

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PATRICK SLAYMAKER,

Claimant,

vs.

UNITED PARCEL SERVICE,

Employer,

and

LIBERTY MUTUAL INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

JUL 20 2009

WORKERS' COMPENSATION

File Nos. 5002040/5002039

A P P E A L

D E C I S I O N

Head Note No.: 2403

Pursuant to Iowa Code sections 86.24 and 17A.15 I affirm and adopt as final agency action those portions of the proposed decision in this matter filed on September 17, 2008, that relate to issues properly raised on intra-agency appeal with the following additional analysis:


Although not determinative in his ultimate findings, the presiding deputy commissioner properly concluded in his remand decision that claimant has had no change of condition in the original injury that was not contemplated or unanticipated at the time of the original injury.

More specifically it is concluded that defendants have failed to establish that claimant's earning capacity has increased from the 20 percent loss established in the arbitration decision filed April 30, 2003. Claimant's earning capacity was determined therein with the understanding that claimant's ability to compete in the competitive labor market was impacted by the invasive shoulder surgery and his then inability to perform the work offered by defendant-employer. However, the earning capacity determination also wisely considered that claimant was a motivated worker likely to have additional employment opportunities – which is exactly what occurred following his retraining and continued rehabilitation. Claimant remains a worker who is less than the worker he was prior to his injury of March 15, 2001. There is no basis for review-reopening or other credit.

IT IS THEREFORE ORDERED that the remand decision of September 18, 2008 is AFFIRMED with the added analysis in this decision.

Defendants shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 20th day of July, 2009.



CHRISTOPHER J. GODFREY
WORKERS' COMPENSATION
COMMISSIONER

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