

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHANE SCHOENBERGER,

Claimant,

vs.

ZEPHYR ALUMINUM PRODUCTS,

Employer,

and

ACUITY,

Insurance Carrier,
Defendants.

File No. 1642927.02

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803.1; 2907;
4000.2; 5-9998

Claimant Shane Schoenberger appeals from an arbitration decision filed on June 21, 2021. Defendants Zephyr Aluminum Products, employer, and its insurer, Acuity, respond to the appeal. The case was heard on December 14, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 11, 2021.

In the arbitration decision, the deputy commissioner found that pursuant to Iowa Code section 85.34(2)(n), claimant sustained permanent scheduled member disability of 19 percent of the left shoulder as a result of claimant's stipulated work injury which occurred on September 18, 2017, which entitles claimant to receive 76 weeks of permanent partial disability benefits commencing on September 12, 2018. The deputy commissioner found claimant failed to prove the injury extends beyond claimant's left shoulder into his body as a whole, and the deputy commissioner found claimant is not entitled to receive industrial disability benefits for the injury. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for an unreasonable delay in the payment of weekly benefits, or for an unreasonable underpayment of weekly benefits. The deputy commissioner found this agency is unable to rule on claimant's assertion that Iowa Code sections 85.34(2)(n), 85.34(2)(v) and 85.34(2)(x) violate the Iowa Constitution. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's injury is confined to his left shoulder and does not extend into his body as a

whole. Claimant asserts the deputy commissioner erred in failing to award claimant industrial disability benefits for the work injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits. Claimant asserts that while he recognizes this agency cannot address the constitutionality of Iowa Code sections 85.34(2)(n), 85.34(2)(v) and 85.34(2)(x), he wishes to preserve these issues for potential judicial review.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration 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 June 21, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 pursuant to Iowa Code section 85.34(2)(n), claimant sustained permanent scheduled member disability of 19 percent of the left shoulder as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove the injury extends beyond claimant's left shoulder into his body as a whole, and I affirm the deputy commissioner's finding that claimant is not entitled to receive industrial disability benefits for the injury. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits. I find that while this agency is unable to rule on claimant's assertion that Iowa Code sections 85.34(2)(n), 85.34(2)(v) and 85.34(2)(x) violate the Iowa Constitution, claimant has preserved these issues for potential judicial review. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 21, 2021, is affirmed in its entirety.

Defendants shall pay claimant seventy-six (76) weeks of permanent partial disability benefits at the weekly rate of eight hundred ninety-five and 58/100 dollars (\$895.58) a week commencing on September 12, 2018.

Defendants 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.

Defendants shall receive credit for all benefits previously paid.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 shall file subsequent reports of injury as required by this agency.

Signed and filed on this 5th day of January, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

Stephanie Marett (via WCES)