

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICAH McMORRIS,

Claimant,

vs.

SEABEE CORP. CYLINDERS,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.,

Insurance Carrier,  
Defendants.

File No. 1659134.01

A P P E A L  
D E C I S I O NHead Notes: 1402.40; 1802; 1803; 2907;  
5-9999

Claimant Micah McMorris appeals from an arbitration decision filed on April 13, 2021. Defendants Seabee Corporation Cylinders, employer, and its insurer, Travelers Indemnity Company of Connecticut, respond to the appeal. The case was heard on November 10, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 14, 2020.

In the arbitration decision, the deputy commissioner found claimant sustained eight percent industrial disability because of his hearing loss and tinnitus which result from the stipulated January 14, 2019, work injury. The deputy commissioner also found claimant is entitled to receive healing period benefits from March 23, 2019, through June 19, 2019.

On appeal, claimant asserts the deputy commissioner's industrial disability award is too low.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on April 13, 2021, is affirmed in part and modified in part.

With respect to the deputy commissioner's findings regarding claimant's industrial disability, I agree that Dr. Dettmer's opinions are the most reliable in this case, and I agree with the deputy commissioner's findings regarding claimant's inability to return to his past work:

Of the previous jobs he has held, his work restrictions likely prevent him from doing manufacturing and production work. Claimant testified credibly that he has some difficulty communicating with people and has low confidence that he is communicating fully. It is likely that some office jobs that require significant interaction either with the public or on the telephone would be challenging for claimant.

(Arbitration Decision, p. 8)

These are the facts on which the deputy commissioner relied to support the eight percent industrial disability award. However, I find claimant's inability in this case to engage in employment for which he was fitted, including his former jobs in manufacturing and production - some of the highest-paying work he ever performed - supports an award greater than eight percent industrial disability.

Also supporting a greater award is the fact that claimant's hearing loss and tinnitus affect his ability to perform jobs in settings without sustained noise as well. As claimant credibly explained:

Q. Assuming that is your only restriction, not to work in a noisy environment that presents noise levels greater than 85 decibels unless you're wearing appropriate hearing protection and that's your only restriction, there would be no reason why you would not be able to go back to doing your job at Casey's, would there?

A. Yes, I think there is. I know there is. I can't sleep. I mean, I'm not getting sleep. My ears are constantly ringing. I'm exhausted. It's just not safe.

Like we went through all these things. Again, just being assertive to what I'm doing, I feel like I would be giving a poor quality of a worker. I think eventually it would catch up to me, whether it was not getting any sleep, whether it's not hearing the right commands, whether it's, you know, just not being a good -- I wouldn't say customer, the opposite end, not being a good worker for a customer on accident. The headaches that I get. The loud noises that pop up there that trigger headaches that make me feel like whatever. Just everything that comes with what I said earlier . . . .

(Hearing Transcript, p. 49)

Because claimant's hearing loss and tinnitus and the limitations therefrom prevent him from returning to much of the work he previously performed, including his highest-paying jobs, I find claimant sustained an industrial disability greater than eight percent. Instead, I find claimant sustained 25 percent industrial disability, which entitles

him to receive 125 weeks of permanent partial disability benefits. The deputy commissioner's findings regarding the extent of claimant's permanent disability are therefore modified.

I find the deputy commissioner provided a well-reasoned analysis of all of the remaining issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed in this matter on April 13, 2021, is affirmed in part and modified in part.

Defendants shall pay claimant one hundred and twenty-five (125) weeks of permanent partial disability benefits at the weekly rate of four hundred sixty-seven and 92/100 dollars (\$467.92) commencing on June 20, 2019.

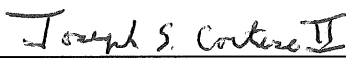
Defendants shall pay any accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall receive credit for any overpayment of temporary total or healing period benefits.

Pursuant to rule 876 IAC 4.33, 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 18<sup>th</sup> day of August, 2021.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Nicholas Pothitakis (via WCES)

James Ballard (via WCES)