

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SAMUEL DE DIOS,

Claimant,

vs.

BRAND ENERGY & INFRASTRUCTURE  
SERVICES, INC.,

Employer,

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,

Defendants.

File No. 5061144

A P P E A L

D E C I S I O N

Head Note Nos: 1104; 1106; 1402.30;  
1402.40; 1802; 1803;  
2206; 2907

**FILED**

**MAY - 7 2019**

**WORKERS' COMPENSATION**

Defendants Brand Energy & Infrastructure Services, Inc. employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on December 11, 2017. Claimant Samuel De Dios responds to the appeal. The case was heard on July 12, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 15, 2017.

The deputy commissioner found the stipulated incident which occurred on April 8, 2016, arose out of and in the course of claimant's employment with defendant-employer because the incident occurred in an area under the direct control of defendant-employer. The deputy commissioner found claimant carried his burden of proof that he sustained injuries as a result of the April 8, 2016, work incident, which entitles claimant to receive both healing period benefits and permanent partial disability (PPD) benefits. The deputy commissioner found claimant is entitled to receive healing period benefits from April 8, 2016, through May 2, 2016, for the work injury. The deputy commissioner found claimant sustained 35 percent industrial disability as a result of the work injury, which entitles claimant to receive 175 weeks of PPD benefits commencing on May 3, 2016. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained permanent disability as a result of the work injury and in awarding claimant industrial disability benefits. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the award for industrial disability should be increased significantly.

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 December 11, 2017, 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 the April 8, 2016, incident arose out of and in the course of claimant's employment with defendant-employer because the incident occurred in an area under the direct control of defendant-employer. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from April 8, 2016, through May 2, 2016, for the work injury. I affirm the deputy commissioner's finding that claimant sustained 35 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

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 was credible. Defendants assert the deputy commissioner erred in finding claimant was credible. 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 the deputy commissioner correctly assessed claimant's credibility in this matter. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's finding that claimant was credible.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 11, 2017, is affirmed in its entirety.

All weekly benefits shall be paid at the stipulated weekly rate of eight hundred forty-six and 77/100 dollars (\$846.77).

Defendants shall pay claimant healing period benefits from April 8, 2016, through May 2, 2016

Defendants shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability benefits commencing on May 3, 2016.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be 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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, 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 7<sup>th</sup> day of May, 2019.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies to:

Al Sturgeon  
Attorney at Law  
911 – 6<sup>th</sup> St.  
Sioux City IA 51101  
[alsturgeon@siouxlan.net](mailto:alsturgeon@siouxlan.net)

Jean Z. Dickson  
Attorney at Law  
1900 East 54<sup>th</sup> St.  
Davenport, IA 52807  
[jzd@bettylawfirm.com](mailto:jzd@bettylawfirm.com)