

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL MADSEN,  
Claimant,

vs.

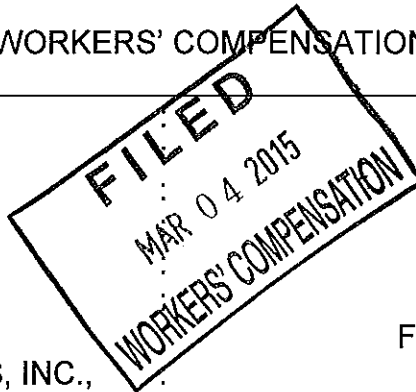
REMBRANDT ENTERPRISES, INC.,

Employer,

and

NATIONWIDE AGRIBUSINESS,

Insurance Carrier,  
Defendants.



File No. 5046090

ARBITRATION  
DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Paul Madsen, claimant, filed a petition in arbitration seeking workers' compensation benefits against Rembrandt Enterprises, Inc., employer, and Nationwide Agribusiness, insurer, both as defendants, for an alleged work injury date of April 24, 2007.

This case was heard on January 12, 2015, in Des Moines, Iowa, and considered fully submitted on February 2, 2015, upon the simultaneous filing of briefs. The evidence in this case consists of Exhibits 1 through 8 of the claimant's, defendants' Exhibits A and J, testimony of claimant, and testimony of Joy Madsen.

ISSUE

Extent of industrial disability.

STIPULATIONS

The parties agreed claimant sustained an injury while working for the defendant employer on April 24, 2007. They further agree that injury was the cause of some temporary disability during a period of recovery. At the time of his injury claimant's gross earnings were \$897.00 per week. He was married and entitled to three exemptions. Based upon the foregoing figures the claimant is entitled to a weekly benefit rate of \$576.54.

Entitlement to permanent partial disability benefits began on October 3, 2007.

Claimant was paid all temporary total disability benefits to which he was entitled along with 275 weeks of permanent partial disability benefits at the aforementioned rate. Payments to the claimant are itemized in defendants' Exhibit J.

#### FINDINGS OF FACT

Claimant was a 56-year-old man at the time of hearing. At the time of his injury on April 24, 2007, claimant was married with one minor child living at home.

Claimant graduated from high school and received some post-secondary EMS training while he was a member of the Rembrandt Fire Department. Claimant was a good student, often achieving honor roll status. He grew up on a farm and began laboring full time after high school at a grain and livestock family farm. Claimant still does some farming on a grain farm.

He began working for Rembrandt on August 6, 2001, an egg laying facility. Initially he worked part time helping to construct the new facility. Claimant admitted that he had past prior medical issues but was able to perform all of his necessary work activities without restrictions.

At the time of his injury he was earning \$13.40 per hour.

His prior injuries included a broken ankle and an eye injury. While he reports no current problems related to his broken ankle he does have some depth perception and periphery vision issues. Subsequent to his work-related injury, claimant underwent right shoulder surgery on February 21, 2012. (Exhibit D)

Claimant has performed a number of tasks for the defendant including working in both the layer site where the chickens would lay the eggs, which would then be conveyed to the breaking plant, and the pullet site where baby chicks are raised until they are ready to lay eggs. He then moved to the exterior maintenance to work on biohazard precautions.

Claimant owned a large farm, and defendant employer would allow claimant time off in the spring to plant and time off in the fall to harvest.

Claimant's past work history includes working as a self-employed farmer from 1976 until the present time. The farm land is between 1500 and 2000 acres. Claimant also helped his brother-in-law build the Lakeside Marina in Storm Lake, Iowa.

On April 24, 2007, claimant was cleaning a conveyor belt. A coworker turned the machine on while claimant was working on it, and claimant's arm caught between rollers resulting in a below-the-shoulder amputation on the left side along with a left scapular fracture, left clavicle fracture, and multiple left rib fractures.

