

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MONTE FECKERS,

Claimant,

vs.

JOHN DEERE WATERLOO WORKS,

Employer,  
Self-Insured,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 19700153.01

A P P E A L  
D E C I S I O NHead Notes: 1108.50; 1402.20; 1801.1  
1808; 2502; 2907; 3202

Defendant Second Injury Fund of Iowa (hereinafter "the Fund") appeals from an arbitration decision filed on November 6, 2020, and from a ruling on motion for reconsideration filed on December 2, 2020. Claimant Monte Feckers cross-appeals. Defendant John Deere Waterloo Works (hereinafter "defendant-employer"), self-insured employer, responds to the appeal and the cross-appeal. The case was heard on July 13, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 3, 2020.

In the arbitration decision, the deputy commissioner found claimant failed to prove his weight gain/body deconditioning and alleged mental condition were caused by the stipulated work injury, which occurred on September 15, 2017. However, the deputy commissioner found claimant sustained 31 percent whole body impairment as a result of his bilateral arm injury. The deputy commissioner found claimant failed to prove entitlement to temporary partial disability (TPD) benefits. As a result, the deputy commissioner found claimant's claim for penalty benefits based on the failure to pay TPD benefits was moot.

The deputy commissioner found claimant sustained a first qualifying injury for purposes of his Fund claim, and the deputy commissioner found that the combination of claimant's first qualifying injury and his bilateral arm injury rendered him permanently and totally disabled. The deputy commissioner ordered defendant-employer to reimburse claimant for seventy-five (75) percent of the cost of the independent medical evaluation (IME) of claimant performed by Arnold Delbridge, M.D. The deputy commissioner assessed costs against both defendant-employer and the Fund.

On December 2, 2020, the deputy commissioner issued a ruling on defendant-employer's motion to enlarge findings and a separate ruling on the Fund's motion for reconsideration. In the ruling on defendant-employer's motion to enlarge, the deputy commissioner clarified defendant-employer's entitlement to credit for past payments made. In the ruling on the Fund's motion for reconsideration, the deputy commissioner rejected the Fund's request for application of the odd-lot doctrine.

On appeal, the Fund asserts the deputy commissioner erred in finding a first qualifying injury. The Fund also asserts the deputy commissioner erred in determining claimant's work-related injury was limited to his arms. In the alternative, the Fund asserts the deputy commissioner erred by not considering whether claimant was permanently and totally disabled as a result of his bilateral arm injury under Iowa Code section 85.34(2)(t) (post-July 1, 2017).<sup>1</sup> Lastly, the Fund asserts the deputy commissioner erred in assessing claimant's costs against it.

On cross-appeal, claimant - like the Fund - asserts the deputy commissioner erred in not considering claimant's entitlement to permanent total disability benefits as a result of his bilateral arm injury under Iowa Code section 85.34(2)(t). Claimant additionally asserts the deputy commissioner erred in not finding claimant's weight gain and body deconditioning to be causally related to the work injury. Claimant argues the deputy commissioner erred in finding claimant is not entitled to TPD benefits or penalty benefits as a result of defendant-employer's failure to pay TPD benefits. Lastly, claimant seeks full reimbursement for the cost of Dr. Delbridge's IME.

Defendant-employer asserts on appeal that the arbitration decision should be affirmed in its entirety.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on November 6, 2020 is reversed in part and affirmed in part.

I turn first to the shared position of claimant and the Fund that the deputy commissioner failed to appropriately consider whether claimant is permanently and totally disabled as a result of his work-related bilateral arm injury. Iowa Code section

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<sup>1</sup> Prior to July 1, 2017, Iowa Code section 85.34(2)(t) was numbered as 85.34(2)(s).

85.34(2)(t) provides: "The loss of both arms . . . shall equal five hundred weeks and shall be compensated as such; however, if said employee is permanently and totally disabled the employee may be entitled to benefits under subsection 3 [which is the subsection pertaining to permanent total disability benefits]. Iowa Code § 85.34(2)(t) (emphasis added).

The deputy commissioner apparently overlooked this provision, as she cited law pertaining only to the loss of scheduled members and compensation being measured functionally and not industrially. (Arbitration Decision, pp. 14-15) The deputy commissioner's failure to consider whether claimant was permanently and totally disabled as a result of his bilateral arm injury under Iowa Code section 85.34(2)(t) was in error. As such, I will consider this provision on appeal.

The deputy commissioner made the following findings regarding claimant's bilateral arm injury:

Claimant is unable to perform any of his past work due to the fact that every job he has held in the past required constant use of his hands. Further, claimant has minimal education and a learning disability which would affect his ability to retrain. The valid FCE results were adopted by both Dr. Gorsche and Dr. Delbridge, as well as used by the vocational rehabilitation specialist, Barbara Laughlin. The FCE results placed claimant in the sedentary work category. According to the therapist, claimant was only able to exert up to 10 pounds of force occasionally and a negligent amount of force frequently.

(Arb. Dec., p. 15) (emphasis added).

