

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WARREN GRAHAM,	:		FILED
	:		JUL 14 2017
Claimant,	:	File No. 5044585	WORKERS' COMPENSATION
vs.	:	A P P E A L	
SECOND INJURY FUND OF IOWA,	:	D E C I S I O N	
	:		
Defendant.	:	Head Note No: 3202	

Claimant Warren Graham appeals from an arbitration decision filed on January 27, 2016. Defendant Second Injury Fund of Iowa (the Fund) responds to the appeal. The case was heard on November 16, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 7, 2015.

The deputy commissioner found claimant failed to carry his burden of proof that an injury to claimant's left upper extremity, which he sustained in 1981, is a qualifying first injury pursuant to Iowa Code section 85.64 which entitles claimant to receive benefits from the Fund. The deputy commissioner determined that the issue of the extent of claimant's entitlement to Fund benefits was moot because claimant failed to prove the 1981 injury was a qualifying first injury which entitles claimant to receive Fund benefits. The deputy commissioner awarded claimant nothing. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that the 1981 injury was a qualifying first injury which entitles claimant to receive benefits from the Fund. Claimant asserts the deputy commissioner erred in failing to award substantial industrial disability pursuant to Iowa Code section 85.64.

Defendant 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.

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 January 27, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 failed to carry his burden of proof that the 1981 injury was a qualifying first injury which entitles claimant to receive benefits from the Fund. I affirm the deputy commissioner's finding that claimant is entitled to nothing in this matter. I also affirm the deputy commissioner's order that the parties pay their own 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 January 27, 2016, is affirmed in its entirety.

Claimant shall take nothing in the way of Fund benefits from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 14th day of July, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Randall Schueller
Attorney at Law
1311 – 50th St
West Des Moines, IA 50266
randy@loneylaw.com

Stephanie Jo Copley
Dept. Of Justice-Special Litigation
Hoover State Office Bldg.
Des Moines, IA 50319
stephanie.copley@iowa.gov