

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHNNIE VANCE,

Claimant,

vs.

DELANEY CONCRETE  
CONSTRUCTION COMPANY, INC.,  
Employer,CONTINENTAL WESTERN GROUP,  
Insurance Carrier,  
Defendants.

File No. 19004997.01

## A P P E A L

## D E C I S I O N

Head Notes: 1402.20; 1402.40; 1803; 1803.1;  
2501; 2502; 2701; 2907; 3001;  
3002; 5-9998

Claimant Johnnie Vance appeals from an arbitration decision filed on May 2, 2023. Defendants Delaney Concrete Construction Company, Inc., employer, and its insurer, Continental Western Group, respond to the appeal. The case was heard on November 3, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 20, 2022.

In the arbitration decision, the deputy commissioner found claimant failed to carry his burden of proof to establish he sustained sequela injuries to his back and left leg, in addition to the stipulated injuries to his bilateral shoulders, as a result of the stipulated May 29, 2019, work injury. The deputy commissioner found that because claimant continued to work for defendant-employer and earned more at the time of the arbitration hearing than he earned at the time of the injury, pursuant to Iowa Code section 85.34(2)(u), claimant should be compensated functionally instead of industrially for his permanent disability resulting from the work injury. The deputy commissioner found claimant proved he sustained combined functional impairment of 14 percent of his body as a whole as a result of the work injury, which entitles claimant to receive 70 weeks of permanent partial disability benefits. The deputy commissioner found the correct commencement date for claimant's permanent disability benefits is February 19, 2021. The deputy commissioner found claimant's average weekly wage for the work injury is \$1,228.83. The deputy commissioner found claimant's correct classification for weekly benefits is married with three exemptions, with the result that claimant's correct weekly benefit rate for the work injury is \$788.86. Because the deputy commissioner found claimant did not sustain sequela injuries to his back and left leg as a result of the work injury, the deputy commissioner found claimant is not entitled to receive the following:

- (1) additional temporary disability or healing period benefits,
- (2) payment of the medical expenses itemized in Exhibit 10,
- (3) alternate medical care for his back and left leg.

The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$4,312.50 for the cost of the independent medical evaluation (IME) of claimant performed by Mark Taylor, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$103.00.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained sequela injuries to his back and left leg as a result of the work injury. Claimant asserts the deputy commissioner erred in finding claimant should be compensated functionally instead of industrially for his permanent disability resulting from the work injury. Claimant asserts the deputy commissioner erred in finding the correct commencement date for claimant's permanent disability benefits is February 19, 2021. Claimant asserts it should be found the correct commencement date for claimant's permanent disability benefits is May 5, 2021. Claimant asserts that because the deputy commissioner erred in finding claimant failed to prove he sustained sequela injuries to his back and left leg as a result of the work injury, the deputy commissioner also erred in finding claimant is not entitled to receive the following:

- (1) additional temporary disability or healing period benefits,
- (2) payment of the medical expenses itemized in Exhibit 10,
- (3) alternate medical care for his back and left leg.

Defendants assert on appeal that the arbitration decision should be modified to find the correct commencement date for claimant's permanent disability benefits is October 28, 2020, and to find claimant's functional impairment resulting from the work injury is six percent of his body for his right shoulder injury and two percent of his body for his left shoulder injury.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I 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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on May 2, 2023, 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 failed to prove he sustained sequela injuries to his back and left leg as a result of the work injury. I affirm the deputy commissioner's finding that because claimant continued to work for defendant-employer and earned more at the time of the arbitration hearing than he earned at the time of the injury, that pursuant to Iowa Code section 85.34(2)(u), claimant should be compensated functionally instead of industrially for his permanent disability caused by the work injury. I affirm the deputy commissioner's finding that claimant proved he sustained combined functional impairment of 14 percent of his body as a whole as a result of the work injury. I affirm the deputy commissioner's finding that the correct commencement date for claimant's permanent disability benefits is February 19, 2021. I affirm the deputy commissioner's finding that claimant's average weekly wage for the work injury is \$1,228.83. I affirm the deputy commissioner's finding that claimant's correct classification for weekly benefits is married with three exemptions, with the result that claimant's correct weekly benefit rate for the work injury is \$788.86. Because I affirm the deputy commissioner's finding that claimant did not sustain sequela injuries to his back and left leg as a result of the work injury, I affirm the deputy commissioner's finding that claimant is not entitled to receive the following:

- (1) additional temporary disability or healing period benefits,
- (2) payment of the medical expenses itemized in Exhibit 10,
- (3) alternate medical care for his back and left leg.

I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the cost of Dr. Taylor's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$103.00.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 2, 2023, is affirmed in its entirety.

Defendants shall pay claimant seventy (70) weeks of permanent partial disability benefits at the weekly rate of seven hundred eighty-eight and 86/100 dollars (\$788.86) commencing on February 19, 2021.

Defendants shall receive credit for the forty (40) weeks of permanent partial disability benefits paid prior to hearing at the weekly rate of seven hundred thirty-eight and 61/100 dollars (\$738.61).

Defendants shall pay claimant one hundred and five and 75/100 dollars (\$105.75) for underpaid healing period benefits from May 30, 2019, through July 14, 2020.

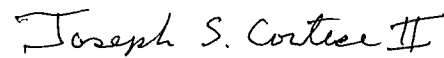
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of four thousand three hundred twelve and 50/100 dollars (\$4,312.50) for the cost of Dr. Taylor's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and three dollars and 00/100 dollars (\$103.00), and the parties shall split 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 6<sup>th</sup> day of September, 2023.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Dillon Besser (via WCES)

Christine Westberg Dorn (via WCES)