

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH R. SMITH,

Claimant,

vs.

MONSANTO COMPANY,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5041252

A P P E A L

D E C I S I O N

FILED

MAR 14 2016

WORKERS' COMPENSATION

Head Note Nos.: 1701, 1803, 2301
3001, 4000.2

This case was heard on December 2, 2013, in Des Moines, Iowa, by Deputy Workers Compensation Commissioner Michelle McGovern and considered fully submitted on January 10, 2014. The case was then delegated to Deputy Workers Compensation Commissioner James Christiansen who issued a decision on November 6, 2014, finding that the claimant had sustained a permanent disability arising out of a work injury which resulted in 250 weeks of permanent partial disability.

On November 26, 2014, the claimant filed a notice of appeal. On December 4, 2014, the defendants filed a cross-appeal.

On December 16, 2014, the claimant dismissed his appeal without prejudice.

Therefore, the appeal issues arise from the defendants' cross-appeal. According to their brief, defendants seek a review of the following issues:

- 1) The finding by the Deputy that the claimant sustained industrial disability, and
- 2) The extent of the industrial disability;

An appeal to the Commission demands a de novo review of the evidentiary record. Having reviewed the evidence and the arguments of counsel, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner in the delegated decision.

Pursuant to Iowa Code sections 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on November 6, 2014, which relate to issues properly raised on intra-agency appeal with the following analysis:

Defendants argue first that the claimant was returned to work without restrictions and did, in fact, work without restrictions until a nonrelated back injury rendered him incapable of doing his job duties. At that time, he left work and sought Social Security disability.

As the deputy noted, Douglas Cooper, M.D., who returned claimant to work without restrictions, recorded that the claimant had a loss of range of motion in the left shoulder which was corroborated by testimony during hearing as well as a physical demonstration and photographic recordings of the loss of range of motion. Claimant testified that he suffered an approximately 50 percent reduction in strength in his left shoulder. That evidence was not contradicted and, therefore, is sufficient to meet the claimant's burden of proof that he sustained some permanent injury arising out of and in the course of his employment.

The next issue that the defendants take issue with is the extent of claimant's disability. The challenged decision found that the claimant had sustained a 50 percent loss of earning capacity due to the left shoulder injury. The defendants rely heavily upon the claimant's return to work without restrictions. Claimant was a 59-year-old man at the time of hearing with a GED. He had worked for the defendant employer since 1979. At the time of his injury, claimant was a seed technician for the defendant and as a seed technician he would clean seed, clean the plant, fill bins, mow the lawn, and do inspecting and maintenance. Essentially, claimant was a laborer with some seed knowledge.

Dr. Cooper did return the claimant to work without restrictions and encouraged the claimant to work up to full activity. However, at the time of claimant's discharge, as well as several months after, at which time Dr. Cooper issued a final opinion, claimant had not regained full function, mobility or reached a pain-free level. There's an important distinction in Dr. Cooper's opinions that isn't articulated in the defendants' briefs. He encouraged the claimant to work up to full activity but did not find at the time of claimant's discharge that he could work at full capacity.

Claimant had sustained a full thickness tear of the rotator cuff which necessitated surgery followed by light duty work assignments, physical therapy and prescription medications.

While the defendants assert that the medical records contradict the claimant's testimony regarding his limitations, they do not cite to the records that support the argument. As of March 29, 2010, Dr. Cooper assigned an 8 percent impairment of the upper extremity due to "lack of internal rotation, external rotation, abduction, and decreased strength". (Exhibit 7, page 4) Dr. Cooper's last medical note affirms and

corroborates the claimant's testimony at hearing that he had limited range of motion as well as decreased strength. While claimant was encouraged to work up to full activity, he was unable to do so given his pain and the limitation in his range of motion.

At hearing, claimant testified that his shoulder has deteriorated and worsened with pain, and he has decreased strength and limited range of motion. The injury was to claimant's non-dominant arm and he was able to compensate for his deficiencies with his right arm and the help of his coworkers during the few months he'd returned to work without restrictions.

Claimant did work at home to gain full strength of his arm by lifting 5 pound weights twice a day--in the morning and then at night -- while he watched TV. He also attempted to perform an exercise shown to him during physical therapy but eventually he quit because of too much pain.

After the March 29, 2010, return to work, claimant did not do anything strenuous with his shoulder. He testified to working in the plant, cleaning the seed, mowing the lawn and helping with end of the season cleanup. Cleaning the seed required him to run a machine using hand controls and the mower was a riding John Deere lawnmower. He further testified that running a forklift was difficult because it required the use of both hands and arms. He did not believe he could drive a forklift for any extended period of time given the strain on his shoulder.

On July 10, 2010, claimant was taken off of work due to a recommendation of claimant's personal physician regarding a back condition. Claimant testified at hearing that the lowest pain that his shoulder reaches is three on a 10 scale and the highest is six or seven on a 10 scale.

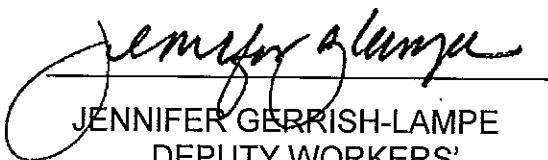
He testified that he has not gone back to receive care for either his back or his shoulder. He is not the type to seek ongoing medical treatment when he believes there is nothing further that can be done for him.

I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to all of those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of November 6, 2014, is AFFIRMED in its entirety.

Signed and filed this 14th day of March, 2016.


JENNIFER GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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