

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAN LOUKAITIS,

Claimant,

vs.

MENARD, INC.,

Employer,

and

ZURICH INSURANCE,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

: Head Note Nos: 1803; 1803.1; 3202; 5-9998

FILED

JUL 17 2018

WORKERS' COMPENSATION

File No. 5052710

A P P E A L

D E C I S I O N

Defendants Menard, Inc., employer, and its insurer, Zurich Insurance, appeal from an arbitration decision filed on December 20, 2016. Claimant Dan Loukaitis responds to the appeal. Defendant Second Injury Fund of Iowa makes no response to the appeal. The case was heard on September 9, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 30, 2016.

The deputy commissioner found claimant carried his burden of proof that the stipulated work injury which arose out of and in the course of claimant's employment with defendant-employer on March 9, 2011, caused permanent disability to claimant's bilateral lower extremities and claimant's low back. Because the deputy commissioner found claimant's permanent disability from the work injury extends into claimant's low back, the deputy commissioner found claimant is entitled to receive industrial disability benefits for the work injury. The deputy commissioner found claimant sustained 25 percent industrial disability as a result of the work injury, which entitles claimant to receive 125 weeks of permanent partial disability (PPD) benefits commencing on April 20, 2012, from defendants employer and insurer. Because the deputy commissioner found claimant sustained an injury to the body as a whole, the deputy commissioner found claimant is not entitled to receive Second Injury Fund benefits. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding.

Defendants employer and insurer assert on appeal that the deputy commissioner erred in finding claimant's disability resulting from the work injury extends beyond claimant's bilateral lower extremities into claimant's low back. Defendants employer and insurer assert the deputy commissioner erred in finding claimant proved entitlement to receive industrial disability benefits and in finding claimant sustained 25 percent industrial disability.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Defendant Second Injury Fund makes no assertions on appeal.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis 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 that the work injury caused permanent disability to claimant's bilateral lower extremities and claimant's low back. Because I affirm the deputy commissioner finding that claimant's permanent disability from the work injury extends into claimant's low back, I also affirm the deputy commissioner's finding that claimant is entitled to receive industrial disability benefits for the work injury from defendants, employer and insurer. I affirm the deputy commissioner's finding that claimant sustained 25 percent industrial disability as a result of the work injury. Because I affirm the deputy commissioner's finding that claimant sustained an injury to the body as a whole, I also affirm the deputy commissioner's finding that claimant is not entitled to receive Second Injury Fund benefits. I affirm the deputy commissioner's order that defendants employer and insurer 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, 2016, is affirmed in its entirety.

Defendants employer and insurer shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the weekly rate of three hundred seventeen and 78/100 dollars (\$317.78) commencing on April 20, 2012.

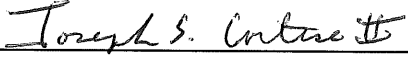
Defendants employer and insurer are entitled to receive a credit for all benefits previously paid.

Defendants employer and insurer shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding, and defendants employer and insurer shall pay 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 17th day of July, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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