

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL STREIF,

Claimant,

vs.

JOHN DEERE DUBUQUE WORKS  
OF DEERE & COMPANY,

Employer,  
Self-Insured,  
Defendant.

File No. 5068621

A P P E A L

D E C I S I O N

Head Note: 1803

Defendant John Deere Dubuque Works of Deere & Company, self-insured employer, appeals from an arbitration decision filed on December 3, 2019. Claimant Michael Streif responds to the appeal. The case was heard on October 16, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 4, 2019.

The deputy commissioner found claimant's permanent disability resulting from the stipulated February 22, 2018, work injury should be assessed as a loss of the hand as opposed to a loss of the finger.

Defendant asserts on appeal that Iowa Code section 85.34(2)(x) (2017) requires a finding that claimant's permanent disability is limited to the thumb and does not extend into the hand.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on December 3, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues with the following additional analysis:

For the reasons set forth by the deputy commissioner, I affirm the deputy commissioner's finding that the impairment ratings of claimant's independent medical examiner, Mark Taylor, M.D., are more persuasive than those of Lisa Kruse, M.D.

Dr. Taylor assigned a 50 percent digit impairment for the amputation of claimant's thumb at the IP joint and an additional 4 percent digit impairment for loss of motion in the MP and CMC joints. (Claimant's Exhibit 2, p. 5; AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition, pp. 440, 457, 459) Defendant argues that Dr. Taylor did not assign impairment for any involvement of the hand under the Guides. While defendant is correct that Dr. Taylor initially assigned "digit impairment," the Guides permit conversion of impairment of the digits to impairment of the hand per Table 16-1. (Guides, p. 438) Dr. Taylor relied on this table to convert the rating from the digit to the hand. Thus, contrary to defendant's argument, there is a section of the Guides that supports conversion to a hand impairment should I find claimant's permanent disability actually extends into his hand.

Per Dr. Taylor's report, claimant was assigned impairment for loss of motion in the MP joint. The MP joint is the point where the bones of the finger connect to the bones of the hand. Stumpff v. Second Injury Fund of Iowa, 534 N.W.2d 904, 907 (Iowa 1996). In such cases, the Iowa Supreme Court has held that recovery for a hand injury is appropriate. Id. ("We think the industrial commissioner has correctly allowed recovery for a hand injury when the site of the injury is at the point where the bones of the finger connect to the bones of the hand (phalangeal-metacarpal joint) . . ."). In this case, I find claimant's MP joint impairment extends his permanent disability into his hand.

In 2017, the Iowa Legislature made several amendments to the Iowa Workers' Compensation Act. One of those changes is set forth in Iowa Code section 85.34(2)(x), which provides that

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 "t", or paragraph "u" when determining functional disability and not loss of earning capacity.

As discussed, I found that the impairment to claimant's MP joint extended his permanent disability into his hand. In making this finding, I considered the situs of the impairment (the MP joint) and well-established case law regarding what constitutes an

injury to a digit versus an injury to the hand. I then used Dr. Taylor's impairment ratings, all of which were based on the Guides, to determine the loss of percentage of permanent impairment. At no point did I consider lay testimony or agency expertise to determine the loss of percentage of claimant's permanent impairment to his hand. This case is not a scenario in which the agency "split the baby" between two impairment ratings or assigned an impairment rating that was not consistent with the Guides. My finding that claimant's permanent disability extends into his hand is therefore consistent with Iowa Code section 85.34(x).

With this additional analysis, I affirm the deputy commissioner's finding that claimant's permanent disability extends into his hand, meaning claimant is entitled to 39.9 weeks of permanent partial disability based on Dr. Taylor's rating (21 percent x 190 weeks).

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 3, 2019, is affirmed in its entirety with the additional analysis set forth above.

Defendant shall pay claimant thirty-nine point nine (39.9) weeks of permanent partial disability benefits at the rate of six hundred forty-four and 66/100 dollars (\$644.66) per week commencing on July 11, 2018.


Defendant shall receive a credit for benefits previously paid.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding, and defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed this 10<sup>th</sup> day of July, 2020.

  
JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Thomas Wertz            (via WCES)

Dirk Hamel              (via WCES)