

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

DEC 28 2018

WORKERS' COMPENSATION

BRYAN FIX,

Claimant,

vs.

POLK COUNTY, IOWA,

Employer,
Self-Insured,
Defendant.

File No. 5051755

A P P E A L

D E C I S I O N

Headnote Nos.: 1402.30, 1403.30, 1803
2209, 2401

Defendant Polk County, Iowa appeals from an arbitration decision filed on December 5, 2016. Claimant Bryan Fix responds to the appeal.

On June 29, 2018, Iowa Workers' Compensation Commissioner Joseph S. Cortese II, delegated authority to the undersigned to issue the final agency decision on the intra-agency appeal currently pending before this agency. The decision in this matter shall be the final agency action.

An arbitration hearing was held on February 29, 2016, at the Division of Workers' Compensation, in Des Moines, Iowa. The parties submitted post-hearing briefs and the case was fully submitted on April 18, 2016.

On December 5, 2016, the deputy workers' compensation commissioner issued an arbitration decision finding the defendant waived its notice claim by paying temporary benefits, and, alternatively, the claimant provided timely notice, concluding the claimant met his burden of proof he sustained a cumulative injury arising out of and in the course of his employment with the defendant, which manifested on December 9, 2013, finding the claimant sustained a twenty percent industrial disability and awarding the claimant 100 weeks of permanent partial disability benefits commencing on July 23, 2014, at the weekly rate of \$564.74, and ordering the defendant to pay any past due amounts in a lump sum with interest as provided by law.

Defendant timely appealed the decision. Defendant asserts the decision should be reversed because the claimant is not a credible witness, the claimant failed to meet his burden of proof he sustained a permanent, work-related cumulative injury, the claimant failed to provide timely notice, the deputy erred in concluding the opinion of John Kuhnlein, D.O., was most persuasive when his opinion is allegedly based upon incomplete information and a history from the claimant that is not credible, and by failing to provide a proper explanation for finding the opinions of Michael Jackson, M.D., and Joshua Kimelman, D.O., less persuasive than Dr. Kuhnlein's opinion. Claimant responds to the appeal and contends the decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as 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 December 5, 2016, which relate to the issues properly raised on intra-agency appeal. I find the deputy workers' compensation commissioner provided a well-reasoned analysis of the issues raised in the arbitration proceeding. I find the deputy commissioner provided more than a sufficient analysis of all of the issues raised in the arbitration decision. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

The deputy commissioner placed a great deal of weight on claimant's credibility. The deputy specifically determined claimant was a credible witness. The deputy commissioner also made credibility findings when evaluating the opinions of other witnesses. Where credibility is a critical finding before a deputy workers' compensation commissioner, the commissioner often gives deference to the credibility findings of the deputy. See: Clay v. Dee Zee, Inc., File No. 5044016 (App. Dec. September 23, 2015).

I affirm the deputy workers' compensation commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy workers' compensation commissioner's findings the claimant proved he sustained a permanent, work-related cumulative injury, the claimant's claim was timely, and the claimant sustained a twenty percent industrial disability, entitling the claimant to 100 weeks of permanent partial disability benefits commencing on July 23, 2014.

ORDER

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

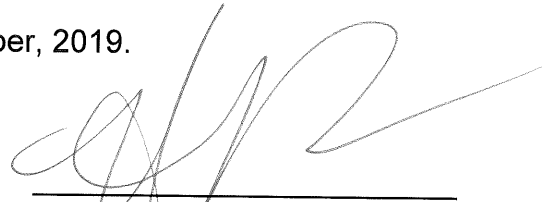
Defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing on July 23, 2014, at the weekly rate of five hundred sixty-four and 74/100 dollars (\$564.74).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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).

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs of the appeal, including the cost of the transcript are assessed to the defendant.

Signed and filed this 28th day of December, 2019.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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