

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIAN E. LIPPOLD,

Claimant,

vs.

CECO CONCRETE  
CONSTRUCTION, LLC,

Employer,

and

AMERICAN ZURICH INSURANCE  
COMPANY,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5058061

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 1803; 1803.1;  
2907, 3202; 5-9998

Claimant Brian E. Lippold appeals from an arbitration decision filed on November 6, 2018. Defendants CECO Concrete Construction, LLC, employer, and its insurer, American Zurich Insurance Company, and defendant Second Injury Fund of Iowa (the Fund), respond to the appeal. The case was heard on May 31, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 9, 2018.

The deputy commissioner determined claimant carried his burden of proof to establish that the permanent disability he sustained as a result of the stipulated October 27, 2015, work-related injury extends beyond his left lower extremity into his body as a whole. The deputy commissioner found claimant sustained 75 percent industrial disability as a result of the work injury, which entitles claimant to receive 375 weeks of permanent partial disability benefits from defendants employer and insurer commencing on August 18, 2017. The deputy commissioner found claimant failed to carry his burden of proof to establish he is permanently and totally disabled under either the traditional industrial disability analysis or under the odd-lot analysis as a result of the work injury.

The deputy commissioner found that because claimant's permanent disability resulting from the work injury extends beyond his left lower extremity into his body as a whole, claimant is not entitled to receive benefits from the Fund. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding in the amount of \$628.65.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof to establish he is permanently and totally disabled under either the traditional industrial disability analysis or under the odd-lot analysis as a result of the work injury.

Defendants employer, insurer and the Fund assert 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 November 6, 2018, 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 carried his burden of proof to establish that the permanent disability he sustained as a result of the work injury extends beyond his left lower extremity into his body as a whole. I affirm the deputy commissioner's finding that claimant sustained 75 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof to establish he is permanently and totally disabled under either the traditional industrial disability analysis or under the odd-lot analysis as a result of the work injury. I affirm the deputy commissioner's finding that because claimant's permanent disability resulting from the work injury extends beyond his left lower extremity into his body as a whole, claimant is not entitled to receive benefits from the Fund. I affirm the deputy commissioner's order that defendants employer and insurer pay claimant's costs of the arbitration proceeding in the amount of \$628.65.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 6, 2018, is affirmed in its entirety.

Defendants employer and insurer shall pay claimant three hundred seventy-five (375) weeks of permanent partial disability benefits at the stipulated weekly rate of six hundred forty-six and 21/100 dollars (\$646.21), commencing on August 18, 2017.

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

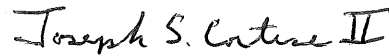
Defendants employer and insurer shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, 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).

Claimant takes nothing from the Second Injury Fund of Iowa and his original notice and petition against the Fund is dismissed with prejudice.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of six hundred twenty-eight and 65/100 dollars (\$628.65), and claimant 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 shall file subsequent reports of injury as required by this agency.

Signed and filed on this 14<sup>th</sup> day of January, 2020.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Greg A. Egbers	Via WCES
Timothy W. Wegman	Via WCES
Amanda R. Rutherford	Via WCES