical therapy for nerve desensitization. (JE2, p. 6) Dr. Hale also opined that there was not much that could be done for claimant's left foot discoloration, as it was secondary to the burn, which he believed had healed well. He further noted that claimant did not have any vascular insufficiency into the digits as her pulses and capillary refill time was within normal limits. (Id.) As such, Dr. Hale returned claimant to work without restrictions. (JE2, p. 8)

Claimant attended four physical therapy sessions between April 11, 2022, and May 16, 2022. (JE3, pp. 12-21; Hr. Tr., pp. 49-50) Her first physical therapy note describes right foot and great toe pain, with reduced sensation secondary to 2nd and 3rd degree grease burns. (JE3, p. 12) The final physical therapy note, dated May 16, 2022, provides: "Melissa states she has no pain, her motion is improved, and she is ready to discharge from therapy this date." (JE3, p. 19)

Dr. Hale placed claimant at maximum medical improvement as of May 12, 2022. (JE2, p. 10) Utilizing Table 8-2 on page 178 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Hale assigned two percent whole person impairment as a result of the December 5, 2021, burn injury. He explained, "Impairment estimate includes no modification of activity and no effect on self image. However, she does have permanent paresthesias." (Id.) Dr. Hale did not feel as though claimant required permanent work restrictions. (Id.)

Claimant subsequently presented to Alyssa Zacharjasz, DPM on July 29, 2022. (JE4, p. 60) Claimant reported chronic bilateral foot pain that prevented her from wearing shoes or standing for long periods of time. She further noted that her pain was only in the

areas of her scars. (Id.) Dr. Zacharjasz assessed claimant with paresthesias and painful scars. (Id.) She recommended that claimant offload the scar tissue with shoes that provide a wide, tall, and flexible toe box. She also recommended a home exercise program and scar massage. (JE4, pp. 61-62) Dr. Zacharjasz offered to refer claimant to physical therapy; however, claimant declined said offer. (Id.) Dr. Zacharjasz discussed topical and oral medication options for the treatment of claimant's paresthesias. She also recommended claimant manage the condition with a primary care provider or neurology. (JE4, p. 62)

Claimant has not presented for any medical treatment since July 29, 2022. (Hr. Tr., p. 53)

In response to Dr. Hale's impairment assessment, claimant sought an independent medical evaluation with Sunil Bansal, M.D. (Exhibit 1) As part of the evaluation, Dr. Bansal conducted a records review and physical examination. The examination occurred on October 18, 2022. During the examination, claimant reported left worse than right foot pain. (Ex. 1, p. 7) She further reported that her left foot is hypersensitive and tingles when any pressure is applied to it. (Id.) She also relayed that her left foot pain will "shoot up her leg to her knee" on occasion. (Id.) She reported the ability to walk on her left foot, but relayed that there are times when she cannot place all of her weight on it. (Id.)

Dr. Bansal felt that claimant reached maximum medical improvement on February 15, 2022. (Ex. 1, p. 8) Utilizing Table 8-2 on page 178 of the AMA Guides, Fifth Edition, Dr. Bansal assessed a nine percent whole person impairment. In support of his higher impairment rating, Dr. Bansal noted that claimant's foot is sensitive to the physical agents of temperature and she has developed neuropathic pain. (Ex. 1, p. 9) As such, Dr. Bansal recommended a neurologic and/or pain specialty referral for further management. (Id.)

