

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEE D. KLETT,	:		FILED
	:		AUG - 3 2015
Claimant,	:	File No. 5048253	WORKERS' COMPENSATION
vs.	:	ARBITRATION	
KINZE MANUFACTURING,	:	DECISION	
	:		
Employer,	:		
TRAVELERS CASUALTY & SURETY,	:		
	:		
Insurance Carrier,	:		
Defendants.	:	Head Note No. 1803, 1803.1	

STATEMENT OF THE CASE

Lee Klett filed a petition for arbitration seeking workers' compensation benefits from Kinze Manufacturing and Travelers Casualty & Surety.

The matter came on for hearing on June 24, 2015, before deputy workers' compensation commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1 through 8; defense exhibits A through C; as well as the sworn testimony of claimant, Lee Klett.

ISSUES

1. The issue is whether the claimant is entitled to any permanent partial disability benefits.
2. The nature of the disability is disputed. Claimant contends it is industrial, while the defendants allege the disability is limited to facial disfigurement/dental under section 85.34(2)(t).
3. The extent of the disability is also in dispute.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury which arose out of and in the course of his employment on July 30, 2012.
3. The injury is a cause of both temporary and permanent disability.
4. The elements which comprise the rate of compensation are stipulated. Claimant was married with 3 exemptions with gross earnings of \$783.00 per week at the time of injury. The parties contend the rate is \$510.00 per week.
5. Affirmative defenses have been waived.
6. Medical benefits are not in dispute.
7. The defendants are entitled to a credit for payment of 10 weeks of permanent partial disability benefits.

FINDINGS OF FACT

Lee Klett is a pleasant 35 year old man who lives in Sigourney, Iowa. At the time of the injury, he was married with two children. He is now divorced. Lee is a high school graduate who has worked with livestock for much of his working life. Other than some massage therapy courses, he has no additional formal education. He initially worked in hog confinements, caring for hogs for several years. He stopped working in confinements in approximately 2006. By his testimony, this was very heavy work. He then handled livestock at Cargill for five years.

In July 2012, Lee began working for Kinze Manufacturing (hereafter Kinze). Kinze builds farm equipment. Lee worked in small assembly, and performed a variety of different jobs. On July 30, 2012, Lee was working in a job known as "bust and grind" operating a press. At approximately 7 p.m., a piece of cast iron metal roughly the size of a candy bar shot back at him in the process and hit him in the right side of his mouth. The Safety Investigation form described Lee as "using hydraulic press to break off support welds, the support broke off and came back at me and struck me in the mouth." (Claimant's Exhibit 1)

Lee described this as shattering one tooth, pushing back a second and chipping and damaging a third. In addition, it broke the jaw bone above his teeth on the right side. He fell to his knees bleeding and was eventually taken to Iowa County Hospital. Iowa County Hospital informed him they could not help and referred him on to the University of Iowa Hospitals and Clinics. (Cl. Ex. 3) The emergency room report described the following injuries, "Maxillary front left incisor was chipped; maxillary front left incisor was depressed lateral to the right maxillary front incisor. The tooth was broken at gum line. There was a laceration sustained right upper lip at approximately 1.75 centimeter. It was closed and nonbleeding at the time . . . A minor headache." (Cl. Ex. 3)

At the University of Iowa Hospitals and Clinics, Lee was evaluated by Jason

Thompson, DDS, and Teresa Morgan, DDS. After a full evaluation and work up, a plan was developed. "32 y.o. patient with broken and non restorable tooth #7. We plan removal of tooth #7 today with local anesthesia. We will also splint tooth #8. Lacerations will be closed." (Cl. Ex. 4, p. 12)

In August, Lee began following up with Williamsburg Dental Health Clinic. (Cl. Ex. 5) Megan Grier, DDS, opined that "teeth #6, 7, 8, 9, 26 and possibly 5, 10, 24, 25, 27 were affected by the impact." (Cl. Ex. 5, p. 17) Lee's primary concern was avoiding future difficulties with his teeth and making sure that all of the damage was fixed. Over the next several months a plan was developed and carried out to repair Lee's teeth through the use of dental implants and other dental procedures. (Cl. Ex. 5, pp. 17-21) During the period of recuperation, Lee's life was inconvenienced significantly. It was more difficult to eat, talk and sing.

