

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DON A. ELLIS,
Claimant,

vs.

GILCREST/JEWETT LUMBER
COMPANY,

Employer,

and

ACUITY INSURANCE

Insurance Carrier,
Defendants.

File No. 5058934

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 2907; 5-9998

Defendants Gilcrest/Jewett Lumber Company, employer, and its insurer, Acuity Insurance, appeal from an arbitration decision filed on December 20, 2019. Claimant Don A. Ellis responds to the appeal. The case was heard on September 12, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the arbitration hearing.

The deputy commissioner found claimant sustained 30 percent industrial disability as a result of the stipulated November 25, 2015, work injury, which entitles claimant to receive 150 weeks of permanent partial disability benefits commencing on May 12, 2017. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 30 percent industrial disability as a result of the work injury. Defendants assert the award for industrial disability should be reduced to ten percent.

Claimant 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 20, 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 30 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.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 20, 2019, is affirmed in its entirety.

Defendants shall pay claimant one-hundred fifty (150) weeks of permanent partial disability benefits at the weekly rate of four hundred and fifty-seven and 01/100 dollars (\$457.01) commencing on May 12, 2017.

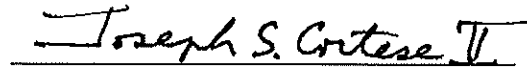
Defendants shall receive credit for the twenty-five (25) weeks of permanent partial disability benefits previously paid.

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).

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.

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

Signed and filed this 24th day of July, 2020.

Handwritten signature of Joseph S. Cortese II in black ink, underlined.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Matthew Petrzelka (via WCES)

Matthew Novak (via WCES)