

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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CHRISTOPHER MAYNARD,

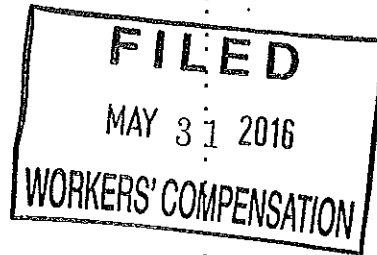
Claimant,

vs.

CITY OF DES MOINES,

Employer,  
Self-Insured,  
Defendant.

File Nos. 5052526, 5052655



ARBITRATION  
DECISION

Head Note No.: 1803

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STATEMENT OF THE CASE

Christopher Maynard, claimant, filed a petition in arbitration seeking workers' compensation benefits from the City of Des Moines, as a result of injuries he sustained on March 9, 2015 and June 4, 2015 that arose out of and in the course of his employment. This case was heard in Des Moines, Iowa, and fully submitted on June 6, 2016. The evidence in this case consists of the testimony of claimant, claimant's exhibits 1 through 3, and defendants' exhibits A through D.

ISSUES

For File No. 5052526 (Date of injury March 9, 2015):

The extent of claimant's disability.

For File No. 5052655 (Date of injury June 4, 2015):

The extent of claimant's disability.

For both cases the stipulations contained in the Hearing Report are accepted and incorporated into this decision as if fully set forth. The weekly rate for both injuries that is set forth in the Hearing Report is accepted and will be used in this decision.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Christopher Maynard, claimant, was 39 years old at the time of the hearing. He obtained a high school diploma in 1995. Claimant was in special needs classes in high school and had difficulty with reading, writing, math and science.

At the time of his graduation he was working as a busboy. In 1995 claimant started working part-time for the City of Des Moines, defendant. He worked part-time until he was made full-time in 2003. Claimant worked in the Parks Department in 1995 and 1996. He worked Street Maintenance Department from 1997 through 2003.

When claimant was hired full-time he worked in the Sewer Department. He continues to work in the Sewer Department. Claimant described his work in the Sewer Department as physically demanding. The job description of a Sewer Maintenance Worker confirms that there are significant physical aspects to his job. (Exhibit C, page 1)

I find the claimant's testimony credible based upon his demeanor at the hearing and the consistency with the evidence in the record.

On March 9, 2015 claimant fell at work. He fell while getting out of the back of a pick-up truck and injured his left shoulder. The claimant is right handed. (Ex. 3, p. 17) Claimant reported his injury and was seen at a clinic.

He was referred to Wesley Smidt, M.D., for his left shoulder and elbow. On March 19, 2015, Dr. Smidt questioned as to whether claimant had a rotator cuff tear and ordered an MRI. (Ex. 1, p. 1) The MRI showed in part:

3. Large full thickness tear involving the supraspinatus and infraspinatus tendons, centered at the critical zone. The affected muscles demonstrate mild edema without atrophy.
4. Subscapularis tendinopathy with partial thickness articular surface tear.

(Ex. 1, p. 4)

On April 13, 2015, Dr. Smidt recommended surgery to repair claimant's shoulder. (Ex. 1, p. 6) On April 29, 2015, Dr. Smidt performed surgery. His post-operative diagnosis was, "Left shoulder impingement with acromioclavicular arthrosis and massive rotator cuff tear." (Ex. 1, p. 7) Claimant was allowed to return to work with no use of the left arm on May 11, 2015. (Ex. 1, p. 10) On August 27, 2015, Dr. Smidt returned claimant to work without restrictions. Claimant testified that he asked Dr. Smidt not give him any restrictions as he felt it could jeopardized his job. Claimant said that Dr. Smidt had suggested a 25-pound lifting restriction. (Ex. 3, p. 27)

Claimant is able to do his work. He has figured out ways to work with his injured left arm, his employer is not providing accommodation and has not been asked to provide accommodation. Claimant feels his left arm now is 55 to 65 percent weaker now.

On September 22, 2015, Dr. Smidt wrote that claimant was at maximum medical improvement as of August 27, 2015 and that he had a 2 percent whole person impairment. (Ex.1. p. 17) Claimant testified that Dr. Smidt wanted to put restriction of 25 pounds for overhead lift.

