

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KUNDA ELMAK KOKO,

Claimant,

vs.

UNITED NATURAL FOODS,

Employer,

and

INDEMNITY INS. CO. OF N. AMERICA,

Insurance Carrier,  
Defendants.

File No. 5068473

ARBITRATION DECISION

Head Note Nos.: 1402.40, 1803

Claimant Kunda Koko filed a petition in arbitration on May 24, 2019, alleging he sustained injuries to his left middle finger, left ring finger, and left hand while working for the defendant, United Natural Foods ("UNF"), on February 13, 2018. UNF and its insurer, the defendant, Indemnity Insurance Company of North America ("Indemnity") filed an answer on August 5, 2019.

An arbitration hearing was held *via* CourtCall on May 11, 2020. Attorney Christopher Foster represented Koko, who appeared and testified. Attorney Theresa Davis represented UNF and Indemnity. Joint Exhibits ("JE") 1 through 3, and Exhibits A through D were admitted into the record. The case was fully submitted at the conclusion of the hearing.

At the start of the hearing the parties submitted a hearing report, listing stipulations and issues to be decided. UNF and Indemnity waived all affirmative defenses.

**STIPULATIONS**

1. An employer-employee relationship existed between UNF and Koko at the time of the alleged injury.

2. Koko sustained an injury arising out of and in the course of his employment with UNF on February 13, 2018.

3. The alleged injury is a cause of a temporary disability during a period of recovery.

4. Temporary benefits are no longer in dispute.

5. If the alleged injury is found to be the cause of permanent disability, the disability is a scheduled member disability to the left middle/ring fingers.

6. The commencement date for permanent partial disability benefits, if any are awarded, is April 12, 2018.

7. At the time of the alleged injury, Koko's gross earnings were \$834.16 per week, he was married and entitled to five exemptions, and the parties believe the weekly rate is \$565.04.

8. Medical benefits are no longer in dispute.

9. Prior to the hearing, UNF and Indemnity paid Koko five weeks of compensation at the rate of \$565.04 per week.

### **ISSUES**

1. Is the alleged injury a cause of permanent disability?

2. If the alleged injury is a cause of permanent disability, what is the extent of disability?

### **FINDINGS OF FACT**

Koko works as a picker for UNF. (JE 1, page 2) On February 13, 2018, Koko sustained injuries to his middle and finger fingers while working for UNF. (JE 1, pp. 1-2)

UNF arranged for medical care for Koko the day of his work injury with Ernest Perea, M.D., with Mercy Occupational Health. (JE 1, p. 2) Koko told Dr. Perea he was working with dry goods at UNF and he reached into a box with broken glass in it, which lacerated through his gloves the dorsal distal interphalangeal joint of his left middle finger. (JE 1, p. 2) Dr. Perea documented Koko sustained a "superficial traumatic laceration/amputation with sparing of the nailbed distally/loss of 1/4 x 1/8 inch crescent shaped distal radial aspect fingernail and the rest of the 2x2cm dimension skin flap to dermis." (JE 1, p. 2) Dr. Perea treated Koko's wounds, prescribed Augmentin and Norco, and restricted Koko from working until February 15, 2018. (JE 1, pp. 2-3, 5)

Koko's wounds did not heal as anticipated and he sustained an infection. (JE 2; Koko Testimony) Koko received treatment from the Mercy Wound Care Center. (JE 2) After his wounds healed, Koko was referred back to Dr. Perea. (JE 1, p. 9; JE 1, p. 19)

During an appointment on March 19, 2018, Dr. Perea documented Koko had “[n]o numbness, tingling, no pain, and he flexes and extends all the proximal interphalangeal joints of his left hand.” (JE 1, p. 9) Dr. Perea noted Koko had some mild plethora and swelling over the distal interphalangeal joint, dorsum of the left middle finger, diagnosed Koko with left middle finger interphalangeal laceration resolved/mild swan neck deformity and crepitus, ordered an x-ray, and referred Koko to Brian Willis, M.D., an orthopedic surgeon. (JE 1, pp. 9-10, 13-14) Koko received the imaging of his finger and the reviewing radiologist listed an impression of mild degenerative spurring on the dorsal aspect of the distal interphalangeal joint, primarily from the distal phalanx. (JE 1, p. 16)

