

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BARRY RETTERATH,

Claimant,

vs.

JOHN DEERE WATERLOO WORKS,

Employer,
Self-Insured,
Defendant.

File No. 5067003

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803, 1803.1; 2502;
2907; 4000; 5-9998

Claimant Barry Retterath appeals from an arbitration decision filed on December 22, 2020. Defendant John Deere Waterloo Works, self-insured employer, responds to the appeal. The case was heard on February 6, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 3, 2020.

In the arbitration decision, the deputy commissioner found claimant sustained a permanent scheduled member right shoulder injury as a result of the stipulated work injury which occurred on July 12, 2017. The deputy commissioner found that pursuant to Iowa Code section 85.34(2)(n), claimant sustained eight percent functional scheduled member disability of the right shoulder, which entitles claimant to receive 32 weeks of permanent partial disability benefits commencing on March 26, 2018. The deputy commissioner found claimant failed to prove he sustained an injury to the body as a whole which would entitle claimant to receive industrial disability benefits. The deputy commissioner found claimant is entitled to receive penalty benefits from defendant in the amount of \$3,299.00 for an unreasonable underpayment of permanent partial disability benefits. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants in the amount \$399.00 for expenses related to claimant's independent medical evaluation (IME) with Arnold Delbridge, M.D., which was performed on May 29, 2018. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$164.40.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant sustained permanent scheduled member functional disability pursuant to section 85.34(2)(n). Claimant asserts the deputy commissioner erred in finding claimant failed to prove he sustained an injury to the body as a whole as a result of the work injury, and in finding claimant is not entitled to receive industrial disability benefits for the work injury.

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.

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 December 22, 2020, 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 sustained a permanent scheduled member right shoulder injury as a result of the work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(2)(n), claimant sustained eight percent functional scheduled member disability of the right shoulder. I affirm the deputy commissioner's finding that claimant failed to prove he sustained an injury to the body as a whole which would entitle claimant to receive industrial disability benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits from defendant in the amount of \$3,299.00 for an unreasonable underpayment of permanent partial disability benefits. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants in the amount \$399.00 for the expenses related to Dr. Delbridge's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$164.40.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 22, 2020, is affirmed in its entirety.

Defendant shall pay claimant thirty-two (32) weeks of permanent partial disability benefits at the weekly rate of seven hundred fifty-five and 46/100 (\$755.46) from March 26, 2018.

Defendant shall receive credit for all benefits previously paid.

Defendant shall pay 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

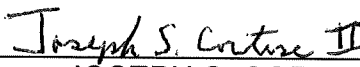
Defendant shall pay claimant penalty benefits in the amount of three thousand two hundred ninety-nine and no/100 dollars (\$3,299.00) for defendant's unreasonable underpayment of permanent partial disability benefits.

Pursuant to Iowa Code section 85.39, defendant shall reimburse claimant in the amount of three hundred ninety-nine and no/100 dollars (\$399.00) for the expenses related to Dr. Delbridge's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred sixty-four and 40/100 dollars (\$164.40), and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 3rd day of May, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Kalkhoff (via WCES)

Benjamin Roth (via WCES)

Charles Showalter (via WCES)