

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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 JOHN OPPELT,

Claimant,

vs.

KLOCKNER USA HOLDING, INC.,

Employer,

and

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA,Insurance Carrier,  
Defendants.

File No. 5058047

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1804; 2502;  
2907; 4100; 5-9998

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Claimant John Oppelt appeals from an arbitration decision filed on November 23, 2020, and from an order granting application for rehearing filed on December 7, 2020. Defendants Klockner USA Holding, Inc. employer, and its insurer, Travelers Property Casualty Company of America, respond to the appeal. The case was heard on September 3, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 2, 2020.

In the arbitration decision, the deputy commissioner found claimant failed to meet his burden of proof to establish he is permanently and totally disabled under the odd-lot doctrine as a result of the stipulated January 5, 2015, work injury. The deputy commissioner found that pursuant to Iowa Code section 85.39 claimant is entitled to reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In the order granting application for rehearing, the deputy commissioner found claimant sustained 35 percent industrial disability as a result of the work injury, which entitles claimant to receive 175 weeks of permanent partial disability benefits starting on the stipulated commencement date of July 15, 2019.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he is permanently and totally disabled under the odd-lot doctrine as a result of the work injury. In the alternative, claimant asserts the award for industrial disability should be increased substantially.

Defendants assert on appeal that the arbitration decision and the order granting application for rehearing should be affirmed in their entirety.

Those portions of the proposed agency decision and order 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 November 23, 2020, and the order granting application for rehearing filed on December 7, 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.

I affirm the deputy commissioner's finding that claimant failed to prove he is permanently and totally disabled under the odd-lot doctrine as a result of the work injury. I affirm the deputy commissioner's finding that claimant sustained 35 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39 claimant is entitled to reimbursement from defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 23, 2020, and the order granting application for rehearing filed on December 7, 2020, are affirmed in their entirety.

Defendants shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability benefits at the stipulated weekly rate of eight hundred thirty-eight and 64/100 dollars (\$838.64) starting on the stipulated commencement date of July 15, 2019.

Defendants 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).

Defendants shall receive credit for all benefits previously paid.

Defendants shall reimburse claimant three thousand three hundred eighty-one and 00/100 dollars (\$3,381.00) pursuant to Iowa Code section 85.39 for the cost of Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration 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 31<sup>st</sup> day of March, 2021.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Nick Avgerinos (via WCES)

Julie Burger (via WCES)