

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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AMY DERIFIELD,

Claimant,

vs.

JOHN DEERE WATERLOO WORKS,

Self-Insured Employer,  
Defendant.

File No. 21701314.01

ARBITRATION

DECISION

Head Note No.: 1402.40, 1703,  
1802, 1803, 1803.1, 2502,  
2907, 3001

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STATEMENT OF THE CASE

Amy Derifield, claimant, filed a petition in arbitration and seeks workers' compensation benefits from defendant, John Deere Waterloo Works, as the self-insured employer. Hearing was held on December 2, 2022, via Zoom videoconference.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 3, and Employer's Exhibits A through G. All exhibits were received into the evidentiary record without objection.

Claimant testified on her own behalf. Defendant called Jason Pontnack, its Safety Manager, to testify. No other witnesses testified at the hearing. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested an opportunity to file post-hearing briefs. Their request was granted. Both parties filed briefs on January 6, 2023, and the case was considered fully submitted on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's work injury is limited to a right shoulder scheduled member or should be compensated as an unscheduled injury.

2. If the injury is an unscheduled injury involving both the right shoulder and right arm, whether the injury should be compensated based on claimant's permanent functional impairment or with industrial disability benefits.
3. The extent of claimant's entitlement to permanent disability.
4. The claimant's gross average weekly earnings at the time of her work injury and the corresponding weekly worker's compensation rate.
5. Whether defendants overpaid weekly benefits and are entitled to a credit for any such overpayment of benefits.
6. Whether claimant is entitled to reimbursement of her independent medical evaluation.

At the commencement of hearing, defendant conceded that the independent medical evaluation expense was reimbursable pursuant to Iowa Code section 85.39. Defendant conceded that the expense had been reimbursed or would be reimbursed to claimant. The undersigned entered a verbal order directing defendant to comply with its stipulation at the commencement of hearing and to reimburse claimant's independent medical evaluation fee. If defendant has not already done so, it should immediately reimburse the claimant's independent medical evaluation fee. No further findings or conclusions will be entered on this disputed issue.

#### FINDINGS OF FACT

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

Claimant, Amy Derifield, sustained an admitted injury as a result of and in the course of her employment with John Deere Waterloo Works (hereinafter referred to as "Deere") on October 16, 2020. (Hearing Report) Specifically, claimant worked in the material flow department at Deere and delivered parts to the assembly line. On October 16, 2020, she put a tote on a top shelf. When doing so, she felt a pop in her right shoulder. (Transcript, pages 21-23)

Ultimately, defendant authorized treatment for claimant's injury with an orthopaedic surgeon, Robert B. Bartelt, M.D. Dr. Bartelt diagnosed claimant with a complete tear of the right rotator cuff and recommended surgical intervention. Ms. Derifield submitted to the recommended surgery on December 3, 2020, and Dr. Bartelt performed a right shoulder arthroscopy, including a right rotator cuff repair and a right biceps tenodesis. (Joint Exhibit 3, p. 4; Tr., p. 23)

Claimant participated in some physical therapy but, due to personal reasons and the pandemic, she did not complete all of the recommended therapy or work hardening. (Tr., p. 49; Jt. Ex. 1, p. 10) Ultimately, Ms. Derifield voluntarily quit her position at Deere and moved with her boyfriend (now husband) to Arkansas to open a marina. (Tr., pp. 22, 25) Ms. Derifield provided un rebutted testimony that she assisted her husband at

the marina beginning in April 2021, performing bookkeeping, ordering, fueling a boat occasionally, and minimal stocking of shelves. (Tr., pp. 25, 41) The marina is a seasonal business, open from April to October. (Tr., p. 25) Ms. Derifield testified she stopped working for the marina on a scheduled basis on September 15, 2021 and did not resume working there until April 2022. (Tr., p. 45) Ms. Derifield testified that she did not begin drawing wages or income from the marina until February 2022 and that she did not receive any income from the marina during 2021. (Tr., pp. 51-52)

I accept Ms. Derifield's testimony about when she began receiving wages from the marina. Defendant challenges that testimony as not credible. Yet, it is un rebutted, and it is not unreasonable to believe that claimant would help her boyfriend/husband get the marina up and running. It is also reasonable to believe that the marina would not show sufficient profit for a period of time to pay Ms. Derifield for her work. I find that claimant did not receive any wages or other income from work from February 25, 2021 through November 14, 2021.