There is no real dispute about claimant's injury, his treatment, and his course of healing. After his injury, claimant was taken by emergency services to Buena Vista Regional Medical Center. (Ex. 1, p. 2) Claimant was then transferred via LifeFlight to the Mayo Clinic. (Ex. 1, p. 6)

The injury to his pectoralis major muscle and ulnar nerves in the brachial plexus was severe and has limited the types of prosthesis claimant can use. (Ex. 2) After the resection, focus turned to obtaining a prosthetic for the claimant as well as rehabilitation services to help him cope with the loss of his arm.

Claimant has a prosthetic made out of industrial plastic. He uses his shoulder motion to lock and unlock as well as open and close pincers that serve as his hand. He testified that the device is a tool, not a hand.

Initially claimant just learned to attach and unattach the prosthetic. He then graduated to using it. By August 24, 2007 claimant was able to use scissors to cut out a pattern and to cut Theraputty with a knife and fork. (Ex. 2, p. 74) His last occupational therapy session was on August 29, 2007. He was able to use his prosthesis in two handed activities such as a tin snip and hole punch to attach a strap with a rivet to a piece of plastic. He was able to use a hammer with his right hand while stabilizing the plastic with his left prosthesis. He was described as creative and a good problem solver. (Ex. 2, p. 77)

When Mark Christopherson, M.D. saw him on October 3, 2007, claimant was described as "doing fantastic. He says that his phantom pain is doing the classic whenever he is distracted with work or activity, it is absent, but as soon as he relaxes, trying to get comfortable to eat or sleep, it comes back, it is manifested as a burning type pain." (Ex. 2, p. 79) He was given a work release on that day to return to work without restrictions with the prosthesis. (Ex. 2, p. 79]

He was seen in followup on February 13, 2008. During that visit it was noted that he had fallen on the slippery snow and ice and cracked the prosthesis. His range of motion with his scapula and humeral stump improved to almost 90 degrees but he had significant phantom pain. (Ex. 2, p. 81) Dr. Christopherson prescribed Cymbalta at that time in order to increase claimant's management of the phantom pain. (Ex. 2, p. 82)

Because of the rudimentary nature of his prosthesis, claimant has difficulty engaging in tasks such as tying things, zipping his coats, closing snaps, changing tires, etc. Tasks take longer because he can ordinarily use only one arm. Any task that requires the use of both arms is not within his ability. For instance, he can drive most vehicles but not anything with a clutch because it requires the use of both hands.

He currently suffers from issues of phantom pain and takes a maximum dose of Lyrica to control it. Phantom pain was first noticed on May 15, 2007. (Ex. 2, p. 45) Dr. Christopherson's goal was to wean claimant off narcotics and get him on neuroactive agents. (Ex. 2, p. 66)

The phantom pain has not abated. Claimant has treated with injections and even acupuncture. (Ex. 6) At one time he asked about mirror therapy. (Ex. 2, p. 87) On September 21, 2010 he complained to Dr. Christopherson of fluctuating problems with this phantom limb pain. The Cymbalta was not successful. (Ex. 2, p. 91) The mirror therapy seemed to help somewhat in reducing claimant's pain levels. (Ex. 2, pp. 95 to 97, p. 99) Claimant has a TENS unit as well. (Ex. 6, p. 5)

The pain medication does allow him to function, but he is not pain free. During periods of intense pain, he will have to stop working and wait until the pain subsides. His current employer accommodates this problem.

Medical records indicate the claimant had varying responses to Lyrica. At times it was reported that he was doing well on his prescription and at others, needing an increase or complaining the medication was not working. (See, e.g. Ex. 2, p. 67 v. Ex. 2, p. 39)

He currently works as an outside maintenance manager. He oversees six people and takes care of all the maintenance on the outside, which includes mowing the grass, moving snow. He supervises, hires and fires, interviews, fills out performance reviews, and orders supplies as well as makes sure the maintenance jobs are performed appropriately. He agreed that his position is not a makework job and that if not him, someone else would be doing his job.

Prior to the amputation, his job was primarily physical labor. His employment has now transformed from hourly to salaried, and he is working primarily supervisory role with only 20 percent of his duties in physical labor and the remainder in management, office, and paperwork.

Claimant continues to farm approximately 125 acres. He plants and sprays his own crops and operates a grain wagon during the harvest. He performs normal maintenance on his farm equipment based upon injuries with his prosthesis. He is fairly active including climbing silos and carrying motors. He is able to drive a four wheeler, tractor and the mower, and helps with household chores.

