

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HERIBERTO HERNANDEZ GARCIA,

Claimant,

vs.

METRO SALVAGE POOL, INC.,

Employer,

and

WESTERN NATIONAL MUTUAL
INSURANCE COMPANY,Insurance Carrier,
Defendants.

File No. 21007693.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1804; 2501;
2907; 4100; 5-9998

Claimant Heriberto Hernandez Garcia appeals from an arbitration decision filed on June 5, 2023. Defendants Metro Salvage Pool, Inc., employer, and its insurer, Western National Mutual Insurance Company, respond to the appeal. The case was heard on November 1, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 19, 2022.

In the arbitration decision, the deputy commissioner found claimant failed to prove he is entitled to receive permanent total disability benefits under either the traditional industrial disability analysis or under the odd-lot doctrine for the stipulated work injury which occurred on January 4, 2021. The deputy commissioner found claimant did prove he sustained 30 percent industrial disability as a result of the work injury, which entitles claimant to receive 150 weeks of permanent partial disability benefits commencing on November 19, 2021. The deputy commissioner ordered defendants to pay all the requested past medical expenses itemized in claimant's Exhibit 8, with the exception of the MercyOne Des Moines Laboratory charges totaling \$53.00, dated July 21, 2021, found at page 96 of claimant's Exhibit 8. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$1,918.00.

Claimant asserts on appeal that the deputy commissioner erred in failing to award claimant permanent total disability benefits under either the traditional industrial disability analysis or under the odd-lot doctrine. In the alternative, claimant asserts the award for industrial disability should be increased to an amount in the range of 70 percent to 80 percent.

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 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 5, 2023, 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 claimant failed to prove he is entitled to receive permanent total disability benefits for the work injury under either the traditional industrial disability analysis or under the odd-lot doctrine. I affirm the deputy commissioner's finding that claimant did prove he sustained 30 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's order that defendants pay all the requested past medical expenses itemized in claimant's Exhibit 8, with the exception of the MercyOne Des Moines Laboratory charges totaling \$53.00, dated July 21, 2021, found at page 96 of claimant's Exhibit 8. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$1,918.00.

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 in this matter on June 5, 2023, is affirmed in its entirety.

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the weekly rate of six hundred thirty-three and 63/100 (\$633.63), commencing on November 19, 2021.

Defendants shall receive credit for all benefits previously paid and stipulated to in the hearing report.

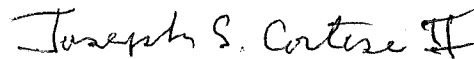
Defendants shall pay accrued weekly benefits, if any, in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall pay, or reimburse claimant, or any third-party payor, and generally hold claimant harmless, for all medical expenses itemized in Claimant's Exhibit 8, with the exception of the MercyOne Des Moines Laboratory charges totaling \$53.00, dated July 21, 2021, found at page 96 of claimant's Exhibit 8.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand nine hundred eighteen and 00/100 dollars (\$1,918.00), 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 17th day of October, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Tom Drew (via WCES)

Jeff Margolin (via WCES)