

Delaney and Strable

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Delaney v. Second Injury Fund 6 N.W.3d 714 (Iowa 2024)

- In 1986, Dee Delaney suffered an injury to her lower left leg. Thirty-three years later, she suffered an injury to her lower right leg in the course of her employment with Nordstrom, Inc. The later injury required knee surgery, and the knee surgery caused lymphedema in Delaney's lower right leg and foot. Delaney filed a claim for workers' compensation benefits against Nordstrom and the Second Injury Fund (the Fund). She reached a settlement agreement with Nordstrom and proceeded to arbitration against the Fund. The workers' compensation commissioner found that Delaney's lymphedema was a sequela of her work injury and that lymphedema is per se an injury to the body as a whole and not an injury to a scheduled member. The commissioner concluded that because Delaney suffered a sequela injury to the body as a whole, she was not entitled to Fund benefits under Iowa Code section 85.64 (2019). The question presented in this appeal is whether the commissioner erred in its interpretation and application of section 85.64.

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Delaney v. Second Injury Fund 6 N.W.3d 714 (Iowa 2024)

Prior loss-1986 left leg

Subsequent loss right leg

Sequela-lymphedema

Lymphedema an injury to the body as a whole? If so, the Commissioner says no liability to the Fund.

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Delaney v. Second Injury Fund 6 N.W.3d 714 (Iowa 2024)

- Our caselaw provides that section 85.64 requires an employee to "prove three things to trigger the liability of the Fund." *Bergeson*, 526 N.W.2d at 547. "First, that he or she has either lost, or lost the use of a hand, arm, foot, leg, or eye. Second, the employee sustained the loss, or loss of use of another such member or organ through a work-related, compensable injury. Third, there must be some permanent injury from the injuries." *Id.* at 547-48; *see also Stumpff v. Second Inj. Fund of Iowa*, 543 N.W.2d 904, 906 (Iowa 1996); *Shank*, 516 N.W.2d at 812. Our caselaw also holds that the Fund is liable for benefits only where both of the employee's injuries resulted in the loss or loss of use of the scheduled members set forth in the statute. *See Second Inj. Fund of Iowa v. Nelson*, 544 N.W.2d 258, 270 (Iowa 1995) ("We conclude that section 85.64 requires two scheduled injuries to invoke Fund liability."). "It is the cumulative effect" of the injuries that result in industrial disability—"rather than the injuries considered in isolation—that triggers the Fund's proportional liability." *Second Inj. Fund of Iowa v. Braden*, 459 N.W.2d 467, 470 (Iowa 1990).

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Delaney v. Second Injury Fund 6 N.W.3d 714 (Iowa 2024)

- Can the Fund be responsible for Industrial disability? Yes.
 - This court has already concluded that "loss of or loss of use of another such member or organ" includes "a loss to another such member regardless if the second loss includes other injuries." *George*, 737 N.W.2d at 147 (quoting Iowa Code § 85.64(1)). And, in *Gregory v. Second Injury Fund of Iowa*, we explained that it was not relevant under section 85.64 that the injury to the scheduled member subsequently caused an impairment to an unscheduled member. 777 N.W.2d at 400 (stating liability "under section 85.64 is not affected by the fact that the incident also caused bilateral shoulder impairment and was therefore compensated as an unscheduled injury").

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Delaney v. Second Injury Fund 6 N.W.3d 714 (Iowa 2024)

Case by Case Basis:

The relevant precedents demonstrate that whether an injury results in the "loss of use" to a scheduled member or extends to the body as a whole is a fact-based inquiry that must be determined on a case-by-case basis. In some cases, an injury to a bodily system may extend beyond a localized area and amount to an injury to the body as a whole. For example, in *Barton v. Nevada Poultry Co.*, we found that a disorder that "affect[ed] the entire nervous system" was an unscheduled disability. 253 Iowa 285, 110 N.W.2d 660, 661 (Iowa 1961) (emphasis added) (holding that claimant's complex regional pain syndrome or Sudeck's atrophy was an unscheduled industrial disability).

