

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL JOHNSON,	:	File Nos. 5068454, 5068455, 5068456
Claimant,	:	
vs.	:	A P P E A L
WHIRLPOOL CORPORATION,	:	D E C I S I O N
Employer,	:	
Self-Insured,	:	Head Notes: 1402.40; 1803; 2701; 2907;
Defendant.	:	5-9998

Defendant Whirlpool Corporation, self-insured employer, appeals from an arbitration decision filed on May 18, 2020. Claimant Michael Johnson responds to the appeal. The case was heard on April 7, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 1, 2020.

In File No. 5068454, stipulated work injury which occurred on May 1, 2016, the deputy commissioner found claimant sustained permanent scheduled member functional impairment of two percent of the right lower extremity, which entitles claimant to receive 4.4 weeks of permanent partial disability benefits commencing on October 7, 2016.

In File No. 5068455, the deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability as a result of the stipulated work injury which occurred on June 1, 2017. The deputy commissioner found claimant sustained permanent scheduled member functional impairment of five percent of the left upper extremity, which entitles claimant to receive 12.5 weeks of permanent partial disability benefits commencing on June 1, 2017. Pursuant to the stipulation the parties entered into at the arbitration hearing, the deputy commissioner ordered defendant to provide alternate medical care for claimant's left upper extremity with Joseph A. Buckwalter, M.D.

In File No. 5068456, the deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability as a result of the stipulated work injury which occurred on September 13, 2018. The deputy commissioner found claimant sustained permanent scheduled member functional impairment of 20 percent of the right lower extremity, which entitles claimant to receive 44 weeks of permanent partial disability benefits commencing on September 13, 2018. The deputy commissioner ordered defendant to provide alternate medical care for claimant's right knee with an orthopedic surgeon who is a knee joint replacement specialist who will evaluate and treat claimant's right knee. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$171.20.

In File No. 5068454, neither party raises any issues on appeal.

In File No. 5068455, defendant asserts the deputy commissioner erred in finding claimant proved he sustained permanent disability as a result of the June 1, 2017, work injury. Defendant asserts the award of permanent partial disability benefits for claimant's left upper extremity should be reversed.

In File No. 5068456, defendant asserts the deputy commissioner erred in finding claimant proved he sustained permanent disability as a result of the September 13, 2018, work injury. Defendant asserts the award of permanent partial disability benefits for claimant's right lower extremity should be reversed. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive alternate medical care for his right knee. Defendant asserts the order for defendant to authorize an orthopedic surgeon who is a knee joint replacement specialist who will evaluate and treat claimant's right knee should be reversed.

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 performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on May 18, 2020, 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. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

In File No. 5068454, I affirm the deputy commissioner's finding that claimant sustained permanent scheduled member functional impairment of two percent of the right lower extremity as a result of the May 1, 2016, work injury

In File No. 5068455, I affirm the deputy commissioner's finding that claimant proved he sustained permanent disability as a result of the June 1, 2017, work injury. I affirm the deputy commissioner's finding that claimant sustained permanent scheduled member functional impairment of five percent of the left upper extremity. Pursuant to the stipulation of the parties, I affirm the deputy commissioner's order that defendant provide alternate medical care for claimant's left upper extremity with Dr. Buckwalter.

In File No. 5068456, I affirm the deputy commissioner's finding that claimant proved he sustained permanent disability as a result of the September 13, 2018, work injury. I affirm the deputy commissioner finding that claimant sustained permanent scheduled member functional impairment of 20 percent of the right lower extremity. I affirm the deputy commissioner's order that defendant provide alternate medical care for claimant's right knee with an orthopedic surgeon who is a knee joint replacement specialist. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$171.20.

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 May 18, 2020, is affirmed in its entirety.

File No. 5068454 – Injury Date of May 1, 2016:

Defendant shall pay claimant four point four (4.4) weeks of permanent partial disability benefits commencing on October 7, 2016.

All weekly benefits shall be payable at the stipulated weekly rate of five hundred seventy-two and 21/100 dollars (\$572.21).

Defendant shall receive the stipulated credit against this award.

The employer and insurance carrier 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).

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

File No. 5068455 – Injury Date of June 1, 2017:

Defendant shall pay claimant twelve point five (12.5) weeks of permanent partial disability benefits commencing on June 1, 2017.

All weekly benefits shall be payable at the stipulated weekly rate of five hundred ninety-one and 26/100 dollars (\$591.26).

The employer and insurance carrier 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 provide the stipulated alternate medical care for claimant's left upper extremity with Dr. Buckwalter.

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

In File No. 5068456 – Injury Date of September 13, 2018:

Defendant shall pay claimant forty-four (44) weeks of permanent partial disability benefits commencing on September 13, 2018.

All weekly benefits shall be paid at the stipulated weekly rate of five hundred seventy-three and 35/100 dollars (\$573.35).

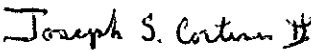
Defendant shall pay accrued weekly benefits in a lump sum together with interest payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent, as required by Iowa Code section 85.30.

Defendant shall authorize an orthopedic surgeon who is a knee joint replacement specialist to evaluate and treat claimant's right knee.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of one hundred seventy-one and 20/100 dollars (\$171.20), and defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 9th day of November, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Steven Durick (via WCES)