

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL MANUEL,

Claimant,

vs.

GANNETT PUBLISHING SERVICES,

Employer,

and

NATIONAL UNION FIRE INS. CO.,

Insurance Carrier,
Defendants.

File No. 5067758

A P P E A L
D E C I S I O NHead Notes: 1402.40; 1803; 1803.1; 2502;
2907

Defendants Gannett Publishing Services, employer, and its insurer, National Union Fire Insurance Company, appeal from a substituted and amended arbitration decision filed on February 18, 2021. Claimant Paul Manuel cross-appeals. The case was heard on June 25, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 12, 2020.

In the substituted and amended arbitration decision, the deputy commissioner found claimant proved he sustained work-related injuries to both shoulders resulting in permanent disability, but the deputy commissioner found claimant failed to prove he sustained compensable injuries to his neck or knees. The deputy commissioner found claimant sustained 23 percent permanent impairment of his right shoulder and 17 percent permanent impairment of his left shoulder as a result of the work injury, which entitles claimant to receive 92 weeks of permanent partial disability (PPD) benefits for his right shoulder and 68 weeks of PPD benefits for his left shoulder. The deputy commissioner found claimant gave timely notice of his work-related injuries. The deputy commissioner ordered defendants to reimburse claimant for a portion of the invoice relating to claimant's independent medical examination (IME) and his filing fee. In his decision, the deputy commissioner specifically found claimant to be a credible witness.

On appeal, defendants assert the deputy commissioner erred in determining claimant sustained a compensable left shoulder injury for which he provided timely notice. Defendants also assert the deputy commissioner erred in adopting the

impairment ratings assigned by claimant's IME doctor. Defendants assert the deputy commissioner erred in awarding expenses and costs to claimant. Finally, defendants assert the deputy commissioner erred in finding claimant to be a credible witness.

On cross-appeal, claimant asserts the deputy commissioner erred in finding claimant failed to prove he sustained any permanent disability as a result of his neck injury.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the substituted and amended arbitration decision filed on February 18, 2021, is affirmed in part and modified in part.

I affirm the deputy commissioner's finding that claimant sustained work-related injuries to both of his shoulders. I specifically affirm the deputy commissioner's findings that claimant sustained a right shoulder injury on February 12, 2018, and the left shoulder injury developed as a sequela of the right shoulder injury. I affirm the deputy commissioner's finding that claimant failed to prove he sustained compensable injuries to his neck or his knees. I affirm the deputy commissioner's finding that claimant provided timely notice of his work-related injuries. I affirm the deputy commissioner's finding regarding claimant's expenses and costs. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

For the reasons that follow, however, the deputy commissioner's findings regarding the extent of claimant's permanent disability are modified. The deputy commissioner adopted the impairment ratings assigned by claimant's IME physician, Jacqueline Stoken, D.O. The deputy commissioner adopted Dr. Stoken's ratings despite them seeming "particularly high, particularly on the left side, where [claimant] did not even require surgery and his symptoms had significantly subsided for a period of time." (Arbitration Decision, p. 10) I share those same concerns.

Of additional concern is that Dr. Stoken's impairment ratings for claimant's left shoulder range of motion deficits were higher than those for his right shoulder, and Dr. Stoken's ratings for strength deficits in both shoulders were the same. (See Claimant's Exhibit 1, pp. 1-2) Those ratings are not consistent with neither the medical records nor claimant's testimony.

For example, when claimant was released from the care of his treating physician, Patrick Sullivan, M.D., in March 2019, claimant had “[f]ull active and passive range of motion [in] both shoulders” and “stability and strength [was] normal in both shoulders except for some mild weakness with forward flexion and abduction of the right shoulder.” (Joint Ex. 12, p. 73 (emphasis added)) In fact, months before, in November 2018, claimant reported a steroid injection eliminated all of his left shoulder pain and discomfort. (JE 12, p. 71) Further, though claimant testified at hearing that he continued to experience symptoms in his left shoulder, those symptoms were described as much less severe than those in his right shoulder. (Hearing Transcript, pp. 44-45) In other words, neither claimant’s testimony nor the medical records support ratings that reflect equal or worse impairment in claimant’s left shoulder.

With respect to the right shoulder, claimant’s final exam with Dr. Sullivan revealed a largely normal shoulder but for “some mild weakness”. (JE 12, p. 73) To account for this weakness, Dr. Sullivan assigned a six percent upper extremity impairment rating. (JE 12, p. 75) Notably, at the time Dr. Sullivan assigned this rating in March of 2019, claimant had been working without restrictions for his right shoulder for roughly five months, and he continued to work without restrictions at the time of the hearing. (JE 12, p. 65; Tr., p. 53) Claimant likewise had not missed any work due to right shoulder symptoms. (Tr., p. 52)

I agree with the deputy commissioner that claimant’s true impairment seems to fall somewhere in the middle of the competing ratings in this case. However, given claimant’s own testimony, the fact that claimant reported resolution of his left shoulder symptoms to Dr. Sullivan, and Dr. Sullivan’s exam revealing full strength and range of motion in the left shoulder, I am not persuaded by Dr. Stoken’s impairment rating for claimant’s left shoulder. Instead, the greater weight of the evidence supports Dr. Sullivan’s opinion that claimant sustained no permanent impairment of his left shoulder. I therefore find claimant is entitled to receive no permanent partial disability benefits for his left shoulder injury.

I am similarly not persuaded by Dr. Stoken’s impairment rating for claimant’s right shoulder. Claimant returned to work without restrictions for his right shoulder in October 2018, and he continued to work full duty without missing any work through the time of the hearing. Though he continued to experience residual weakness in his right shoulder upon his return to work, those symptoms were addressed in Dr. Sullivan’s impairment rating. Dr. Stoken’s rating, as noted by the deputy commissioner, simply seems too high. The greater weight of the evidence supports Dr. Sullivan’s opinion that claimant sustained six percent right upper extremity impairment.

The deputy commissioner's evaluation of claimant's permanent disability is therefore modified. Claimant's six percent right upper extremity impairment entitles him to receive 24 weeks of PPD benefits.

I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed claimant's credibility in this matter. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings. I therefore affirm the deputy commissioner's finding that claimant was a credible witness.

ORDER

IT IS THEREFORE ORDERED that the substituted and amended arbitration decision filed on February 18, 2021, is affirmed in part and modified in part.

Defendants shall pay the claimant twenty-four (24) weeks of permanent partial disability benefits at the weekly rate of four hundred and ninety-four and 82/100 (\$494.82) from November 15, 2018.

Defendants shall receive credit for the twenty-four (24) weeks of benefits previously paid.

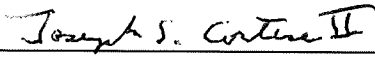
Defendants shall pay any accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall reimburse claimant in the amount of three thousand two hundred and no/100 dollars (\$3,200.00) for the IME expense.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and the parties shall split the cost 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 22nd day of July, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Tom Drew (Via WCES)

Aaron Oliver (Via WCES)