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Second Injury Fund of Iowa v. Strable, 14 N.W.3d 742 (Iowa 2024)

- Material Facts:
 - Regina Strable suffered a work-related ankle injury that caused sequela injuries to her hip, lower back, and mental health.
 - Strable had a preexisting carpal tunnel injury to both wrists from a previous job.
 - Strable settled her ankle injury claim with her employer and sought additional benefits from the Second Injury Fund based on her preexisting carpal tunnel injury.

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Second Injury Fund of Iowa v. Strable, 14 N.W.3d 742 (Iowa 2024)

Injured worker has a compensable injury to the body as a whole as well as to a scheduled member.

Based upon *Delaney* the injured worker has the prerequisites for a claim against the Fund.

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Second Injury Fund of Iowa v. Strable, 14 N.W.3d 742 (Iowa 2024)

- What is the Fund Credit?
 - To calculate the Fund's liability, the Commissioner must first assess Strable's industrial disability considering both qualifying injuries, i.e., the bilateral carpal tunnel and the lower left leg—including its sequela injuries to her hip, lower back, and mental health. The Commissioner should then subtract the 20 weeks associated with the bilateral carpal tunnel. Finally, the Commissioner should also subtract the discrete industrial disability associated with the lower left leg and sequela without considering the effect of Strable's bilateral carpal tunnel. The result is that ANR is allocated that amount of Strable's overall industrial disability associated with the left lower leg and its sequela injuries, while the Fund is liable for the remaining amount of Strable's industrial disability associated only with the combination of her carpal tunnel and lower left leg—without considering the sequela injuries.

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Example

- First qualifying injury: arm
- Second injury: leg and back
- Step one: Calculate Industrial Disability caused by leg and back. e.g. 50%
- Step two: calculate Industrial Disability caused by arm and leg. e.g. 30%. No award against the Fund.

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Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

- What constitutes a body as a whole injury?
 - Blacksmith was diagnosed with thrombophlebitis of his left leg caused by his employment activity.
 - in the arbitration decision no PPD awarded because no permanent disability was anticipated.
 - However, he became disqualified from driving under federal regulations, so he filed a review-reopening petition.
 - The Commissioner denied the review-reopening on the basis that Blacksmith had not establish a change of condition that related to the work injury.
 - The Court reversed and remanded for a determination of the extent of industrial disability.

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Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

- There is no specific holding in Blacksmith that thrombophlebitis is an injury to the body as a whole. It can be implied that the Court accepted that the condition was to the body as a whole because that was not raised as an issue upon appeal.
- However, the Commission has long used the following blurb with respect scheduled member v. body as a whole:
 - An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a)-(f) are applied. Leubhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dalley v. Proley Lumber Co., 10 N.W.2d 569 (1943) and Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 588 (1936)

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Delaney v. Second Injury Fund 6 N.W.3d 714 (Iowa 2024)

The Court in *Delaney* discussed the question of whether there had been an injury to the body as a whole.

However, it should be noted that ruling on whether the condition was an injury to the body as a whole was not necessary to decide the case.

The Court determined that pursuant to *Stable* it was only necessary that an injury to a qualifying scheduled member had been sustained.

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Delaney v. Second Injury Fund 6 N.W.3d 714 (Iowa 2024)

- Is Lymphedema a body as a whole injury per se?
 - Although the agency has frequently cited *Blacksmith* as supporting its per se rule for vascular injuries, we conclude that was and is error. See, e.g., *Architectural Wall Sys. v. Towers*, 854 N.W.2d 74, 2014 Iowa App. LEXIS 714, 2014 WL 3511892, at *4 n.5 (Iowa Ct. App. 2014) (explaining the commissioner used *Blacksmith* "to infer our supreme court would consider any similar vascular injury to the lower extremity to be an injury to the body as a whole" and stating "[w]e do not necessarily agree *Blacksmith* lends itself to such a conclusion"). The "controlling question" in *Blacksmith* was "whether the industrial commissioner erred in denying additional workers' compensation to an employee who was transferred by his employer to a lower-paying job following a work-related phlebotomy attack." 290 N.W.2d at 349. It was a review reopening case in which the employee sought additional benefits due to a change in his earning capacity caused by his work-related injury and not due to an increase in his functional impairment. *Id.* We held "that *Blacksmith* sustained his burden of proof to show that the 1977 injury was a proximate cause of his reduced earning capacity." *Id.* at 354. While there was some discussion of the claimant's vascular disease, there was no statement that vascular disease is per se an injury to the body as a whole. See, e.g., 137-14. Indeed, from our review, *Blacksmith* is wholly irrelevant to the issues presented in this case involving the Fund.

