

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RUBEN VILLASANA,

Claimant,

vs.

TEAM STAFFING SOLUTIONS,

Employer,

and

UNITED HEARTLAND

Insurance Carrier,  
Defendants.

**FILED**

**SEP 8 2016**

**WORKERS' COMPENSATION**

File No. 5046335

**A P P E A L**

**D E C I S I O N**

Head Note Nos.: 1108.50, 1402.30, 1802  
1803

Defendants, Team Staffing Solutions and United Heartland, appeal from an arbitration decision filed on February 26, 2015. The arbitration hearing was held on December 18, 2014.

The presiding deputy commissioner found that claimant proved by a preponderance of the evidence that his past and ongoing neck symptoms arose out of and in the course of his employment as a result of the accident at work on October 4, 2012. The presiding deputy commissioner also awarded claimant healing period benefits from February 25, 2013, through May 13, 2014. Finally, the presiding deputy commissioner awarded claimant 60% industrial disability. None of the other awards contained within the arbitration decision are challenged in this appeal and any other findings, conclusions or awards will be affirmed.

Defendants contend that the presiding deputy commissioner erroneously weighed the evidence in this case and erroneously found that claimant proved he sustained a neck injury as a result of the October 4, 2012, work accident. Defendants further allege on intra-agency appeal that the deputy commissioner erroneously awarded healing period benefits for the time period between February 25, 2013, and May 13, 2014. Finally, defendants contend that the deputy commissioner's 60% industrial disability award is excessive and should be reduced. Claimant contends that the arbitration decision should be affirmed in its entirety.

The parties timely filed appellate briefs in this case and the case was fully submitted to the Iowa Workers' Compensation Commissioner on July 23, 2015. On August 30, 2016, the Iowa Workers' Compensation Commissioner entered a delegation of authority directing the undersigned to review this case on appeal and delegating the undersigned authority to enter an appeal decision that represents final agency action. Therefore, pursuant to the Commissioner's delegation of authority and Iowa Code section 86.3, the undersigned issues this decision as the intra-agency appeal decision, which represents final agency action.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings and conclusions as those reached by the deputy commissioner on the issue of whether claimant's neck injury arose out of and in the course of his employment and on the extent of claimant's entitlement to industrial disability. As a result of a subsequently filed Iowa Supreme Court case, I modify the findings of fact and conclusions of law with respect to claimant's entitlement to healing period benefits, the commencement date for permanent partial disability benefits, and defendants' claim for credit against permanent partial disability benefits for all weekly benefits paid between February 25, 2013, and May 13, 2014.

Pursuant to Iowa Code sections 86.3, 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of February 26, 2015, filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis and modifications:

#### ISSUES ON APPEAL

Defendants state the issues on appeal as follows:

1. Whether claimant proved by a preponderance of the evidence that the October 4, 2012, work incident proximately caused his claimed permanent cervical injury.
2. Whether defendants are entitled to a credit against any permanent partial disability award for weekly benefits paid to claimant from February 25, 2013, through May 13, 2014.
3. Whether claimant proved by a preponderance of the evidence that he sustained a 60% industrial disability as a result of the October 4, 2012, work injury.

#### STATEMENT OF THE FACTS

I concur with the presiding deputy commissioner's findings of fact as they pertain to the issue of whether claimant proved by a preponderance of the evidence that the October 4, 2012, work incident was a substantial cause of the claimant's neck injury.

Defendants contend that the claimant's testimony pertaining to the development and ongoing nature of his neck symptoms after the October 4, 2012, work injury are inconsistent with the contemporaneous medical records generated immediately after the injury. Of course, all medical records must be put in context given that claimant is a Spanish speaking individual that required translation for all communications with the medical providers. Moreover, the medical records should also be read in context of the fact that claimant had some pressing medical issues immediately after the injury, including an obviously fractured left wrist, a fairly seriously separated right shoulder, and abrasions that required immediate medical attention.

The initial injury involved trauma to multiple body parts. Claimant sustained significant trauma to both upper extremities as well as his head. While the initial medical treatment focused on the obvious wrist fracture and shoulder separation, there is medical documentation of injury about the head and neck in the initial emergency room record. Claimant obviously expressed complaints of neck symptoms during his evaluation with Robin Sassman, M.D. Theron Jameson, D.O.'s initial medical record documents complaints into claimant's neck. Then, upon evaluation by a neurosurgeon, claimant expressed complaints of neck symptoms to Robert Milas, M.D.

