BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEAN SHADLE,	:	
Claimant,	:	File No. 5006828
vs.	:	ARBITRATION
SNAP-ON TOOLS CORPORATION,	:	DECISION
Employer, Self-Insured, Defendant.	:	Head Note No.: 1804

STATEMENT OF THE CASE

Dean Shadle, claimant, filed a petition in arbitration seeking workers' compensation benefits from Snap-On Tools Corporation, defendant self-insured employer, as a result of an injury he sustained on August 4, 2001 which arose out of and in the course of his employment. The case was heard and fully submitted in Des Moines, Iowa on March 10, 2004. The evidence in the case consists of the testimony of claimant, Pamela Shadle, Dixie Shadle, Lee Gunderson and Kari Lowe. The evidence also consists of claimant's exhibit 1-14 and defendant's exhibits A-W.

ISSUES

The issues presented in this case involve the extent of permanent disability and in particular whether claimant is either permanently and totally disabled or is an odd-lot employee. A further issue is the commencement date for any permanent partial disability benefits awarded in this decision.

The parties stipulated at the time of the injury the claimant's gross weekly earnings were $715.92, he was married and entitled to three exemptions. Based on this information, claimant's correct weekly rate of compensation is $452.49. Weekly benefits have been paid claimant since the injury up to the time of the hearing and the allowed amount of credit is tied to the determination to be made by the undersigned in this decision as to the extent of claimant's industrial disability.

FINDINGS OF FACT

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

Dean Shadle, claimant, was born on April 20, 1952 making him 51 years old at the time of the hearing. Claimant left high school before graduating and eventually received a GED while he was in the U.S. Army. It was claimant's testimony he was a mechanic while he was in the Army and that he did not receive an honorable discharge. Claimant's employment history is set forth in Claimant's exhibit 11, pages 4-5 and indicate claimant was a welder, for several different employers, ran his own welding business and was a construction worker and laborer.

Claimant attended Iowa Central Community College in the early 1990's and received a degree in digital electronics. Thereafter, claimant was involved in installing security and fire systems for various businesses.

Claimant began working for Snap-On Tools Corporation in 1997. Claimant's primary job was maintenance of the equipment in the employer's plant. This involved claimant troubleshooting problems in order to attempt to repair them and in so doing claimant used a laptop computer to perform this work.

Claimant while working for the employer took an advanced computer programming class, which he completed, and he used the knowledge from this class in order to do his job for the employer.

Before the injury of August 4, 2001, claimant had no problems with his concentration and he had no physical or mental limitations in his ability to work.

On August 4, 2001 while engaged in his job for the employer, claimant fell approximately 10-12 feet from a ladder. Claimant does not recall the fall and in fact his memory did not come back until later when he was in the hospital. Claimant's injuries sustained in the fall included fractured ribs, a right clavicle fracture and an occipital skull fracture. (Exhibit 1, page 3) Claimant was life flighted to the Mayo Clinic and on August 5, 2001 claimant underwent a decompression of a subdural hematoma related to the skull fracture. (Ex. 2, p. 1)

While at Mayo Clinic, claimant went through occupational therapy and it was determined claimant had significant cognitive impairments. On August 22, 2001 there is a notation from a therapist that claimant was unaware of the level of his cognitive impairments and that he required 24-hour supervision for safety. (Ex. 2, p. 5)

On August 24, 2001, claimant was readmitted to the rehabilitation program at Mayo Clinic and at that time it was noted claimant showed deficits in problem solving ability and short-term memory. There was a notation by the therapist on that date that claimant still believed he was able to return to work for the employer even though such work involved complex problem solving and cognitive skills which claimant clearly did not have on that occasion. (Ex. 2, pp. 7 & 8)

On September 4, 2001, in a physical therapy discharge summary, it was noted claimant had moderate to severe deficits in recent memory, in following written

directions and auditory recall and recognition as well as in simple math and money skills. It was further determined that he had deficits in moderate to complex problem solving, involving mental flexibility, and in safety and judgment and abstract thinking. It was again noted claimant required 24-hour supervision for safety. (Ex. 2, p. 10) This opinion was restated in a rehabilitation psychology consultation dated October 29, 2001. (Ex. 2, pp. 16 & 18)

