BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL BOVY,

File No. 5042474

JAN 2 3 2018

FHLED

Claimant,

WORKERS' COMPENSATION

VS.

REHEARING

DECISION

SECOND INJURY FUND OF IOWA,

Defendant.

Defendant Second Injury Fund of Iowa (Fund) filed an application for rehearing (application). Claimant has not filed a resistance. The application is considered.

In this matter, the arbitration decision found claimant was permanently and totally disabled. The arbitration decision gave the Fund 47.5 weeks of credit as to claimant's second injury to the right upper extremity. That decision was affirmed on appeal.

The Fund contends that in those cases where a claimant is found to be permanently and totally disabled, the Fund is entitled to a credit for the first injury after expiration of the employer's liability, before the Fund's liability begins.

The Fund is correct. This agency has held, in prior decisions, when a claimant is found to be permanently and totally disabled, the Fund is entitled to a credit for the first injury after the employer's liability expires, before the Fund's liability commences. Buser v Second Injury Fund of Iowa, File No. 5021259 (App. Dec. July 18, 2012). Given prior agency law, the Fund's application is granted. The Fund will be given a credit for the 47.5 weeks concerning the second injury, and a 4.4 week credit for the first injury, before the Fund's liability commences.

ORDER

Therefore it is ordered that the Fund's application is granted.

The appeal decision is supplemented as discussed above.

The appeal decision remains the same in all other respects.

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Signed and filed this 23rd day of January, 2018.

JOSEPH S. CORTESE II WORKERS' COMPENSATION COMMISSIONER

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