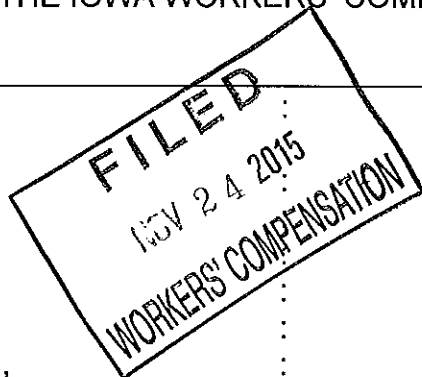


BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CARRIE SIEPKA,
Claimant,

vs.

TYSON FOODS, INC.,
Employer,
Self-Insured,
Defendant.



File No. 5049275

ARBITRATION
DECISION

Head Note No. 1803

STATEMENT OF THE CASE

The claimant, Carrie Siepka, filed a petition for arbitration and seeks workers' compensation benefits from Tyson Foods, Inc., a self-insured employer. The claimant was represented by Willis Hamilton. The defendant was represented by Deena Townley.

The matter came on for hearing on October 1, 2015, before Deputy Workers' Compensation Commissioner Joe Walsh in Sioux City, Iowa. The record in the case consists of claimant's exhibits 1 and 2. The claimant testified under oath at hearing. Amy Pedersen was appointed the official reporter and custodian of the notes of the proceeding.

ISSUE

The parties submitted the following issue for determination:

What is the extent of the claimant's right leg disability?

STIPULATIONS

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

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury which arose out of and in the course of employment on July 22, 2012.

3. Temporary disability/healing period and medical benefits are no longer in dispute.
4. The commencement date for any permanent disability benefits is July 4, 2014.
5. The parties agree that the injury caused both temporary and permanent disability.
6. The parties further agree the disability is to the claimant's right leg.
7. The weekly rate of compensation is \$356.16.
8. Defendant has paid and is entitled to a credit of 22 weeks of compensation (permanent partial disability).
9. Affirmative defenses have been waived.
10. Medical benefits are no longer in dispute.

FINDINGS OF FACT

Claimant is a pleasant, 32-year-old woman from Larrabee, Iowa. She graduated from Cherokee High School. Carrie testified credibly in all regards. Her testimony was consistent with the medical records in evidence, as well as her prior sworn deposition testimony. (Claimant's Exhibit 2) She has taken some college coursework. Carrie has an interesting work history, which is not relevant to this case. She moved back to Iowa from Texas in approximately 2010 and began working for Tyson Foods in Cherokee, Iowa, as a floater. As a floater, her job assignments rotated based upon the needs of the employer.

On July 22, 2012, Carrie suffered an injury which arose out of and in the course of her employment. She essentially tripped on a grate and twisted her right knee. She had suffered a previous injury to the right knee which had healed up nicely. She immediately experienced pain and swelling after the July work injury. She was initially treated conservatively by an occupational medicine specialist until an MRI in August 2012. (Cl. Ex. 1, p. 1) After the MRI, she was referred to Joshua Harmann, M.D. In October 2012, Dr. Harmann tried an injection. (Claimant's Exhibit 1, page 2) She also attempted further physical therapy.

In November 2012, Dr. Harmann attempted another steroid injection. By this time, the diagnosis was right knee patellar chondromalacia. (Cl. Ex. 1, p. 3) On January 10, 2013, Dr. Harmann noted that Carrie had attempted several different therapies to resolve her condition but nothing had helped. He recommended surgery.

Carrie's treatment stalled for a period of time due to a pregnancy. (Cl. Ex. 1, p. 5) When she resumed treatment she was referred to Ryan Meis, M.D. By that time,

she was no longer working for Tyson. Dr. Meis recommended surgery as well, albeit a different surgical option. (Cl. Ex. 1, p. 8) He performed arthroscopic surgery on July 22, 2013. He provided a thorough postoperative plan and kept her on significant restrictions for a period of time. (Cl. Ex. 1, p. 10) She was prescribed an immobilizer.