On October 30, 2007 Dr. Christopherson noted claimant was doing quite well and that claimant was released without restriction on the same date. (Ex. 2, p. 79) On October 9, 2013 Dr. Christopherson noted that the claimant was very active and used a number of custom-made tools that could be attached to the end of his prosthesis. (Ex. 2, p. 104)

October 17, 2007, Dr. Christopherson confirmed the claimant reached MMI as of October 3, 2007 and recommended a rating from Russell Gelfman, M.D. (Ex. B, p. 2-3) In a followup letter Dr. Christopherson noted that if the Minnesota permanent partial disability scale was used, claimant would have a 57 percent impairment rating. (Ex. 2, p. 82) However, Dr. Christopherson also noted that claimant's impairment is more complex than a simple permanent partial disability rating. He recommended that

claimant's impairment be rated by someone who does these things regularly. (Ex. 2, p. 82)

On March 27, 2008, claimant was seen by Dr. Kuiken for an evaluation of a new myoelectric prosthetic. (Ex. E, p. 2) Because of claimant's transhumeral injury, he was not a viable candidate.

On April 17, 2008 claimant went to the University of Chicago to see if he was a candidate for a bionic arm but again was turned down because there was not enough nerve function left in the shoulder. (Ex. 3, p. 2)

### CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Defendants point out that claimant is very active. He is earning more today than he was at the time of his injury. He is in a supervisory role, overseeing six employees,

and has received regular raises since his injury. He is active on his farm, using farm equipment on a regular basis and works without restrictions in his normal job.

Claimant is an older worker who has worked primarily for this single company since 2001. He is not looking for employment outside of the defendant. He is highly motivated, but has limited education as well as experience outside the maintenance work he has done on the chicken production facility.

He has regular phantom pain that has not gone away despite the maximum dose of Lyrica, a TENS unit, injections, and acupuncture. Some of the pain has been reduced with mirror therapy but has not gone away entirely.

While the claimant does use the computer daily at work, he only has one hand. He would not be able to do data entry or anything that would require the use of two hands. The claimant described his left arm as a tool.

In the competitive labor market, claimant is at a great disadvantage. He would not be able to do two-handed jobs. At work and at his farm, he receives help from fellow employees and his son.

It is admirable that the defendant continues to employ the claimant. There is no evidence that other employers in the marketplace would be as accommodating.

In Winn v. SunOpta Food Ingredients, File No. 5031715 (Appeal December 12, 2012), a 58-year-old male lost his right arm and was awarded 75 percent industrial disability. In Sailors v. Kind & Knox Gelatin Inc., File No. 5002213 (Arb. Decision May 4, 2004), a forty-eight year old female was awarded 70 percent industrial disability as a result of her fingers being amputated.

While every case is unique and should be heard and decided on its own merits, past agency decisions can provide a guide for the future.

Based on the claimant's amputation, chronic phantom pain, his age, past experience, education, and motivation to return to work, it is determined that claimant's industrial disability is 75 percent.

#### ORDER

#### THEREFORE IT IS ORDERED:

That defendants are to pay unto claimant three-hundred seventy-five (375) weeks of permanent partial disability benefits at the rate of five-hundred seventy-six and 54/100 dollars (\$576.54) per week from October 3, 2007.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits awarded herein as

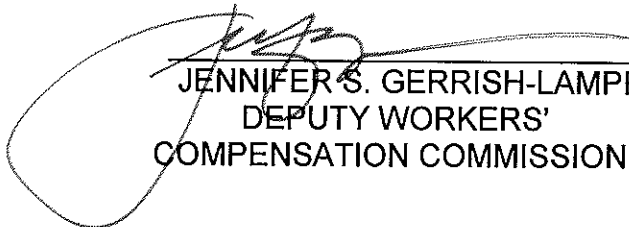
set forth in Iowa Code section 85.30.

That defendants are to be given credit for benefits previously paid.

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

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 4<sup>th</sup> day of March, 2015.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JGL/sam

**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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.