

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REX EVANS,

Claimant,

vs.

IOWA DEPARTMENT OF
TRANSPORTATION,

STATE OF IOWA

Self-Insured
Employer
Defendant.

File No. 5046657

APPEAL
DECISION

Head Note No.: 1803

FILED

SEP 16 2016

WORKERS' COMPENSATION

This is an appeal by defendant, Iowa Department of Transportation, State of Iowa, self-insured employer. The appeal is from an arbitration decision filed on March 25, 2015, wherein the presiding deputy commissioner determined that as a result of the work injury claimant had sustained permanent impairment to his right lower extremity, determined the amount of permanent benefits owed to claimant, and awarded healing period benefits. Defendant has appealed from the findings of the presiding deputy commissioner.

Defendant contends that the deputy erred in finding that claimant sustained permanent partial disability as a result of his February 13, 2012, right knee sprain, the deputy erred in concluding claimant was entitled to healing period benefits as a result of the February 13, 2012, right knee injury, and the deputy erred in concluding claimant was entitled to permanent partial disability benefits equivalent to 18% of the right lower extremity for his February 13, 2012, right knee injury under Iowa Code Section 85.34(7)(b)(1).

The appeal case was considered fully submitted to the Iowa Workers' Compensation Commissioner on July 2, 2015. On July 8, 2016, the Iowa Workers' Compensation Commissioner entered a delegation of authority directing the undersigned to review this case on appeal and delegating the undersigned authority to enter an appeal decision that represents final agency action. Therefore, pursuant to the Commissioner's delegation of authority and Iowa Code section 86.3, the undersigned issues this decision as the intra-agency appeal decision, which represents final agency action.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same findings and conclusions as those reached by the deputy. Pursuant to Iowa Code sections 86.3, 86.24, and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of March 25, 2015, filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis with regard to the deputy's finding of permanent disability.

In the arbitration decision the deputy stated that the "parties agreed in this case that the work injury is a cause of some degree of permanent, scheduled loss of use to the leg." (Arbitration Decision, page 6) Defendant correctly points out that while the parties did stipulate that Evans sustained a scheduled member injury the defendant disputed that claimant was entitled to any permanent partial disability benefits as a result of that injury. (Hearing Report)

For the same reasons set forth by the deputy in the arbitration decision, I find the opinions of Dr. Bansal to be persuasive. (Arb. Dec., p. 4) The deputy believed the claimant when he asserted that something significant occurred at the time of his 2012 injury and that he had not improved much since that time. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing. The deputy who presided at the hearing had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. The undersigned's ability to find the true facts that are affected by witness demeanor and credibility cannot be expected to be superior to that of the deputy who presided at the hearing. If anything, my ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation. Therefore, I adopt the deputy commissioner's findings, conclusions, and analysis regarding these issues. The presiding deputy agreed with Dr. Bansal's opinions. Dr. Bansal opined that claimant sustained permanent loss of the use of his right lower extremity. I also agree with the doctor's opinions regarding permanent impairment. Therefore, I conclude that the claimant has demonstrated by a preponderance of the evidence that he sustained permanent loss of the use of his right lower extremity.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of March 25, 2015, is affirmed.

Defendant shall pay to claimant thirty-nine point six (39.6) weeks of permanent partial disability benefits at the stipulated rate of eight hundred thirty-six and 06/100 dollars (836.06) per week from October 6, 2012.

Defendant shall pay to claimant healing period benefits from September 24, 2012, through October 5, 2012, at the stipulated rate of eight hundred thirty-six and 06/100 dollars (\$836.06) per week. Defendant may take a credit against this award from the sick leave used, but only in an amount equivalent to the weekly benefit and only if defendant restores to claimant the sick leave used equivalent to weekly benefit. Claimant shall retain the difference and defendants need not restore that portion of the sick leave used by claimant.

Defendant shall reimburse claimant for the cost of Dr. Bansal's evaluation in the amount of two thousand eight hundred ninety-five and 00/100 dollars (\$2,895.00).

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

Defendant shall pay the costs of the arbitration proceedings pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter.

Defendant shall bear the costs of the appeal.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule IAC 3.1(2).

Signed and filed this 16th day of September, 2016.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Channing L. Dutton
Attorney at Law
1415 Grand Avenue
West Des Moines, IA 50265-3473
cdutton@lidd.net

Sarah C. Brandt
Assistant Attorney General
Special Litigation
Hoover State Office Building
Des Moines, IA 50319-0106
Sarah.brandt@iowa.gov