

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KARL MARKLEY,

Claimant,

vs.

J. RETTENMAIER USA LP,

Employer,

and

ACCIDENT FUND INSURANCE  
COMPANY OF AMERICA,Insurance Carrier,  
Defendants.

File No. 1657411.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40: 1801; 1803; 1803.1;  
2502; 2907; 3001; 3002;  
4000.2; 5-9998

Claimant Karl Markley appeals from an arbitration decision filed on November 4, 2021. Defendants J. Rettenmaier USA LP, employer, and its insurer, Accident Fund Insurance Company of America, cross-appeal. The case was heard on February 12, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 8, 2021.

In the arbitration decision, the deputy commissioner found that pursuant to Iowa Code section 85.34(2)(n), claimant sustained permanent scheduled member disability of 16 percent of the right shoulder as a result of claimant's stipulated work injury which occurred on July 28, 2018, which entitles claimant to receive 64 weeks of permanent partial disability benefits commencing on December 3, 2019. The deputy commissioner found claimant failed to prove the injury extends beyond claimant's right shoulder into his body as a whole, and the deputy commissioner found claimant is not entitled to receive industrial disability benefits for the injury. The deputy commissioner found claimant's correct average weekly wage for the work injury is \$1,225.34, and the deputy commissioner found claimant's correct weekly benefit rate for the injury is \$768.24. The deputy commissioner found claimant is entitled to receive \$2,750.00 in penalty benefits from defendants for an unreasonable underpayment of weekly benefits. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$2,670.50 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 \$292.20.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's injury is confined to his right shoulder and does not extend into his body as a whole. Claimant asserts the deputy commissioner erred in failing to award claimant industrial disability of at least 40 percent for the work injury.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to receive penalty benefits. Defendants assert the deputy commissioner erred in awarding claimant permanent scheduled member disability of 16 percent of the right shoulder pursuant to Dr. Taylor's permanent impairment rating. Defendants assert the award should be reduced to 12 percent of the shoulder pursuant to the impairment rating of authorized treating surgeon Kyle Switzer, M.D. Defendants assert the deputy commissioner erred in taxing claimant's costs to defendants

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 November 4, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 pursuant to Iowa Code section 85.34(2)(n), claimant sustained permanent scheduled member disability of 16 percent of the right shoulder as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove the injury extends beyond claimant's right shoulder into his body as a whole, and I affirm the deputy commissioner's finding that claimant is not entitled to receive industrial disability benefits for the injury. I affirm the deputy commissioner's finding that claimant's correct average weekly wage for the work injury is \$1,225.34, and I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the injury is \$768.24. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$2,750.00 from defendants for their unreasonable underpayment of weekly benefits. 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 \$292.20.

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 November 4, 2021, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits from August 22, 2019, through December 2, 2019, at the weekly rate of seven hundred sixty-eight and 24/100 dollars (\$768.24).

Defendants shall pay claimant sixty-four (64) weeks of permanent partial disability benefits at the weekly rate of seven hundred sixty-eight and 24/100 dollars (\$768.24), commencing on December 3, 2019.

Defendants shall receive credit for all benefits previously paid.

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.

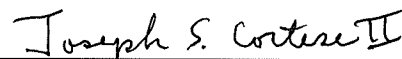
Defendants shall pay claimant a penalty in the amount of two thousand seven hundred fifty and no/100 dollars (\$2,750.00).

Defendants shall reimburse claimant in the amount of two thousand six hundred seventy and 50/100 dollars (\$2,670.50) for the cost of Dr. Taylor's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two hundred ninety-two and 20/100 dollars (\$292.20), 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 14<sup>th</sup> day of February, 2022.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

Lindsey Mills (via WCES)