

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT A. POPE,

Claimant,

vs.

CITY OF STRAWBERRY POINT,

Employer,

and

EMPLOYERS MUTUAL CASUALTY  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

**NOV 26 2018**

File No. 5053571

**A P P E A L**

**D E C I S I O N**

**WORKERS' COMPENSATION**

Head Note No: 1402.40; 1803; 5-9998

Claimant Robert A. Pope appeals from an arbitration decision filed on May 17, 2017. Defendants City of Strawberry Point, employer, and its insurer, Employers Mutual Casualty Company, cross-appeal. The case was heard on November 29, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 19, 2017.

The deputy commissioner found claimant carried his burden of proof that he sustained a permanent injury to his low back which arose out of and in the course of his employment with defendant-employer on December 31, 2011. The deputy commissioner found claimant sustained 65 percent industrial disability as a result of the work injury, which entitles claimant to receive 325 weeks of permanent partial disability (PPD) benefits commencing on March 24, 2015. The deputy commissioner found claimant failed to carry his burden of proof that he is permanently and totally disabled as a result of the work injury. The deputy commissioner found the correct commencement date for PPD benefits is March 24, 2015. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in failing to find claimant is permanently and totally disabled as a result of the work injury and in failing to award claimant permanent total disability benefits.

Defendants assert on cross-appeal that the deputy commissioner erred in finding claimant sustained anything more than a temporary work injury on December 31, 2011. Defendants assert that the award of 65 percent industrial disability should be reversed.

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 May 17, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 carried his burden of proof that he sustained a permanent work-related low back injury on December 31, 2011. I affirm the deputy commissioner's finding that claimant sustained 65 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he is permanently and totally disabled as a result of the work injury. I affirm the deputy commissioner's finding that the correct commencement date for PPD benefits is March 24, 2015. 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 May 17, 2017, is affirmed in its entirety.

Defendants shall pay claimant three hundred twenty-five (325) weeks of permanent partial disability benefits at the weekly rate of five hundred fifty-six and 67/100 dollars (\$556.67) commencing March 24, 2015.

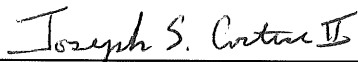
Defendants shall receive a credit for all benefits previously paid.

Defendant 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 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 26<sup>th</sup> day of November, 2018.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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