

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DELBERT KEMPER,

Claimant,

vs.

INTERNATIONAL EQUIPMENT
SOLUTIONS,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 1661309.01

A P P E A L
D E C I S I O NHead Notes: 1402.20; 1402.30; 1803;
2907; 5-9998

Defendants International Equipment Solutions, employer, and its insurer, Zurich American Insurance Co., appeal from an arbitration decision filed on December 3, 2020. Claimant Delbert Kemper responds to the appeal. The case was heard on September 21, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 16, 2020.

In the arbitration decision, the deputy commissioner found claimant sustained permanent disability as a result of the stipulated work injury which occurred on July 30, 2018. The deputy commissioner found claimant sustained 55 percent industrial disability as a result of the work injury, which entitles claimant to receive 275 weeks of permanent partial disability benefits commencing on October 14, 2019. The deputy commissioner declined to tax claimant's costs of the arbitration proceeding against defendants.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained permanent disability as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive industrial disability benefits for the work injury. In the alternative, defendants assert the award of industrial disability should be reduced significantly.

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

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

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 December 3, 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.

I affirm the deputy commissioner's finding that claimant sustained permanent disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant sustained 55 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's decision not to tax claimant's costs of the arbitration proceeding against defendants.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 3, 2020, is affirmed in its entirety.

Defendants shall pay claimant two hundred seventy-five (275) weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred sixty and 24/100 dollars (\$560.24) commencing on October 14, 2019.

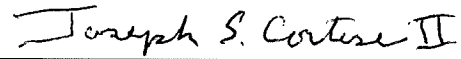
Defendants shall receive the stipulated credit noted in the hearing report against this award of permanent disability benefits.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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).

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and defendants shall pay 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 (SROI) as required by this agency.

Signed and filed on this 14th day of April, 2021.

Handwritten signature of Joseph S. Cortese II in black ink.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Darin Luneckas (via WCES)

Jean Dickson (via WCES)