An attempt was made to return claimant to work in May 2002. Claimant testified he wanted to go back to work and believed at that time he could return to his regular employment. However, claimant began having difficulties doing his job because as he testified, he became confused easily, had problems concentrating and remembering where he was during a repair and became uncertain as to the next step he should go to in the repair he was making. Claimant also began having problems sleeping and developed headaches from attempting to perform his assigned work. The employer, to its credit, attempted to work with claimant, notwithstanding the fact that the employer was aware of the difficulties claimant was having in doing his work. Lee Gunderson, the employers Human Resources Manager, testified that he was made aware of these difficulties by claimant's supervisors.

Claimant was put in an outpatient program at Mayo Clinic and on June 7, 2002 claimant's difficulties in attempting to return to work were noted. In particular, claimant reported when speed was important in the job that he was assigned he had trouble understanding the problem and as a result he developed bi-frontal headaches. (Ex. 2, p. 19)

On July 1, 2002, the hospital notes indicate claimant displayed a further decline in his level of functioning and at that time the claimant had a clear increase in his level of despondency. It was determined claimant had an adjustment disorder with a depressed mood. (Ex. 2, p. 24)

On July 26, 2002, claimant was admitted to the Mayo Clinic for cognitive rehabilitation. Claimant reported at that time he was working 30 hours per week with difficulties, in particular with his concentration, accuracy, and speed of processing. (Ex. 2, p. 25) A psychiatric note, dated August 2, 2002, set forth that claimant continued to express his desire and motivation to return to work. Claimant was returned to work by the psychiatrist, effective August 5, 2002, working two hours a day. Claimant was encouraged to take breaks throughout the day to help him cope with his situation and his cognitive functioning. (Ex. 2, pp. 27-28)

In August 2002, claimant's psychiatric and psychological care began being offered by S. O. Lee, M.D., and David Johnson, Ph.D. On August 9, 2002, Dr. Lee offered the impression that claimant had depression secondary to post-cerebral trauma and that claimant had difficulties with recollection of dates, names, and the order of events. Dr. Lee further determined claimant's short-term and long-term memories, as well as concentration and attention, were poor. At that point, Dr. Lee determined claimant's global assessment of functioning was 40. Dr. Lee also noted that on that day

claimant had accidentally taking a wrong medication and opined claimant was "in no shape to go to work." (Ex. 8, p. 3) Claimant in fact left defendant-employer in September 2002.

Dr. Johnson began noting in December 2002 that claimant was having thoughts that were very unrealistic and paranoid not only as it related to the employer but also to some of claimant's relatives. (Ex. 9, pp. 2-3) On January 2, 2003, Dr. Johnson set forth claimant's beliefs that neighbors, acquaintances, and family members connected with the employer were attempting to find out something detrimental about claimant. Claimant also mentioned e-mails he had received from friends and former fellow employees which he took to contain hidden messages about what was being said concerning him at work and were also attempting to create trouble for him. (Ex. 9, pp. 4-6)

On January 30, 2003, Dr. Johnson stated his belief that claimant would not be able to return to his job with defendant-employer. (Ex. 9, p. 6) On May 6, 2003, Dr. Lee opined the following: "He may improve to the point of engaging in some gainful activities, but in my judgment, not enough to hold any job to maintain any gainful employment." (Ex. 8, p. 32)

On May 14, 2003, Dr. Johnson stated that claimant seemed most comfortable in a fairly reclusive lifestyle and that as a result it seemed highly unlikely claimant would be able to function in a work setting and feel even minimally comfortable. (Ex. 9, p. 11) Dr. Johnson, on September 11, 2003, set forth that claimant continued to express and evidence paranoid and delusional thoughts concerning a variety of matters and that these thoughts and tendencies were not present prior to the work injury. (Ex. 9, p. 18)

On October 20, 2003, in a letter to claimant's attorney, signed by both Dr. Lee and Dr. Johnson, the following opinion was set forth:

> It is our judgment that Mr. Shadle will continue for the foreseeable future to require daily custodial care and supervision due to his persistent and severe paranoia, and also because his memory problems prevent him from being able to take care of himself safely at home by himself. If it were necessary for Mrs. Shadle to find employment to meet the family's expenses, this would create a serious dilemma, since Mr. Shadle does not trust anyone other than his wife. If his wife were to return to the work force, Mr. Shadle would then require daily custodial care and supervision above and beyond what could be provided by a spouse in the usual course of daily events.

