

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID GLAUSSER,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Defendant.

File No. 5065874

A P P E A L

D E C I S I O N

Head Note Nos: 1108.50; 1402.40; 1803;
3202; 3203; 5-9998

Defendant Second Injury Fund of Iowa (the Fund) appeals from an arbitration decision filed on October 23, 2018. Claimant David Glausser cross-appeals. The case was heard on August 30, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 24, 2018.

The deputy commissioner found claimant carried his burden of proof to establish he sustained a first qualifying injury to his right lower extremity on October 9, 1990, and a second qualifying work-related injury to his left lower extremity on December 16, 2014, for the purpose of receiving benefits from the Fund. The deputy commissioner found that as a result of the two injuries taken together, claimant sustained 45 percent industrial disability, which entitles claimant to receive 141.4 weeks of permanent partial disability (PPD) benefits from the Fund after the Fund receives the appropriate credits totaling 83.6 weeks for the qualifying injuries. The deputy commissioner found the Fund is entitled to receive a credit of 19.8 weeks for the first qualifying injury, and the deputy commissioner found the Fund is entitled to receive a credit of 63.8 weeks for the second qualifying work injury, for a total credit 83.6 weeks. The deputy commissioner found the Fund is not entitled to receive an additional requested credit of 17.6 weeks for permanent disfigurement of claimant's left lower extremity caused by the work injury. The deputy commissioner found that pursuant to Iowa Code section 85.66, claimant's costs of the arbitration proceeding cannot be taxed against the Fund.

The Fund asserts on appeal that the deputy commissioner erred in finding claimant sustained a first qualifying injury and in awarding claimant industrial disability benefits to be paid by the Fund. In the alternative, the Fund asserts if it is found on appeal that claimant is entitled to receive benefits from the Fund, the award of industrial disability should be reduced substantially. The Fund also asserts that if it is found on appeal that claimant is entitled to receive benefits from the Fund, it should also be found that the Fund is entitled to receive the additional requested credit of 17.6 weeks for permanent disfigurement of claimant's left lower extremity caused by the work injury.

Claimant asserts on appeal that the deputy commissioner's finding that pursuant to Iowa Code section 85.66, claimant's costs of the arbitration proceeding cannot be

taxed against the Fund should be reversed and claimant's costs of the arbitration proceeding should be taxed against the Fund.

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 October 23, 2018, 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 carried his burden of proof to establish he sustained a first qualifying injury to his right lower extremity on October 9, 1990, and a second qualifying work-related injury to his left lower extremity on December 16, 2014, for the purpose of receiving benefits from the Fund. I affirm the deputy commissioner's finding that as a result of the two injuries taken together, claimant has sustained 45 percent industrial disability, which entitles claimant to receive 141.4 weeks of PPD benefits from the Fund after the Fund receives the appropriate credits totaling 83.6 weeks for the qualifying injuries. I affirm the deputy commissioner's finding that the Fund is entitled to receive a credit of 19.8 weeks for the first qualifying injury, and I affirm the deputy commissioner's finding that the Fund is entitled to receive a credit of 63.8 weeks for the second qualifying work injury, for a total credit of 83.6 weeks. I affirm the deputy commissioner's finding that the Fund is not entitled to receive the additional requested credit of 17.6 weeks for permanent disfigurement of claimant's left lower extremity caused by the work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.66, claimant's costs of the arbitration proceeding cannot be taxed against the Fund.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 23, 2018, is affirmed in its entirety.

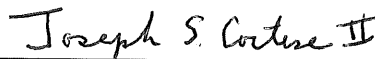
The Fund shall pay one hundred forty-one point four (141.4) weeks of permanent partial disability benefits at the stipulated weekly rate of six hundred forty-nine and 63/100 dollars (\$649.63) commencing on March 28, 2017.

Interest will accrue on unpaid Fund benefits from the date of this appeal decision 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 this decision, plus two (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33 and pursuant to Iowa Code section 85.66, the parties shall pay their own costs of the arbitration proceeding, and the parties shall pay their own costs of the appeal.

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

Signed and filed on this 12th day of February, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Christopher Fry Via WCES

Amanda R. Rutherford Via WCES