

# **SECTION V**

## **Shoulder Case Discussion**

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## **Shoulder Case Discussion ... Now What?**

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### **Overview**

As a direct result of the 2016 election, the Republican-controlled Iowa legislature passed sweeping legislative changes which were considered “pro-business.” This included “House File 518.” House File 518 amended key aspects of Iowa Code Chapter 85 and 86, dealing with workers’ compensation and likely was intended to reduce the costs of workers’ compensation.

The Iowa House of Representatives introduced House File 518 on March 3, 2017. The House passed this bill (55-38) on March 16, 2017. The Iowa Senate passed House File 518 without Amendments (29-21) on March 27, 2017. The Iowa House of Representatives sent House File 518 to the Governor for his signature on March 29, 2017. Governor Branstad signed and approved House File 518 on March 30, 2017. The Amended Act took effect on July 1, 2017.

### **Iowa Code section 85.34(2)(n):**

- The loss of a shoulder is now a scheduled member injury. Therefore, compensation for the loss of a shoulder will no longer be determined by the loss of the employee’s earning capacity. The loss of a shoulder is based on 400 weeks.

### **Caselaw**

Chavez v. MS Technology LLC and Westfield Insurance Company, File No. 50666270 (App. Dec. April 29, 2021)

Claimant appealed the Iowa Workers’ Compensation Commissioner’s holding that Claimant’s diagnosed injury of a full thickness rotator tear that had “retracted to the level of the glenoid, severe AC arthrosis, tendonitis and tearing of the biceps tendon” was a “shoulder” injury. The Commissioner’s conclusion limited Claimant’s recovery based on functional loss of the scheduled member body part pursuant to Iowa Code § 85.34 (2)(n). Claimant sought judicial review on the assertion that the injury should be treated as an unscheduled injury because her injury was to the proximal side of her shoulder.

After determining the legislature’s use of the word “shoulder” was ambiguous, the court found that the “Iowa legislature’s intent was to add injuries to the shoulder structure as a scheduled member, not just injuries to the glenohumeral joint itself.” Furthermore, the court found

that the ordinary interpretation of the word “shoulder” was “the complex structure that includes the joint, tendons, and muscles.” Claimant’s medical records repeatedly noted that the injury, treatment, and impairment was to Claimant’s “right shoulder.” Therefore, the treating physician and expert witness considered Claimant’s injury and impairment to be within the ordinary meaning of the word “shoulder.” Because the Commissioner’s decision did not contain an erroneous interpretation of law and was not an abuse of discretion, wholly irrational, or ignorant of important and relevant evidence, the court found the Commissioner had correctly concluded that Claimant suffered a scheduled injury under Iowa Code § 85.34 (2)(n). This case is now on appeal to the Iowa Supreme Court.

Deng v. Farmland Foods, Inc., and Safety National Casualty Company, File No. 5061883 (App. Dec. May 21, 2021)

Claimant sustained work-related injuries to her infraspinatus muscle and labrum (both located in the general area of the shoulder). The parties agreed that Claimant’s glenoid labrum injury was a “shoulder injury” compensable as a scheduled injury under § 85.34 (2)(n) because it was entirely within the glenohumeral joint. Regarding the infraspinatus muscle injury, the Commissioner reversed the Deputy’s determination that the Claimant had suffered a “whole body” injury. Instead, the Commissioner concluded that the muscles of the rotator cuff should be included in the statutory definition of “shoulder,” due to the importance of the rotator cuff and its muscles to the function of the joint. The Commissioner found that the rotator cuff (area of injury in this case) is “integral to the operation of the shoulder,” and “the glenohumeral joint and its surrounding muscles, tendons, bones, and surfaces are extremely intricate and intertwined.” Therefore, the “functionality of the shoulder is dependent on these surrounding anatomical parts.”

Claimant filed for judicial review of the Commissioner’s finding that the Claimant’s injury was a “shoulder” injury under § 85.34(2)(n). In her appeal, Claimant argued that the term “shoulder” should be construed only to mean the glenohumeral joint itself and that the Commissioner erroneously focused on the function of the infraspinatus muscle and its effect on the function of the shoulder, rather than solely determining the “anatomical situs” of the injury itself.

The court found that the plain language of the statute makes clear that that “the intent of the legislature . . . was to reclassify permanent disabilities that result from injuries which impair the function of the shoulder” from whole-body industrial disabilities to scheduled disabilities. The court further determined that “it is not the situs of the actual physical injury” that the statute addresses, but rather “the disability caused by such injury in the form of functional impairment.” In this context, there was no ambiguity in the term “shoulder.” Therefore, the ordinary meaning of

an impairment of the shoulder means that the "shoulder does not work as it should, or as it would absent the disability" in "provid[ing] articulation for the arm." As a result, the court affirmed the Commissioner's holding that Claimant's injury was a scheduled injury. This case is now on appeal to the Iowa Supreme Court.

