

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

<p>MICHELE BAILEY, Claimant, vs. ALLSTEEL, INC., Self-Insured Employer, SECOND INJURY FUND OF IOWA, Defendants.</p>	<p>File No. 19004619.01</p> <p>RULING ON APPLICATIONS FOR REHEARING BY CLAIMANT & EMPLOYER</p>
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On April 7, 2022, the agency issued an arbitration decision in this case finding, among other things, claimant Michele Bailey is entitled to permanent partial disability (PPD) benefits for industrial disability from defendant-employer Allsteel, Inc., under Iowa Code section 85.34(2)(v). Under rule 876 IAC 4.24, Bailey applied for reconsideration. On April 11, 2022, Allsteel did the same. Bailey resisted Allsteel's application, Allsteel has not responded to Bailey's application, and the Second Injury Fund of Iowa (Fund) has not filed a response to either application.

1. ALLSTEEL'S APPLICATION.

Rule 876 IAC 4.19(3)(f) requires the parties to a contested case before the agency to “prepare and file a joint hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy commissioner who presides at the hearing.” The agency “cannot consider the hearing report in a vacuum.” Staff Mgmt. v. Jimenez, 839 N.W.2d 640, 656 (Iowa 2013). The parties to a case may “put different interpretations on a stipulation.” Graen’s Mens Wear, Inc. v. Stille-Pierce Agency, 329 N.W.2d 295, 300 (Iowa 1983). The agency must “consider the stipulation ‘with reference to its subject matter and in light of the surrounding circumstances and the whole record, including the state of the pleadings and issues involved.’” Jimenez, 839 N.W.2d at 656–57.

In this case, there are two defendants, each with potential individual liability: Allsteel, the employer, and the Fund. Iowa Code section 85.64 makes an employer liable for “the degree of disability” resulting from the work injury that caused the second qualifying loss for purposes of Fund benefits. The Fund is then liable after payment of benefits by the employer for “compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.” Iowa Code § 85.64(1). Consequently, the

question of liability for permanent partial disability (PPD) benefits necessitates consideration of both Allsteel and the Fund's defenses.

In the petition, Bailey alleged injuries to both arms and her "whole body" and identified "industrial disability" as a disputed issue. In the Fund's answer, it denied the applicability of the Second Injury Fund Act, Iowa Code sections 85.63 through 85.69. Thus, the petition and the Fund's answer gave Allsteel notice and a chance to mount a defense with respect to the permanent disability resulting from Bailey's alleged injuries for which it is liable. See Larson Mfg. Co. Inc. v. Thorson, 763 N.W.2d 842, 853 (Iowa 2009); see also Drake Univ. v. Davis, 769 N.W.2d 176, 181–82 (Iowa 2009).

In Allsteel's application for rehearing, it raises the hearing report's stipulations regarding Bailey's injuries and the permanent disability they caused. The parties stipulated Bailey sustained work injuries on June 7, 2019, that caused permanent disability. Hrg. Rpt. §§ 2(a), 3(b). In Section 5 of the Hearing Report, the parties indicated:

- Bailey's entitlement to PPD benefits is disputed.
- They dispute whether Bailey is entitled to PPD benefits for an eight percent functional impairment to each arm and a thirteen percent functional impairment to her right shoulder. Id. at § 5(a).

Further, the parties stipulated, "If the injury is found to be a cause of permanent disability, [t]he disability is a scheduled member disability to the bilateral arms and right shoulder." Id. at § 5(b). They indicated it was disputed whether the disability is an industrial disability "for purposes of the Fund Claim." Id. at § 5(b). The parties also disputed the commencement date for benefits depending on what injuries were found to result in permanent disability.

This case went to hearing on August 17, 2021. The agency issued an arbitration decision in Anderson v. Bridgestone Americas, Inc. and Second Injury Fund of Iowa, File No. 5067475, on September 2, 2021. The parties' post-hearing briefs were due on September 24, 2021. Bailey's post-hearing brief did not discuss the Anderson decision. Neither did Allsteel's.

In contrast, the Fund's post-hearing brief cited to Anderson and argued that if the agency found Bailey sustained permanent disabilities to her arms and shoulder, permanent disability must be determined based on lost earning capacity under Iowa Code section 85.34(2)(v). The Fund further contended Allsteel was liable for such industrial disability, not the Fund. While the parties' respective positions in this case were admittedly ill-defined at the time of hearing and the agency issued a decision that implicated their respective positions between the date of hearing and the due date of post-hearing briefs, it is plain that the Fund did not believe it had stipulated away its defense on liability with respect to the applicability of section 85.34(2)(v) to disability caused by Bailey's alleged work injuries.

On January 25, 2022, the Commissioner issued an appeal decision affirming and adopting the arbitration decision as final action in Anderson. The agency filed the arbitration decision in this case on April 7, 2022. In it, the undersigned found Bailey's injuries to her bilateral arms and right shoulder caused permanent disability. The undersigned found the Fund's argument persuasive regarding the application of section 85.34(2)(v) persuasive under Anderson. Because permanent disability is measured by lost earning capacity under section 85.34(2)(v), the undersigned applied an industrial disability analysis to determine Bailey's entitlement to PPD benefits and found Allsteel liable.

