

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAMELA SALAZAR,

Claimant,

vs.

FEDERAL EXPRESS CORPORATION,

Employer,

and

INDEMNITY INS. CO. OF N. AMERICA,

Insurance Carrier,
Defendants.File Nos. 1664432.01
1658294.01

A P P E A L

D E C I S I O N

Headnotes: 1403.40; 1803; 2907; 5-9998

Defendants Federal Express Corporation, employer, and its insurer, Indemnity Ins. Co. of N. America, appeal from an arbitration decision filed on January 7, 2022. Claimant Pamela Salazar responds to the appeal. The case was heard on January 15, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 15, 2021.

In the arbitration decision, in File No. 1658294.01, stipulated injury date of December 13, 2018, the deputy commissioner found claimant failed to carry her burden of proof to establish she sustained any permanent disability as a result of that injury. The deputy commissioner found all other issues raised in File No. 1658294.01 are moot. No party in File No. 1658294.01 appealed the deputy commissioner's findings in that case. Therefore, this appeal decision addresses only those issues raised on appeal in File No. 1664432.01.

In File No. 1664432.01, stipulated injury date of May 2, 2019, the deputy commissioner found claimant sustained permanent scheduled member functional impairment of 12 percent of the right shoulder, based on the impairment rating of Mark Kirkland, D.O., which entitles claimant to receive 48 weeks of permanent partial disability benefits commencing on October 23, 2019. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$106.48.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 12 percent permanent impairment of the right shoulder as a result of the work injury. Defendants assert the award for permanent impairment should be reduced to three percent of the shoulder based on the impairment rating of Scott Meyer, M.D. In the alternative, defendants assert the award for permanent impairment should be reduced to six percent of the shoulder by using the range of motion scores determined by Dr. Kirkland and by using claimant's contralateral shoulder range of motion scores as a baseline.

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

Those portions of the proposed arbitration 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 January 7, 2022, which relate to the issues properly raised on intra-agency appeal.

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 proved she sustained 12 percent permanent impairment of her right shoulder as a result of May 2, 2019, work injury, based on Dr. Kirkland's impairment rating. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$106.48.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 7, 2022, is affirmed in its entirety.

Defendants shall pay claimant forty-eight (48) weeks of permanent partial disability benefits at the weekly rate of five hundred eighty and 53/100 dollars (\$580.53) commencing on October 23, 2019.

As stipulated by the parties, defendants shall receive credit for twelve (12) weeks of permanent partial disability benefits previously paid to claimant.

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.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred six and 48/100 dollars (\$106.48), 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 as required by this agency.

Signed and filed on this 23rd day of May, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Ballard (via WCES)

John Cutler (via WCES)