(Ex. 8, p. 33)

Claimant continues to be under the care of Drs. Lee and Johnson at the time of the hearing.

Pamela Shadle, claimant's wife, and Dixie Shadle, claimant's daughter, both testified as to claimant's present mental capabilities compared to what those abilities were prior to the work injury. Both of them testified that claimant is now forgetful, has problems sleeping, is less trustful and is paranoid with respect to outsiders as well as family members, including claimant's daughter. Pamela Shadle testified that because of claimant's memory problems, he has difficulty remembering when to take certain medications and as a result she has taken over that responsibility. She testified that she has to get claimant up in the morning and she has to prepare food for claimant or else claimant would not eat. She further testified that she now takes care of the family's financial needs and responsibilities.

Dixie Shadle testified that claimant now loses his temper more and jumps to conclusions. He also gets confused when he tries to do things and that claimant no longer does the things he used to do around the house. Although claimant and his wife have been involved in remodeling their older house, including doing wood work and plumbing work, Dixie Shadle testified that that activity has come to a standstill.

Claimant was informed by a letter from Mr. Gunderson, dated October 3, 2003, that based on a conference with Dr. Lee, who indicated claimant would not be able to return to work with the employer, that claimant's employment was terminated as of that date. (Ex. 13, p. 32) Claimant applied for and was awarded Social Security Disability on September 4, 2003, which was made effective November 2002, based on his mental and emotional disabilities.

REASONINGS AND CONCLUSIONS OF LAW

Claimant contends he is entitled to either permanent total disability benefits or benefits as an odd-lot employee.

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City Ry. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 29, 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. 1982).

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled

if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Guyton, 373 N.W.2d at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

The medical evidence presented from Dr. Lee, Dr. Johnson, and physicians and therapists at the Mayo Clinic establish that claimant's present mental and emotional deficits, which include problems with memory, attention, and concentration as well as depression and paranoid thoughts, make it highly unlikely that claimant will be able to engage in any gainful employment or hold any job. The employer's attempt to return claimant to work, which is found to be commendable in this case, was unsuccessful as claimant's cognitive deficits made it quite difficult for him to perform the high concentration and problem solving aspects of that job. Claimant has been determined to be entitled to Social Security Disability as a result of these same emotional and mental deficits. It is concluded that claimant is not employable in the type of work he has done in the past and the work that he was doing for defendant-employer. It is further concluded that there is no reasonable likelihood that claimant can be employed in a competitive employment setting in any well-known branch of the labor market without accommodations. Therefore, it is concluded, claimant has established that he is permanently and totally disabled from gainful and competitive employment and further that he meets the definition of being an odd-lot employee.

It is concluded that based on the granting of permanent total disability benefits, the commencement date for such benefits shall be the date of the injury. Debose v. Process Mechanical Inc., File No. 889569, (App. February 22, 1993).

ORDER

THEREFORE, IT IS ORDERED:

That defendant shall pay claimant permanent total disability benefits at the weekly rate of four hundred fifty-two and 49/100 dollars ($452.49) for the period of claimant's disability commencing on August 4, 2001.

That defendant shall pay interest pursuant to Iowa Code section 85.30.

That defendant shall pay the costs of this action pursuant to rule 876 IAC 4.33.

That defendant shall file subsequent reports of injury as required by the agency.

Signed and filed this ____12th_____ day of April, 2004.

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STEVEN C. BEASLEY
DEPUTY WORKERS'
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