BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS MAY, Claimant, vs. MENARDS, INC., Employer, and PRAETORIAN INSURANCE CO., Insurance Carrier, Defendants.	File No. 5041559 A P P E A L D E C I S I O N Head Note Nos.: 1804, 4100

Defendants Menards, Inc., employer, and Praetorian Insurance Company, insurer, appeal from a review-reopening decision filed on May 23, 2018. The case was heard on April 2, 2018, and was considered fully submitted in front of the deputy workers' compensation commissioner on April 23, 2018.

On November 7, 2019, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

The deputy commissioner in the review-reopening decision found claimant satisfied his burden to prove he was permanently and totally disabled under the odd-lot doctrine.

On appeal, defendants assert claimant did not present a prima facie case of total disability under the odd-lot doctrine. Assuming claimant proved a prima facie case, defendants assert they produced evidence of the availability of suitable work. Ultimately, defendants argue claimant failed to establish his entitlement to permanent and total disability benefits under either customary criteria or the odd-lot doctrine.

I performed a de novo review of the evidentiary record before the presiding deputy workers' compensation commissioner and the detailed arguments of the parties. Pursuant to Iowa Code section 86.24 and 17A.15, those portions of the proposed review-reopening decision filed on May 23, 2018 that relate to issues properly raised on

intra-agency appeal are affirmed in their entirety. I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner, with one additional finding.

I affirm the deputy commissioner's finding that claimant's physical condition would allow him to perform sedentary work, if at all, based on the restrictions of the three medical experts and claimant's self-professed tolerance levels. I likewise affirm the deputy commissioner's finding that only a few of the positions identified by defendants' vocational expert, Lana Sellner, fell within the work restrictions identified by Sunil Bansal, M.D.: clerk, courier, delivery driver, host, security guard, and sales associate. I affirm the deputy commissioner's finding that claimant credibly testified driving—one of the positions identified by Ms. Sellner—causes pain to his arms. I also affirm the deputy commissioner's finding that claimant credibly testified he would have difficulty performing the essential duties of many of the other positions identified by Ms. Sellner. It is for these reasons that I affirm the deputy commissioner's finding that claimant presented a prima facie case of total disability.

With respect to whether defendants produced evidence showing the availability of suitable employment, I affirm the deputy commissioner's finding that the positions identified by Ms. Sellner often explicitly stated job requirements that were outside of claimant's restrictions. As mentioned above, I also affirm the deputy commissioner's finding that only a few of the positions identified by Ms. Sellner fell within Dr. Bansal's restrictions. With respect to the testimony from Elizabeth Parillo, a human resources coordinator for defendant-employer, I affirm the deputy commissioner's finding that any position offered by defendant-employer would require accommodation, and defendant-employer failed to offer claimant a job in the years since his work injury. For these reasons, I specifically find defendant failed to produce evidence showing the availability of suitable employment.

With this additional finding, I affirm the deputy commissioner's determination that the types of services claimant can perform are so limited in quality, dependability or quantity that a reasonably stable market for his does not exist. As such, I affirm the deputy commissioner's finding that claimant is permanently and totally disabled under the odd-lot doctrine.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on May 23, 2018, is affirmed in its entirety with my above-stated additional finding.

That defendants are to pay unto claimant permanent total disability benefits at a weekly rate of three hundred three and 74/100 dollars ($303.74) commencing February 20, 2017, and continuing during the period of permanent total disability.

That defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) 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 (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That defendants are to be given credit for benefits previously paid.

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33. Defendants shall bear the costs of the appeal, including preparation of the hearing transcript.

Signed and filed this 15th day of November, 2019.

STEPHANIE J. COPLEY
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Ryan T. Beattie Via WCES

Charles A. Blades Via WCES