

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JAMES LORENZEN,	:		<b>FILED</b>
Claimant,	:	File No. 5024990	SEP 11 2017
vs.	:	A P P E A L	WORKERS' COMPENSATION
SECOND INJURY FUND OF IOWA,	:	D E C I S I O N	
Defendant.	:	Head Note No: 3200	

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Claimant James Lorenzen appeals from a review-reopening decision filed on February 24, 2016. Defendant Second Injury Fund of Iowa (the Fund) cross-appeals. The case was heard on January 6, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 15, 2016.

In this case, claimant seeks review-reopening of a prior award of 60 percent industrial disability against the Fund, with appropriate credits, in an arbitration decision filed on February 3, 2011. The award in that arbitration proceeding was based on a finding that the 60 percent industrial loss was the combined result of the work injury of June 13, 2006, and a 1998 left knee injury which caused a two percent scheduled member loss of use of the left leg. In that arbitration decision, pursuant to Iowa Code section 85.34(2)(s), 60 weeks of permanent partial disability benefits for a 12 percent scheduled member loss of use of the body as a whole was awarded against the employer and its insurer for simultaneous bilateral injuries to claimant's upper extremities on June 13, 2006,

The deputy commissioner found claimant is not entitled to review-reopening against the Fund because the deputy commissioner found claimant's June 13, 2006, bilateral upper extremity injuries have worsened after the arbitration proceeding to the extent that claimant is now permanently and totally disabled by the bilateral upper extremity condition alone, with the result that pursuant to Iowa Code section 85.34(2)(s) the employer and its insurer are solely liable for permanent total disability benefits, thereby preventing the Fund from having any liability for further industrial disability benefits.

Prior to the review-reopening hearing, claimant entered into a full commutation settlement with the employer and its insurer. The deputy commissioner found the Fund is not bound by the terms of that settlement, and the deputy commissioner found claimant is therefore precluded from receiving any additional weekly benefits from the employer and its insurer, as well as claimant is precluded from receiving additional weekly benefits from the Fund. The deputy commissioner also ordered claimant to pay the costs of the review-reopening proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding pursuant to Iowa Code section 85.34(2)(s) that the employer and its insurer are solely liable for permanent total disability benefits, thereby preventing the Fund from having any liability for further industrial disability benefits. Claimant asserts the deputy commissioner erred in finding the Fund is not bound by the terms of the full commutation settlement entered into between claimant and the employer and its insurer. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive additional industrial disability benefits from the Fund, or in the alternative in finding claimant is not entitled to receive permanent total disability benefits from the Fund or, in the alternative, in finding claimant is entitled to receive odd-lot permanent total disability benefits from the Fund.

The Fund asserts on cross-appeal that the deputy commissioner erred in failing to find claimant is barred by Iowa Code section 85.26(2) from bringing a review-reopening action against the Fund. The Fund also asserts the deputy commissioner erred in failing to find the full commutation settlement between claimant and the employer and its insurer is the functional equivalent of an Iowa Code section 85.35(3) compromise settlement which therefore bars the review-reopening claim against the Fund.

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 review-reopening decision filed on February 24, 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 review-reopening proceeding. I affirm the deputy commissioner's finding that claimant's June 13, 2006, bilateral upper extremity injuries worsened after the arbitration proceeding to the extent that claimant is now permanently and totally disabled by the bilateral upper extremity condition alone, with the result that pursuant to Iowa Code section 85.34(2)(s) the employer and its insurer are solely liable for permanent total disability benefits, thereby preventing the Fund from having any liability for further industrial disability benefits. I affirm the deputy commissioner's finding that the Fund is not bound by the terms of the full commutation settlement entered into between claimant and the employer and its insurer, and I affirm the deputy commissioner's finding that claimant is therefore precluded from receiving any additional weekly benefits from the employer and its insurer, as well as claimant is precluded from receiving additional weekly benefits from the Fund. I affirm the deputy commissioner's finding that claimant is not entitled to receive additional industrial disability benefits from the Fund, or in the alternative, claimant is not entitled to receive permanent total disability benefits from the Fund or, in the alternative, claimant is not

entitled to receive odd-lot permanent total disability benefits from the Fund. I affirm the deputy commissioner's order that claimant pay the costs of the review-reopening proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues. I also find the issues raised by the Fund on cross-appeal are moot.

ORDER


IT IS THEREFORE ORDERED that the review-reopening decision filed on February 24, 2016, is affirmed in its entirety.

Claimant shall take nothing further in this matter

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the review-reopening 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 this 11<sup>th</sup> day of September, 2017.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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