

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SEYDOU N. LOH,

Claimant,

vs.

ALLSTEEL, INC.,

Employer,

and

ACE AMERICAN INSURANCE  
COMPANY,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5064253.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1403.10;  
1801; 1803; 2501; 2502;  
2907; 3202; 5-9999

Defendants Allsteel, Inc. (defendant-employer) and Ace American Insurance Company (defendant-insurer) appeal from an arbitration decision filed on January 31, 2022. Claimant Seydou Loh and Defendant Second Injury Fund of Iowa (the Fund) respond to the appeal. The case was heard on August 25, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 5, 2021.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish the December 6, 2018, right total knee replacement surgery, and all associated medical care and expenses, are causally related to the stipulated April 3, 2017, work injury. The deputy commissioner found claimant is entitled to receive healing period benefits from defendants employer and insurer from December 6, 2018, through December 6, 2019, at the stipulated weekly benefit rate of \$345.03. The deputy commissioner found claimant sustained 37 percent permanent functional impairment of his right leg, which entitles claimant to receive 81.4 weeks of permanent partial disability benefits from defendants employer and insurer, commencing on December 7, 2019. The deputy commissioner ordered defendants employer and insurer to pay the disputed medical expenses, reimburse any third-party payor for those expenses, or otherwise hold claimant harmless for those expenses. The deputy commissioner found claimant sustained 40 percent industrial disability as a result of the combined effects of the stipulated 2008 left leg injury and the April 3, 2017, work injury, which entitles claimant to receive 200 weeks of permanent partial disability benefits from the Fund, less a credit of 96.8 weeks, for a total of 103.2 weeks of

permanent partial disability benefits from the Fund, commencing on October 16, 2021. Pursuant to Iowa Code section 85.39, the deputy commissioner found claimant is not entitled to reimbursement from defendants employer and insurer for the cost of the independent medical examination (IME) of claimant performed by Richard Kreiter, M.D. The deputy commissioner found claimant is not entitled to recover the cost of Dr. Kreiter's IME report under 876 IAC 4.33. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding in the amount of \$147.25.

Defendants employer and insurer assert on appeal that the deputy commissioner erred in finding claimant's right knee replacement surgery is causally related to the April 3, 2017, work injury. Defendants employer and insurer assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits, medical expenses, and permanency benefits related to the knee replacement surgery.

Claimant and the Fund assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as 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 January 31, 2022, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 proved the December 6, 2018, right total knee replacement surgery and all associated medical care and expenses are causally related to the April 3, 2017, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from defendants employer and insurer from December 6, 2018, through December 6, 2019. I affirm the deputy commissioner's finding that claimant sustained 37 percent permanent function impairment of his right leg, entitling claimant to receive 81.4 weeks of permanent partial disability benefits from defendants employer and insurer, commencing on December 7, 2019. I affirm the deputy commissioner's finding that defendants employer and insurer are responsible for the disputed medical expenses, and shall reimburse any third-party payor for those expenses, or otherwise hold claimant harmless for those expenses. I affirm the deputy commissioner's finding that claimant sustained 40 percent industrial disability as a result of the combined effects of

the stipulated 2008 left leg injury and the April 3, 2017, work injury, which entitles claimant to receive 200 weeks of permanent partial disability benefits from the Fund, less a credit of 96.8 weeks, for a total of 103.2 weeks of permanent partial disability benefits, commencing on October 16, 2021. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to recover the cost of Dr. Richard Kreiter's IME. I affirm the deputy commissioner's finding that claimant is not entitled to recover the cost of Dr. Kreiter's IME report under 876 IAC 4.33. I affirm the deputy commissioner's order that defendants employer and insurer pay claimant's costs of the arbitration proceeding in the amount of \$147.25.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding the above-stated issues.

### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 31, 2022, is affirmed in its entirety.

Defendants employer and insurer shall pay claimant healing period benefits from December 6, 2018, through December 6, 2019, at the stipulated weekly benefit rate of three hundred forty-five and 03/100 dollars (\$345.03).

Defendants employer and insurer shall pay claimant eighty-one point four (81.4) weeks of permanent partial disability benefits at the stipulated weekly rate of three hundred forty-five and 03/100 dollars (\$345.03), commencing on December 7, 2019.

Defendants employer and insurer shall receive credit for all benefits previously paid.

If additional weekly benefits are owed by defendants employer and insurer after the aforementioned credits are taken and applied, interest on those benefits 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).

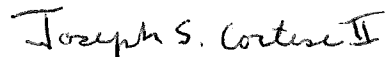
After all applicable credits are given, the Fund shall pay claimant one hundred three point two (103.2) weeks of permanent partial disability benefits, at the stipulated weekly rate of three hundred forty-five and 03/100 dollars (\$345.03), commencing on October 16, 2021.

To the extent they have not already done so, defendants employer and insurer shall pay, reimburse any third-party payer, and otherwise hold claimant harmless for all past medical expenses detailed in Joint Exhibits 12 through 20.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding in the amount of one hundred forty-seven and 25/100 dollars (\$147.25), 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 and the Fund shall file subsequent reports of injury as required by this agency.

Signed and filed on this 21<sup>st</sup> day of July, 2022.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Thomas Cady (via WCES)

Timothy Wegman (via WCES)

Meredith Cooney (via WCES)