

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TONY MACK,	:	File No. 5052951
	:	
Claimant,	:	A P P E A L
	:	
vs.	:	D E C I S I O N
	:	
SECOND INJURY FUND OF IOWA,	:	
	:	Headnotes: 1108.50; 1402.30; 1804;
Defendant.	:	2907; 3200

Defendant Second Injury Fund of Iowa (the Fund) appeals from an arbitration decision filed on March 15, 2018. Claimant Tony Mack responds to the appeal. The case was heard on December 19, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 9, 2018.

The deputy commissioner found claimant carried his burden of proof that he sustained a first qualifying injury in July 1971 and a second qualifying injury on July 24, 2015, for the purpose of receiving benefits from the Fund. The deputy commissioner found that as a result of the two injuries taken together, claimant is permanently and totally disabled. The deputy commissioner found claimant is entitled to receive permanent total disability benefits from the Fund commencing on November 27, 2015, the commencement date stipulated by the parties. The deputy commissioner ordered the Fund to pay claimant's costs of the arbitration proceeding.

The Fund asserts on appeal that the deputy commissioner erred in finding claimant is entitled to receive benefits from the Fund because the Fund asserts the deputy commissioner erred (1) in finding claimant carried his burden of proof that he sustained a first qualifying injury and (2) in finding claimant carried his burden of proof that he sustained a second qualifying injury. In the alternative, the Fund asserts that if it is found on appeal that claimant did sustain first and second qualifying injuries, it should be found that claimant is not permanently and totally disabled and the award for permanent disability benefits should either be reversed entirely or reduced substantially. The Fund asserts the deputy commissioner erred in finding the commencement date for permanent total disability benefits is November 27, 2015, the commencement date stipulated by the parties, and should be 4.4 weeks later to allow the Fund credit for the first qualifying injury. The Fund also asserts the deputy commissioner erred in ordering the Fund to pay claimant's costs of the arbitration proceeding because claimant did not request taxation of costs in the hearing report filed at the arbitration hearing and because claimant did not raise taxation of costs as an issue at the hearing.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on March 15, 2018, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained a first qualifying injury in July 1971 and a second qualifying injury on July 24, 2015, for the purpose of receiving benefits from the Fund.

I affirm the deputy commissioner's finding that as a result of the two injuries taken together, claimant is permanently and totally disabled, and I affirm the deputy commissioner's finding that claimant is entitled to receive permanent total disability benefits from the Fund.

I affirm the deputy commissioner's finding that the commencement date for permanent total disability benefits is November 27, 2015, because that is the date claimant and the Fund stipulated in the hearing report is the correct commencement date for benefits and the parties are bound by their stipulation in that regard.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I reverse the deputy commissioner's order that the Fund pay claimant's costs of the arbitration proceeding because, as pointed out by the Fund, claimant did not request taxation of costs in the hearing report and claimant did not raise taxation of costs as an issue at the hearing.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 15, 2018, is MODIFIED as follows:

The Second Injury Fund of Iowa shall pay claimant permanent total disability benefits at the weekly rate of one thousand two hundred fifty and 64/100 dollars (\$1,250.64) commencing on November 27, 2015, and continuing during the period of permanent total disability.

The Fund shall pay accrued weekly benefits in a lump sum together with interest from the date of this appeal decision at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled

as of the date of the second qualifying injury, July 24, 2015, plus two percent, See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), The Fund shall file subsequent reports of injury as required by this agency.

Signed and filed on this 13th day of September, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies Served Through WCES to:

Randall Schueller
Sarah Brandt