

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RON CARNEY,
Claimant,

vs.

SHIVVERS, INC.,
Employer,

and

ARGENT-WEST BEND MUTUAL
INSURANCE COMPANY,
Insurance Carrier,

SECOND INJURY FUND OF IOWA,
Defendants.

File No. 5051675

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 2502; 2701;
3002; 3202; 5-9998

Claimant Ron Carney appeals from an arbitration decision filed on December 14, 2018. Defendants Shivvers, Inc., employer, and its insurer, Argent-West Bend Mutual Insurance Company, cross-appeal. Defendant Second Injury Fund of Iowa (the Fund), responds to the appeal. The case was heard on October 23, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 17, 2017.

The deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability as a result of the stipulated work-related injury which arose out of and in the course of claimant's employment with defendant-employer on September 23, 2013. The deputy commissioner found that as a result of the work injury, claimant sustained scheduled member functional disability of six percent of his left lower extremity, which entitles claimant to receive 13.2 weeks of permanent partial disability benefits commencing on May 21, 2014. The deputy commissioner found claimant's correct weekly benefit rate for the work injury is \$312.15. The deputy commissioner found claimant failed to carry his burden of proof to establish he sustained a first qualifying injury on either August 17, 1990, or on November 11, 2002, with the result that the deputy commissioner found claimant is not entitled to receive benefits from the Fund. The deputy commissioner found claimant is entitled to receive alternate medical care in the form of ongoing treatment for the work injury by Randy Metzger, DPM. The deputy commissioner found claimant is entitled to receive

reimbursement from defendants employer and insurer in the amount \$1,947.00 for the cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D. on November 21, 2014. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof to establish he sustained a first qualifying injury on either August 17, 1990, or on November 11, 2002, and in finding claimant is not entitled to receive benefits from the Fund.

Defendants employer and insurer assert on cross-appeal that the deputy commissioner erred in finding claimant is entitled to receive alternate medical care.

The Fund 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 December 1, 2018, 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 carried his burden of proof to establish he sustained permanent disability as a result of the September 23, 2013, work injury. I affirm the deputy commissioner's finding that claimant sustained scheduled member functional disability of six percent of his left lower extremity as a result of the work injury. I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the work injury is \$312.15. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof to establish he sustained a first qualifying injury on either August 17, 1990, or on November 11, 2002, and I affirm the deputy commissioner's finding that claimant is not entitled to receive benefits from the Fund. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care in the form of ongoing treatment for the work injury by Dr. Metzger. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants employer and insurer in the amount

\$1,947.00 for the cost of Dr. Bansal's IME. I affirm the deputy commissioner order that defendants employer and insurer pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 14, 2018, is affirmed in its entirety.

Defendants employer and insurer shall pay claimant thirteen point two (13.2) weeks of permanent partial disability benefits at the weekly rate of three hundred twelve and 15/100 dollars (\$312.15), commencing on May 21, 2014.

Defendants employer and insurer are entitled to a credit for all benefits paid.

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).

Defendants employer and insurer remain responsible for providing claimant with ongoing medical care for his causally-related left lower extremity symptoms, and those defendants shall provide claimant with alternate medical care with Dr. Metzger as set forth above.

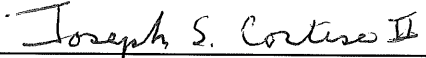
Defendants employer and insurer shall reimburse claimant in the amount of one thousand nine hundred forty-seven and no/100 dollars (\$1,947.00) for the cost of Dr. Bansal's IME.

Claimant shall take nothing in the way of benefits from the Second Injury Fund of Iowa.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00) and those defendants and claimant shall split the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 24th day of February, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Eric J. Loney Via WCES

Charles A. Blades Via WCES

Tonya A. Oetken Via WCES