

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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SALLY BENNETT,

Claimant,

vs.

SECOND INJURY FUND OF IOWA,

Defendant.

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File No. 5051118

A P P E A L

D E C I S I O N

**FILED**

**AUG - 1 2017**

**WORKERS' COMPENSATION**

Head Note No: 3200; 5-9998

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Defendant Second Injury Fund of Iowa (the Fund) appeals from an arbitration decision filed on February 5, 2016. Claimant Sally Bennett responds to the appeal. The case was heard on September 16, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 12, 2015.

In the arbitration decision, the deputy commissioner found claimant is entitled to benefits from the Fund because the deputy commissioner found claimant sustained a first qualifying injury by being born completely blind in her left eye on January 29, 1940, in addition to the work-related right upper extremity injury which occurred on June 13, 2012, which is the subject of this proceeding. The deputy commissioner found the effects of the two injuries combined result in 100 percent loss of earning capacity, which entitles claimant to permanent total disability (PTD) benefits, less credits to the Fund. The deputy commissioner found the Fund is entitled to a credit of 140 weeks for the January 29, 1940, first qualifying injury and a credit of 55 weeks for the June 13, 2012, work injury, for a total credit of 195 weeks. The deputy commissioner found claimant is entitled to receive permanent total disability benefits from the Fund commencing 195 weeks after June 13, 2012.

The Fund asserts on appeal that the deputy commissioner erred in finding claimant sustained permanent total disability due to the combined effects of the January 29, 1940, first qualifying injury and the June 13, 2012, work injury. The Fund asserts at most claimant has sustained minimal industrial disability due to the combined effects of the two injuries.

Claimant asserts 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 February 5, 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 sustained permanent total disability due to the combined effects of the January 29, 1940, first qualifying injury and the June 13, 2012, work injury. I affirm the deputy commissioner's finding that the Fund is entitled to a credit of 140 weeks for the January 29, 1940, first qualifying injury and a credit of 55 weeks for the June 13, 2012, work injury, for a total credit of 195 weeks. I affirm the deputy commissioner's finding claimant is entitled to receive permanent total disability benefits from the Fund commencing 195 weeks after June 13, 2012, which is a commencement date of February 9, 2016, for payment of permanent total disability benefits to claimant. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 5, 2016, is affirmed in its entirety.

The Second Injury Fund of Iowa shall pay claimant permanent total disability commencing one hundred ninety-five (195) weeks following June 13, 2012, which is a commencement date of February 9, 2016, for payment of permanent total disability benefits.

All weekly benefits shall be paid at the weekly rate of two hundred eighty-five and 02/100 dollars (\$285.02).


All accrued benefits shall be paid in a lump sum.

Pursuant to Iowa Code section 85.30, interest accrues on unpaid Second Injury Fund benefits from the date of the decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990).

Pursuant to rule 876 IAC 4.33, the Second Injury Fund shall pay all costs of the arbitration proceeding except the filing fee, and the Second Injury Fund shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), the Second Injury Fund shall file subsequent reports of injury as required by this agency.

Signed and filed this 1<sup>st</sup> day of August, 2017.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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