

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JOSE GARRIDO,

Claimant,

vs.

AMVC EMPLOYEE SERVICES, LLC,

Employer,

and

BERKSHIRE HATHAWAY HOME  
STATE INSURANCE COMPANY,

Insurance Carrier,

and

ACCIDENT FUND INSURANCE  
COMPANY OF AMERICA,

Insurance Carrier,  
Defendants.

File Nos. 5066290, 5066291

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

Head Notes: 1402.30; 1803; 1803.1; 2501;  
2502; 2907; 5-9998

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Claimant Jose Garrido appeals from an arbitration decision filed on July 24, 2020. Petitioner/defendant-insurer Accident Fund Insurance Company of America (hereinafter "Accident Fund") also appeals. Defendant-insurer Berkshire Hathaway Home State Insurance Company (hereinafter "Berkshire Hathaway") responds to the appeal. The case was heard on October 15, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 19, 2019. By order of delegation of authority on May 26, 2020, Deputy Workers' Compensation Commissioner James Christenson was appointed to prepare the findings of fact and proposed arbitration decision in this case due to the unavailability of Deputy Workers Compensation Commissioner Benjamin Humphrey.

In the arbitration decision, the deputy commissioner addressed two dates of injury: October 10, 2016 (File No. 5066291) and October 13, 2017 (File No. 5066290).

With respect to the alleged October 10, 2016, injury date, the deputy commissioner found claimant failed to carry his burden of proof to establish he sustained an injury that arose out of and in the course of his employment. As a result, the deputy commissioner found all other issues moot, including Accident Fund's claim for contribution against Berkshire Hathaway.

Regarding the accepted October 13, 2017, date of injury, the deputy commissioner found claimant sustained eight percent permanent disability of his right hand.

The deputy commissioner found claimant is not entitled to reimbursement for his independent medical examination (IME) pursuant to Iowa Code section 85.39, but the deputy commissioner assessed the cost of the IME report against defendant-employer AMVC Employee Services, LLC, and petitioner/defendant-insurer Accident Fund.

On appeal, in File No. 5066291, claimant asserts the deputy commissioner erred in finding claimant failed to prove he sustained a work-related injury on October 10, 2016. Claimant asserts he sustained an injury to his left shoulder that arose out of and in the course of his employment on October 10, 2016, he asserts he provided timely notice of that injury, and he asserts he is permanently and totally disabled or, in the alternative, he asserts he sustained a severe industrial disability as a result.

On appeal in File No. 5066291, petitioner Accident Fund likewise asserts the deputy commissioner erred in finding claimant failed to prove he sustained a work-related shoulder injury, for which Accident Fund seeks contribution from defendant-insurer Berkshire Hathaway.

On cross-appeal in File No. 5066290, defendant-insurer Accident Fund asserts the deputy commissioner erred in finding claimant sustained eight percent permanent disability of his right hand. Accident Fund asserts the deputy commissioner should have adopted a four percent permanent partial impairment rating.

Accident Fund also asserts the cost of the IME report should be assessed equally between Accident Fund and Berkshire Hathaway.

Berkshire Hathaway asserts on appeal that the arbitration decision should be affirmed in its entirety.

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 July 24, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

Regarding the alleged October 10, 2016, injury date in File No. 5066291, I affirm the deputy commissioner's finding that claimant failed to prove he sustained an injury that arose out of and in the course of his employment. Thus, I find all remaining issues

moot, including petitioner Accident Fund's claim for contribution against Berkshire Hathaway.

Regarding the October 13, 2017 date of injury, I affirm the deputy commissioner's finding that claimant sustained eight percent permanent disability of his right hand.

I likewise affirm the deputy commissioner's determination to assess the cost of the IME report against defendant-employer AMVC Employee Services, LLC, and petitioner/defendant-insurer Accident Fund.

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 July 24, 2020, is affirmed in its entirety.

**File No. 5066291 - alleged date of injury October 10, 2016,:**

Claimant shall take nothing in the way of benefits from this case.

**File No. 5066290 - date of injury October 13, 2017:**

Defendants employer and Accident Fund shall pay claimant fifteen point two (15.2) weeks of permanent partial disability benefits at the weekly rate of six hundred seventy-one and 02/100 dollars (\$671.02) commencing on March 14, 2018.

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).

Defendants employer and Accident Fund shall receive credit for all benefits previously paid.

Defendants employer and Accident Fund shall pay claimant temporary benefits at the stipulated rate.

Defendants employer and Accident Fund shall pay claimant's medical mileage as detailed in Exhibit 11.

Pursuant to rule 876 IAC 4.33, defendants employer and Accident Fund shall reimburse claimant for the filing fee and the service costs as set forth in the arbitration decision.

**Both file numbers:**

Pursuant to rule 876 IAC 4.33, defendants employer and Accident Fund shall reimburse claimant two thousand two hundred eighty-two and 00/100 dollars (\$2,282.00) for the cost of Dr. Bansal's IME report.

Pursuant to rule 876 IAC 4.33, claimant and defendants employer and Accident Fund shall split the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rules 876 IAC 3.1(2) and 876 IAC 11, defendants employer and Accident Fund shall file subsequent reports of injury (SROI) as required by this agency.

Signed and filed on this 19<sup>th</sup> day of February, 2021.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

James C. Byrne (via WCES)

Robert Cardell Gainer (via WCES)

Andrew Portis (via WCES)