

## **Evaluating Exposure and Claim Resolution:**

*Scheduled injuries, Shoulder injuries, Industrial disability, and Strategies for claim resolution*

The Iowa Workers' Compensation Laws of the Iowa Code provide an injured worker, who suffers an on the job injury, with financial compensation for any lasting permanent impairment or loss of earning capacity because of the injury.

The Iowa Workers' Compensation Laws were recently amended by the 2017 Session of the 86<sup>th</sup> General Assembly and the enacted amendments apply to injuries occurring after July 1, 2017.

### **I. Scheduled Injuries**

A. Compensation for scheduled injuries is listed in § 85.34(2)(a)-(t).

1. The Legislature set out the schedule and limits compensation to the same. Each member part evaluated under the above sections is in relation to the number of weeks for the individual member. Traditionally, scheduled injuries involve injuries to the arms, hands, fingers, legs, feet, toes, eyes and hearing.
2. Scheduled injuries are to be compensated based upon loss of function of the injured member and are unrelated to earning capacity.
3. 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).
  - i. Traditionally, deputies have discretion when evaluating the extent of an injury to a scheduled member.
    - a. 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).
  - ii. The most important factor deputies consider is an impairment rating pursuant to the AMA Guides to the Evaluation of Permanent Impairment provided by a doctor. In addition, deputies also consider non-expert testimony, including testimony from the injured worker and his/her family, and demonstration of difficulties resulting from the injury.
  - iii. Iowa law has allowed awards, at the deputy's discretion, above the provided impairment ratings based on the factors depicted above.

B. 2017 Amendments to the Iowa Workers' Compensation Laws – § 85.34(2)(w).

1. The 2017 Amendments to the Iowa Workers' Compensation Laws changed the law requiring that the extent of disabilities for all future scheduled injuries shall be based solely on impairment ratings per the AMA Guides, thus

eliminating deputies' discretion. Therefore, deputies expect the testifying experts to explicitly provide their analysis of the injured worker and provide evidence supporting their provided rating.

*i. Practice tip: Educate testifying experts, i.e. doctors, to show their work or risk losing at hearing.*

## **II. Shoulder Injuries**

A. Shoulder injuries prior to July 1, 2017, require an industrial disability analysis – § 85.34(2)(u).

1. Workers who have suffered a shoulder injury in Iowa have traditionally had the shoulder injury treated as an uncheduled or industrial disability injury. As discussed above, the measure of damages for uncheduled or industrial disability injuries is based on how much the injury has impaired the worker's potential earning capacity.

B. 2017 Amendments to the Iowa Workers' Compensation Laws – § 85.34(2)(0n).

1. The 2017 Iowa Legislature amended Iowa Code § 85.34 to convert shoulder injuries from uncheduled to scheduled member injuries. Therefore, the measure of damages will be based on how much of a functional impairment the worker has suffered to their shoulder. Once the functional impairment has been determined a worker is entitled to receive that percent of impairment applied to a maximum of 400 weeks of permanent partial disability benefits.
2. For example, if the worker suffers a 10% impairment to his shoulder, he will now be entitled to receive 40 weeks of PPD benefits. The effect of this change will be to substantially reduce the amount of compensation a worker can receive for a shoulder injury.

## **III. Industrial Disability**

A. Traditional industrial disability analysis – § 85.34(2)(u).

1. "Disability from injuries coved by chapter 85 have been defined by case law as 'industrial disability,' or a reduction in earning capacity. E.g., *Olsen v. Goodyear Services Stores*, 125 N.W.2d 251, 256 (Iowa 1963)." *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 191 (Iowa 1980).
2. "Industrial disability is not a calculation, but an evaluation." *Bakker v. Wilson Foods*, 89-90 IAWC 35 (app. Dec. 1990).
3. Traditionally, only uncheduled injuries were analyzed as industrial disability claims, such as back injuries, neck injuries, head injuries, hip injuries, psychological injuries and chronic pain syndrome, and were valued based on their negative effect on a worker's potential loss of earning capacity.
4. Industrial disability will always involve an uncheduled injury (i.e. BAW). (see e.g. *Neal v. Annett Holdings*, *infra*). However, a body as a whole injury

doesn't necessarily mean an industrial disability finding (see, e.g. *Westling v. Hormel Foods Corp.*, infra).

5. The percentage of compensation is based on 500 weeks.
6. Important: Industrial disability is NOT the same as function disability; BUT functional disability does factor into the evaluation by the Agency.

B. Factors for assessing the loss of earning capacity:

1. The basics are outlined in *Olson v. Goodyear Services Stores*, 125 N.W.2d 251 (Iowa 1963).

- i. "No formula for weighting the factors in industrial disability. It is not known if all factors are equal or how consideration within one factor should be treated. Common sense, however, dictates that back injury to a manual laborer whose work experience has been in heavy labor will result in a higher industrial disability than the same injury in a person who is trained for lighter work."

- ii. *Age of the worker.*

- a. Traditionally, an older worker would receive a higher award than a younger worker for the same injury. The rationale behind the rule is that most employers generally preferred younger workers, therefore an older worker with an injury is put at even more of a disadvantage in securing employment.

- iii. *Education of the worker.*

- iv. *Job qualifications and job experience.*

- v. *Loss of actual earnings.*

- a. Traditionally, an injured worker can receive industrial disability benefits even if their actual earnings increased.

- vi. *Functional impairment from the injury.*

- vii. *Work restrictions.*

- viii. *Whether the employer continues to provide the worker a job.*

- a. Greater industrial disability awards are found when employers terminate injured workers because of their injuries. In *Galli v. Advanced Drainage Sys. Inc.*, the injured worker was not provided a functional impairment rating yet was awarded industrial disability because his employer did not return him to work. 89-90 IA WC 135 (1989).

- b. Practice Tip: Do not jump to termination – modify the job.**

- ix. *Inability to engage in employment for which the worker is suited.*

- a. The injured worker has a duty to mitigate their disability (*Sona v. Chevron Phillips Chemical Co.*, File No. 5016619 (2007)).

- x. *Motivation.*



- i. Transparency on the front end can avert injured workers from consulting with an attorney. Be pro-active and contact the injured worker early on. Educate injured workers on the timeline of the process, the process of benefits due, how the rate is calculated, etc.
- ii. Establish interpersonal relationship with injured worker and set level of expectation with the injured worker. Inform the injured worker of the schedule, if applicable, to prepare them what their settlement will look like to avoid unreasonable expectations. Discuss the possibility of settlement early in the process and explain the reasonable basis or formula behind the offer. Once an attorney is retained, the value of the claim will increase.
- iii. Know the claim value and your authority. Do not be afraid to consult with an attorney regarding value or potential exposure before negotiating directly with an injured worker.