

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CAROLYN SALLIS,

Claimant,

vs.

CITY OF WATERLOO, IOWA,

Employer,
Defendant.

File No. 1643953.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1703; 1803.1;
2209; 2907; 4000.2

Defendant City of Waterloo, self-insured employer, appeals from an arbitration decision filed on May 4, 2022. Claimant responds to the appeal. The case was heard on January 19, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 25, 2022.

In the arbitration decision, the deputy commissioner found claimant met her burden of proof to establish she sustained sequelae injuries to her left shoulder and left upper extremity caused by the February 4, 2018, work-related injury to claimant's right shoulder and right upper extremity. 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 commencing on May 15, 2019. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendant. The deputy commissioner found defendant is not entitled to a credit for overpaid benefits but found defendant should receive a credit for all permanent partial disability benefits actually paid to claimant, including defendant's payments and overpayment of the weekly rate. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of \$420.00.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained sequelae injuries to her left shoulder and left upper extremity as a result of the work injury. Defendant asserts the deputy commissioner erred in finding the combined effect of claimant's right shoulder, right upper extremity, left shoulder, and left upper extremity injuries should be compensated as an unscheduled injury under Iowa Code section 85.34(2)(v). Defendant asserts the deputy commissioner erred in awarding claimant industrial disability benefits under Iowa Code section 85.34(2)(v) because claimant voluntarily left her employment with defendant.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, the arbitration decision filed on May 4, 2022, is affirmed in part, and modified in part, with the following additional and substituted analysis.

Without further analysis, I affirm the deputy commissioner's finding that claimant proved she sustained sequelae injuries to her left shoulder and left upper extremity caused by the February 4, 2018, work injury to her right shoulder and right upper extremity. I affirm the deputy commissioner's finding that the commencement date for permanent partial disability benefits is May 15, 2019. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendant. I affirm the deputy commissioner's finding that defendant is not entitled to a credit for overpaid benefits, but defendant should receive a credit for all permanent partial disability benefits actually paid to claimant, including defendant's payments and overpayment of the weekly rate. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of \$420.00.

With the following additional and substituted analysis, I affirm the deputy commissioner's finding that claimant is entitled to industrial disability benefits for the combined loss to her right shoulder, right upper extremity, left shoulder and left upper extremity, but I modify the deputy commissioner's finding claimant sustained 35 percent industrial disability. I find claimant sustained 20 percent industrial disability as a result of the February 4, 2018, work injury.

In the conclusions of law section of the arbitration decision, the deputy commissioner found as follows:

Having considered claimant's age, proximity to retirement, educational background, employment history, ability to return to work for the City of Waterloo, permanent physical restrictions, permanent functional impairment, the situs and severity of the injuries, claimant's motivation, as well as all relevant factors of industrial disability outlined by the Iowa Supreme Court, I found that claimant proved a 35 percent loss of future earning capacity as a result of the February 4, 2018 work injury. This is equivalent to a 35 percent industrial disability and entitles claimant to 175 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(v).

(Arb. Dec., p. 10)

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010).

The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

I agree with the deputy commissioner's finding that claimant remains employable if she chooses to reenter the workforce. I also agree with the deputy commissioner's finding that claimant has a permanent work restriction of no lifting over ten pounds overhead with her right upper extremity, but she does not require any permanent restrictions for her left shoulder or left upper extremity.

Claimant graduated from high school and later received an associate degree in general studies. She worked for defendant in the library from 1988 until her retirement. Claimant has additional experience working with mail and supplies, and in retail jewelry sales. Despite the fact claimant was 66 at the time of the hearing, I find she is capable of retraining.

After claimant retired from defendant, claimant did not seek alternate, full-time paid employment. Claimant works part-time as a union president, two to ten hours per month. She also started an interior decorating business with her sister. As noted by the deputy commissioner, claimant testified at hearing she does not spend a great deal of time working in the decorating business, most of her work for the business is computer work, and she has not earned any income from the business. I find claimant is not motivated to return to work. Considering all of the factors of industrial disability, including claimant's lack of motivation and her retirement, I find claimant sustained 20 percent industrial disability as a result of the work injury.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 4, 2022, is affirmed in part, and modified in part, with the above additional and substituted analysis.

Defendant shall pay claimant 100 weeks of permanent partial disability benefits commencing on May 15, 2019, at the stipulated weekly rate of five hundred sixty-three and 65/100 dollars (\$563.65).

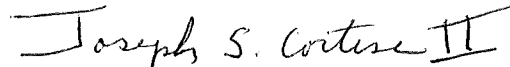
Defendant shall receive credit against the award of permanent partial disability benefits for all permanent partial disability benefits paid to date, including all weekly benefits paid prior to the date permanent partial disability benefits should have commenced and all benefits paid in excess of the stipulated weekly rate.

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.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of four hundred twenty and 00/100 dollars (\$420.00), and the parties shall split the cost 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 29th day of August, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Benjamin Roth (via WCES)

Bruce Gettman (via WCES)

Adam Babinat (via WCES)