

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

JUN 4 2018

WORKERS' COMPENSATION

MICHAEL BOLES,

Claimant,

vs.

ENXCO, INC.,

Employer,

and

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File Nos. 5036958, 5036959

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

Head Note Nos: 1804; 2905

Defendant Second Injury Fund of Iowa (the Fund) appeals from a review-reopening decision filed on November 8, 2016. Claimant Michael Boles responds to the appeal. Defendant-Employer Enxco, Inc., makes no argument on appeal. The case was heard on August 8, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 24, 2016.

The deputy commissioner found claimant is entitled to review-reopening against the Fund in this matter because claimant carried his burden of proof that he sustained a physical change of condition following an arbitration decision which was filed in this matter on September 20, 2012, for injuries which occurred on August 26, 2009, and on October 6, 2010, which arose out of and in the course of claimant's employment with defendant-employer. In the arbitration decision, which was not appealed, claimant was awarded 65 percent industrial disability from the Fund, with appropriate credit to the Fund for scheduled member permanent disability payments made to claimant for the qualifying injuries. Based on the finding of a change of physical condition in the review-reopening decision, the deputy commissioner found claimant is entitled to receive permanent total disability benefits from the Fund commencing 39.6 weeks following March 20, 2015, with appropriate credit for weekly payments previously made through November 3, 2016. The deputy commissioner found claimant is not entitled to taxation of costs against defendant-employer because claimant is not entitled to receive any additional weekly benefits from defendant-employer. In a ruling on rehearing filed on December 1, 2016, which was not appealed, the deputy commissioner ordered the

Fund to pay claimant's costs of the review-reopening proceeding in the amount of \$100.00.

The Fund asserts on appeal that the deputy commissioner erred in finding claimant is entitled to review-reopening in this matter because the Fund asserts the deputy commissioner erred in finding claimant carried his burden of proof that he sustained a physical change of condition following the September 20, 2012, arbitration decision. The Fund asserts the deputy commissioner erred in awarding claimant permanent total disability benefits.

Claimant asserts on appeal that the requested costs itemized in Exhibit 12 should be taxed against either defendant-employer or against the Fund. Claimant asserts that the review-reopening decision should otherwise be affirmed.

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 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed review-reopening decision filed on November 8, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the review-reopening 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 is entitled to review-reopening against the Fund in this matter because I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained a physical change of condition following the September 20, 2012, arbitration decision. I affirm the deputy commissioner's finding that claimant is entitled to receive permanent total disability benefits from the Fund commencing 39.6 weeks following March 20, 2015, with appropriate credit for weekly payments previously made through November 3, 2016. I affirm the deputy commissioner's finding that claimant is not entitled to taxation of costs against defendant-employer because claimant is not entitled to receive any additional weekly benefits from defendant-employer. I affirm the deputy commissioner's order that the Fund pay claimant's costs of the review-reopening proceeding in the amount of \$100.00. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on November 8, 2016, and the ruling on rehearing filed on December 1, 2016, are affirmed in their entirety.

Claimant shall take nothing further from these proceedings against defendant-employer.

The Second Injury Fund of Iowa shall pay claimant permanent total disability benefits at the weekly rate of four-hundred forty and 62/100 dollars (\$440.62) commencing thirty-nine point six (39.6) weeks following March 20, 2015, with appropriate credit for weekly payments previously made through November 3, 2016.

All accrued benefits shall be paid in a lump sum.

Interest shall accrue pursuant to Iowa Code section 85.30. Interest accrues on unpaid Second Injury Fund benefits from the date of this decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990). Any interest 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 this decision, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, the Second Injury Fund of Iowa shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, and the Second Injury Fund of Iowa shall pay the cost of the hearing transcript for the appeal.

Pursuant to rule 876 IAC 3.1(2), defendant-employer and the Second Injury Fund of Iowa shall file subsequent reports of injury as required by this agency.

Signed and filed on this 4th day of June, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Joseph S. Powell
Attorney at Law
4900 University Avenue, Ste. 200
Des Moines, IA 50311
jpowell@reillylawfirm.com

Jean Z. Dickson
Attorney at Law
1900 East 54th St.
Davenport, IA 52807
jzd@bettylawfirm.com

Jonathan Bergman
Assistant Attorney General
Special Litigation
Hoover State Office Bldg.
Des Moines, IA 50319-0106
Jonathan.bergman@ag.iowa.gov