Following Dr. Bansal's IME, claimant requested additional treatment in the form of a referral to a neurologist and/or pain management. (Ex. 4, p. 12) On February 8, 2023, defendants declined claimant's request; however, they agreed to authorize a follow-up evaluation with the authorized treating physician. (Ex. B, p. 4)

Claimant did not return to work following Dr. Hicks' February 15, 2022 release. (Hr. Tr., p. 35; see Ex. A, p. 1). The defendant employer terminated claimant's employment on February 26, 2022. (See Ex. A, pp. 1, 3) Claimant asserts she has not been able to secure alternative employment because she cannot wear regular shoes. (Hr. Tr., p. 36) However, claimant conceded she has not performed any sort of job search since her termination. (Hr. Tr., p. 37)

Claimant continues to walk with her left foot at an angle. She testified this is due to the fact she cannot put pressure on the inside portion of her foot. (Hr. Tr., pp. 38-39) Her feet continue to swell, and she experiences a tingling sensation with pressure. (Hr. Tr., p. 39) Claimant estimated that she can stand for approximately one hour before her feet swell up. (Hr. Tr., p. 41) Claimant does not believe she could return to full-time work for the defendant employer unless she was allowed to be off her feet for periods of time.

(Hr. Tr., p. 44-45) No physician has told claimant she is unable to work in any capacity. (Hr. Tr., p. 53)

When comparing the competing impairment ratings, I note that both physicians assigned permanent impairment based on Table 8-2. Additionally, both physicians felt claimant met the criteria for Class I impairment. The range of impairment for Class I is zero to nine percent whole person impairment. (See Ex. 1, p. 9) As mentioned, Dr. Hale assigned two percent whole person impairment, while Dr. Bansal assigned nine percent whole person impairment. Dr. Bansal explained that he assigned a higher impairment rating due to claimant's sensitivity to temperature and the development of neuropathic pain. (Ex. 1, p. 9)

I further note that Dr. Hale is a podiatrist, while Dr. Bansal is an occupational physician. A podiatrist is a superior choice for evaluating foot injuries when compared to an occupational physician because of their specialized expertise. As a podiatrist, Dr. Hale possesses in-depth knowledge and a comprehensive understanding of foot-related ailments.

Claimant is requesting alternate medical care consistent with the recommendations of Dr. Zacharjasz and Dr. Bansal. (Hr. Tr., p. 45; see JE4, p. 62; Ex. 1, p. 9) Defendants agreed to schedule a follow-up evaluation with Dr. Hale and claimant agreed to present for the same. (See Hr. Tr., p. 46)

CONCLUSIONS OF LAW

The parties stipulate that claimant sustained a work-related burn injury that arose out of and in the course of claimant's employment on December 5, 2021. The parties further stipulate that the injury is a cause of permanent disability; however, the parties dispute how the permanent disability should be compensated. Claimant argues she sustained an injury to her nervous system, which constitutes an injury to the body as a whole and entitles her to industrial disability. Defendants argue claimant's injury is limited to the bilateral feet and she is only entitled to Dr. Hale's functional impairment rating.

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. 6.904(3). 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).

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 as an unscheduled injury pursuant to the provisions of section

85.34(2)(v). An injury to a scheduled member may, because of after-effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment that determines whether the schedules in section 85.34(2)(a)-(u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Iowa has adopted the majority view set forth by Professor Arthur Larson in his treatise on workers' compensation law concerning "spill-over" effects of a scheduled injury. Larson states that if the effects of the loss of the member extend to other parts of the body and interfere with their efficiency, the schedule allowance for the lost member is not exclusive. 4-87 Larson's Workers' Compensation Law, § 87.02. Therefore, various spill-over conditions resulting from a scheduled injury are now compensated industrially in this state. Collins v. Department of Human Services, 529 N.W.2d 627, 629 (Iowa App. 1995) and Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660-664 (1961) (regional pain syndrome formerly called Sudeck's atrophy, causalgia or reflex sympathetic dystrophy (RSD); Blacksmith v. All-American, Inc., 290 N.W.2d 248 (Iowa 1980); Andrade v. IBP, Inc., File No. 5013872 (App. August 29, 2006) (phlebitis/DVT); Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 17 (Iowa 1993) (psychological or mental conditions); Dowell v. Wagner, 509 N.W.2d 134, 136 (Iowa 1993) (phantom pain); and; Ehteshamfar v. UTA Engineered Systems, 555 N.W.2d 450 (Iowa 1996) (tinnitus). In each of these cases, this division or the courts rejected the argument that these complications or effects which extend beyond the initial location of the injury were anticipated in the schedule. Such interpretations of the Workers' Compensation Act are consistent with the instructions set forth in Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503 (Iowa 1981), wherein it is instructed that the primary purpose of our workers' compensation statute is to benefit workers and worker's dependents and is to be interpreted liberally with view toward that objective. It is further noted that workers' compensation statutes have a humanitarian objective and must be applied broadly and liberally for the primary benefit of injured workers and their families. The fundamental reason for their enactment is to avoid litigation, lessen the expense incident thereto, minimize appeals and afford an efficient and speedy tribunal to determine and award compensation. Flint v. City of Eldon, 191 Iowa 845, 849; 183 N.W. 344, 345 (1921).