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CPRS

- Does *Delaney* mean that CRPS (RSD) is not an injury to the Body as a Whole?
 - The case often cited for the proposition that CRPS is an injury the body as a whole is *Collins v. Dep't of Human Servs.*, 529 N.W.2d 627 (Ct of Appeals 1995).
 - The Court in *Collins* made no reference to *Blacksmith*.

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CRPS-Collins

- Reflex sympathetic dystrophy is sometimes referred to as causalgia or Sudeck's atrophy. 3 Robert K. Ausman, M.D., & Dean E. Snyder, J.D., *Medical Library* § 4-278(c) (lawyer's ed. 1989). The condition of causalgia or Sudeck's atrophy was considered in *Barton v. Nevada Poultry Co.*, 253 Iowa 285, 110 N.W.2d 660 (1961). There, the employee suffered an injury to the foot, which is a scheduled member. *Id.* at 287, 110 N.W.2d at 661. As a result of the injury the employee's entire nervous system became affected by causalgia. *Id.*, 110 N.W.2d at 661. In *Barton*, the court held that where an employee has an injury to a scheduled member and also to a part of the body not included in the schedule, [**7] the resultant permanent disability was compensable as an unscheduled disability. *Id.* at 291, 110 N.W.2d at 663. The court concluded the employee, based on the condition of causalgia, was entitled to compensation based on industrial disability. *Id.* at 292, 110 N.W.2d at 664. *Collins v. Dep't of Human Servs.*, 529 N.W.2d 627, 629, 1995 Iowa App. LEXIS 14, *6-7

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Shoulders

- 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. In addition, when compensation is payable, and after the expiration of the ninety-day period provided by law for the payment of compensation by the employer, the employee shall be paid out of the second injury fund created by this subchapter the remainder of such compensation as would be payable for the degree of permanent disability resulting from the latter injury, less the remainder of the compensable value of the previously lost member or organ.
- Any benefits received by any such employee, or to which the employee may be entitled, by reason of such increased disability from any state or federal fund or agency, to which the employee has not directly contributed, shall be regarded as a credit to any award made against the second injury fund.


Iowa Code § 85.64

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Shoulders

- Does *Delaney* mean the Fund entitled to credit for an injury to the Shoulder?
 - First injury: leg
 - Second injury: wrist and shoulder
 - Iowa Code section 85.64 specifically lists the parts of the body that are qualifying for Fund liability
 - The Shoulder is not listed in 85.64 nor does *Delaney* refer to additional credit for unlisted scheduled members.

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Shoulders

- The statute does refer to when the payments from the Fund are to begin.
- The Fund liability would begin after the after the wrist and shoulder have been fully paid by the employer

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Takeaways

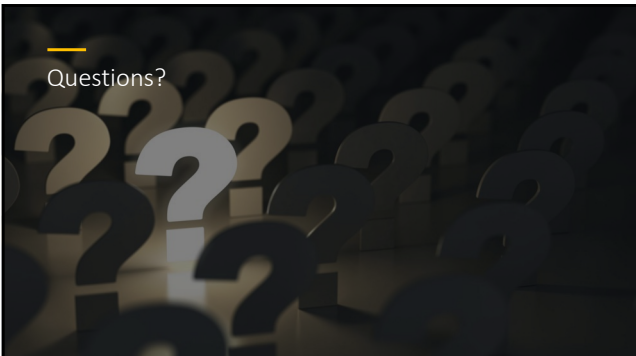
An injury to a scheduled member and to the body as a whole is still a qualifying injury for Fund purposes

The extent of the Fund's liability will be reduced by the extent of disability for which the employer is responsible.

Whether an injury to a scheduled member extends to the body as a whole is fact question-likely in the domain of expert opinion.

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Questions?



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Questions

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