BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHAD WOOD, Claimant, vs. VERMEER MANUFACTURING COMPANY, Employer, and EMPLOYERS MUTUAL CASUALTY COMPANY, Insurance Carrier, Defendants.	File No. 5061583 A P P E A L D E C I S I O N HEAD NOTE NO. 1803

Defendants Vermeer Manufacturing Company, employer, and its insurer, Employers Mutual Casualty Company, appeal from an arbitration decision filed on June 10, 2019. Claimant Chad Wood responds to the appeal. The case was heard on April 18, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 28, 2019, upon the simultaneous filing of briefs.

The deputy commissioner found claimant sustained 35 percent industrial disability as a result of the stipulated August 28, 2017, work injury, which entitled claimant to receive 175 weeks of permanent partial disability benefits commencing on the stipulated date of October 31, 2017 at the stipulated weekly rate of $713.78.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 35 percent industrial disability as a result of the work injury and that the industrial disability should be reduced and that claimant has sustained little, if any, industrial disability.

Claimant asks 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 June 10, 2019, 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 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.

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

The deputy commissioner found that claimant's credibility was at issue and the irregularities in his report of pain, his inability to lift even one pound, his behavior during his final physical therapy appointment, and his sensitivity to light stimulated stroking of his back raise concerns and suggested claimant was exaggerating the severity of his ongoing complaints. I adopt the credibility findings of the deputy commissioner as the record does not contradict those findings.

There are two expert witness reports opining on the extent of the claimant's disability. Dr. Schmitz assigned a ten percent impairment but apportioned the rating between the decompression surgery in 2018 and previous decompression surgery in 2013 which was brought about by a non-work-related injury. Dr. Schmitz placed claimant in the medium work category and recommended no lifting greater than 28 pounds.

Since claimant's release from surgeon Trevor Schmitz, M.D., on October 31, 2018, claimant has received no additional medical treatment.

Claimant retained the services of Jacqueline Stoken, D.O., for an independent medical evaluation on January 23, 2019. She assigned a slightly higher impairment rating of 13 percent but did not address claimant's prior decompression surgery in 2013. Dr. Stoken recommended permanent work restrictions including avoiding repetitive bending, twisting, lifting, and avoidance of lifting more than ten pounds on a frequent

basis and 20 pounds on an occasional basis. These restrictions placed claimant in the light physical demand categories.

Following the 2013 decompression surgery, claimant returned to his regular job with the defendant employer with no restrictions and accommodations. However, after the 2018 surgery, claimant has not returned to work. He was terminated for reasons unrelated to his work restrictions in February 2017. He currently works as a manager of a shooting range for an average of 22 to 24 hours per week. These were the maximum hours claimant was permitted to work but acknowledged that he could work more if more hours were available. He described his job as fairly sedentary and within the work restrictions recommended by Dr. Stoken. He has applied for limited positions since his termination and I agree with the deputy commissioner's finding that the claimant did not appear to be particularly motivated in the months leading up to the hearing in finding full-time employment.

Claimant's past educational history includes high school graduation along with several semesters at a community college. He agreed that he was capable of being retrained and learning new skills and he has managerial experience including keeping inventory, working with customers, and scheduling.

Claimant's vocational expert opined that claimant had sustained a severe loss of access to the labor market, placing the percentage of loss at around 80 percent. Defendants' vocational expert opined that based on the claimant's medium physical demand category, claimant would be able to return to some of his past welding work in a variety of occupational possibilities between light and medium level. Based upon the education, past work experience, the five percent impairment rating of Dr. Schmitz, Dr. Schmitz's categorization of claimant's work capabilities in the medium work category, and the opinions of the defendants' vocational rehabilitation expert, the finding of a 35 percent loss of industrial disability is appropriate.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 10, 2019, is affirmed in its entirety.

Defendants shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability benefits commencing on the stipulated date of October 31, 2017 at the stipulated weekly rate of seven hundred thirteen and 78/100 dollars ($713.78).

Defendants are entitled to a credit for weekly benefits previously paid.

Defendants shall pay accrued weekly benefits, including but not limited to the underpayment of the weekly rate, 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 shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 4th day of August, 2020.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Michael Norris Via WCES

William D. Scherle Via WCES