

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL J. JOHNSTON,

Claimant,

vs.

MOHAWK INDUSTRIES, INC.,

Employer,

and

LIBERTY MUTUAL INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

APR 20 2018

WORKERS' COMPENSATION

File No. 5052017

APPEAL DECISION

Head Note No.: 1803

Defendant Mohawk Industries, Inc., employer, and Liberty Mutual Insurance Co., insurer, filed an appeal from an arbitration decision filed on October 27, 2016. The case was heard on January 29, 2016, and considered fully submitted on March 11, 2016, upon the simultaneous filing of briefs. The notice of appeal was timely filed November 15, 2016. On March 23, 2018, the matter was delegated to the undersigned to issue the final agency decision in this matter.

The sole issue before the deputy commissioner was the extent of claimant's permanent disability arising out of an accepted work injury of November 6, 2012. The deputy commissioner found claimant sustained a 35% impairment of the whole person and awarded costs in the amount of \$112.96.

Defendant asserts on appeal that the deputy commissioner erred in awarding any benefits beyond which defendants had paid prior to hearing.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on October 27, 2016, that relate to issues properly raised on intra-agency appeal. The preponderance of the evidence supports the well-reasoned decision of the presiding deputy that claimant's work injury resulted in a reduction of the type of work he could perform within his restrictions set forth by the authorized treating physician as well as a valid FCE.

Defendants' argument is that following surgery claimant was found to have full strength in both shoulders and that claimant passed a post-surgical DOT physical allowing him to continue to drive commercially. They further point to claimant's admission that he could physically perform the duties of two past jobs which paid him significantly less than what he was earning with defendant employer and that claimant has no restrictions concerning the amount of driving he can perform or "cranking" of dollies.

However, a de novo review of the evidence shows these arguments ignore the restrictions recommended by the FCE and adopted by the authorized treating physician. The arguments also glide over the defendants' termination of the claimant and lack of re-employment with defendants or other load-heavy trucking jobs.

The greater weight of the evidence supports the conclusion that claimant's work injury and resulting pain and restrictions give rise to a serious reduction of access to the labor market.

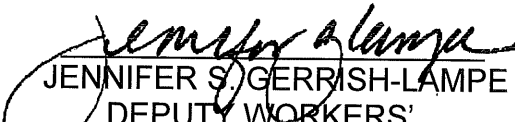
The deputy commissioner provided sufficient analysis of the competing expert opinions and the medical records to explain how he arrived at his findings and conclusions regarding those issues. I concur with the deputy commissioner's findings of fact and conclusions of law pertaining to the issues of extent and adopt the deputy commissioner's findings, conclusions and analysis regarding these issues without further comment.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of October 27, 2016, is AFFIRMED.

Defendants shall pay the costs of this matter and of the appeal, including the preparation of the hearing transcript.

Signed and filed this 20th day of April, 2018.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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