However, Rick Garrels, M.D., assumed care after completion of the right shoulder surgery. Dr. Garrels released claimant to return to work without restrictions on September 15, 2021. (Jt. Ex. 1, p. 9) Deere's Waterloo safety manager, John Pontnack, testified credibly that claimant could have returned to her position with Deere once released by Dr. Garrels on September 15, 2021, if she had not already voluntarily resigned. (Tr., pp. 54-55) I find that Ms. Derifield was medically capable of returning to substantially similar employment for which she was engaged at the time of her work injury by September 15, 2021.

Dr. Garrels acknowledged claimant's stated ongoing symptoms and recommended work hardening if claimant was inclined. Claimant declined the recommended work hardening with a physical therapist. (Tr., p. 49) Therefore, Dr. Garrels declared claimant to be at maximum medical improvement (MMI) on November 5, 2021. (Joint Ex. 1, p. 11)

Given that claimant had moved to Arkansas, Dr. Garrels did not physically re-evaluate claimant after she achieved MMI. Instead, he performed a telephonic evaluation and used range of motion measurements obtained from the treating physical therapist in Arkansas. The therapist obtained measurements on November 4, 2021, documenting 158 degrees of flexion, 152 degrees of abduction, 90 degrees of internal rotation, and 75 degrees of external rotation. (Jt. Ex. 6, p. 15) Using those range of motions measurements, Dr. Garrels utilized the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition and opined that Ms. Derifield sustained a two percent permanent functional impairment of the right upper extremity as a result of her right shoulder injury. (Jt. Ex. 1, pp. 11-12)

Claimant obtained both a functional capacity evaluation (FCE) as well as an independent medical evaluation on October 19, 2022. (Jt. Ex. 8-9) The FCE was deemed valid and documented ranges of motions including right shoulder flexion of 100 degrees, extension of 30 degrees, abduction of 75 degrees, internal rotation of 45 degrees, and external rotation of 15 degrees. (Jt. Ex. 8, pp. 1, 10) The therapist

recommended claimant limit work to the light work category, including lifting up to 20 pounds on an occasional basis and that she limit any right shoulder elevated work to head level and on an occasional basis. (Jt. Ex. 8, p. 2)

On the same date as the FCE, Sunil Bansal, M.D. performed an independent medical evaluation on claimant. (Jt. Ex. 9) He diagnosed claimant with a complete right rotator cuff tear and right biceps tendinopathy, status post rotator cuff repair with biceps tenodesis. (Jt. Ex. 9, p. 16) Dr. Bansal's physical evaluation documented right shoulder ranges of motion that included 118 degrees of flexion, 120 degrees of abduction, 46 degrees of adduction, 68 degrees of external rotation, 39 degrees of extension, and 58 degrees of internal rotation. Using these ranges of motion and the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Bansal calculated and opined that Ms. Derifield sustained a 10 percent permanent functional impairment of the right upper extremity as a result of a right shoulder injury. He further opined that claimant sustained an additional 2 percent permanent functional impairment of the right upper extremity as a result of the biceps tendinopathy. (Jt. Ex. 9, p. 17)

Dr. Bansal accepted the results of the FCE. He recommended claimant lift no more than 20 pounds on an occasional basis and limited elevated work to head level on an occasional basis. (Jt. Ex. 9, p. 18) Dr. Bansal offers no explanation why the ranges of motion he measured differed from those identified in the FCE or by the prior physical therapist.

