

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MELISSA NOE,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Defendant.

File No. 5056973

A P P E A L

D E C I S I O N

Head Note Nos: 1803; 3200; 5-9998

FILED

JAN 15 2019

WORKERS' COMPENSATION

Defendant Second Injury Fund of Iowa (the Fund) appeals from an arbitration decision filed on July 24, 2018. Claimant Melissa Noe responds to the appeal. The case was heard on August 28, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 6, 2017.

Claimant filed a petition in arbitration seeking workers' compensation benefits from VT Industries, Inc., employer, Travelers Indemnity Company of Connecticut, insurance carrier, and the Fund, as defendants, as a result of a stipulated injury to claimant's right foot which arose out of and in the course of claimant's employment with the employer on October 21, 2015.

On August 28, 2017, prior to the start of the arbitration hearing, claimant entered into an agreement for settlement with the employer and the insurer. Pursuant to the settlement, claimant and the employer and insurer stipulated claimant sustained a work-related injury on October 21, 2015, and the injury resulted in scheduled member permanent partial disability of ten percent of claimant's right foot. That stipulation entitled claimant to receive 15 weeks of permanent partial disability (PPD) benefits commencing on the stipulated commencement date of July 12, 2017. The parties to the agreement for settlement also stipulated that claimant's gross average weekly wage for the work injury is \$795.78. The parties stipulated claimant is married and is entitled to three exemptions, which results in a weekly benefit rate of \$527.03. The agreement for settlement was approved by this agency on August 31, 2017.

Because claimant and the employer and the insurer entered into the above-described agreement for settlement prior to the arbitration hearing, the hearing involved only claimant's claim against the Fund. Claimant and the Fund stipulated in the hearing report that if claimant was found to be entitled to receive benefits from the Fund, the Fund is entitled to receive a credit of 20 weeks of PPD benefits for the two scheduled member injuries which comprise claimant's claim against the Fund.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proof that she is entitled to receive benefits from the Fund. The deputy commissioner found claimant carried her burden of proof that she sustained a first qualifying injury to her left upper extremity in 2000. The deputy commissioner found the

October 21, 2015, work injury to claimant's right foot is a second qualifying injury which triggers claimant's entitlement to receive Fund benefits. The deputy commissioner found the combination of the first qualifying injury in 2000 and the work injury on October 21, 2015, caused claimant to sustain 40 percent industrial disability, which entitles claimant to receive 200 weeks of PPD benefits from the Fund. While the deputy commissioner did not specifically state in her findings of fact and conclusions of law that the Fund is entitled to receive the credit of 20 weeks of PPD benefits as stipulated for the two scheduled member injuries which comprise claimant's claim against the Fund, the deputy commissioner did state in the order section of the arbitration decision that "Defendant shall receive credit as stipulated by the parties."

On appeal, the Fund asserts the deputy commissioner erred in finding claimant is entitled to receive benefits from the Fund. The Fund asserts the deputy commissioner erred in finding claimant sustained a first qualifying injury in 2000. In the alternative, the Fund asserts that if it is found on appeal that claimant did sustain a first qualifying injury in 2000, the evidence does not support an award of 40 percent industrial disability and the award should be reduced substantially. The Fund also asserts the deputy commissioner failed to find the Fund is entitled to receive the credit as stipulated for the two scheduled member injuries which comprise claimant's claim against the Fund, and the Fund asserts the deputy commissioner erred in that regard.

Claimant asserts on appeal that the deputy commissioner correctly, although imprecisely, stated the Fund is entitled to receive the credit of 20 weeks of PPD benefits for the two scheduled member injuries which comprise claimant's claim against the Fund. Claimant asserts 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, 2018, 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 carried her burden of proof that she is entitled to receive benefits from the Fund. I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained a first qualifying injury to her left upper extremity in 2000. I affirm the deputy commissioner's finding that the October 21, 2015, work injury to claimant's right foot is a second qualifying injury which triggers claimant's entitlement to receive Fund benefits. I affirm the deputy commissioner's finding that the combination of the first qualifying injury in 2000 and the work injury on October 21, 2015, caused claimant to sustain 40 percent industrial disability. I find that while the deputy commissioner did not specifically state in

her findings of fact and conclusions of law that the Fund is entitled to receive the credit of 20 weeks of PPD benefits as stipulated for the two scheduled member injuries which comprise claimant's claim against the Fund, the deputy commissioner did state in the order section of the arbitration decision that "Defendant shall receive credit as stipulated by the parties" and I affirm the Fund's entitlement to that credit of 20 weeks of PPD benefits. I therefore affirm the deputy commissioner's finding that claimant is entitled to receive 180 weeks of PPD benefits from the Fund commencing on the stipulated commencement date of November 29, 2017.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 24, 2018, is affirmed in its entirety.

The parties are ordered to comply with all stipulations that have been accepted by this agency.

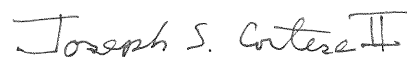
The Fund shall receive a credit of 20 weeks of PPD benefits as stipulated by the parties. The Fund shall therefore pay claimant one hundred eighty (180) weeks of permanent partial disability benefits commencing as stipulated on November 29, 2017, at the stipulated weekly rate of five hundred twenty-seven and 03/100 dollars (\$527.03).

The Fund shall pay accrued weekly benefits in a lump sum, together with interest from the date of this appeal decision, 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 October 21, 2015, 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 the parties shall pay their own costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), the Fund shall file subsequent reports of injury as required by this agency.

Signed and filed on this 15th day of January, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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