

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATTHEW A. LAWSON,

Claimant,

vs.

BENTON SAND & GRAVEL, INC.,

Employer,

and

UNITED FIRE & CASUALTY COMPANY, :

Insurance Carrier,
Defendants.

File No. 5066379

R E M A N D

D E C I S I O N

Head Notes: 3002; 3003

This matter is before the Iowa Workers' Compensation Commissioner on remand from the Polk County District Court from an order on judicial review dated July 9, 2021.

The matter was initially heard on November 12, 2019. An arbitration decision was filed on February 21, 2020. The arbitration decision found claimant failed to carry his burden of proof to establish that the permanent disability resulting from the stipulated work injury which occurred on November 21, 2014, extends beyond claimant's right lower extremity into claimant's body as a whole, and the decision therefore found claimant's injury must be evaluated as a scheduled member injury. The arbitration decision found claimant sustained scheduled member functional disability of 15 percent of the right lower extremity as a result of the work injury, which entitles claimant to receive 33 weeks of permanent partial disability benefits commencing on January 19, 2015. The arbitration decision found that in calculating claimant's weekly benefit rate, claimant is entitled to five exemptions, with the result that claimant's weekly benefit rate is \$655.71. The arbitration decision ordered the parties to pay their own costs of the arbitration proceeding.

An appeal decision filed on October 23, 2020, summarily affirmed the arbitration decision.

A petition for judicial review was filed on November 24, 2020. In the order on judicial review filed on July 9, 2021, the district court affirmed the entire appeal decision, with the sole exception that the order on judicial review found the arbitration decision and the appeal decision erred in finding claimant is entitled to five exemptions for the

purpose of calculating claimant's weekly benefit rate for the work injury. The district court remanded the agency decision with instructions to adjust the number of exemptions from five to four.

ISSUE

As required by the order on judicial review from the Polk County District Court, the sole issue on remand is to adjust the number of exemptions from five to four for the purpose of calculating claimant's weekly benefit rate for the work injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties stipulated that claimant's gross average earnings at the time of the injury were \$992.00 per week and that claimant was married. Using the 2014-2015 rate book, with gross average weekly earnings of \$992.00, and with four exemptions, the correct weekly benefit rate for claimant for the work injury is \$646.70. Defendants shall pay all weekly benefits for claimant's injury at the weekly benefit rate of \$646.50.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits in this matter shall be paid at the weekly rate of six hundred forty-six and 70/100 dollars (\$646.70).

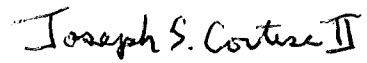
Defendants shall pay claimant thirty-three (33) weeks of permanent partial disability benefits from January 19, 2015.

Defendants shall receive credit for all benefits previously paid pursuant to the agreements and stipulations of the parties acknowledging that defendants are entitled to receive a section 85.34(4) credit due to overpayment of temporary benefits.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed on this 10th day of September, 2020.

Handwritten signature of Joseph S. Cortese II in black ink.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jenna Green (via WCES)

Cory Abbas (via WCES)