

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RITA R. MELBY,

Claimant,

vs.

CONAGRA FOODS, INC.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 5064273.01

A P P E A L

D E C I S I O N

Headnotes: 1402.40; 1803; 1808; 2907;  
5-9998

Defendants ConAgra Foods, Inc., employer, and its insurer, Old Republic Insurance Company, appeal from an arbitration decision filed on February 22, 2021. Claimant Rita Melby responds to the appeal. The case was heard on November 20, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 21, 2020.

In the arbitration decision, the deputy commissioner found that pursuant to Iowa Code Section 85.34(2)(s), claimant sustained eleven percent whole body scheduled member functional disability as a result of the stipulated bilateral upper extremity work injury which occurred on August 12, 2016. The award entitles claimant to receive 55 weeks of permanent partial disability benefits commencing on the stipulated date of May 15, 2018. In arriving at her decision, the deputy commissioner adopted the permanent impairment rating of Sunil Bansal, M.D., contained in his independent medical evaluation (IME) report issued on July 1, 2019. (Exhibit 1, pp.11-13) In adopting Dr. Bansal's impairment rating, the deputy commissioner rejected the impairment rating of John McCarthy, M.D., issued on August 6, 2019, (Joint Exhibit 3, p. 63) and the deputy commissioner rejected the impairment rating contained in the IME report of Ian Crabb, M.D., issued on May 15, 2018. (JE 8, p. 100) The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$700.00.

Defendants assert on appeal that the deputy commissioner erred in adopting Dr. Bansal's impairment rating. Defendants assert Dr. Crabb's impairment rating of "3% of combined impairment to the right upper extremity . . . and 4% of combined impairment to the left upper extremity" (Id.) should be adopted in place of Dr. Bansal's impairment rating, and defendants assert the award for permanent disability should be reduced accordingly.

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 February 22, 2021, 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 eleven percent whole body scheduled member functional disability as a result of the work injury. I affirm the deputy commissioner's determination to adopt the impairment rating of Dr. Bansal, and I affirm the deputy commissioner's determination to reject the impairment ratings of Dr. Crabb and Dr. McCarthy. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$700.00.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 22, 2021, is affirmed in its entirety.

Defendants shall pay claimant fifty-five (55) weeks of permanent partial disability benefits commencing on the stipulated date of May 15, 2018, at the stipulated weekly rate of eight hundred fifty and 62/100 dollars (\$850.62).

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)

Defendants shall receive the stipulated credits against this award.

Defendants shall pay claimant's costs of the arbitration proceeding in the amount of seven hundred and 00/100 dollars (\$700.00), 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 28<sup>th</sup> day of May, 2021.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Jordan Glaser (via WCES)

Lindsey E. Mills (via WCES)