

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 RICHIE WILLIAMS,

File No. 5067813.02

Claimant,

A P P E A L

vs.

D E C I S I O N

ARCHER DANIELS MIDLAND,

Employer,
Self-Insured,
Defendant.: Head Notes: 1402.20; 1402.40; 1801; 1803;
: 1803.1; 2206; 2502; 2907;
: 3001; 3002; 4000.2; 5-9998

Defendant Archer Daniels Midland, self-insured employer, appeals from an arbitration decision filed on November 3, 2021, and from a ruling on application for rehearing filed on November 19, 2021. Claimant Richie Williams cross-appeals. The case was heard on January 4, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 12, 2021.

In the arbitration decision, the deputy commissioner found claimant sustained an injury to his right shoulder as a result of the stipulated work injury which occurred on November 19, 2018. The deputy commissioner found claimant failed to prove the injury extends beyond claimant's right shoulder into his body as a whole, and the deputy commissioner found claimant is not entitled to receive industrial disability benefits for the work injury. The deputy commissioner found claimant failed to prove he is entitled to receive healing period benefits for any days during the period of November 19, 2018, through September 9, 2019. The deputy commissioner found that pursuant to Iowa Code section 85.34(2)(n), claimant sustained permanent functional scheduled member disability of eleven percent of the right shoulder, which entitles claimant to receive 44 weeks of permanent partial disability benefits commencing on December 20, 2019. The deputy commissioner found claimant's average weekly earnings for the work injury were \$1,103.55, and the deputy commissioner found claimant's correct weekly benefit rate for the injury is \$665.74. The deputy commissioner found claimant is entitled to receive penalty benefits from defendant in the amount of \$10,000.00 for defendant's unreasonable failure to pay weekly benefits in a timely manner. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendant for the cost of the independent medical evaluation (IME) of claimant performed by Farid Manshadi, M.D. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$366.95.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained permanent functional scheduled member disability of eleven percent

of the right shoulder as a result of the work injury. Defendant asserts the deputy commissioner erred in failing to find claimant sustained permanent functional scheduled member disability of eight percent of the right shoulder pursuant to the permanent impairment rating of Kyle Switzer, D.O. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant's permanent disability resulting from the work injury is confined to his right shoulder and does not extend into claimant's body as a whole, and in finding claimant is not entitled to receive industrial disability benefits for the work injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive temporary disability benefits for any days during the period of November 19, 2018, through September 9, 2019. Claimant asserts Iowa Code sections 85.34(2)(n) and 85.34(2)(x) violate the United States Constitution and the Iowa State Constitution.

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 November 3, 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 sustained an injury to his right shoulder as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove the injury extends beyond claimant's right shoulder into his body as a whole, and I affirm the deputy commissioner's finding that claimant is not entitled to receive industrial disability benefits for the work injury. I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to receive any healing period benefits for any days during the period of November 19, 2018, through September 9, 2019. I affirm the deputy commissioner finding that pursuant to Iowa Code section 85.34(2)(n), claimant sustained permanent functional scheduled member disability of eleven percent of the right shoulder as a result of the work injury, which entitles claimant to receive 44 weeks of permanent partial disability benefits commencing on December 20, 2019. I affirm the deputy commissioner's finding that claimant's average weekly earnings for the work injury were \$1,103.55, and I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the injury is \$665.74. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits from defendant in the amount of \$10,000.00 for defendant's unreasonable failure to pay weekly benefits in a timely manner. I affirm the deputy

commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendant for the cost of Dr. Manshadi's IME. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$366.95. I find claimant has raised and preserved the issue of the constitutionality of Iowa Code sections 85.34(2)(n) and 85.34(2)(x) under both the United States Constitution and the Iowa State Constitution.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed in this matter on November 3, 2021, and the ruling on application for rehearing filed on November 19, 2021, are affirmed in their entirety.

Defendant shall pay claimant forty-four (44) weeks of permanent partial disability benefits at the weekly rate of six hundred sixty-five and 74/100 dollars (\$665.74), commencing on the stipulated commencement date of December 20, 2019.

Pursuant to the stipulation of the parties, defendant shall receive credit for thirty-two (32) weeks of permanent partial disability benefits previously paid.

Defendant 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.

Defendant shall pay claimant penalty benefits in the amount of ten thousand and 00/100 dollars (\$10,000.00) for defendant's unreasonable failure to pay weekly benefits in a timely manner.

Defendants shall reimburse claimant in the amount of one thousand four hundred and 00/100 dollars (\$1,400.00) for the cost of Dr. Manshadi's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of three hundred sixty-six and 95/100 dollars (\$366.95), and the parties shall split 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 18th day of April, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Andrew Giller (via WCES)

Paul Powers (via WCES)

Peter Thill (via WCES)