I agree with these findings - particularly that claimant is unable to perform any of his past work due to his bilateral hand injury. This is consistent with claimant's uncontroverted hearing testimony. (Hearing Transcript, pp. 35-38)

Notably, claimant also testified that before the injury to his bilateral hands, he was on his feet for the majority of his shifts and was able to perform his jobs for defendant-employer without assistance. (Tr., pp. 14, 16) In other words, what removed claimant from his job with defendant-employer, along with all other employment for which he was fitted, was the stipulated work injury to his bilateral arms - not his right knee or other personal conditions.

I recognize claimant's placement in the sedentary work category is not due solely to his bilateral arm injury. However, as noted by the deputy commissioner:

Jobs such as material handling, fast food, or even driving would require regular to frequent use of his hands and wrists. While Ms. Laughlin's vocational assessment concluded that there would be 112 occupational titles available to the claimant under a transferable skills analysis, these positions did not take into consideration limitations in the use of hands, fingers, or upper extremities. Defendant employer found one position - fork lift driving - and while the claimant's habitus prevented him from testing this job, no other positions have been offered to claimant.

(Arb. Dec., p. 18)

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

Claimant's bilateral arm injury has completely disabled him from performing the work he would otherwise be suited to perform. As a result, I find claimant is permanently and totally disabled as a result of his work-related bilateral arm injury.

Because claimant is permanently and totally disabled as a result of the loss of use of both arms, I find claimant is entitled to receive permanent total disability benefits from defendant-employer under section 85.34(3). Iowa Code § 85.34(2)(t). More specifically, claimant is entitled to permanent total disability benefits from defendant-employer from the date of injury until he is no longer permanently and totally disabled. Iowa Code § 85.34(3)(a).

The deputy commissioner's finding that claimant's compensation from defendant-employer is limited to his functional disability is therefore respectfully reversed, as is the deputy commissioner's finding that claimant is entitled to permanent total disability benefits from the Fund. Because claimant is permanently and totally disabled due to his

bilateral arm injury under Iowa Code section 85.34(2)(t), his claim against the Fund is moot.

Though I found claimant to be permanently and totally disabled as a result of his bilateral arm injury, claimant also asserts on appeal that his weight gain and deconditioning developed as sequelae of his arm injuries. However, I affirm the deputy commissioner's finding that claimant failed to prove a causal link between his work-related injury and his weight gain and deconditioning. I affirm the deputy commissioner's findings, conclusions and analysis regarding that issue.

I now turn to claimant's argument on cross-appeal that he is entitled to receive TPD benefits from October 23, 2017, through November 19, 2017. Because claimant is entitled to receive permanent total disability benefits from defendant-employer from September 15, 2017, the date of injury, through the present and ongoing, claimant cannot also receive TPD benefits from defendant-employer for the period of October 23, 2017, through November 19, 2017. The issues of whether claimant is entitled to receive TPD benefits, and penalty benefits for failure to pay TPD benefits, from defendant employer, are therefore rendered moot by the award of permanent total disability benefits.

Lastly, I address claimant's claims for costs and for reimbursement of his IME. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

Claimant is seeking an assessment for his deposition transcript, Ms. Laughlin's report, Kyle Christason, M.D.'s report, and Dr. Delbridge's IME. (Cl. Ex. 11) With the exception of Dr. Delbridge's IME, which will be addressed below, I assess all costs in Claimant's Exhibit 11 against defendant-employer. 876 IAC 4.33(2), (6). The deputy commissioner's cost assessment against the Fund is therefore respectfully reversed.

With respect to Dr. Delbridge's IME, the deputy commissioner found defendant-employer responsible for 75 percent of the charges considering roughly a quarter of the report was devoted to claimant's alleged first qualifying injury. I affirm this finding. See Keyser v. St. Gobain Corp., File No. 5061026 (App. Dec., Aug. 24, 2018). The remainder of the IME cannot be assessed against the Fund, as the Second Injury Fund Act does not provide for costs to be paid from the Fund, and Iowa Code section 85.66 expressly prohibits expenditures from the Fund for other purposes. See Hannan v. Second Injury Fund of Iowa, File No. 5052402 (App. Dec., July 25, 2018). The deputy commissioner's finding regarding reimbursement for claimant's IME is therefore affirmed.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 6, 2020, is reversed in part and affirmed in part.

Defendant-employer shall pay claimant permanent total disability benefits at the stipulated weekly rate of five hundred sixty-nine and 02/100 dollars (\$569.02) commencing on the date of injury and continuing during the period of permanent total disability.

Defendant-employer shall pay accrued weekly benefits in a lump sum together with interest 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.

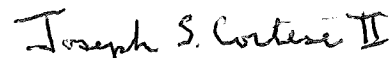
Defendant-employer shall receive credit for the sums previously paid in March and June 2018 representing a total of eleven thousand three hundred eighty and 40/100 dollars (\$11,380.40) and any sums previously paid since September 15, 2018.

Defendant-employer shall reimburse claimant seventy-five (75) percent of the cost of Dr. Delbridge's IME.

Pursuant to rule 876 IAC 4.33, defendant-employer shall pay claimant's costs of the arbitration proceeding as set forth above, and defendant-employer shall bear the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 15<sup>th</sup> day of April, 2021.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Benjamin Roth (via WCES)

James Kalkhoff (via WCES)

Tonya Oetken (via WCES)