Having reviewed the competing impairment ratings of Dr. Hale and Dr. Bansal, I find the opinion of Dr. Hale, as a podiatrist, most persuasive on the issue of permanent impairment. Dr. Hale clearly considered the factors provided in Table 8-2, including claimant's paresthesia. Therefore, I accept the opinion of Dr. Hale and find claimant has proven she sustained a two percent whole person impairment as a result of the December 5, 2021 burn injury.

Claimant asserts she is entitled to industrial disability as her burn injuries resulted in nerve damage to her feet. While it is acknowledged that injuries to the nervous system can indeed lead to industrial disabilities, it is important to note that this is not always the

case. For example, a carpal tunnel injury to the wrist results in impingement of the median nerve, a part of the nervous system. More often than not, this impingement results in burning, numbness, or tingling. However, a carpal tunnel injury is not an injury to the entire nervous system just because it impacts on a part of the nervous system. In the present case, the injury appears to be confined solely to the bilateral feet. Upon reviewing the available records, no evidence has been found to support the contention that the claimant suffers from any systemic condition that extends beyond her feet. Thus, it can be concluded that all the injury, impairment, and effects stemming from the bilateral injury are contained within the feet themselves.

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). Having found claimant sustained bilateral foot injuries, I conclude claimant has sustained injuries to two scheduled members, injuries specifically identified in Iowa Code section 85.34(2)(t) such that the functional disability resulting from each injury should be combined and benefits should be awarded on a 500-week schedule. Iowa Code section 85.34(2)(t).

Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss relative to 500 weeks of benefits. Iowa Code section 85.34(2)(v). Two (2) percent of 500 weeks equals 10 weeks. I conclude claimant is entitled to 2 percent of 500 weeks, or 10 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(t),(v); Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

The next issue is whether claimant is entitled to alternate medical care consisting of a referral to a neurologist and/or pain specialist.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-reopen October 16, 1975).

Claimant requested care for a medical condition related to her work injury and was denied reasonable care. Two physicians evaluated her symptoms and recommended she be examined by a neurologist and/or pain specialist. The care offered by the defendants has not been effective in alleviating claimant's symptoms. The claimant's request for alternate care is granted; however, defendants maintain the right to select the neurologist and pain specialist.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant ten (10) weeks of permanent partial disability benefits, commencing on February 15, 2022, at the rate of two hundred ninety-five and 67/100 dollars (\$295.67).

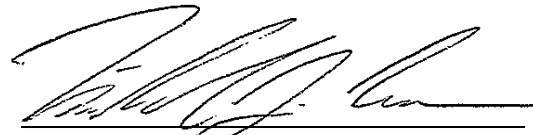
Defendants are entitled to a credit for all benefits paid to date.

Defendants shall promptly identify a provider, authorize, and pay for a neurological evaluation of claimant's bilateral feet.

Defendants shall promptly select, authorize, and pay for a pain specialist to treat claimant's bilateral feet.

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

Signed and filed this 31st day of July, 2023.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Richard Schmidt (via WCES)

Matthew Grotnes (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 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.