

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT RILEY,

Claimant,

vs.

ARKANSAS BEST CORP.,

Employer,

and

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,  
Defendants.

File No. 1659289.01

A P P E A L

D E C I S I O N

: Headnotes: 1402.40; 1803; 2502; 2907;  
: 5-9998

Defendants Arkansas Best Corp., employer, and its insurer, Ace American Insurance Co., appeal from an arbitration decision filed on September 30, 2022. Claimant Robert Riley responds to the appeal. The case was heard on August 11, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 26, 2022.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish he sustained permanent scheduled member functional impairment of 18 percent of his right shoulder as a result of the stipulated work injury which occurred on December 31, 2018, which entitles claimant to receive 72 weeks of permanent partial disability benefits commencing on August 13, 2019. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Jacqueline Stoken, D.O. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$300.30.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 18 percent permanent impairment of the right shoulder based on the impairment rating of Jacqueline Stoken, D.O. Defendants assert the award for permanent impairment should be reduced to six percent of the right shoulder based on the impairment rating of Jason Sullivan, M.D., which would entitle claimant to 24 weeks of permanent partial disability benefits.

Claimant asserts 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 September 30, 2022, 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 based on Dr. Stoken's impairment rating, claimant proved he sustained 18 percent permanent impairment of his right shoulder as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants for the cost of Dr. Stoken's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$300.30.

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 September 30, 2022, is affirmed in its entirety.

Defendants shall pay Claimant 72 weeks of permanent partial disability benefits, at the stipulated weekly rate of eight hundred one and 14/100 dollars (\$801.14), commencing on the stipulated commencement date of August 13, 2019.

Defendants shall receive credit for all benefits paid to date.

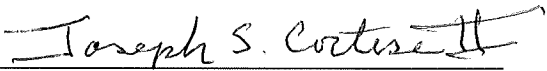
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of one thousand eight hundred and 00/100 dollars (\$1,800.00) for the cost of Dr. Stoken's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of three hundred and 30/100 dollars (\$300.30), and defendants 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 9<sup>th</sup> day of February, 2023.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Jerry Jackson (via WCES)

Stephen Spencer (via WCES)

Christopher Spencer (via WCES)