

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICHOLAS KVIDERA,

Claimant,

vs.

WINDOWS BY PELLA, INC.,

Employer,

and

SELECTIVE INSURANCE COMPANY
OF THE SOUTHEAST,

Insurance Carrier,
Defendants.

File No.: 5048086

APPEAL
DECISION

Headnote Nos.: 1110, 1100, 1104,
1803, 9998

FILED

NOV 20 2017

WORKERS' COMPENSATION

Defendants Windows by Pella, Inc., employer, and its insurer, Selective Insurance Company of the Southeast, insurance carrier, appeal from an arbitration decision filed on March 3, 2016. On August 4, 2017, Joseph S. Cortese II, Workers' Compensation Commissioner, issued an order of delegation of authority delegating the authority to issue the final agency decision to the undersigned. The detailed arguments of the parties have been considered and the record of evidence has been reviewed de novo.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to show that he sustained an injury which arose out of and in the course of his employment with defendant-employer on November 20, 2012. Additionally, the deputy commissioner found that defendants were responsible for the medical expenses as set forth in claimant's exhibits 14 and 15. By stipulation of the parties, the deputy commissioner stated that defendants shall pay healing period benefits to the claimant as set forth in the hearing report, from November 20, 2012 through May 1, 2013 and January 10, 2014 through March 10, 2014. The deputy commissioner found claimant sustained 45 percent industrial disability resulting from the work injury. The award entitles claimant to 225 weeks of permanent partial disability (PPD) benefits commencing on March 11, 2014. The parties stipulated that claimant's gross average weekly earnings for the work injury were six hundred fifty-two and 12/100 dollars (\$652.12), and that claimant's weekly benefit rate for the injury is four hundred forty-nine and 81/100 dollars (\$449.81). The deputy commissioner also taxed defendants with claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding that the injury arose out of and in the course of claimant's employment. Specifically, defendants contend that at the time of the injury claimant had deviated from his employment. Defendants also assert on appeal that the deputy commissioner erred in finding that the claimant sustained a forty-five percent (45%) loss in earning capacity due to his work injury, with a commencement date of March 11, 2014.

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 arbitration decision filed on March 3, 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 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 his burden of proof to show that the injury arose out of and in the course of his employment. I affirm the deputy commissioner's award of forty-five percent (45%) industrial disability for the work injury, which entitles claimant to 225 weeks of PPD benefits commencing on March 11, 2014. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding 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.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of March 3, 2014, is affirmed in its entirety.

By stipulation of the parties, defendants shall pay healing period benefits to the claimant as set forth in the hearing report, from November 20, 2012 through May 1, 2013, and January 10, 2014 through March 10, 2014.

Defendants shall pay the claimant two hundred twenty-five (225) weeks of permanent partial disability benefits at the stipulated rate of four hundred forty-nine and 81/100 dollars (\$449.81) per week commencing March 11, 2014.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall pay medical expenses as outline in claimant's Exhibits 14 and 15.

Pursuant to rule 876 IAC 4.33, defendants are taxed with claimant's costs of the arbitration proceeding, and 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 as required by this agency.

Signed and filed this 20th day of November, 2017.



ERIN Q. PALS
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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