

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHAD LEWIS,

Claimant,

vs.

HY-VEE, INC.,

Employer,

and

UNION INSURANCE COMPANY
OF PROVIDENCE,Insurance Carrier,
Defendants.

File No. 19700629.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1803.1
2907; 5-9998

Defendants Hy-Vee, Inc., employer, and its insurer, Union Insurance Company of Providence, appeal from an arbitration decision filed on March 4, 2021. Claimant Chad Lewis responds to the appeal. The case was heard on December 7, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 11, 2021.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability of his left shoulder and his neck as a result of the stipulated work injury which occurred on October 1, 2018. The deputy commissioner found that Iowa Code section 85.34(2)(v) does not apply in this matter, and the deputy commissioner found claimant sustained 15 percent industrial disability as a result of the work injury, which entitles claimant to receive 75 weeks of permanent partial disability benefits commencing on the stipulated date of January 25, 2019. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$113.60.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained any permanent disability as a result of the work injury. Defendants assert it should be found on appeal that claimant sustained only a temporary work injury and is not entitled to receive permanency benefits. Defendants assert if it is found on appeal that claimant did sustain permanent disability, it should be found that claimant's permanent disability does not extend beyond his left shoulder into his body as a whole. Defendants assert it should be found on appeal that claimant's permanent disability resulting from the work injury is limited to claimant's left shoulder only as a scheduled

member injury. Defendants assert if it is found on appeal that claimant sustained permanent disability to both his left shoulder and his neck, that the award for permanent disability benefits should be limited to claimant's functional impairment under Iowa Code section 85.34(2)(v). Defendants assert that if it is found on appeal that section 85.34(2)(v) does not apply, and if it is found claimant is entitled to receive industrial disability benefits, the award for industrial disability should be reduced significantly.

Claimant asserts 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 March 4, 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 he sustained permanent disability of both his left shoulder and his neck as a result of the work injury. I affirm the deputy commissioner's finding that Iowa Code section 85.34(2)(v) does not apply in this matter. I affirm the deputy commissioner's finding that claimant sustained 15 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$113.60.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 4, 2021, is affirmed in its entirety.

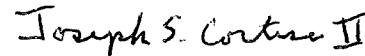
Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits commencing on the stipulated date of January 25, 2019, at the stipulated weekly rate of three hundred seventy-three and 58/100 dollars (\$373.58).

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.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred thirteen and 60/100 dollars (\$113.60), and defendants 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 (SROI) as required by this agency.

Signed and filed on this 3rd day of June, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

David Lawyer (via WCES)

Lindsey Mills (via WCES)