

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WENDY KISH,

Claimant,

vs.

UNIVERSITY OF DUBUQUE,

Employer,

and

TRAVELERS INDEMNITY COMPANY
OF CONNECTICUT,Insurance Carrier,
Defendants.

File No. 5066482

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 2907; 4000.2;
5-9998

Claimant Wendy Kish appeals from an arbitration decision filed on July 29, 2021. Defendants University of Dubuque, employer, and its insurer, Travelers Indemnity Company of Connecticut, respond to the appeal. The case was heard on June 25, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 6, 2020

In the arbitration decision, the deputy commissioner found claimant's recovery for her work-related injury sustained on May 30, 2018, is limited by Iowa Code section 85.34(2)(v) to claimant's functional impairment, with no consideration for industrial disability. The deputy commissioner found claimant's functional impairment for the work injury is ten percent, which entitles claimant to receive 50 weeks of permanent partial disability benefits commencing on July 19, 2019. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for an unreasonable delay in the payment of weekly benefits. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's recovery for the work injury is limited by Iowa Code section 85.34(2)(v) to claimant's functional impairment. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive industrial disability benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits from defendants for an unreasonable delay in the payment of weekly benefits.

Defendants assert 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 July 29, 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's recovery for the work injury is limited by Iowa Code section 85.34(2)(v) to claimant's functional impairment, with no consideration for industrial disability. I affirm the deputy commissioner's finding that claimant's functional impairment for the work injury is ten percent. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants for an unreasonable delay in the payment of weekly benefits. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 29, 2021, is affirmed in its entirety.

Defendants shall pay claimant fifty (50) weeks of permanent partial disability benefits, commencing June 19, 2019, at the stipulated weekly rate of three hundred eighty-four and 99/100 dollars (\$384.99).

Defendants shall receive credit for all benefits previously paid.

Defendants 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 (Appeal April 2018).

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 shall file subsequent reports of injury as required by this agency.

Signed and filed on this 30th day of November, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

Julie Burger (via WCES)