

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSE L. TORRES,

Claimant,

vs.

LECLAIRE MANUFACTURING CO.,

Employer,

and

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH,

and

SECOND INJURY FUND OF IOWA,

Defendants.

FILED

MAY - 3 2019

WORKERS' COMPENSATION

File Nos. 5050690, 5050691

A P P E A L

D E C I S I O N

Head Notes: 1803; 2701; 3202; 5-9998

JOSE L. TORRES,

Claimant,

vs.

LECLAIRE MANUFACTURING CO.,

Employer,

and

GREAT AMERICAN INSURANCE
GROUP,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5057031

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 2701; 3202; 5-9998

Claimant, Jose L. Torres appeals from an arbitration decision filed on December 27, 2017. Defendants, LeClaire Manufacturing Co., employer, and its insurers, National Union Fire Insurance Company of Pittsburgh and Great American Insurance Group, respond to the appeal. Defendant Second Injury Fund of Iowa (the Fund) also responds to the appeal. The case was heard on July 20, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 17, 2017.

In File No. 5050690, the deputy commissioner found claimant proved he sustained scheduled member functional disability of 25 percent of the left upper extremity, which entitles claimant to receive 62.5 weeks of permanent partial disability benefits commencing on October 28, 2015, as a result of a stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on March 18, 2014. The deputy commissioner found claimant is entitled to receive alternate medical care for the injury to his left upper extremity at the University of Iowa Hand Clinic, as recommended by Richard Kreiter, M.D. The deputy commissioner found claimant failed to carry his burden of proof that he is entitled to receive benefits from the Fund because he failed to prove an injury he sustained on June 15, 2009, was a first qualifying injury for purposes of the Fund. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

In File No. 5050691, the deputy commissioner found claimant proved he sustained scheduled member functional disability of eleven percent of the right upper extremity, which entitles claimant to receive 27.5 weeks of permanent partial disability benefits commencing on October 28, 2015, as a result of a stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on June 15, 2014. The deputy commissioner found claimant is not entitled to receive alternate medical care for the injury to his right upper extremity. The deputy commissioner found claimant failed to carry his burden of proof that he is entitled to receive benefits from the Fund because he failed to prove an injury he sustained on June 15, 2009, was a first qualifying injury for purposes of the Fund. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

In File No. 5057031, the deputy commissioner found claimant failed to prove he sustained an injury which arose out of and in the course of his employment with defendant-employer on July 15, 2016, as alleged. The deputy commissioner found all other issues raised in File No. 5057031 are moot.

In File No. 5050690, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that the injury he sustained on June 15, 2009, was a first qualifying injury for purposes of the Fund. Claimant asserts the deputy commissioner erred in failing to award Fund benefits in File No. 5050690.

In File No. 5050691, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that the injury he sustained on June 15, 2009, was a first qualifying injury for purposes of the Fund. Claimant asserts the deputy commissioner erred in failing to award Fund benefits in File No. 5050691.

In File No. 5057031, claimant makes no argument on appeal. Claimant thereby waives his appeal in File No. 5057031.

Defendants Employer and Insurers, and Defendant Fund, assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency 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 December 27, 2017, 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.

In File No. 5050690, I affirm the deputy commissioner's finding that claimant proved he sustained scheduled member functional disability of 25 percent of the left upper extremity as a result of the March 18, 2014, work injury, which entitles claimant to receive 62.5 weeks of permanent partial disability benefits commencing on October 28, 2015. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care for the injury to his left upper extremity at the University of Iowa Hand Clinic, as recommended by Dr. Kreiter. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he is entitled to receive benefits from the Fund because he failed to prove the injury he sustained on June 15, 2009, was a first qualifying injury for purposes of the Fund. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

In File No. 5050691, I affirm the deputy commissioner's finding that claimant proved he sustained scheduled member functional disability of eleven percent of the right upper extremity as a result of the June 15, 2014, work injury, which entitles claimant to receive 27.5 weeks of permanent partial disability benefits commencing on October 28, 2015. I affirm the deputy commissioner's finding that claimant is not entitled to receive alternate medical care for the injury to his right upper extremity. I affirm the deputy commissioner's finding that claimant failed to carry his burden of

proof that he is entitled to receive benefits from the Fund because he failed to prove the injury he sustained on June 15, 2009, was a first qualifying injury for purposes of the Fund. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

In File No. 5057032, because claimant waived his appeal, I affirm the deputy commissioner's finding that claimant failed to prove he sustained an injury which arose out of and in the course of his employment with defendant-employer on July 15, 2016, as alleged. I affirm the deputy commissioner's finding that all other issues raised in File No. 5057031 are moot.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 27, 2017, is affirmed in its entirety.

File No. 5050690 - Date of Injury: March 18, 2014:

All weekly benefits shall be paid at the stipulated weekly rate of three hundred eighty and 24/100 dollars (\$380.24).

Defendants employer and insurer shall pay claimant sixty two and one-half (62 ½) weeks of permanent partial disability benefits commencing on the stipulated commencement date of October 28, 2015.

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

Accrued benefits, if any, shall be paid in a lump sum along with interest pursuant to Iowa Code section 85.30.

Defendants employer and insurer shall promptly authorize medical care for claimant's left upper extremity as recommended by Dr. Kreiter in his June 13, 2017, report.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, 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.

File No. 5050691 - Date of Injury: June 15, 2014:

All weekly benefits shall be paid at the stipulated weekly rate of three hundred eighty and 24/100 dollars (\$380.24).

Defendants employer and insurer shall pay claimant twenty seven and one-half (27 ½) weeks of permanent partial disability benefits commencing on the stipulated commencement date of October 28, 2015, until all benefits are paid in full.

Defendants shall receive a credit for all weekly benefits paid to date.

Accrued benefits, if any, shall be paid in a lump sum along with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, 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.

Both File Nos. 5050690 and 5050691:

The parties stipulated in the hearing reports for File Nos. 5050690 and 5050691 that the applicable credit to be applied to the above awards is ninety (90) weeks.

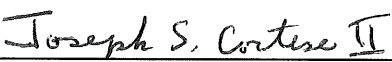
File No. 5057031 - Date of Injury: July 15, 2016:

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration 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 employer and insurer shall file subsequent reports of injury as required by this agency.

Signed and filed on this 3rd day of May, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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