

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JAMES GOODLETT,

Claimant,

vs.

SYSCO IOWA, INC.,

Employer,

and

AMERICAN ZURICH INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**  
APR 12 2019  
WORKERS' COMPENSATION

File No. 5059963

ARBITRATION

DECISION

Head Note No.: 1803

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STATEMENT OF THE CASE

James Goodlett, claimant, filed a petition in arbitration seeking workers' compensation benefits from Sysco Iowa, Inc. (Sysco) and its insurer, American Zurich Insurance Company as a result of an injury he sustained on August 19, 2016 that arose out of and in the course of his employment. This case was heard in Des Moines, Iowa and fully submitted on April 10, 2019. The evidence in this case consists of the testimony of claimant, Joint Exhibits 1 – 4, Claimant's Exhibits 1 – 2 and Defendants' Exhibits A, B, D and E. No briefs were submitted.

The parties have stipulated that claimant suffered an injury to his left upper extremity on August 19, 2016 and that claimant's injury is to a scheduled member. As such, this decision will not detail the claimant's educational and vocational histories.

ISSUES

1. The extent of claimant's disability.
2. Whether claimant is entitled to assessment of the cost of an independent medical examination.

3. Assessment of costs.

STIPULATIONS

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.

FINDINGS OF FACT

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

James Goodlett, claimant, was 41 years old at the time of the hearing. He was married and has four children. At the time of the hearing claimant was working as a music director in a church where he supervises around nine volunteer musicians. Claimant also works part-time doing delivery of meals from restaurants. (Exhibit A, page 7)

Claimant began his work at Sysco on August 6, 2016. Claimant worked as a delivery driver. Claimant drove an eighteen wheeler and would deliver food to restaurants. On August 19, 2016 claimant was unloading a pallet from his truck. The pallet was in an incline and rolled pinning his hand against a brick wall. (Joint Exhibit 1, p. 9; Ex. E, p. 6)

Claimant called his manager who drove claimant to the emergency department at Iowa Methodist Hospital in Des Moines.

Claimant was admitted to the hospital and on August 20, 2016 Mark Isaacson, D.O. performed an, "Open reduction and internal fixation of left radial shaft fracture with stabilization of distal radioulnar joint utilizing a splint." (JE 1, p. 3) Dr. Isaacson's postoperative diagnosis was "Left Radius Fracture." (JE. 1, p. 4) Claimant was discharged on August 21, 2016.

Claimant was off work from Sysco for about four months and returned to work in December 2016 at full duty. Claimant testified that he had difficulty keeping up with the pace of work when he returned. Claimant was terminated by Sysco on March 8, 2017. Sysco terminated claimant based upon their belief that claimant violated company policies. (Ex. B, p. 1)

Claimant testified that he went to physical therapy approximately 12 – 15 times. The physical therapy discharge note of December 22, 2016 stated that claimant met all of his physical therapy goals. (JE. 3, p. 2)

On December 27, 2016 Dr. Isaacson released claimant to return to work with a 30-pound lifting restriction for 30 days and limited repetitive grasping and pulling with the left arm. He imposed no restrictions after January 27, 2017. (JE. 2, pp. 10, 14) Dr. Isaacson found claimant at maximum medical improvement (MMI) as of January 27, 2017. (JE. 2, p. 15)

On January 24, 2017 Dr. Isaacson provided a disability rating on the claimant. Dr. Isaacson noted claimant was still experiencing some pain in his left arm and claimant was concerned that his left arm was weaker than his right (the parties agreed that the date of this letter was January 24, 2017, not the January 24, 2016 date on the letter.) (JE. 2, p. 1) Dr. Isaacson wrote,

I am unable to associate a specific impairment rating based on his strength deficit. According to the guidelines of this textbook, strength assessment cannot be applied until at least a year has passed from his injury or surgery, which would not be until next August. Additionally, I do think he will regain additional strength as he continues to progress with therapy as well as return to normal activities.

I do not anticipate Mr. Goodlett having significant long term deficits secondary to his injury and surgical fixation. However, I cannot completely rule out some strength deficit secondary to the trauma from the injury and his surgery that may persist in this left upper extremity compared to the right side. Currently, however, I think he has reached maximal medical improvement as of today's date, which would be January 24, 2017. I do not have any permanent partial disability at this point.