Allsteel applied for rehearing because of the arbitration decision's application of Iowa Code section 85.34(2)(v). The application contains no discussion of whether the presiding deputy must apply the holdings off agency decisions issued after the date of the hearing in a case. It argues the parties' stipulation in Section 5(b) of the hearing report that the injuries to Bailey's bilateral arms and shoulder caused "scheduled member disability" means that "any award of permanency benefits should have been rendered pursuant to Iowa Code sections 85.34(2)(t) for the bilateral carpal tunnel (arms) and 85.34(2)(n) for the right shoulder, respectively. Industrial disability is inapplicable pursuant to the parties' stipulation on the [h]earing [r]eport." Allsteel contends the arbitration decision's application of section 85.34(2)(v) violated its due process rights.

Bailey resisted Allsteel's application. Bailey noted Allsteel cited to Robinson v. City of Des Moines, File No. 5035076 (App. January 25, 2013), in which the Commissioner ruled "stipulations entered into by parties should be binding so long as they are not erroneous as a matter of law." Bailey contends the Commissioner's appeal decision in Anderson, which was issued after the submission of post-hearing briefs by the parties, makes the parties' stipulation legally erroneous and non-binding on the agency. Consequently, according to Bailey, Allsteel's application should be rejected.

Courts have long recognized "a stipulation does not foreclose legal questions." Case v. Los Angeles Lumber Prod., 308 U.S. 106, 114 (1939). "Stipulations as to the law do not settle . . . what the law is, and consequently are of no validity." Freeman v. Ernst & Young, 541 N.W.2d 890, 894 (Iowa 1995) (quoting State v. Aumann, 236 N.W.2d 320, 322 (Iowa 1975) and citing 73 Am.Jur.2d Stipulations § 5, at 539 (1974)). "Although litigants may stipulate to facts, they may not stipulate to what the law requires, or to the law that will apply to a given state of facts." 83 C.J.S. Stipulations § 28. In workers' compensation cases before the agency, the Iowa Supreme Court has held "it is the [C]ommissioner's duty to determine the application of law to the contested facts, and this determination is not within the parties' power by stipulation." Jimenez, 839 N.W.2d at 656 (citing Mycogen Seeds v. Sands, 686 N.W.2d 457, 467 (Iowa 2004) and Iowa Supreme Ct. Att'y Disciplinary Bd. v. Gailey, 790 N.W.2d 801, 804 (Iowa 2010)).

The case law is clear. A stipulation with respect to the application of law to facts is not binding on the agency. It is axiomatic that the agency applying the law to the facts of a case independent of a stipulation does not infringe on a party's right to due process.

Moreover, even assuming *arguendo* the parties can dictate how the agency applies the law in a case, the stipulation that Bailey's injuries caused "scheduled member disability" cannot reasonably be construed to preclude the agency applying industrial disability analysis under section 85.34(2)(v). The Fund signed onto the hearing report that the undersigned issued an order adopting. But the Fund clearly did not believe the parties had entered into a stipulation regarding how chapter 85 applied in this case, as evidenced by its defense against liability. The Fund argued that if the agency found Bailey sustained permanent disability to her arms, Allsteel was liable for any industrial disability under section 85.34(2)(v). Thus, there was no meeting of the minds between the parties on the application of the law to the facts in this case.

Allsteel prays for the undersigned to "find the at-issue injuries to be 'scheduled member' injuries pursuant to the stipulation(s) via the [h]earing [r]eport and to award permanency benefits accordingly." Granting Allsteel's application would require ignoring the Fund's defense on liability with respect to Anderson as well as the text of sections 85.34(2)(v) and 85.64(1). This would place the burden of paying PPD benefits for permanent disability caused by injuries arising out of and in the course of Bailey's employment with Allsteel on the Fund. Even if the parties could dictate by stipulation the application of the law in a case before the agency, the parties' stipulations in this case cannot reasonably be construed to dictate such a result.

For these reasons, the parties' stipulations regarding the application of the Iowa Workers' Compensation Act to the facts in this case are not binding on the agency. The arbitration decision's application of Iowa Code section 85.34(2)(v) is not a violation of Allsteel's right to due process. Allsteel's application for rehearing is denied.

2. BAILEY'S APPLICATION.

Bailey moved for rehearing on the question of industrial disability because of an incorrect calculation of functional disability using the combined values chart in the Fifth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (Guide). According to Bailey's motion, the undersigned miscalculated the combined value of her permanent functional impairments. Neither Allsteel nor the Fund responded to Bailey's motion.

Bailey is correct. The arbitration decision incorrectly combined her permanent functional impairments. Using the combined values table on pages 604 and 605 of the Guides, Bailey's seven percent impairment must be combined with her four percent impairment of one arm. This results in a combined value of eleven percent that must in turn be combined with the four percent impairment of her other arm. Doing so in accordance with the table gives Bailey a combined functional impairment of fifteen percent.

Using fifteen percent, the correct combined value for Bailey's functional impairment, and the previously articulated analysis of the other factors used in an industrial disability analysis, the weight of the evidence establishes an industrial disability of twenty-two percent. Five hundred multiplied by twenty-two percent is one hundred ten weeks. Bailey is entitled permanent partial disability (PPD) benefits for one hundred ten weeks in the amount of four hundred ninety-five and 6/100 dollars per week.

ORDER

THEREFORE, IT IS ORDERED:

- 1) Allsteel's application for rehearing is DENIED.
- 2) Bailey's application for rehearing is GRANTED.
- 3) The arbitration decision is amended with respect to its permanent disability analysis as set forth above.
- 4) The defendants shall pay to Bailey permanent partial disability (PPD) benefits for one hundred ten (110) weeks in the amount of four hundred ninety-five and 6/100 dollars (\$495.06) per week.

Signed and filed this 28th day of April, 2022.



BEN HUMPHREY

Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Nate Willems (via WCES)

Edward Rose (via WCES)

Jonathan Bergman (via WCES)