

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CRAIG REITER,

Claimant,

vs.

INCORPORATED CITY OF REMSEN,
(REMSEN UTILITIES),

Employer,

and

EMC INSURANCE,

Insurance Carrier,
Defendants.

FILED

OCT 25 2018

WORKERS COMPENSATION

File No. 5059413

ARBITRATION

DECISION

Head Note Nos.: 1402.40, 1803

STATEMENT OF THE CASE

Craig Reiter, claimant, filed a petition in arbitration seeking workers' compensation benefits from Incorporated City of Remsen, employer and EMC Insurance, insurance carrier as defendants. Hearing was held on September 5, 2018 in Sioux City, Iowa.

Claimant, Craig Reiter, was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE6.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The parties submitted post-hearing briefs on September 19, 2018.

Stipulations

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

2. Claimant sustained an injury on July 18, 2017 which arose out of and in the course of employment.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The alleged injury is a cause of permanent disability during a period of recovery.
5. The disability is a scheduled member disability to the shoulder.
6. The commencement date for permanent partial disability benefits is March 15, 2018.
7. At the time of the alleged injury claimant's gross earnings were \$1,338.23 per week, he was single and entitled to 3 exemptions. His weekly workers' compensation rate is \$790.07.
8. Prior to hearing, claimant was paid 24 weeks of compensation at the rate of \$790.07 per week.

ISSUES

The parties submitted the following issues for resolution:

1. The extent of permanent disability claimant sustained as a result of the stipulated July 18, 2017 work injury.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

On April 5, 2018, Jay T. Strittholt, M.D., issued a letter to the insurance carrier. In that letter Dr. Strittholt assigned an impairment rating to Mr. Reiter. Dr. Strittholt stated, "I do feel based on his residual weakness, that he sustained a 10% impairment of his upper extremity." (JE1, p. 49)

On May 16, 2018, Sunil Bansal, M.D., issued a report to claimant's counsel. In that report Dr. Bansal assigned an impairment rating to Mr. Reiter. He stated:

With reference to the **AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (Guides)**, specifically Table 16-35, he is assigned an 8% upper extremity impairment for 40% loss of flexion strength and 5% upper extremity impairment for 40% loss of abduction strength. **Total is 13% upper extremity impairment or 8% whole person.**

(JE4, p. 10)

I find that Dr. Bansal's impairment rating utilizes The Guides to The Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association

("Guides"). I further find that Dr. Strickholt's impairment rating does not indicate that he utilized the Guides.

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 only dispute in this case is the amount of permanent partial disability benefits claimant is entitled to receive. The date of injury in this case is July 18, 2017. Therefore, this case must be decided under the "new law" which was enacted in 2017. Under the "new" Iowa Code section 85.34(2)(n), the shoulder is now a scheduled member injury and permanent partial disability compensation shall be paid based on a maximum of four hundred weeks.

The "new law" also states:

In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34(2)(x)(2017).

This agency has adopted The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association "for determining the extent of loss or percentage of impairment for permanent partial disabilities and payment of weekly compensation for permanent partial scheduled injuries under Iowa Code section 85.34(2). . . ." 876 IAC 2.4.

I found that the only rating in this case that utilized the Guides is the rating from Dr. Bansal. Because Dr. Bansal's rating is the only rating based on the Guides, this is the rating that will be applied in this case. Dr. Bansal assigned 13 percent impairment to the upper extremity or 8 percent of the whole person.

The next issue that must be determined is whether to apply the upper extremity or whole person rating to the 400-week schedule set forth in Iowa Code section 85.34(2)(x)(2017). The plain language of the statute is silent on which rating is to be utilized. Claimant argued in favor of Dr. Bansal's 13 percent of the upper extremity rating. Defendants argued in favor of Dr. Stritholt's 10 percent of the upper extremity

rating. Neither side presented any argument on whether the upper extremity or whole person rating should be applied. The table that Dr. Bansal relies on to assign impairment, Table 16-35, is contained in Chapter 16 of the Guides. Chapter 16 is entitled, "The Upper Extremities." Additionally, for a single scheduled member injury, this agency has historically not utilized a whole person impairment rating. Thus, I conclude it is appropriate to apply the upper extremity impairment rating for this shoulder injury.

Permanent partial disability compensation for the shoulder shall be paid based on a maximum of 400 weeks. Having adopted Dr. Bansal's 13 percent impairment rating, I conclude that Mr. Reiter has shown by a preponderance of the evidence that he is entitled to 52 weeks of permanent partial disability benefits.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of seven hundred ninety and 07/100 dollars (\$790.07).


Defendant shall pay fifty-two (52) weeks of permanent partial disability benefits commencing on the stipulated commencement date of March 15, 2018.

Defendant shall be entitled to credit for all weekly benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 25th day of October, 2018.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EQP/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.