

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY AMLING,

Claimant,

vs.

A.Y. MCDONALD INDUSTRIES, INC.,

Employer,

and

TWIN CITY FIRE INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 1640446.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1803;  
1803.01; 1806; 2907; 3001;  
3002; 4000; 5-9998

Claimant Timothy Amling appeals from an arbitration decision filed on September 22, 2022. Defendants A.Y. McDonald Industries, Inc., employer, and its insurance carrier, Twin City Fire Insurance Company, cross-appeal. The case was heard on April 20, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 27, 2022.

In the arbitration decision, the deputy commissioner found that as result of the stipulated work injury which occurred on November 28, 2017, claimant sustained 14 percent permanent functional impairment of his right shoulder, which entitles claimant to receive 56 weeks of permanent partial disability benefits commencing on the stipulated commencement date of April 16, 2018. The deputy commissioner found claimant failed to prove he sustained permanent functional impairment of his right arm as a result of the work injury. The deputy commissioner found claimant's right shoulder condition should not be apportioned between the work injury and claimant's pre-existing underlying degenerative condition. The deputy commissioner found claimant's earnings for the week of August 27, 2017, fairly represent claimant's customary weekly earnings such that the earnings for that week should be included in claimant's weekly benefit rate calculation, with the result that claimant's correct weekly benefit rate is \$717.42. The deputy commissioner found defendants are entitled to a credit for an overpayment of the weekly benefit rate. The deputy commissioner found claimant is not entitled to an award of penalty benefits. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$265.00.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained permanent disability of his right arm as a result of the work injury, in addition to permanent disability of his right shoulder, which would entitle claimant to receive industrial disability benefits pursuant to Iowa Code section 85.35(2)(v). Claimant asserts it should be found on appeal that he sustained at least 45 percent industrial disability as a result of the work injury.

On cross-appeal, defendants assert the deputy commissioner erred in failing to apportion liability for claimant's right shoulder condition between the work injury and claimant's underlying preexisting degenerative condition. Defendants assert the remainder of the decision should be affirmed.

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

I 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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on September 22, 2022, 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 14 percent permanent functional impairment of his right shoulder as a result of the work injury, which entitles claimant to receive 56 weeks of permanent partial disability benefits. I affirm the deputy commissioner's finding that claimant failed to prove he sustained any permanent functional impairment of his right arm. I affirm the deputy commissioner's finding that claimant's right shoulder condition should not be apportioned between the work injury and claimant's underlying degenerative, preexisting condition. I affirm the deputy commissioner's finding that claimant's earnings for the week of August 27, 2017, fairly represent claimant's customary weekly earnings, and I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the work injury is \$717.42. I affirm the deputy commissioner's finding that defendants are entitled to a credit for an overpayment of the weekly benefit rate. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$265.00.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 22, 2022, is affirmed in its entirety.

Defendants shall pay claimant 56 weeks of permanent partial disability benefits, at the weekly rate of seven hundred seventeen and 42/100 dollars (\$717.42), commencing on the stipulated commencement date of April 16, 2018.

Defendants shall receive credit for all benefits paid to date.

Defendants shall pay accrued weekly benefits 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 pay claimant's costs of the arbitration proceeding in the amount of two hundred sixty-five and 00/100 dollars (\$265.00), 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), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 30<sup>th</sup> day of March, 2023.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served, as follows:

Mark Sullivan (via WCES)

Jane Lorentzen (via WCES)