

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THEODORE J. MALGET,

Claimant,

vs.

JOHN DEERE WATERLOO WORKS,

Employer,
Self-Insured,
Defendant.

File No. 5048441.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1804; 2501; 2905;
2907; 5-9998

Defendant John Deere Waterloo Works, self-insured employer, appeals from a review-reopening decision filed on November 24, 2020. Claimant Theodore J. Malget cross-appeals. The case was heard on July 30, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 11, 2020.

In the review-reopening decision, the deputy commissioner found claimant sustained a substantial and causally related change in condition after the 2015 arbitration hearing. As a result, the deputy commissioner found claimant proved he is entitled to review-reopening. The deputy commissioner found claimant proved an increase in his permanent disability. More specifically, the deputy commissioner found claimant is now permanently and totally disabled as a result of the September 8, 2011, work injury. However, the deputy commissioner found claimant failed to prove he is entitled to reimbursement for the claimed medical expenses itemized in Claimant's Exhibit 4, which were incurred after the arbitration hearing. The deputy commissioner ordered defendant to pay claimant's costs of the review-reopening proceeding in the amount of \$2,583.50.

On appeal, defendant asserts the deputy commissioner erred in finding claimant proved entitlement to permanent total disability benefits on review-reopening.

On cross-appeal, claimant asserts he is entitled to reimbursement for the claimed medical expenses incurred after the arbitration hearing.

Those portions of the proposed review-reopening 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 review-reopening decision filed on November 24, 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 review-reopening 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 he is entitled to review-reopening by proving a substantial change in condition. I affirm the deputy commissioner's finding that claimant proved an increase in his permanent disability - specifically that claimant proved he has become permanently and totally disabled as a result of the work injury after the arbitration hearing. I affirm the deputy commissioner's finding that claimant failed to prove entitlement to reimbursement for the claimed medical expenses incurred after the arbitration hearing which are itemized in Claimant's Exhibit 4. I affirm the deputy commissioner's order that defendant pay claimant's costs of the review-reopening proceeding in the amount of \$2,583.50.

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

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on November 24, 2020, is affirmed in its entirety.

Defendant shall pay claimant permanent total disability benefits at the stipulated weekly rate of seven hundred and 70/100 dollars (\$700.70) per week commencing on May 25, 2017, through the present and continuing into the future until claimant's disability ends.

The employer 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).

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the review-reopening proceeding in the amount of two thousand five hundred eighty-three and 50/100 dollars (\$2,583.50), and the parties shall split the cost 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 as required by this agency.

Signed and filed on this 13th day of April, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

James Kalkhoff (via WCES)