

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KESHIA HEISTER,

Claimant,

vs.

DREAM II HOLDINGS, LLC.,

Employer,

and

THE HARTFORD,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 1652134.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1803; 2907;
3002; 3202; 5-9998

Claimant Keshia Heister appeals from an arbitration decision filed on May 20, 2021. Defendant Second Injury Fund of Iowa (the Fund) responds to the appeal. Because the appeal applies only to the Fund and it does not apply to defendant-employer Dream II Holdings LLC, or to defendant-insurer The Hartford, those defendants make no response to the appeal. The case was heard on September 10, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 23, 2020.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proof to establish she sustained a first qualifying injury to her right upper extremity on October 31, 2013, and a second qualifying work-related injury to her left upper extremity on August 1, 2018, for the purpose of receiving benefits from the Fund. The deputy commissioner found that as a result of the two injuries taken together, claimant sustained ten percent industrial disability, which entitles claimant to receive 25 weeks of permanent partial disability (PPD) benefits from the Fund after the Fund receives the appropriate credits totaling 25 weeks for the qualifying injuries. The deputy commissioner found the Fund is entitled to receive a credit of 12.5 weeks for the first qualifying injury, and the deputy commissioner found the Fund is entitled to receive a credit of 12.5 weeks for the second qualifying work injury, for a total credit of 25 weeks. The deputy commissioner found claimant sustained five percent permanent functional impairment resulting from the August 1, 2018, work-related left upper extremity injury, which entitles claimant to receive 12.5 weeks of PPD benefits from defendants

employer and insurer commencing on February 11, 2019. The deputy commissioner found claimant's weekly benefit rate for the work injury is \$253.21. The deputy commissioner ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding in the amount of \$636.50.

Claimant asserts on appeal that the award against the Fund for industrial disability is too low and should be increased substantially.

The Fund 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 May 20, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 proved she sustained a first qualifying injury to her right upper extremity on October 31, 2013, and a second qualifying work-related injury to her left upper extremity on August 1, 2018, and I affirm the deputy commissioner's finding that claimant is entitled to receive benefits from the Fund. I affirm the deputy commissioner's finding that as a result of the two injuries taken together, claimant sustained ten percent industrial disability, and I affirm the deputy commissioner's finding that claimant is entitled to receive 25 weeks of PPD benefits from the Fund after the Fund receives the appropriate credits totaling 25 weeks for the two qualifying injuries. I affirm the deputy commissioner's finding that the Fund is entitled to receive a credit of 12.5 weeks for the first qualifying injury, and I affirm the deputy commissioner's finding that the Fund is entitled to receive a credit of 12.5 weeks for the second qualifying work injury, for a total credit of 25 weeks. I affirm the deputy commissioner's finding that claimant sustained five percent permanent functional impairment resulting from the August 1, 2018, work-related left upper extremity injury, which entitles claimant to receive 12.5 weeks of PPD benefits from defendants employer and insurer commencing on February 11, 2019. I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the work injury is \$253.21. I affirm the deputy commissioner's order that defendants employer and insurer pay claimant's costs of the arbitration proceeding in the amount of \$636.50.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 20, 2021, is affirmed in its entirety.

All weekly benefits shall be paid at the stipulated weekly rate of two hundred fifty-three and 21/100 dollars (\$253.21).

Defendants employer and insurer shall pay claimant twelve and one-half (12.5) weeks of permanent partial disability benefits commencing on February 11, 2019.

Defendants employer and insurer shall receive credit for all weekly benefits paid to date.

Defendants employer and insurer 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

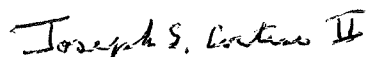
The Second Injury Fund shall pay claimant twenty-five (25) weeks of permanent partial disability benefits commencing on May 9, 2019.

Interest will accrue on unpaid Fund benefits from the date of this appeal decision 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 this decision, plus two (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding in the amount of six hundred thirty-six and 50/100 dollars (\$636.50), 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 employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 28th day of October, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Christopher Fry (via WCES)

Tansha Clarke (via WCES)

Meredith Cooney (via WCES)