

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL BOVY,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Defendant.

File No. 5042474

A P P E A L

D E C I S I O N

Head Note Nos: 3200, 3202

FILED

JAN - 2 2018

WORKERS' COMPENSATION

Defendant Second Injury Fund of Iowa (the Fund) appeals from an arbitration decision filed on June 21, 2016. Claimant Daniel Bovy cross-appeals. The case was heard on February 26, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 20, 2016.

In the arbitration decision, the deputy commissioner found claimant is entitled to receive benefits from the Fund because the deputy commissioner found claimant sustained a first qualifying injury to his left lower extremity with an injury date of 1979, and because the deputy commissioner found claimant sustained a second qualifying work-related injury to his right upper extremity with an injury date of September 1, 2011. The deputy commissioner found the combined effects of the two injuries result in permanent total disability, which entitles claimant to receive permanent total disability benefits from the Fund, less appropriate credit to the Fund. The deputy commissioner found the Fund shall pay claimant permanent total disability benefits commencing immediately upon termination of the employer's payment of 47.5 weeks of permanent partial disability benefits pursuant to an agreement for settlement of the September 1, 2011, work injury between claimant and the employer. The deputy commissioner also ordered the Fund to pay claimant's costs of the arbitration proceeding.

The Fund asserts on appeal that the deputy commissioner erred in finding claimant is entitled to receive benefits from the Fund. The Fund asserts the deputy commissioner erred in finding claimant sustained a first qualifying injury in 1979. The Fund asserts the deputy commissioner erred in finding the combined effects of the first and second injuries entitles claimant to receive permanent total disability benefits from the Fund. The Fund asserts even if claimant is entitled to receive benefits from the Fund, that entitlement is substantially less than permanent total disability. The Fund asserts at most claimant has sustained minimal industrial disability due to the combined effects of the two injuries. The Fund asserts that the deputy commissioner erred in finding the Fund shall pay claimant permanent total disability benefits commencing immediately upon termination of the employer's payment of 47.5 weeks of permanent partial disability benefits pursuant to the agreement for settlement of the September 1,

2011, work injury between claimant and the employer. The Fund asserts the deputy commissioner erred in ordering the Fund to pay claimant's costs of the arbitration proceeding.

Claimant asserts on cross-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 June 21, 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 is entitled to receive benefits from the Fund because I affirm the deputy commissioner's finding that claimant sustained a first qualifying injury to his left lower extremity with an injury date of 1979, and because I affirm the deputy commissioner's finding that claimant sustained a second qualifying work-related injury to his right upper extremity with an injury date of September 1, 2011. I affirm the deputy commissioner's finding that the combined effects of the two injuries result in permanent total disability, which entitles claimant to receive permanent total disability benefits from the Fund, less appropriate credit to the Fund. I affirm the deputy commissioner's finding that the Fund shall pay claimant permanent total disability benefits commencing immediately upon termination of the employer's payment of 47.5 weeks of permanent partial disability benefits pursuant to the agreement for settlement of the September 1, 2011, work injury between claimant and the employer. I affirm the deputy commissioner's order that the Fund pay claimant's 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 June 21, 2016, is affirmed in its entirety.

The Second Injury Fund shall pay claimant permanent total disability benefits at the stipulated weekly rate of four hundred eighty-nine and 92/100 dollars (\$489.92), commencing immediately upon termination of the employer's payment of weekly benefits pursuant to the agreement for settlement between claimant and the employer.

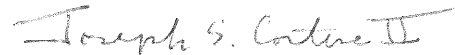
The Second Injury Fund shall pay accrued weekly benefits in a lump sum.

Pursuant to Iowa Code section 85.30, interest accrues on unpaid Second Injury Fund benefits from the date of the filing of this decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990).

Pursuant to rule 876 IAC 4.33, the Second Injury Fund shall pay claimant's costs of the arbitration proceeding, and the Second Injury Fund shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed this 2nd day of January, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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