His treatment largely concluded by January 2013. (Cl. Ex. 5, p. 21) He has minimal ongoing symptoms. The parties had significant difficulty obtaining an impairment rating for this injury because the dental experts were unwilling to provide ratings and the occupational medicine doctors lack expertise for such. In any event, Mark Taylor, M.D., provided a 2 percent impairment rating. (Def. Ex. B, p. 10) In any event, the impairment or loss of function from this injury is minimal but not nonexistent. Likewise, his minimal permanent functional impairment has a minimal impact on his ability to earn wages in the competitive job market. He takes no medications for this condition. He has no follow up treatment scheduled. He has no restrictions and the condition does not appear to prevent his employment. When asked about his disability rating at hearing, Lee almost exclusively focused on the inconvenient recovery period while he was healing. He did testify that his teeth do not feel the same and he has to be careful with certain foods. I find Lee to be highly credible based upon both the substance and consistency of his testimony as well as his demeanor at hearing.

CONCLUSIONS OF LAW

The first question revolves around the nature of Lee's disability. The defendant's claim that Lee is entitled to permanency benefits under Iowa Code section 85.34(2)(t) (2013) for facial disfigurement. Defendants paid 10 weeks of benefits and allege that all benefits owed have been paid. The claimant argues that his disability should be evaluated industrially under section 85.34(2)(u) and has requested a finding of a 20 percent disability.

Section 85.34(2)(t) is applicable for "permanent disfigurement of the face or head which shall impair the future usefulness and earnings of the employee in the employee's occupation at the time of receiving the injury, . . ." *Id.* Lee's primary damage was to his mouth and teeth. He did have some minimal scarring around his mouth as well. He also had a broken jaw bone above his teeth. I find that this type of injury does not fit within the confines of 85.34(2)(t) and must, therefore, be evaluated under section 85.34(2)(u).

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.

I find that both the functional impairment and the industrial disability are minimal. Lee did have an inconvenient, painful and uncomfortable period of recuperation from this injury. He is not exactly the same as he was prior to the injury, however, the impact on his ability to earn wages in the competitive job market is limited or almost negligible. He has a 2 percent impairment rating and no permanent work restrictions. His occupational changes have been entirely unrelated to his injury. His condition does not appear to significantly impact his employability in the competitive job market. The reality is, if Lee had to look for a job in the competitive labor market tomorrow, this condition would not impact his search in any meaningful way. When asked why he disagreed with the payment made to him which was based upon a rating of 2 percent, Lee focused exclusively on the period of recuperation which was admittedly inconvenient, painful and otherwise unpleasant. Nevertheless, Lee really does not have any ongoing symptoms of disability which impact his employability since he recuperated in January 2013.

It is not unreasonable for Lee to feel as though he should be entitled to something additional for his pain and suffering and the inconvenience caused by this injury. He previously had healthy teeth and now he has implants. He is not exactly the same as he was before and this is reflected in his 2 percent rating. I suspect Lee would rather have his teeth back than 10 weeks of benefits. The workers' compensation system, however, is limited statutorily in the types of benefits which are allowed. In Lee's case, to prove entitlement to any benefits, he must prove that his condition somehow affects his employability. Iowa Code section 85.34(2)(u) (2013). No benefits are owed for inconvenience, pain and suffering or similar concepts which may be allowable in a tort system. I sympathize strongly with Lee, however, I am required to apply the law as it is. His loss of earning capacity is no more than two percent. All

benefits owed have been paid at this time.

The claimant is entitled to lifetime medical benefits for his condition. He seemed concerned both in the medical records and at hearing, about protecting the same. Defendants have not disputed this.

ORDER

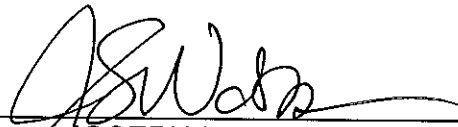
THEREFORE IT IS ORDERED

Claimant is entitled to no additional benefits.

Claimant is entitled to lifetime medical benefits for all future medical expenses causally related to his conditions outlined in this decision and the sequela of such conditions.

Each party shall pay their own costs.

Signed and filed this 3rd day of August 2015.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.