

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY THOMPSON,

Claimant,

vs.

MAIL CONTRACTORS OF AMERICA,

Employer,

and

CHARTIS INSURANCE, INC.,

Insurance Carrier,
Defendants.

File No. 5039421

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1804; 2905; 2907;
5-9998

Defendants Mail Contractors of America, employer, and its insurer, Chartis Insurance Company, appeal from a review-reopening decision filed on March 3, 2021. Claimant Gary Thompson responds to the appeal. The case was heard on August 5, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 14, 2020.

On February 4, 2009, claimant sustained the work-related injury which is at issue in this matter. In the underlying arbitration decision filed in this case on July 24, 2013, a deputy commissioner found claimant sustained 80 percent industrial disability as a result of the work injury, which entitled claimant to receive 400 weeks of permanent partial disability benefits. The July 24, 2013, arbitration decision was affirmed in its entirety by the workers' compensation commissioner in an appeal decision filed on December 26, 2013.

On June 26, 2019, claimant filed a review-reopening petition alleging he sustained both a physical change of condition and a change in his economic circumstances related to the work injury after the arbitration decision was filed. Claimant asserted that due to the alleged physical change of condition and the alleged change in economic circumstances, he is now entitled to receive permanent total disability benefits for the work injury. The review-reopening petition proceeded to hearing before another deputy workers' compensation commissioner on August 5, 2020.

On March 3, 2021, the deputy commissioner issued a review-reopening decision finding claimant carried his burden of proof to establish he sustained both a physical change of condition and a change in economic circumstances related to the work injury after the arbitration decision was filed. The deputy commissioner found that as a result of the physical change of condition and the change in economic circumstances, claimant is now entitled to receive permanent total disability benefits for the work injury.

The deputy commissioner ordered defendants to pay claimant's costs of the review-reopening proceeding.

Defendants asserts on appeal that the deputy commissioner erred in finding claimant proved he sustained a physical change of condition and/or a change in his economic circumstances related to the work injury after the arbitration decision was filed. Defendants assert the deputy commissioner erred in finding claimant is now entitled to receive permanent total disability benefits for the work injury.

Claimant 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 March 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 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 proved he sustained a physical change of condition and a change in his economic circumstances related to the work injury after the arbitration decision was filed. I affirm the deputy commissioner's finding that claimant is now entitled to receive permanent total disability benefits for the work injury. I affirm the deputy commissioner's order that defendants pay claimant's costs of the review-reopening proceeding.

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

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed in this matter on March 3, 2021, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits at the rate of six hundred thirty-nine and 54/100 dollars (\$639.54) per week commencing on June 26, 2019, the date on which the review-reopening petition was filed.

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 (App. Apr. 24, 2018).

Defendants shall receive credit for all benefits previously paid.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the review-reopening proceeding, 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 as required by this agency.

Signed and filed on this 15th day of July, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jason David Neifert (via WCES)

Kelsey Paumer (via WCES)