Bolinger v. Trillium Healthcare Group, LLC, and American Home Assurance, File No. 5060856 (Arb. Dec. June 17, 2021)

Deputy Commissioner held that Claimant's injury was to the body as a whole because it not only impacted and involved the muscles of the shoulder (similar to the injuries in Deng and Chavez), but also the muscles of the back, including the rhomboids, the serratus, and the trapezius muscles. Furthermore, because Claimant returned to work for the employer at an increased hourly wage but later voluntarily left and retired, the Deputy held that Claimant's benefits were limited to functional impairment and not industrial disability. This case settled.

Smidt v. JKB Restaurants, L.C., and Accident Fund National Insurance Company, File No. 5067766 (App. Dec. December 11, 2020)

Deputy Commissioner found claimant to have "sustained tears to, or material aggravation of, several of the muscles in his rotator cuff, including the supraspinatus and infraspinatus tendons." The deputy found Claimant's injuries to be whole body, entitling him to industrial disability benefits. Commissioner reversed the Deputy's decision, relying on the reasons set forth in Deng, and found Claimant's injury should be compensated as a shoulder under Iowa Code § 85.34 (2)(n).

Schoenberger v. Zephyr Aluminum Products, File No. 1642927 (Arb. Dec. June 21, 2021)

Claimant's injuries included a SLAP tear and tendinopathy of the supraspinatus and infraspinatus tendons. One of the main issues was whether claimant's injuries extended to the body as a whole. Two experts gave their opinion on this issue. One said the injury was a whole person injury, whereas the other expert opined claimant's rotator cuff injury was solely related to his shoulder. Relying on the reasons set forth in Deng, Chavez, and Smidt, claimant's shoulder injury was a scheduled shoulder injury and was limited to the functional impairment, as per Iowa Code section 85.34(2)(n).

Himmelsbach v. Quaker Oat, File No. 506673 (June 29, 2021)

"In this case, claimant sustained a rotator cuff tear, which included a tear of the long-head of the biceps tendon and superior labrum." Based on the Commissioner's decisions in Deng and Chavez, the injury should be compensated as a shoulder under section 85.34(2)(n).

Keve v. John Deere Waterloo Works, File No. 19700068 (June 29, 2021)

Claimant's shoulder had a massive full-thickness rotator cuff tear involving the supraspinatus and infraspinatus tendons in their entirety. The subscapularis was torn from its insertion at the lesser tuberosity. One of the issues in this case is whether claimant's injury extends beyond her shoulder. Claimant argued that the affected areas from the injury "involve structures proximal to the glenohumeral joint and thus should be determined to be an unscheduled injury." The injury was a scheduled shoulder injury and is limited to the functional impairment.

Bautista v. Iowa Premium Beef, File No. 1643891 (July 7, 2021)

Claimant's injury was "a long head biceps tendon rupture with Popeye deformity as well as a supraspinatus tendon tear with a type II anterolateral downsloping acromion and subacromial impingement." "Claimant argues that the defendants have conceded that the injury extends to the whole body in that treatment included a distal clavicle excision which is located in the trunk of the body." However, following Deng and Chavez, the "distal clavicle is closely intertwined with the glenohumeral joint both in location and function." Thus, the claimant's injury was a scheduled member and limited to functional impairment.

Howard v. Presage Food of Iowa, File No. 1665279 (App. Dec. August 24, 2021)

This case was an appeal decision from a case filed on April 14, 2021. The decision was affirmed. Claimant sustained permanent injury to his shoulder. His shoulder injury did not extend to his body as a whole. Therefore, claimant did not receive industrial disability benefits.

Fuller v. Des Moines, File No. 1654454 (August 31, 2021)

Fuller had a left shoulder labral tear with paralabral cyst extending into the spinoglenoid notch. The parties stipulated that this shoulder injury was a scheduled member disability.

Anderson v. Bridgestone Americas Inc/2<sup>nd</sup> INJ-Fund, File No. 507475

Deputy Pals held that a case which involves permanency to both the shoulder and the arm will be combined to a body as a whole claim. Claimant sustained permanent disability to the right arm and permanent disability to the right shoulder, caused by a single accident. There was a dispute regarding which section of Iowa Code 85.34(2) applies to these facts. Claimant's permanent partial disability did not fall into any single subsection listed in "a" through "u" and therefore, was compensated on the basis of an *unscheduled* injury as set forth in subsection "v."