On April 12, 2018, Koko attended an appointment with Dr. Willis, reporting he was experiencing pain in his left hand and left middle finger. (JE 3, p. 36) Dr. Willis diagnosed Koko with a left middle finger mallet injury, partial amputation of the very tip of the left ring finger, and “[p]ossible left middle finger trigger digit that bothers him only upon awakening in the morning.” (JE 3, p. 36) Dr. Willis documented Koko did not have any issues with numbness or sensation at the tip of either finger and reported he was working full duty with “no difficulty bending the fingers,” but noted Koko’s middle finger extended fully before his work injury. (JE 3, p. 36) Koko agreed Dr. Willis’s observations were correct at hearing. (Koko Testimony)

Dr. Willis observed “[t]he [distal interphalangeal joint] to the middle finger does rest in a slightly flexed posture [and] [t]here is a mild prominence dorsally of the [distal interphalangeal joint],” noting the partial tip amputation to the ring finger had granulated and epithelialized well. (JE 3, p. 37) Dr. Willis recommended no additional treatment, found Koko had reached maximum medical improvement, and released Koko to full duty without restrictions. (JE 3, pp. 38, 40)

Pursuant to a request from UNF and Indemnity, Dr. Willis issued an impairment rating for Koko on June 13, 2018, as follows:

[u]sing The AMA Guides to Evaluation of Permanent Impairment, Fifth Edition, and specifically figure 16-21 on page 461, he has a 12% impairment as it relates to limited extension at the DIP joint. Utilizing the conversion tables at the beginning of chapter 16: this then converts to a 2% hand impairment, then to a 2% upper extremity impairment, and finally to a 1% whole person impairment.

(JE 3, p. 42; Exhibit A, p. 1) No physician other than Dr. Willis has issued an impairment rating in this case.

Koko testified at the time of the hearing he was not having any problems with his ring finger. (Koko Testimony) Koko reported since the work injury he can bend his left middle finger, but he cannot fully straighten the top joint of his left middle finger. (Koko Testimony) Koko relayed he was not experiencing any pain in his fingers at the time of

hearing. (Koko Testimony) Koko testified he has trouble carrying things with his left middle finger. (Koko Testimony)

## CONCLUSIONS OF LAW

### I. Applicable Law

This case involves the issues of nature and extent of disability under Iowa Code section 85.34. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring after July 1, 2017, therefore, the provisions of the new statute involving nature and extent of disability under Iowa Code section 85.34 apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Again, given this case concerns an injury occurring after July 1, 2017, the new provision on interest applies to this case.

### II. Nature and Extent of Disability

Dr. Willis, an orthopedic surgeon, opined Koko has sustained a permanent impairment to his left middle finger in this case caused by the work injury. I find Koko has met his burden of proof he sustained a permanent impairment to his middle finger only. No permanent impairment rating was issued for his ring finger. I do not find Koko has established he sustained a permanent impairment to his ring finger.

Under Iowa Code section 85.34(2)(c) (2018), an injury to the second or middle finger is a scheduled member injury. The schedule provides thirty weeks is the maximum number of weeks of compensation for loss of the second or middle finger. Iowa Code § 85.34(2)(c). Koko avers he is entitled to a fifty percent loss of his second or middle finger. UNF and Indemnity contend Koko is only entitled to the impairment rating issued by Dr. Willis in this case, of twelve percent.

Iowa Code section 85.34(2)(x) provides when determining functional disability under Iowa Code section 85.34(2)(c), "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." The Commissioner has adopted the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides 5th Edition"). 876 IAC 2.4.

One physician, Dr. Willis, has issued an impairment rating in this case and his opinion is un rebutted. The changes to the statute only afford me the ability to award Koko's functional loss using the AMA Guides. Koko has established he has sustained a twelve percent loss to his second or middle finger. Twelve percent of thirty weeks is 3.6 weeks of compensation. Koko is entitled to 3.6 weeks of compensation at the stipulated rate of \$565.04 per week, commencing on the stipulated commencement date of April 12, 2018. The parties stipulated Koko was paid five weeks of permanent compensation. Koko is not entitled to any additional permanent partial disability benefits.

### ORDER

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing further in this case.

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

Signed and filed this 15<sup>th</sup> day of May, 2020.

  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Foster (via WCES)

Terri C. Davis (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.