Carrie continued to follow up with Dr. Meis and physical therapy through the summer and fall of 2013. Initially, she was improving and progressing well, although she seemed to stall and regress by November 2013. (Cl. Ex. 1, p. 19) She attempted another steroid injection at that time. On December 30, 2013, Dr. Meis placed her at maximum medical improvement. "It was conveyed to Carrie once again that her knee will never be "normal," due to the articular cartilage damage present, however, she should be very functional at this point in time." (Cl. Ex. 1, p. 21) Dr. Meis sent her for a functional capacity evaluation (FCE) with Physical Therapy Specialists, P.C. The FCE placed her in the light work classification and limited her bending, squatting, kneeling, stair climbing, ladder climbing, crawling and lifting. "Ms. Siepka reports increased pain in her knee with weight bearing and direct stress. Her greatest limitations are found with squatting and lifting from the floor." (Cl. Ex. 1, p. 24) Dr. Meis provided a functional impairment rating of 10 percent per the AMA Guides, 5th edition. (Cl. Ex. 1, p. 25)

Carrie testified that she contacted a Tyson official, Jean Headquist, after the conclusion of her treatment and described her ongoing pain and symptoms. She stated that she was never provided followup treatment. She testified that she is unable to walk for more than a mile. Her knee still swells and she has to be cautious with it. She has to be very careful on stairs and usually takes them one at a time. She still feels a grinding or catching sensation, and when she sits down she puts her leg up. She is able to work.

CONCLUSIONS OF LAW

The only question submitted is the nature and extent of claimant's right leg injury. The parties have stipulated that Carrie suffered a right leg injury that has resulted in some permanent partial disability.

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).

The disability in question is to Carrie's right leg, and the compensation is dictated by Iowa Code section 85.34(2)(o) (2015). The defendant argues that the only rating in the record should be utilized to set her compensation. The claimant argues her functional loss exceeds 10 percent.

In making an assessment of the loss of use of a scheduled member, the evaluation is not limited to the use of a standardized guide such as the AMA Guides to the Evaluation of Permanent Impairment. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). Notwithstanding suggestions to the contrary in the AMA Guides, this agency has a long history of recognizing that the actual loss of use which is to be compensated is the loss of use of the body member in the activities of daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions, and other pertinent factors may all be considered when determining scheduled disability. Bergmann v. Mercy Medical Center, File Nos. 5018613 & 5018614, (App. March 14, 2008); Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Community Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Bieghler v. Seneca Corporation, File No. 979887 (Arb. February 8, 1994); Ryland v. Rose's Wood Products, File No. 937842 (Arb. January 13, 1994); Smith v. Winnebago Industries, File No. 824666 (Arb. April 2, 1991).

I find that the evidence in the record establishes a 10 percent loss of use of the claimant's right leg. Dr. Meis was the treating physician in this case. He actually performed surgery on her and provided all of the followup care. His rating appears, in all respects, to be reasonable. It is the only rating in the record provided pursuant to the AMA Guides, 5th edition, which has been adopted as a guide for determining an injured worker's extent of functional disability. 876 IAC section 2.4.

I have considered the claimant's arguments that the disability exceeds 10 percent, and there are some compelling factors; in particular, Carrie's ongoing symptoms are significant and severe. I find this is a close case. She has significant difficulties with activities of daily living, such as walking and stair climbing, which could indicate a higher functional loss. There is simply not enough supporting evidence in this file to justify a deviation from the treating surgeon's rating. The greater weight of the evidence, therefore, supports a finding of a 10 percent functional disability. This entitles the claimant to 22 weeks of benefits under section 85.34(2)(o), which has already been paid by the defendant in this case. The claimant is entitled to no additional benefits.

While it was not formally requested in the hearing report, Carrie clearly requested the opportunity to return to a physician to check on her right knee. Carrie is entitled to lifetime medical benefits for her right leg condition. If a return appointment is requested, it should be honored.

ORDER

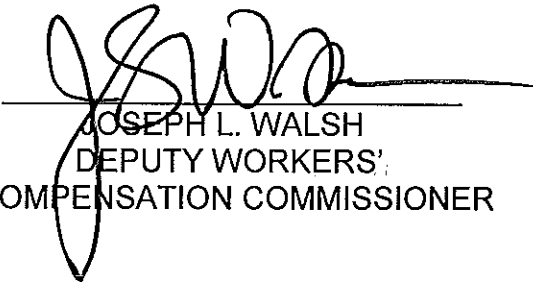
THEREFORE IT IS ORDERED:

The claimant is entitled to no further permanent partial disability benefits beyond the rating of Dr. Meis.

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

Costs are taxed to defendant.

Signed and filed this 24th day of November, 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.