Ultimately, the question is boiled down relatively clearly by defendants' arguments: Is the claimant telling the truth about when his neck symptoms began or is he exaggerating when the neck symptoms started contrary to some of the medical records? This determination requires a credibility determination to decide whether claimant is telling the truth about when his neck symptoms began.

The presiding deputy commissioner was in an advantageous position to evaluate claimant's testimony in person, to watch claimant during cross-examination on these issues, and to make findings about claimant's credibility. The presiding deputy commissioner found:

[C]laimant has credibly testified as to ongoing cervical pain from the outset. He related how his complaints of neck pain were ignored. Both Dr. Sassman and Dr. Milas find a cervical condition related to the work injury. Their conclusions are consistent with claimant's testimony and the other evidence.

(Arbitration Decision, p. 7)

The presiding deputy commissioner had the advantage of viewing claimant while he testified. Therefore, while I acknowledge defendants' arguments about potential inconsistencies between claimant's testimony and the contemporaneous medical records, I accept and concur with the presiding deputy commissioner's credibility findings.

Having found claimant to be credible, I concur with the deputy that the claimant's testimony about his neck symptoms is consistent with the opinions expressed by Dr. Sassman and Dr. Milas. Therefore, I also concur with the presiding deputy commissioner's finding that claimant has proven a causal connection between the October 4, 2012, work injury and his ongoing neck symptoms.

The second disputed issue on appeal is claimant's entitlement to healing period and defendants' entitlement to a credit toward any permanent partial disability benefits for the time period between November 6, 2012, and May 13, 2014. Similar to the presiding deputy commissioner, I find that claimant was off work from October 4, 2012, until November 8, 2012. Claimant then returned to work in a light duty capacity but essentially performed the same job duties as his co-workers. Claimant continued working from November 9, 2012, until February 25, 2013.

On February 25, 2013, claimant called in to work, indicating he had shoulder pain and could not work. Claimant did not call in for work over the next few days and was terminated on March 4, 2013. Immediately prior to February 25, 2013, claimant was performing essentially his full duty work according to his own testimony. Therefore, I find that he was capable of performing substantially similar work as of February 25, 2013. Defendants continued to offer claimant work between February 25, 2013, and March 3, 2013.

Robin L. Sassman, M.D. evaluated claimant on June 10, 2013. As of that date, she imposed permanent work restrictions that precluded claimant from performing substantially similar work. Claimant remained under Dr. Sassman's restrictions from June 10, 2013, through May 13, 2014, the last disputed healing period date. Claimant did not return to work between June 10, 2013, and May 13, 2014. The presiding deputy found claimant achieved maximum medical improvement after recovery from shoulder surgery on September 11, 2014.

The final issue raised by defendants on appeal is the extent of claimant's entitlement to industrial disability. The presiding deputy commissioner found that claimant proved he sustained a 60% industrial disability. Review of the arbitration decision reflects that the presiding deputy commissioner appropriately considered claimant's age, educational background, employment history, the situs and severity of his injuries, the permanent impairment ratings, the permanent restrictions, as well as claimant's level of motivation and all other relevant industrial disability factors. I concur with each of the deputy commissioner's findings of fact pertaining to the relevant industrial disability factors.

I find that claimant was 48 years of age at the time of the arbitration hearing. He has limited educational background, having never graduated from high school. He has very limited English, a work history that includes manual, low-skilled jobs. I accept Dr. Sassman's impairment rating and permanent restrictions as the most accurate in this case. Considering claimant's motivation, or lack thereof, as well as the above factors

and all other factors outlined by the Iowa Supreme Court pertaining to industrial disability, I concur with the presiding deputy commissioner and find that claimant proved a 60% loss of future earning capacity as a result of the various injuries he sustained at work on October 4, 2012.

### CONCLUSIONS OF LAW

Defendants do not appear to challenge the deputy commissioner's legal conclusion or the applicable legal standards utilized by the presiding deputy commissioner with respect to his determinations regarding whether claimant's neck condition arose out of and in the course of his employment on October 4, 2012.

