

# Shoulder Case Law Discussion

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## Chavez v. MS Technology LLC 2022 WL 981813 (Iowa 2022) (publication pending)

- Affirmed on appeal to the Supreme Court
- Claimant sustained a “full thickness rotator cuff tear that has retracted to the level of the glenoid, severe AC arthrosis, tendonitis, and tearing of the biceps tendon.”
- Claimant argued that her injury- specifically, the biceps tendon tear- took her injury beyond the scheduled member of the shoulder because it was outside of the glenohumeral joint itself, and that she her injury should therefore be compensated industrially.
- The court concluded that the term “shoulder,” as used in statutory list of scheduled member injuries for determining the award amount for permanent partial disability, was ambiguous, thereby requiring the court to rely on rules of statutory construction to construe the term.

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## Chavez v. MS Technology LLC

### 2022 WL 981813 (Iowa 2022) (publication pending)

- The court concluded that the term “shoulder,” as used in the statutory list of scheduled member injuries for determining the award amount for permanent partial disability benefits, was construed in a functional sense to include the glenohumeral joint as well as all of the muscles, tendons, and ligaments that were essential for the shoulder to function.
- The court concluded that claimant's injury constituted a scheduled “shoulder” injury potentially entitling her to permanent partial disability benefits, rather than an unscheduled whole body injury evaluated according to industrial disability.
- The court concluded that substantial evidence supported the commissioner's finding that claimant failed to carry her burden to prove her biceps tear resulted in any permanent disability to her arm and, thus, claimant was not entitled to industrial disability benefits.
- The court affirmed the holdings of the District Court and the Commissioner.

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## Deng v. Farmland Foods, Inc

### 2022 WL 981829 (Iowa 2022) (publication pending)

- Affirmed on appeal to the Supreme Court based upon the same reasoning as Chavez.
- Claimant’s injury was to the infraspinatus muscle- still found to be a scheduled shoulder injury as a muscle, tendon, or ligament essential for the shoulder to function.

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## Pamela Carmer v. Nordstrom, Inc.

File No. 1656062.01 (Iowa Indus. Comm'r App. Dec. December 29, 2021)

- Agency appeal decision issued on December 29, 2021
- The Arbitration Decision held that Claimant had sustained a sequelae injury to her left shoulder as the result of a work-related right shoulder injury and that the two injuries together should be compensated based upon industrial disability.
- Among the issues presented for appeal, Defendants argued that if both shoulders were found to be compensable as work injuries, they should be compensated as separate scheduled member injuries rather than industrially.
- Sequelae injury to the left shoulder was from overuse, manifesting a year after the original injury. Found to be causally related based upon a physician's opinion that the deputy commissioner found to be most credible.

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## Pamela Carmer v. Nordstrom, Inc.

File No. 1656062.01 (Iowa Indus. Comm'r App. Dec. December 29, 2021)

- Commissioner examined how 85.34(2)(t) was not amended with the 2017 law changes and provided that the loss of two scheduled members was compensated based upon 500 weeks, but shoulders were not specifically added to that list of scheduled members to be compensated on a 500 week basis when both are injured in a single accident.
- Section 85.34(2)(n) only provides for a single shoulder, so the commissioner determined that it was not appropriate to compensate both shoulders this way because that code section only applied to the loss of a singular member. He determined that 85.34(2)(v) was a 'catch all' provision that this scenario better fit under.
- In summary, based upon this appeal decision, if a claimant has an injury to one shoulder and develops a sequela injury to the other shoulder from overuse, the injuries together are compensated based upon industrial disability principles.

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## Rife v. P.M. Lattner Mfg. Co.

File No. 1652412.02 (Iowa Indus. Comm'r App. Dec. January 21, 2022)

- Agency appeal decision issued on January 21, 2022
- In the Arbitration Decision, the deputy concluded that the claimant sustained an injury to his right shoulder that did not extend to the body as a whole. The deputy further concluded that Defendants were not entitled to a credit against PPD benefits for a prior settlement in which Claimant was compensated for industrial disability resulting from an unscheduled injury.
- The Commissioner noted that there is no mechanism in the statute for apportioning past compensation for industrial disability against compensation for a scheduled member, and the amended statute does not support such apportionment; the post July 1, 2017 amendments provide that an employer “is not liable for compensating an employee’s pre-existing disability that arose out of and in the course of employment from a prior injury with the same employer, to the extent that the preexisting disability has already been compensated under this chapter.” Iowa Code 85.34(7)

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## Rife v. P.M. Lattner Mfg. Co.

File No. 1652412.02 (Iowa Indus. Comm'r App. Dec. January 21, 2022)

- Claimant’s prior shoulder injury occurred before the 2017 law changes and was therefore not compensated as a scheduled member, but based upon industrial disability. The parties entered into an Agreement for Settlement and industrial disability factors were considered when arriving at the agreed upon settlement. However, in considering Claimant’s current shoulder injury, compensation is limited only to the permanent functional impairment.
- The commissioner concluded that if Defendants were entitled to a credit for the entirety of their settlement, which was for industrial disability, against Claimant current scheduled member injury, they would receive an unfair excess credit for consideration and factors not applicable to the current injury. “Their credit would be for apples against an award for oranges.”
- The commissioner did note that Defendants could have taken a credit if they were able to prove what amount of the prior settlement was for functional disability alone, but they failed to prove that in this case through medical evidence or otherwise.
- In summary, pursuant to this appeal decision, if Defendants are seeking a credit against a successive shoulder injury, they have to prove the extent of their credit. They can’t claim a credit for industrial against a scheduled member due to the law change.

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# Anderson v. Bridgestone Americas Inc.

File No. 5067475 (Iowa Indus. Comm'r App. Dec. January 25, 2022)

- Agency Appeal decision issued on January 25, 2022
- The deputy commissioner concluded that Claimant sustained permanent disability of his right arm and right shoulder as a result of the work injury, which entitled Claimant to receive industrial disability benefits pursuant to Iowa Code 85.34(2)(v).
- Based upon the same principles as *Rife*, the “catch all” provision of Iowa Code 85.34(2)(v) applies, because two scheduled members were injured in a single accident, both resulting in permanent disability, and they cannot be compensated as two members under 85.34(2)(t) because that subsection was not amended to include the shoulder.
- In summary, this case states that if an employee sustains injuries to the shoulder and the arm- or any other scheduled member- the injuries will be compensated based upon industrial disability principles.

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# QUESTIONS?

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