

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KIM ZESCH,	:	FILED
	:	AUG 24 2017
Claimant,	:	WORKERS' COMPENSATION
vs.	:	
	:	File No. 5047984
FISHER CONTROLS INTERNATIONAL,	:	
INC./EMERSON ELECTRIC COMPANY,	:	A P P E A L
	:	
Employer,	:	D E C I S I O N
and	:	
	:	
OLD REPUBLIC INSURANCE	:	
COMPANY,	:	
	:	Head Note Nos: 1402.40, 1702, 1803, 4100,
Insurance Carrier,	:	5-9998
Defendants.	:	

Claimant Kim Zesch appeals from an arbitration decision filed on January 28, 2016. Defendants Fisher Controls International, Inc./Emerson Electric Company, employer, and its insurer, Old Republic Insurance Company, respond to the appeal. The case was heard on November 6, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 30, 2015.

Claimant sustained a right shoulder injury which arose out of and in the course of his employment with defendant-employer on September 1, 2010. For that injury, a different deputy commissioner awarded claimant 30 percent industrial disability, which is 150 weeks of permanent partial disability (PPD) benefits. The September 1, 2010, work injury is not the subject of this proceeding.

Claimant sustained a stipulated left shoulder injury which arose out of and in the course of his employment with defendant-employer on July 16, 2013, and that injury is the subject of this proceeding.

The deputy commissioner found claimant failed to carry his burden of proof that he is entitled to permanent total disability benefits under the odd-lot doctrine for the July 16, 2013, work injury. The deputy commissioner found pursuant to Iowa Code section 85.34(7)(b)(1), the successive disabilities provision of the Iowa Workers' Compensation Act, claimant sustained 40 percent industrial disability from the combined effects of the September 1, 2010, work injury and the July 16, 2013, work injury. The deputy

commissioner found defendants are entitled to a credit against the 40 percent industrial disability for the 30 percent industrial disability previously paid by defendants pursuant to the award for the September 1, 2010, work injury. The deputy commissioner also ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Claimant asserts on appeal that the deputy commissioner erred in failing to award substantially more than 40 percent industrial disability. In the alternative, claimant asserts the deputy commissioner erred in failing to award permanent total disability benefits pursuant to the odd-lot doctrine for the July 16, 2013, work injury.

Defendants 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.

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 January 28, 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 failed to carry his burden of proof that he is entitled to permanent total disability benefits under the odd-lot doctrine for the July 16, 2013, work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(7)(b)(1), claimant sustained 40 percent industrial disability from the combined effects of the September 1, 2010, work injury and the July 16, 2013, work injury. I affirm the deputy commissioner's finding that defendants are entitled to a credit against the 40 percent industrial disability for the 30 percent industrial disability previously paid by defendants pursuant to the award for the September 1, 2010, work injury. I also affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 28, 2016, is affirmed in its entirety.

All weekly benefits shall be paid at the stipulated rate of five hundred sixty-nine and 36/100 dollars (\$569.36).

Defendants shall pay claimant two hundred (200) weeks of permanent partial disability benefits.

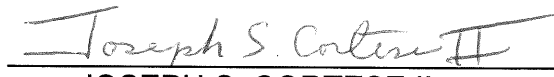
Defendants shall be entitled to credit for all weekly benefits paid to date, including those benefits stipulated to have been paid on the hearing report as well as a credit for the thirty (30) percent industrial disability award for the September 1, 2010, work injury.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, 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 this 24th day of August, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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