

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 DAVID SCOTT MILES,

Claimant,

vs.

CITY OF DES MOINES,

Employer,
Self-Insured,
Defendant.

File Nos. 5048896 and 5048899

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1804; 2905;
2907; 5-9998

Defendant City of Des Moines, self-insured employer, appeals from a review-reopening decision filed on September 30, 2020. Claimant David Scott Miles responds to the appeal. The case was heard on July 8, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 31, 2020.

In the review-reopening decision, with respect to File No. 5048896, injury date of November 29, 2012, the deputy commissioner found claimant sustained a substantial change in condition that warranted an increase in claimant's permanent disability award by 40 weeks. The deputy commissioner determined those benefits should commence on the date of the filing of the petition for review-reopening, which was March 4, 2019.

In File No. 5048899, injury date of December 20, 2013, the deputy commissioner found claimant sustained a substantial change in condition resulting in permanent total disability. The deputy commissioner determined those benefits should commence on April 20, 2019, the day after claimant retired from his employment with defendant.

On appeal, defendant acknowledges claimant's change in condition may be supportive of a modest increase in claimant's industrial disability, but defendant asserts claimant failed to prove he is now permanently and totally disabled.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and 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 review-reopening decision filed on September 30, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 finding that claimant sustained a substantial change in condition warranting an increase in his permanent disability benefits in both File No. 5048896 and in File No. 5048899. With respect to File No. 5048896, I affirm the deputy commissioner's finding that claimant is entitled to receive 40 additional weeks of permanent partial disability benefits. With respect to File No. 5048899, I affirm the deputy commissioner's finding that claimant is entitled to receive permanent total disability benefits.

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

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on September 30, 2020, is affirmed in its entirety.

File No. 5048896 – Injury Date of November 29, 2012:

Defendant shall pay claimant forty (40) additional weeks of permanent partial disability benefits at the stipulated weekly rate of seven hundred twenty-five and 89/100 dollars (\$725.89) commencing on March 4, 2019, the date of filing of the petition for review-reopening.

File No. 5048899 – Injury Date of December 20, 2012:

Defendant shall pay claimant permanent total disability benefits at the stipulated weekly rate of six hundred fifty-nine and 71/100 dollars (\$659.71), commencing on April 20, 2019, continuing to the present and into the future so long as claimant remains totally disabled and qualifies for benefits under Iowa Code section 85.34(3).

Both Files:

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 two thousand seven hundred and 00/100 dollars (\$2,700.00), and defendant 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 1st day of March, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

John Dougherty (via WCES)

John O. Haraldson (via WCES)