I think Mr. Goodlett can return to his job with no restrictions as of January 27, 2017. He may require an occasional anti-inflammatory medication as he continues to regain full strength in the left upper extremity. This rating is produced in accordance with AMA Guidelines and under Iowa law.

(JE. 2, pp. 1, 2)

Claimant credibly testified Dr. Isaacson did not use any device to measure his grip strength or range of motion. For grip strength claimant testified that Dr. Isaacson had him grip Dr. Isaacson's fingers.

On February 21, 2017, claimant returned to Dr. Isaacson with complaints of pain. Dr. Isaacson noted he had completed a partial impairment disability rating when he released claimant to work. (JE. 2, p. 16) On January 27, 2017 Dr. Isaacson completed a form that stated claimant had no impairment and could return to work with no restrictions. (JE. 2, pp. 18, 19)

Sunil Bansal, M.D. performed an independent medical examination (IME) on July 7, 2017 and March 4, 2019. (JE. 4, p. 1) Dr. Bansal's diagnosis was:

Left closed radius and ulna fractures.

Status post open reduction and internal fixation of the left radius shaft fracture, with stabilization of the distal radioulnar joint utilizing a splint.

(JE. 4, p. 7) Dr. Bansal measured claimant's grip strength with a dynamometer. (JE. 4, p. 7) Dr. Bansal agreed that claimant was at MMI as of January 24, 2017. Dr. Bansal provided a rating of ten percent to the upper extremity. (JE. 4, p. 8) Dr. Bansal recommended no lifting greater than 30 pounds with the left arm. (JE. 4, p. 9) Dr. Bansal charged claimant \$2,584.00 for the IME. (JE. 4, p. 10)

### CONCLUSIONS OF LAW

The parties agreed that claimant had an injury to his left arm that arose out of and in the course of his employment at Sysco. The primary dispute is the extent of his disability. Dr. Isaacson provided a zero percent impairment rating. Dr. Bansal provided a ten percent left upper extremity rating.

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).

In this case, Dr. Isaacson did not use a dynamometer to measure grip strength. Dr. Isaacson stated that his rating was a partial rating due to the fact that a year had not passed from the injury.

Dr. Bansal measured the claimant's loss of grip strength and first examination was closer to the one-year anniversary of claimant's injury than Dr. Isaacson's examination.

I find the evaluation and rating provided by Dr. Bansal to be more convincing than Dr. Isaacson's rating. Claimant has a loss of function in his left arm. The claimant did not prove entitlement to more than the ten percent rating to his left arm

Claimant is awarded 25 weeks of permanent partial disability for his August 19, 2016 work injury. (250 x 10% = 25).

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

Dr. Isaacson was a physician retained by the defendants. He issued a rating on January 24, 2017. Dr. Bansal's IME occurred subsequent to Dr. Isaacson's rating. I find the fee charged by Dr. Bansal to be reasonable.

Defendants shall pay claimant \$2,584.00 for the IME costs.

I also award claimant the cost of the filing fee pursuant to 876 IAC 4.33.

#### ORDER

Defendants shall pay claimant twenty-five (25) weeks of permanent partial disability at the weekly rate of seven hundred thirty-four and 18/100 dollars (\$734.18) commencing December 27, 2016.

Defendants shall have credit for benefits previously paid.

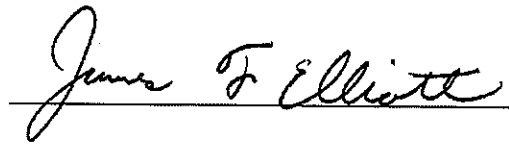
Defendants shall pay claimant two thousand five hundred eighty-four and 00/100 dollars (\$2,584.00) for IME expenses.

Defendants shall pay claimant one hundred and 00/100 dollars (\$100.00) for costs.

Defendants 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 Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

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

Signed and filed this 12<sup>th</sup> day of April, 2019.



JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Steve Hamilton  
Attorney at Law  
12345 University Ave., Ste. 309  
Clive, IA 50325  
[steve@hamiltonlawfirm.com](mailto:steve@hamiltonlawfirm.com)

Valerie A. Landis  
Attorney at Law  
2700 Grand Ave., Ste. 111  
Des Moines, IA 50312  
[vlandis@hhlawpc.com](mailto:vlandis@hhlawpc.com)

JFE/sam

**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.