Ms. Derifield testified that she continues to experience symptoms in both her right shoulder as well as her right arm. Specifically, she testified that her right shoulder continues to "catch" with certain movements. She also testified that she experiences numbness and tingling in her right arm down into the fingers of her right hand. Claimant also testified that she continues to experience limited strength in her right arm since this work injury. (Transcript, p. 28)

Each of the physicians could be critiqued in this case. Dr. Garrels performed telephonic evaluations of claimant after she moved to Arkansas. He did not perform a physical evaluation of claimant or determine range of motion measurements for claimant after he declared MMI. Instead, Dr. Garrels relied upon the measurements of a physical therapist in Arkansas for range of motion measurements upon which he based an impairment rating. Certainly, Dr. Bansal has a more advantageous viewpoint in this respect, as he performed a physical examination of claimant and based his impairment rating on his own measurements of claimant's shoulder range of motion.

On the other hand, Dr. Bansal's range of motion measurements significantly vary from those obtained by a physical therapist performing an FCE on the same date as Dr. Bansal's evaluation. The therapist performing the FCE was selected by Ms. Derifield. Claimant presumably would consider the therapist to be credible and reliable, especially since Dr. Bansal relies on the FCE recommendations to establish permanent work restrictions for claimant. Yet, Dr. Bansal offers no recognition of the difference between his range of motion measurements and those of the therapist on the same date. This

certainly calls into question the validity of Dr. Bansal's evaluation and measurements and/or those of the FCE on the same date.

Dr. Bansal's measurements were also significantly different than the ranges of motion documented by the therapist on November 4, 2021. Dr. Bansal's measurements reflect significant loss of range of motion between November 2021 and Dr. Bansal's evaluation. Again, there is not an explanation of why claimant's ranges of motions were significantly worse when Dr. Bansal evaluated claimant approximately 11 months later. Ultimately, the range of motions documented by Dr. Bansal are suspect given their variance from other providers' measurements. Ultimately, I find the opinions of Dr. Garrels to be more credible and convincing in this record. Therefore, I accept Dr. Garrels' permanent impairment rating as most convincing and find that claimant proved a two percent permanent functional impairment of the right upper extremity as a result of the October 16, 2020 work injury.

The parties also submit a factual dispute about claimant's gross weekly wages at the time of the work injury. The parties stipulate that claimant was single and entitled to only one exemption on the date of injury. (Hearing Report) The only evidence submitted related to claimant's gross weekly earnings was her testimony that she earned \$58,000 per year working at Deere, inclusive of unspecified bonuses and incentive pay. (Tr., pp. 30, 52) Given that this is the only wage information submitted, I divide the annual earnings by 52 weeks and find that claimant's average weekly earnings at the time of her work injury in October 2020 were \$1,115.38.

Defendant asserts a claim that they have overpaid claimant weekly benefits and should be entitled to a credit for overpayment of benefits. Ultimately, the evidence is undisputed that defendant paid Ms. Derifield temporary disability, or healing period, benefits from October 26, 2020 through November 14, 2021 at the rate of \$584.47 per week. Defendant also paid claimant permanent partial disability benefits equal to eight weeks of benefits at the rate of \$584.47 per week. Additional monies were added to that payment in an effort to reflect interest accrual. In total, defendant paid claimant \$4,677.20 in recognition of her permanent disability. (Claimant's Ex. 2-3)

### CONCLUSIONS OF LAW

The initial dispute submitted by the parties is the extent of claimant's entitlement to temporary disability, or healing period, benefits. Defendant contends that it overpaid healing period benefits and that claimant is only entitled to healing period benefits from October 26, 2020 through February 24, 2021. There is no dispute that claimant is entitled to healing period from October 26, 2020 through February 24, 2021. The question presented is whether claimant is entitled to additional healing period benefits from February 25, 2021 through November 14, 2021. (Tr., p. 6)

