

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIKE BISSELL,

Claimant,

vs.

HY-VEE,

Employer,

and

EMC INS. CO.,

Insurance Carrier,
Defendants.

FILED

AUG 25 2017

File No. 5048967 **WORKERS' COMPENSATION**

A P P E A L

D E C I S I O N

Head Note No: 1803

Defendants Hy-Vee, employer, and its insurer, EMC Insurance Company, appeal from an arbitration decision filed on March 8, 2016. Claimant Mike Bissell responds to the appeal. The case was heard on September 21, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 4, 2015.

The deputy commissioner found the stipulated injury to claimant's left shoulder, which arose out of and in the course of claimant's employment with defendant-employer on January 7, 2011, caused claimant to sustain 50 percent industrial disability, which entitles claimant to 250 weeks of permanent partial disability (PPD) benefits commencing on September 9, 2013. Pursuant to the stipulation of the parties contained in the hearing report, the deputy commissioner found defendants are entitled to a credit for 90 weeks of PPD benefits paid by defendants prior to the arbitration hearing. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in awarding claimant 50 percent industrial disability. Defendants assert the award of industrial disability should be significantly less than 50 percent

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, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

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 8, 2016, which relate to issues properly raised on intra-agency appeal.

I affirm the deputy commissioner's finding that the work injury caused claimant to sustain 50 percent industrial disability which entitles claimant to 250 weeks of PPD benefits commencing on September 9, 2013. I affirm the deputy commissioner's finding that defendants are entitled to a credit for 90 weeks of PPD benefits paid by defendants prior to the arbitration hearing. I also affirm the deputy commissioner's order taxing defendants with claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues with the following additional analysis:

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be credible. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

While the medical records document that claimant's two treating orthopedic surgeons both released claimant from medical care without work restrictions more than two years before the arbitration hearing (Exhibit 3, p.12; Ex. 4, p. 24), considering the serious nature of the injury itself and the serious nature of the two surgeries claimant had on his left shoulder for that injury, and also considering the very high functional impairment rating of 30 percent impairment of the left upper extremity, which converts to 18 percent impairment of the body as a whole, given by both surgeons for the injury (Ex. 3, pp 13, 16; Ex. 4, p. 24), I find claimant's testimony regarding his current limitations on his activities to be believable statements which support the deputy commissioner's award of 50 percent industrial disability. Claimant gave unrebutted testimony that he is now unable to perform significant aspects of his current job as a meat specialist. (Hearing Transcript, pp. 33-34) Claimant also testified that given the fact that his left shoulder joint has been entirely replaced, he would, in his current condition, be unable to perform many of the job tasks he performed in the past. (Tr. pp. 35-37, 45-48, 51-52) I find this testimony to be credible and I therefore find the deputy commissioner's award of 50 percent industrial disability should be affirmed.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 8, 2016, is affirmed in its entirety.

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing September 9, 2013, at the weekly rate of seven hundred fifty-nine and 20/100 dollars (\$759.20).

Defendants shall receive credit for all weekly benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants 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 this 25th day of August, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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