

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA BEYER,

Claimant,

vs.

RR DONNELLEY & SONS CO.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,Insurance Carrier,
Defendants.

File No. 20009249.01

A P P E A L

D E C I S I O N

Head Notes: 1108.50, 1402.20, 1402.40,
1802, 1803, 2502, 2907

Defendants RR Donnelley and Sons Company, employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on August 16, 2022. The case was heard on March 4, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 9, 2022.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proof to establish she sustained an injury to her left shoulder that arose out of and in the course of her employment with defendant-employer on April 23, 2018. The deputy commissioner found claimant sustained a sequela injury to her right shoulder as a result of the April 23, 2018, left shoulder injury. Relying on the expert medical opinions of Richard Rattay, M.D., the deputy commissioner found claimant proved she sustained permanent disability as a result of the April 23, 2018, work injury. The deputy commissioner found claimant's bilateral shoulder injury is compensated industrially under Iowa Code section 85.34(2)(v). The deputy commissioner further found claimant did not return to work for defendant-employer, which triggered claimant's entitlement to an assessment of industrial disability. After considering all relevant factors, the deputy commissioner found claimant sustained 40 percent industrial disability as a result of the work injury, which entitles claimant to receive 200 weeks of permanent partial disability benefits commencing on April 21, 2020. The deputy commissioner found claimant is entitled to receive healing period benefits from November 7, 2019, through April 20, 2020. The deputy commissioner found claimant is entitled to two exemptions in

calculating claimant's weekly benefit rate. The deputy commissioner found defendants are responsible for payment, or reimbursement, of all causally related medical expenses itemized in Joint Exhibit 13. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$256.20.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a work-related injury to her left shoulder on April 23, 2018. Defendants assert the deputy commissioner erred in finding claimant sustained a sequela injury to her right shoulder as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant sustained any 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 under section 85.34(2)(v). Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits from November 7, 2019, through April 20, 2020. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment or reimbursement for the medical expenses itemized in Joint Exhibit 13.

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 performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on August 16, 2022, which relate to the issues properly raised on intra-agency appeal.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be a credible witness. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

I find the deputy commissioner provided a well-reasoned analysis of all 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 a work-related injury to her left shoulder on April 23, 2018. I affirm the deputy commissioner's finding that claimant sustained a sequela injury to her right shoulder as a result of the

work injury. I affirm the deputy commissioner's finding that claimant proved she sustained permanent disability as a result of the April 23, 2018, bilateral shoulder injury.

Defendants assert the permanent disability attributable to the bilateral shoulder injury should be compensated separately on two, 400-week schedules, pursuant to Iowa Code section 85.34(2)(n). On December 29, 2021, I issued an appeal decision in Carmer v. Nordstrom, Inc., File No. 1656062.01, in which I addressed which paragraph of section 85.34(2) applies to bilateral shoulder injuries caused by a single accident. Like the deputy commissioner in this case, I found the "catch-all" provision in section 85.34(2)(v) governs and not section 85.34(2)(n). Relying on my findings, conclusions, and analysis as set forth in Carmer, I affirm the deputy commissioner's finding that claimant in this case proved her bilateral shoulder injury is compensated industrially under Iowa Code section 85.34(2)(v).

I affirm the deputy commissioner's finding that claimant sustained 40 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from November 7, 2019, to April 20, 2020. I affirm the deputy commissioner's finding that claimant is entitled to payment or reimbursement for the medical expenses itemized in Joint Exhibit 13.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 16, 2022, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits from November 7, 2019, through April 20, 2020, at the weekly rate of five hundred forty-three and 79/100 dollars (\$543.79).

Defendants shall pay claimant 200 weeks of permanent partial disability benefits at the weekly rate of five hundred forty-three and 79/100 dollars (\$543.79), commencing on April 21, 2020.

Defendants shall receive credit for all benefits paid to date.

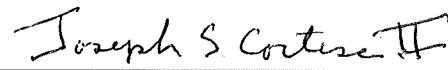
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall pay the medical providers, reimburse claimant, reimburse all third-party payers, or otherwise satisfy and hold claimant harmless for the medical expenses itemized in Joint Exhibit 13.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two hundred fifty-six and 20/100 dollars (\$256.20), and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 22nd day of March, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served, as follows:

James Fitzsimmons (via WCES)

Stephen Spencer (via WCES)

Christopher Spencer (via WCES)