Having found that claimant did not receive wages or income from any source between February 25, 2021 and November 14, 2021, claimant may qualify for healing period benefits during this period. Iowa Code section 85.34(1) provides:

The employer shall pay to the employee compensation for a healing period ... beginning on the first day of disability after the injury and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

In this situation, Ms. Derifield did not return to work or earn any wages or income during the relevant timeframe. Dr. Garrels did not declare maximum medical improvement until November 2021. However, I found that Ms. Derifield was released by Dr. Garrels to return to work without restrictions on September 15, 2021 and that she was medically capable of performing substantially similar employment to that in which she was engaged at the time of her work injury. September 15, 2021 is the earliest date for which healing period benefits would terminate under Iowa Code section 85.34(1). Therefore, I conclude claimant is entitled to healing period benefits from February 25, 2021 through September 15, 2021. Iowa Code section 85.34(1).

Defendant asserts that it is entitled to a credit for overpayment of healing period benefits because claimant earned \$1,000 per month working for her husband's marina from February 25, 2021 through November 14, 2021. Having found that claimant did not earn wages during the claimed healing period, I find no credit for overpayment under this theory. However, I concluded that claimant's healing period terminated on September 15, 2021. Defendants paid healing period benefits from September 16, 2021 through November 14, 2021. Defendant is entitled to a credit for overpayment of healing period benefits for the period from September 16, 2021 through November 14, 2021. Iowa Code section 85.34(5). That overpayment may be credited to any underpayment of the weekly rate for either healing period or permanent disability benefits. Iowa Code section 85.34(5).

Claimant contends that she sustained a right shoulder injury resulting in a right rotator cuff tear and repair. She asserts she also sustained a right arm injury as a result of the right biceps tendinopathy. Ms. Derifield then asserts that the right shoulder and right arm injuries should be considered to be unscheduled because they involve two separate body parts.

Defendant disputed whether claimant sustained two separate scheduled member injuries. Instead, defendant asserts that claimant sustained only a right shoulder injury as a result of the October 16, 2020 work injury. Defendant points out that the Iowa Supreme Court has considered and defined the limits and expansiveness of the "shoulder" within the definition or usage of Iowa Code section 85.34(2)(n). In Chavez v. MS Technology, L.L.C., 972 N.W.2d 663 (Iowa 2022), the Iowa Supreme Court concluded that an injury involved only a shoulder and was limited to a scheduled member recovery pursuant to Iowa Code section 85.34(2)(n).

Defendant accurately notes that the injury involved in Chavez included both a rotator cuff tear as well as a biceps tear. Id. at 668 ("Chavez's treating physician, Dr.

Peterson, diagnosed her injury as a ‘full thickness rotator cuff tear that has retracted to the level of the glenoid, severe AC arthrosis, tendonitis and tearing of the biceps tendon.’”). The Iowa Supreme Court interpreted Iowa Code section 85.34(2)(n) and defined the shoulder “to include the glenohumeral joint as well as all of the muscles, tendons, and ligaments that are essential for the shoulder to function.” Id. Ms. Derifield’s injuries are clearly included within the injuries considered by the Court in Chavez and determined to constitute a scheduled member shoulder injury. Accordingly, I conclude that defendant’s argument is more persuasive and consistent with the Iowa Supreme Court’s holding in Chavez. I conclude that claimant has proven only a right shoulder injury and that her claim is limited to a scheduled member injury and recovery pursuant to Iowa Code section 85.34(2)(n).

Having found Dr. Garrels’ impairment rating to be most convincing and credible, I conclude claimant proved a two percent permanent functional impairment of the right upper extremity as a result of her right shoulder injury on October 16, 2020. Iowa Code section 85.34(2)(x). Shoulder injuries are compensated based upon a 400-week schedule. Iowa Code section 85.34(2)(n). Injuries that result in less than permanent functional loss of a scheduled member result in a proportional award of permanent disability relative to the schedule mandated for each injury. Iowa Code section 85.34(2)(w). In this situation, I found that claimant proved a two percent permanent functional impairment of the right upper extremity. Two percent of 400 weeks results in a conclusion that claimant is entitled to 8 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(n), (w).

