

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KARENJEANNE DUNBAR,

Claimant,

vs.

MENARD, INC.,

Employer,

and

XL INSURANCE,

Insurance Carrier,
Defendants.File Nos. 20008907.02
1657325.02

A P P E A L

D E C I S I O N

Headnotes: 1402.40, 1803, 1803.1, 2502;
2907; 5-9998

Claimant KarenJeanne Dunbar appeals from an arbitration decision filed on December 2, 2021. Defendants Menard, Inc., employer, and its insurer, XL Insurance, respond to the appeal. The case was heard on August 12, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 27, 2021.

In the arbitration decision, in File No. 1657325.02, the deputy commissioner found claimant proved she sustained a work-related injury to her right shoulder on September 21, 2018, which did not result in any temporary or permanent disability.

In File No. 20008907.02, the deputy commissioner found claimant proved she sustained a work-related injury to her right shoulder on October 5, 2018, which did result in permanent disability.

Claimant's appeal in this matter and this appeal decision focus on File No. 20008907.02. Claimant does not challenge the deputy commissioner's findings in File No. 1657325.02.

In File No. 20008907.02, the deputy commissioner found claimant carried her burden of proof to establish that on October 5, 2018, claimant sustained a permanent injury to her right shoulder. The deputy commissioner found that pursuant to Iowa Code section 85.34(2)(n), claimant proved she sustained permanent scheduled member functional impairment of 19 percent of her right shoulder, which entitles claimant to receive 76 weeks of permanent partial disability benefits commencing on September 21, 2019. The deputy commissioner found claimant failed to prove her permanent disability

extends beyond her right shoulder into her body as a whole. The deputy commissioner found claimant is not entitled to receive industrial disability benefits for the October 5, 2018, work injury. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants 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 \$206.90.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's permanent disability from the October 5, 2018, work injury does not extend beyond claimant's right shoulder into claimant's body as a whole. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive industrial disability benefits for the October 5, 2018, work injury.

Defendants assert 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 December 2, 2021, which relate to the issues properly raised on intra-agency appeal.

In File No. 1657325.02, I affirm the deputy commissioner's finding that claimant proved she sustained a work-related injury to her right shoulder on September 21, 2018, which did not result in any temporary or permanent disability.

In File No. 20008907.02, I affirm the deputy commissioner's finding that claimant proved she sustained a permanent injury to her right shoulder on October 5, 2018. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(2)(n), claimant proved she sustained permanent scheduled member functional impairment of 19 percent of her right shoulder. I affirm the deputy commissioner's finding that claimant failed to prove her permanent disability extends beyond her right shoulder into her body as a whole. I affirm the deputy commissioner's finding that claimant is not entitled to receive industrial disability benefits for the October 5, 2018, work injury. 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 \$206.90.

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 December 2, 2021, is affirmed in its entirety.

File No. 1657325.02 – Injury Date of September 21, 2018:

Claimant shall take nothing from these proceedings in the way of temporary disability benefits or permanent disability benefits.

File No.20008907.02 - Injury Date of October 5, 2018:

Defendants shall pay claimant 76 weeks of permanent partial disability benefits commencing as stipulated on September 21, 2019, at the stipulated weekly rate of two hundred seventy-eight and 58/100 dollars (\$278.58) per week.

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.

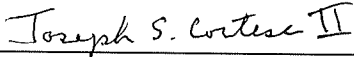
Both Files:

Defendants shall reimburse claimant in the amount of two thousand, seven hundred seventy and 50/100 dollars (\$2,770.50) for Dr. Taylor's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimants costs of the arbitration proceeding in the amount of two hundred six and 90/100 dollars (\$206.90), and claimant 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 30th day of March, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Andrew Giller (via WCES)

Kent Smith (via WCES)