

**IN THE COURT OF APPEALS OF IOWA**

No. 23-0182  
Filed October 25, 2023

**DEE A. DELANEY,**  
Plaintiff-Appellant,

**vs.**

**SECOND INJURY FUND OF IOWA,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Samantha Gronewald,  
Judge.

Dee Delaney appeals the district court's judicial review ruling upholding the  
agency's denial of her claim for Second Injury Fund benefits. **REVERSED AND  
REMANDED WITH DIRECTIONS.**

Nate Willems of Rush & Nicholson, P.L.C., Cedar Rapids, for appellant.

Brenna Bird, Attorney General, and Jonathan D. Bergman, Assistant  
Attorney General, for appellee.

Considered by Bower, C.J., and Ahlers and Chicchelly, JJ.

**BOWER, Chief Judge.**

Dee Delaney appeals the district court's judicial review ruling upholding the agency's denial of her claim for Second Injury Fund ("Fund") benefits based on a finding she had not proved a qualifying second injury. Because the district court and agency rulings are based on an erroneous statutory interpretation, we reverse and remand with directions.

Iowa Code section 85.64 (2019) provides:

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting disability.

"It is beyond dispute that an injury qualifies as a second injury for Fund purposes if it (1) follows a previous disability to an enumerated member and (2) results in 'the loss of or loss of use of another such member.'" *Second Injury Fund v. Kratzer*, 778 N.W.2d 42, 45 (Iowa 2010) (quoting Iowa Code § 85.64). "It is the *cumulative* effect of scheduled injuries resulting in industrial disability to the body as a whole—rather than the injuries considered in isolation—that triggers the Fund's proportional liability." *Second Injury Fund v. Braden*, 459 N.W.2d 467, 470 (Iowa 1990).

Delaney first sustained an injury to her left lower extremity on July 22, 1986. She sustained an injury to her right lower extremity while working for Nordstrom on March 12, 2019. On August 2, Delaney had a right total knee arthroplasty (i.e., knee replacement) and was restricted from returning to work until further notice. Dr. Nicolas Noiseux placed her at maximum medical improvement (MMI) on

January 2, 2020, and released her to return to work with no restrictions. Dr. Noiseux assigned thirty-seven percent impairment of the right lower extremity.

In June, Delaney began to experience pain and swelling in her right foot. She saw Dr. Dale Beiber at University of Iowa Hospitals and Clinics. Dr. Beiber diagnosed post-surgical lymphedema. He opined the lymphedema was likely due to destruction of Delaney's lymph from the total knee replacement surgery. In August, Dr. Noiseux agreed with Dr. Bieber's diagnosis of right foot swelling as post-surgical lymphedema resulting from the August 2, 2019 work-related knee replacement surgery. It was recommended she wear compression stockings.

On March 4, 2021 Dr. Farid Manshadi examined Delaney for an independent medical evaluation and produced a report. Dr. Manshadi found Delaney sustained a right leg injury on March 12, 2019, with MMI from this injury on January 2, 2020; he assigned thirty-seven-percent impairment for the right lower extremity. Dr. Manshadi also found Delaney suffered from lymphedema as a complication of the right total knee arthroplasty. Dr. Manshadi set MMI at March 4, 2021, and opined there was partial permanent impairment as a result of the March 12, 2019 work injury and right total knee arthroplasty. "I used the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5th Edition, Chapter 17, Table 17-38 [Lower Extremity Impairment Due to Peripheral Vascular Disease] and she falls under class 1 and I assign three (3) percent impairment of the whole person."

With respect to Delaney's 1986 injury, Dr. Manshadi assigned eleven-percent impairment to the left lower extremity.

Delaney filed a workers' compensation claim against Nordstrom and the Fund. In 2021, Delaney and Nordstrom entered into a settlement by which they agreed she had suffered a forty-percent impairment to her right leg as a result of the March 2019 injury.

Delaney asserted she suffered an industrial disability due to the combination of the two injuries for which the Fund was liable. Delaney's claim against the Fund proceeded to a hearing before a deputy workers' compensation commissioner. There, she sought an award of industrial disability stemming from her combined injuries "while acknowledging a credit of 11% to the lower left extremity stemming from the first qualifying injury and a credit of 40% to the right leg stemming from the 2019 work injury."

Citing *Braden*, the deputy issued an arbitration ruling in which the deputy stated, "Under Iowa law, the second qualifying injury must be limited to a scheduled member. If the second injury occurred simultaneously with an injury to the body as a whole, industrial disability is implicated against the employer, and the employer is fully responsible." The deputy ruled,

Because the March 12, 2019 work injury is not *limited* to a scheduled member injury, Ms. Delaney has failed to demonstrate entitlement to benefits from the Second Injury Fund of Iowa. Ms. Delaney has failed to demonstrate by a preponderance of the evidence that she qualifies for benefits from the Fund. Claimant shall take nothing from these proceedings.