Similarly, defendants do not appear to challenge the deputy commissioner's legal conclusion or the applicable legal standards utilized by the presiding deputy commissioner with respect to the factors and standards utilized to determine industrial disability. Therefore, I concur with and adopt the deputy commissioner's legal conclusion on these issues. Having reached the same factual findings as the presiding deputy commissioner on these issues, I reach similar conclusions and applications of the law. I, therefore, conclude that the arbitration decision should be affirmed with respect to the conclusions and application of law concluding that claimant's neck injury arose out of and in the course of claimant's employment as a result of the accident at work on October 4, 2012. Similarly, I conclude that the arbitration decision should be affirmed with respect to the award of a 60% industrial disability.

The third issue disputed by defendants on appeal is whether they are entitled to a credit against any permanent partial disability award for weekly benefits they paid between February 25, 2013, and May 13, 2014. Realistically, given the recent decision in Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016), the real challenge being asserted by defendants is whether claimant is entitled to healing period benefits during this period of time.

In Evenson, the Iowa Supreme Court clarified when permanent partial disability benefits commence and clarified that both healing period and permanent partial disability benefits may be due and payable simultaneously. Id. In this case, claimant returned to work, which terminated the initial healing period. Claimant's entitlement to permanent partial disability benefits commenced upon his return to work on November 9, 2012, because that date represents the earliest of the three factors outlined for termination of healing period in Iowa Code section 85.34(1). Id. Therefore, if claimant is entitled to healing period benefits, defendants owe both healing period benefits and permanent partial disability benefits between February 25, 2013, and May 13, 2014. Id. If claimant is not entitled to healing period benefits during this period of time, defendants only owed permanent partial disability benefits for this period of time. Id.

Having found that claimant was actually working and was capable of substantially similar work from November 6, 2012, through February 25, 2013, I conclude that

claimant is not entitled to healing period benefits for this time and any benefits paid during this period of time would be credited as permanent partial disability benefits. Iowa Code section 85.34(1). Although he was terminated for failing to call or report to work, claimant had no additional work restrictions and remained medically capable of performing substantially similar employment between February 25, 2013, and the date he was evaluated by Dr. Sassman.

However, after claimant was evaluated by Dr. Sassman on June 10, 2013, additional restrictions were imposed that would prevent claimant from performing substantially similar employment. Claimant was not working between February 25, 2013, and May 13, 2014, and had not yet achieved maximum medical improvement. Therefore, claimant was entitled to healing period benefits during the disputed period of time from June 10, 2013, (the date of Dr. Sassman's evaluation) through May 13, 2014. Iowa Code section 85.34(1); Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016). All benefits paid by defendants during this period of time would be paid to satisfy claimant's healing period entitlement and defendants owed a second check for permanent partial disability during this period of time. Id.

ORDER

THEREFORE, IT IS ORDERED:

The February 26, 2015, arbitration decision is affirmed with respect to all issues not raised on intra-agency appeal, with respect to the presiding deputy commissioner's findings and conclusions pertaining to claimant's neck injury arising out of and in the course of employment as well as to the presiding deputy commissioner's award of a 60% industrial disability.

The arbitration decision is modified with respect to the healing period claim and entitlement to permanent partial disability credit.

Defendants shall pay unto the claimant healing period benefits from June 10, 2013, through May 13, 2014, at the rate of two hundred fifty-six and 82/100 dollars (\$256.82) per week.

Defendants shall pay unto the claimant three hundred (300) weeks of permanent partial disability benefits at the rate of two hundred fifty-six and 82/100 dollars (\$256.82) per week commencing on November 9, 2012.

Defendants shall pay all accrued benefits in a lump sum.

Defendants shall pay interest on any weekly benefits paid after their due date pursuant to Iowa Code section 85.30.

Defendants shall be given a credit for all weekly benefits previously paid and consistent with the awards contained in this decision.

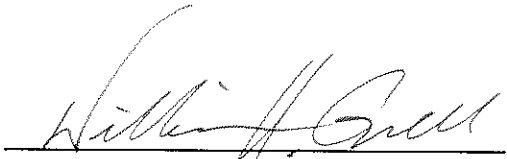
Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing pursuant to the arbitration decision award.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury, including but not limited to the alternate medical care detailed in the arbitration decision.

All costs of the arbitration proceeding and related to this appeal are taxed against defendants.

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

Signed and filed this 8<sup>th</sup> day of September, 2016.



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IOWA DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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