

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DOUGLAS TRIPLETT,

Claimant,

vs.

CITY OF DES MOINES,

Employer,
Self-Insured,
Defendant.

File No. 5056663

A P P E A L

D E C I S I O N

Headnotes: 1402.40; 1803; 2905; 2907;
5-9998

Claimant Douglas Triplett appeals from a review-reopening decision filed on November 24, 2020. Defendant City of Des Moines, self-insured employer, responds to the appeal. The case was heard on August 28, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 9, 2020.

On May 10, 2016, claimant sustained the work-related injury which is at issue in this matter. In the underlying arbitration decision filed in this case on November 1, 2017, the deputy commissioner found claimant sustained permanent scheduled member functional disability of 50 percent of the right lower extremity as a result of the work injury, which entitled claimant to receive 110 weeks of permanent partial disability benefits. The November 1, 2017, arbitration decision was not appealed.

On June 7, 2018, claimant filed a review-reopening petition alleging he sustained a physical change of condition regarding the work injury after the arbitration decision was filed, thus entitling him to receive additional permanent disability benefits for the work injury. The review-reopening petition proceeded to hearing on August 28, 2020.

On November 24, 2020, the deputy workers' compensation commissioner issued a review-reopening decision finding claimant failed to carry his burden of proof to establish he sustained a physical change of condition regarding the work injury after the arbitration decision was filed. The deputy commissioner found claimant is not entitled to receive additional permanent disability benefits. The deputy commissioner ordered the parties to pay their own costs of the review-reopening proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained a physical change of condition regarding the work injury after the arbitration decision was filed. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive additional permanent disability benefits

for the work injury. Claimant asserts the deputy commissioner erred in failing to tax defendant with claimant's costs of the review-reopening proceeding.

Defendant asserts on appeal that the review-reopening 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 review-reopening decision filed on November 24, 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 review-reopening 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 failed to prove he sustained a physical change of condition regarding the work injury after the arbitration decision was filed. I affirm the deputy commissioner's finding that claimant is not entitled to receive additional permanent disability benefits for the work injury. I affirm the deputy commissioner's order that the parties pay their own costs of the review-reopening proceeding.

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

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on November 24, 2020, is affirmed in its entirety.

Claimant shall take no additional benefits in this review-reopening proceeding.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the review-reopening 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 4th day of March, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Christopher Spaulding (via WCES)

Michelle Mackel-Wiederanders (via WCES)