(Emphasis added.)

On intra-agency appeal, the commissioner adopted the findings and conclusions of the deputy. On judicial review, the district court concluded: "The Commissioner's determination that Delaney's lymphedema extends to her body as

a whole is supported by substantial evidence. As such, the Commissioner correctly concluded that Delaney failed to prove a qualifying second injury.”

On our review of the agency’s statutory interpretation, we conclude its reading of *Braden* is too broad and is not supported by language of section 85.64. Section 85.64 does enumerate specific parts of the body, but nothing in the provision states the second loss of use must be *limited* to the enumerated parts.

In *Second Injury Fund v. George*, our supreme court noted,

To decide this issue, we must interpret the phrase “which has resulted in the loss of or loss of use of another such member or organ” contained in section 85.64. The legislature did not vest discretion with the agency to interpret this section. Accordingly, we must determine if we will defer to the agency’s interpretation pursuant to section 17A.19 (11)(b). If a statute is clear, detailed, does not need special expertise for adequate comprehension, and is not highly technical, we will not defer to the agency’s interpretation of a statute. “Our goal in interpreting the workers’ compensation act ‘is to determine and effectuate the intent of the legislature.’” We accomplish this goal by looking to the language the legislature has chosen. We also place “a reasonable or liberal construction which will best effect, rather than defeat, the legislature’s purpose.”

A plain reading of the statute requires us to interpret the phrase “which has resulted in the loss of or loss of use of another such member or organ” to mean a loss to another such member *regardless if the second loss includes other injuries*. This interpretation furthers the statute’s legislative intent by imposing liability on the current employer only for the degree of disability caused by the current loss, and if the employee has previously been disabled, shifting the remaining liability for any remaining compensable disability to the Second Injury Fund.

737 N.W.2d 141, 147 (Iowa 2007) (emphasis added) (internal citations omitted); accord *Gregory v. Second Injury Fund*, 777 N.W.2d 395, 400 (Iowa 2010) (“Although *George* interpreted only that part of section 85.64 which addresses the second qualifying injury, we believe its reasoning is relevant here. Liability of the Fund under section 85.64 expressly turns on the *part(s) of the body* permanently

injured in successive injuries. The focus of our analysis must therefore be on whether Gregory sustained a partial permanent loss of at least two enumerated members in successive injuries.”).

Here, Delany has alleged partial permanent loss of two enumerated parts of the body—the first injury to her left leg and the second injury to the right leg. Manshadi made two impairment ratings concerning the right leg—one for the loss of use of the leg and one for the body as a whole. The loss of use of the right leg triggers possible Fund benefits.

“It is well established that the application of erroneous legal principles mandates reversal.” *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 185–86 (Iowa 1980).

Remand is also necessitated in order to permit the agency to re-evaluate the evidence, applying the correct rule of law, unless the reviewing court can make the necessary factual findings as a matter of law because the relevant evidence is both uncontradicted and reasonable minds could not draw different inferences from it.

*Id.*; accord *Solland v. Second Injury Fund*, No. 08-1893, 2010 WL 786165, at \*2 (Iowa Ct. App. Mar. 10, 2010) (“Because the district court and the agency’s decisions were based upon a misconception that the bilateral nature of a first injury automatically precluded recovery from the second injury fund for a bilateral second injury, we reverse and remand in order to permit the agency to re-evaluate the evidence applying the correct rule of law and to make specific findings as to Solland’s asserted qualifying injuries.”), *reversed in part on other grounds*, 786 N.W.2d 24, 249–50 (Iowa 2010).

On appeal to the commissioner, Delaney asserted she could recover from the Fund even if her second injury extended into her body as a whole. The Fund

contends this claim is not properly preserved because it was not raised in the district court. We are not convinced by the Fund's assertion Delaney's claim somehow morphed beyond her claim that she had a second qualifying injury. Rather, Delaney's contention is she suffered a second qualifying injury even if it is not limited to a scheduled body part. In essence, Delaney challenges the agency's interpretation of section 85.64. We agree the agency's interpretation is erroneous.

Because the district court's and the agency's decisions were based upon an erroneous interpretation of section 85.64, we reverse the ruling of the district court with directions to remand to the agency for further proceedings.

**REVERSED AND REMANDED WITH DIRECTIONS.**



IOWA APPELLATE COURTS

State of Iowa Courts

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