Defendant paid claimant temporary total disability benefits from October 26, 2020 through November 14, 2021 at the rate of \$584.47 per week. Defendant also paid claimant eight weeks of permanent partial disability benefits at the weekly rate of \$584.47. Defendant contends it overpaid the weekly rate and is entitled to a credit for this overpayment of benefits. Claimant disputes the weekly rate and entitlement to a credit for the alleged overpayment.

Specifically, the parties dispute claimant’s gross average weekly wages at the time of the work injury. The parties stipulate that claimant was single and entitled to only one exemption at the time of the injury. (Hearing Report) Having found that claimant’s gross weekly earnings were \$1,115.38, I apply the Commissioner’s rate book<sup>1</sup> and conclude that claimant’s applicable weekly worker’s compensation rate is \$680.06. Having reached this conclusion, I similarly conclude that defendant underpaid the weekly rate and is not entitled to a credit for overpayment of the weekly rate.

Claimant has proven an underpayment of the weekly rate and defendant has proven overpayment of healing period benefits. The undersigned assumes the parties can calculate the respective underpayments and overpayments to determine if additional

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<sup>1</sup> <https://www.iowaworkcomp.gov/sites/authoring.iowadivisionofworkcomp.gov/files/Ratebook%20--%202020-2021%20--%20Spreadsheet.xlsx>

benefits are owed, with interest, at this time. If the parties cannot agree on calculations, they should file a timely request for rehearing, submit their respective calculations of the overpayments and underpayments and the undersigned will make additional findings and order relative to the credit claims.

Defendant obtained and filed a copy of the hearing transcript prior to the parties filing post-hearing briefs, including the receipt for the transcript. Costs are assessed at the agency's discretion. Iowa Code section 86.40. Ultimately, both parties prevailed on some issues in this case. I conclude it is appropriate that each party pay its own costs and that defendant ultimately bear the cost of the hearing transcript. Therefore, any request for assessment of costs is denied and each party shall bear its own costs.

### ORDER

#### THEREFORE, IT IS ORDERED:

Defendant shall pay claimant healing period benefits from February 25, 2021 to September 15, 2021.

Defendant shall pay claimant eight (8) weeks permanent partial disability benefits commencing on November 3, 2021.

All benefits shall be paid at the rate of six hundred eighty and 06/100 dollars (\$680.06) per week.

Defendant shall pay interest on all past due benefits pursuant to Iowa Code section 85.30.

Defendant is entitled to credit for all weekly benefits paid to date against the above award of benefits.

The parties shall cooperate to calculate the underpayment of weekly rate and the overpayment credit for healing period benefits to determine if additional sums, including interest, are owed.

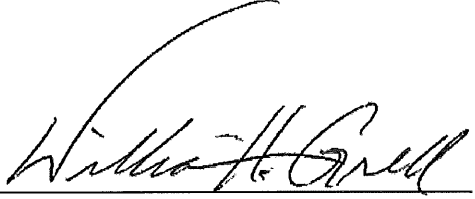
If the parties cannot agree on the calculations, they shall file a request for rehearing, submit their respective calculations of the overpayment and underpayment for further findings and order.

If it has not already done so, defendant shall immediately reimburse claimant for her independent medical evaluation expense pursuant to defendant's agreement and the verbal order entered at the commencement of the arbitration hearing.

Each party shall bear their own costs with defendant bearing the cost of the hearing transcript.



Signed and filed this 12th day of June, 2023.



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WILLIAM H. GRELL  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Randall Schueller (via WCES)

Coreen Sweeney (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.