

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON BROWN,	:	
	:	
Claimant,	:	File No. 5062211
	:	
vs.	:	ARBITRATION DECISION
	:	
SECOND INJURY FUND OF IOWA,	:	
	:	
Defendant.	:	Head Note No.: 3202

STATEMENT OF THE CASE

Jason Brown, claimant, filed a petition for arbitration against the Second Injury Fund of Iowa. This case came before the undersigned for an arbitration hearing on July 2, 2019. Claimant requested a continuance at that hearing, which was granted. Hearing was resumed on August 14, 2019.

The evidentiary record includes Joint Exhibits 1 through 8. Defendant, Second Injury Fund, objected to introduction of Joint Exhibit 9, and it was excluded from the evidentiary record. Claimant offered Claimant's Exhibits 1 and 2, which were received into the record. The Second Injury Fund offered Defendant's Exhibits A through F, which were also received into the record.

Claimant testified on his own behalf. No other witnesses were called to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested an opportunity to file post-hearing briefs. Their request was granted. The Second Injury Fund filed a post-hearing brief on September 16, 2019, at which time the case was considered fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the claimant sustained a qualifying first injury to entitle him to Second Injury Fund benefits.
2. Whether claimant sustained an injury on May 14, 2015 that arose out of and in the course of his employment and would serve as a qualifying second injury for purposes of qualifying claimant for Second Injury Fund benefits.

3. The extent of claimant's entitlement to permanent disability benefits.

FINDINGS OF FACT

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

Jason Brown asserts a claim against the Second Injury Fund of Iowa. He alleges a first qualifying injury to his right hand with an injury date of June 1, 2010. He alleges a second qualifying injury while in the employment of Fairfield Castings on May 14, 2015. Specifically, claimant alleges he sustained injury to his bilateral hands on or about May 14, 2015 as a result of repetitive motion, or cumulative injury, resulting in bilateral carpal tunnel syndrome. Claimant entered into an agreement for settlement with Fairfield Castings for the May 14, 2015 injury. (Claimant's Exhibit 2)

The Second Injury Fund disputes that claimant established either a first or second qualifying injury. (Hearing Report) The Second Injury Fund argues that Mr. Brown has not produced or introduced any medical evidence to establish a permanent impairment, or permanent disability, which extends beyond the small finger of the right hand. As such, the Second Injury Fund asserts that Mr. Brown cannot establish a qualifying first injury to the hand.

The Second Injury Fund further disputes whether Mr. Brown proves a qualifying second injury. Although claimant and the employer entered into an agreement for settlement pertaining to the alleged second qualifying injury, the Second Injury Fund asserts that it is not bound by that evidence or stipulation. The Second Injury Fund asserts that the alleged injury or injuries on May 14, 2015 are not definitively proven to be work related. Therefore, the Second Injury Fund contends that claimant cannot prove a second qualifying injury.

Claimant testified that he sustained the right finger, or hand, injury in 1991 when he got mad and punched a tree. (Transcript, page 55) However, in his answers to interrogatories, Mr. Brown indicated that he injured his right hand while playing football in 2001 or 2002. (Defendant's Ex. A, p. 5) Claimant's original notice and petition asserts a first qualifying injury occurred June 1, 2010. Medical records in evidence suggest claimant sustained the injury to his right small finger "while working on the fan belt of his car." (Joint Ex. 1, p. 1)

An operative note dated July 24, 1991, documents that Mr. Brown sustained a fracture and mal-union of the right fourth metacarpal shaft that required an open reduction and internal fixation. Photographs contained at Claimant's Exhibit 3 correspond with the appearance of claimant's right hand at the time of trial. Those photographs demonstrate apparent deformity of the right ring finger. Mr. Brown clearly has permanent functional loss of the ring finger on his right hand.

However, claimant introduced no medical evidence to establish that he sustained a permanent functional impairment to either the finger or the hand. Mr. Brown introduced no medical evidence to establish that he sustained permanent functional loss

of the right hand or that the injury he sustained extends beyond the ring finger on his right hand.

Claimant initially testified that he had no functional limitations as a result of the right ring finger injury prior to the May 14, 2015 injury. (Tr., pp. 23-24) Although he testified that his ring finger does not function properly, there is no permanent impairment rating in this evidentiary record for the right ring finger or right hand related to the finger injury.

Claimant's testimony, alone, is not sufficient to establish a qualifying first injury. Mr. Brown is a convicted felon with charges for crimes involving dishonesty. (Defendant's Ex. F) He had a significant head injury while a teenager that appears to affect his memory. (Tr., pp. 9-11) He offered varying versions of how the first injury occurred. (Original Notice and Petition; (Tr., p. 55; Defendant's Ex. A, p. 5; Joint Ex. 1, p. 1) Moreover, his treating therapist and orthopaedic surgeon both found evidence of malingering. (Joint Ex. 6, p. 68; Joint Ex. 7, pp. 81-82) Claimant's testimony is not sufficiently credible, standing alone, to establish a qualifying first injury beyond the ring finger of the right hand. Therefore, I find that Mr. Brown has not established a permanent functional loss or permanent disability of the right hand that preceded his alleged work injuries on May 14, 2015.

This finding of fact renders all other pertinent factual issues and disputes moot.

CONCLUSIONS OF LAW

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

In this case, I found that claimant proved a first injury with functional impairment and disability that is limited to the ring finger on his right hand. While it is obvious that claimant has deformity in the ring finger on his right hand, he offered no medical opinion

to establish permanent impairment. He offered no medical opinion establishing permanent injury or disability into the hand or beyond the ring finger on his right hand.

As noted above, Second Injury Fund liability is only triggered if there is a permanent injury to the hand, arm, foot, leg, or eye. Iowa Code section 85.64(1). An injury to the finger is not sufficient to trigger Second Injury Fund liability. Claimant has not established a first qualifying injury. Therefore, I conclude that his claim for Second Injury Fund benefits must fail.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing from the Second Injury Fund.

Signed and filed this 6th day of November, 2019.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Steve Hamilton (via WCES)
Jonathan Bergman (via WCES)

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.