

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

**FILED**  
**JUL 15 2019**  
**WORKERS' COMPENSATION**

BRENDA ROWE,

Claimant,

vs.

HY-VEE FOOD STORE,

Employer,

and

EMC PROPERTY & CASUALTY  
COMPANY,

Insurance Carrier,  
Defendants.

File No. 5053264

A P P E A L  
D E C I S I O N

Head Note Nos: 1402.40; 1803; 2907;  
5-9998

Claimant Brenda Rowe appeals from an arbitration decision filed on January 8, 2018. Defendants Hy-Vee Food Store, employer, and its insurer, EMC Property & Casualty Company, respond to the appeal. The case was heard on July 25, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 25, 2017.

The deputy commissioner found that as a result of the stipulated injury to claimant's low back, which arose out of and in the course of her employment with defendant-employer on May 27, 2014, claimant sustained 55 percent industrial disability, which entitles her to receive 275 weeks of permanent partial disability benefits commencing on December 1, 2015. The deputy commissioner found defendants are entitled to a credit against the award for permanency benefits for all weekly benefits paid on or after December 1, 2015. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant sustained 55 percent industrial disability as a result of the May 27, 2014, work injury. Claimant asserts the deputy commissioner erred in failing to find claimant is permanently and totally disabled as a result of the work injury. Claimant asserts the deputy commissioner erred in giving greater weight to the permanent work restrictions issued by Michael Espiritu, M.D., claimant's authorized treating orthopedic surgeon, rather than giving greater weight to the permanent work restrictions issued by Marlon Gasner, DPT.

Defendants assert 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.

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 arbitration decision filed on January 8, 2018, 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 arbitration 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 claimant sustained 55 percent industrial disability as a result of the May 27, 2014, work injury. I affirm the deputy commissioner's finding that claimant is not permanently and totally disabled as a result of the work injury. I affirm the deputy commissioner's finding that the permanent work restrictions issued by Dr. Espiritu are entitled to greater weight than the permanent work restrictions issued by Mr. Gasner.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 8, 2018, is affirmed in its entirety.

All weekly benefits shall be paid at the stipulated rate of one hundred eighty-two and 23/100 dollars (\$182.23).

Defendants shall pay claimant two hundred seventy-five (275) weeks of permanent partial disability benefits commencing on the stipulated commencement date of December 1, 2015.

Defendants shall receive a credit against the award for permanency for all benefits paid on or after December 1, 2015.

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).

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the 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 15<sup>th</sup> day of July, 2019.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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