On June 4, 2015, claimant had a 200-pound sewer access cover fall on claimant's right foot. He went to the emergency room and was referred to Julie Grundberg, DPM on June 6, 2015. His assessment was:

Assessment

4<sup>th</sup> and 5<sup>th</sup> metatarsal fractures at the neck of the right foot with minor displacement of the 4<sup>th</sup> and 5 mm displacement of the 5<sup>th</sup>, right foot.  
Workman's compensation injury on 6/4/15.

(Ex. 2, p. 2) Claimant was authorized to return to work, but could not do so as he was in a CAM boot for his fractures and work requires him to wear steel toe boots. On July 14, 2015, Dr. Grundberg returned claimant to work with no restrictions. (Ex. 2, p. 8) On October 23, 2015, Dr. Grundberg found claimant at maximum medical improvement (MMI) and also said claimant had no permanent restrictions. (Ex. 2, p. 14)

On December 17, 2015, Sunil Bansal, M.D., performed an independent medical examination. (Ex. D, pp. 1 – 12) Dr. Bansal noted a loss or range of motion in claimant's left shoulder. He assigned an 8 percent impairment rating to the body as a whole. (Ex. D, p. 8) Dr. Bansal found claimant had a 4 percent lower extremity impairment to his right foot. (Ex. D, p. 9) Dr. Bansal would not provide restrictions for claimant's current job with the city, but recommended that if claimant left his job he should limit lifting with his left shoulder to no greater than 25 pounds or 15 pounds frequently. (Ex. D, pp. 11, 12)

Claimant is at work performing the same job he performed before his injuries. His foot injury is minor. He did have a massive tear in his shoulder and has a limited range of motion.

I find that claimant has a 4 percent permanent impairment to the left lower extremity for his right foot injury. Claimant has self-accommodated his work for the City of Des Moines. He has lost range of motion with his left arm, his left arm is weaker and he cannot use it as well as he could before the injury. The claimant has a 20 percent loss of earning capacity.

### CONCLUSIONS OF LAW

The primary issue in these cases is the extent of claimant's injuries. I find Dr. Bansal's report regarding ratings and limitation more convincing than Dr. Smidt and Dr. Grundberg reports. Neither Dr. Grundberg nor Dr. Smidt appeared to provide the testing and examinations in order to evaluate claimant under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Bansal's IME was specifically

designed to evaluate claimant as to impairment under the AMA Guides. Dr. Bansal's evaluation is more thorough than both Dr. Smidt and Dr. Grundberg.

Claimant has an injury to the body as a whole for his left shoulder injury.

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.

As detailed above claimant is still working in the Sewer Department for the City of Des Moines. I found his testimony convincing because of his strong desire to keep working he asked Dr. Smidt not to impose restrictions.

I have considered that claimant is currently employed with the City of Des Moines in making an award in this case. Claimant appears to be extremely motivated to perform his job for the city. Claimant has a very limited education. His most relevant work has involved physical labor. He had a massive tear and five screws were used in the surgery. Having found that claimant suffered a 20 percent loss of earning capacity; I find that claimant has a 20 percent industrial loss. This entitles claimant to 100 weeks of permanent partial disability benefits at the rate of \$660.28, commencing on August 27, 2015.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the

functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

I found that claimant has a 4 percent impairment to his right foot. While the injury is slight, it has caused permanent functional loss. Claimant is entitled to 8.8 weeks of permanent partial disability benefits for the right lower extremity injury. These benefits commence on October 23, 2015 at the weekly rate of \$713.38.

Defendant has agreed to pay costs that were attached to the hearing report.

ORDER

For File No. 5052526 (Date of injury March 9, 2015):

Defendant shall pay claimant one hundred (100) weeks of benefits at the weekly rate of six hundred sixty and 28/100 dollars (\$660.28) commencing August 27, 2015.

For File No. 5052655 (Date of injury June 4, 2015):

Defendant shall pay claimant eight point eight (8.8) weeks of benefits at the weekly rate of seven hundred thirteen and 38/100 dollars (\$713.38) commencing October 23, 2015.

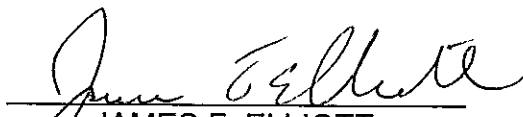
For both File Nos. 5052526 and 5052655:

Defendant shall pay costs as agreed to during the hearing.

Defendant shall pay past due amounts in a lump sum with interest as provided by law.

Defendant shall file Subsequent Reports of Injury (SROI) as required by this agency.

Signed and filed this 31<sup>st</sup> day of May, 2016.

  
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JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JFE/kjw

**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.