

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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PEDRO TARELO GALLEGOS,  
Claimant,

File No. 5066131.01

vs.

A P P E A L

SHELLY KRIEG, INC.,  
Employer,

D E C I S I O N

and

GRINNELL SELECT INSURANCE  
COMPANY,  
Insurance Carrier,  
Defendants.

Headnotes: 1402.40; 1803; 2905; 2907;  
5-9998

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Defendants Shelly Krieg, Inc., employer, and its insurer, Grinnell Select Insurance Company, appeal from a review-reopening decision filed on May 16, 2023. Claimant Pedro Tarelo Gallegos responds to the appeal. The review-reopening hearing was held in this matter on February 8, 2023, and the case was considered fully submitted in front of the deputy workers' compensation commissioner on March 10, 2023.

On March 23, 2018, claimant sustained the work-related injury which is at issue in this matter. In the underlying arbitration decision filed in this case on February 20, 2020, the deputy commissioner found claimant carried his burden of proof to establish the work injury caused permanent disability of his right shoulder and his low back; and the deputy commissioner found claimant proved he sustained 60 percent industrial disability because of the work injury. In an appeal decision issued by the undersigned in this matter on December 8, 2020, the arbitration decision was affirmed in its entirety. The December 8, 2020, appeal decision was not appealed for judicial review.

On February 23, 2022, defendants filed a review-reopening petition in this matter asserting that after the February 20, 2020, arbitration decision was filed, claimant sustained a physical change of condition that warrants a reduction of the 60 percent industrial disability award contained in the February 20, 2020, arbitration decision.

In the review-reopening decision filed in this matter on May 16, 2023, the deputy commissioner found defendants failed to carry their burden of proof to establish claimant sustained a physical change of condition related to the work injury after the arbitration decision was filed on February 20, 2020, that would warrant a reduction of the 60 percent industrial disability award. The deputy commissioner found that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants in the

amount of \$620.00 for the cost of the functional capacity evaluation (FCE) report issued by Todd Schemper, PT, dated September 12, 2022.

Defendants assert on appeal that the deputy commissioner erred in finding defendants failed to prove claimant sustained a physical change of condition related to the work injury after the arbitration decision was filed on February 20, 2020, that would warrant a reduction of the 60 percent industrial disability award. Defendants assert the deputy commissioner erred in finding claimant is entitled to reimbursement from defendants for the cost of Mr. Schemper's FCE report.

Claimant asserts on appeal that the review-reopening decision should be affirmed in its entirety.

Those portions of the proposed review-reopening decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision filed on May 16, 2023, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the review-reopening proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that defendants failed to prove claimant sustained a physical change of condition related to the work injury after the arbitration decision was filed on February 20, 2020, that would warrant a reduction of the 60 percent industrial disability award. I affirm the deputy commissioner finding that claimant is entitled to reimbursement from defendants for the cost of Mr. Schemper's FCE report.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues.

#### ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed in this matter on May 16, 2023, is affirmed in its entirety.

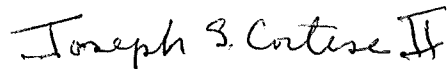
Defendants' review-reopening petition is denied.

Defendants shall pay accrued weekly benefits, if any, in a lump sum together with interest 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.

Pursuant to rule 876 IAC 4.33, Defendants shall reimburse claimant in the amount of six hundred twenty and 00/100 dollars (\$620.00) for the cost of Mr. Schemper's FCE report, and defendants shall pay the costs of the appeal, including the cost of the review-reopening hearing transcript.

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

Signed and filed on this 24<sup>th</sup> day of August, 2023.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Tom Drew (via WCES)

Stephen Spencer (via WCES)

Christopher Spencer (via WCES)