

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GEORGE E. SCHUSTER, JR,

Claimant,

vs.

ANNETT HOLDINGS, INC., d/b/a  
TMC TRANSPORTATION,

Employer,  
Self-Insured,  
Defendant.

File No. 5046350

A P P E A L

D E C I S I O N

Head Note Nos.: 1803; 1300

**FILED**

OCT - 6 2016

WORKERS' COMPENSATION

Defendant Annett Holdings, Inc., d/b/a TMC Transportation, self-insured employer, appeals from an arbitration decision filed on February 27, 2015. Claimant George E. Schuster, Jr., responds to the appeal. The case was heard on December 15, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 5, 2015.

The deputy commissioner awarded claimant 75 percent industrial disability, which entitles claimant to 375 weeks of permanent partial disability (PPD) benefits for the stipulated work-related injury which occurred on February 24, 2010. The deputy commissioner found claimant's correct benefit rate is \$530.00 per week. The deputy commissioner ordered defendant to pay the costs of the arbitration proceeding.

Defendant asserts on appeal that the deputy commissioner erred in awarding 75 percent industrial disability. Defendant asserts the deputy commissioner should have awarded industrial disability in the range of 20 percent. Defendant also asserts the deputy commissioner erred in failing to find claimant's correct benefit rate is \$504.60 per week.

Claimant asserts on appeal that the deputy commissioner erred in failing to find claimant is permanently and totally disabled as a result of the February 24, 2010, work injury. Claimant also asserts the deputy commissioner's finding that claimant's correct benefit rate is \$530.00 per week should be affirmed.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 February 27, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis 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 award of 75 percent industrial disability, which entitles claimant to 375 weeks of PPD benefits. I affirm the deputy commissioner's finding that claimant's correct benefit rate is \$530.00 per week. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision of February 27, 2015, is affirmed in its entirety.

Defendant shall pay claimant 375 weeks of PPD benefits at the rate of \$530.00 per week commencing June 2, 2011.

Defendant shall pay claimant any underpayment of benefits based on the correct benefit rate of \$530.00 per week.

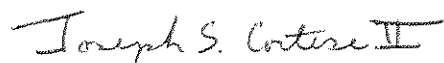
Defendant shall be entitled to a credit for any weekly benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendants shall pay the costs of the arbitration proceeding and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed this 6<sup>th</sup> day of October, 2016.



JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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