

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH FENTON,

Claimant,

vs.

MENARD, INC.,

Employer,

and

ZURICH NORTH AMERICAN,
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

SEP 18 2017

WORKERS' COMPENSATION

File No. 5034943

A P P E A L

D E C I S I O N

Head Note No: 1803

Defendants Menard, Inc., employer, and its insurer, Zurich North American Insurance Company, appeal from a review-reopening decision filed on May 13, 2016. Claimant Kenneth Fenton responds to the appeal. The case was heard on February 11, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 3, 2016.

The deputy commissioner found defendants are not entitled to review-reopening in this matter because the deputy commissioner found defendants failed to carry their burden of proof that claimant has had either an economic change of condition or a physical change of condition following an arbitration decision which was filed in this matter on September 13, 2013, for an injury which occurred on November 8, 2010, which arose out of and in the course of claimant's employment with defendant-employer. In the arbitration decision, which was affirmed on appeal to the workers' compensation commissioner, to the district court and to the Iowa Court of Appeals, claimant was awarded 50 percent industrial disability, which entitled claimant to 250 weeks of permanent partial disability (PPD) benefits, commencing September 30, 2012. In addition to the finding of no change of condition in the review-reopening decision, the deputy commissioner also ordered defendants to pay claimant's costs of the review-reopening proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding defendants are not entitled to review-reopening in this matter because defendants assert the deputy commissioner erred in finding defendants failed to carry their burden

of proof that claimant has had an economic change of condition following the September 13, 2013, arbitration decision. Defendants assert the deputy commissioner erred in failing to reduce the award of 50 percent industrial disability contained in the September 13, 2013, arbitration decision.

Claimant asserts on appeal that the arbitration 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.

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 review-reopening decision filed on May 13, 2016, 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 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 defendants are not entitled to review-reopening in this matter because I affirm the deputy commissioner's finding that defendants failed to carry their burden of proof that claimant has had either an economic change of condition or a physical change of condition following the September 13, 2013, arbitration decision. I affirm the deputy commissioner's finding that the award of 50 percent industrial disability contained in the September 13, 2013, arbitration decision should not be reduced. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on May 13, 2016, is affirmed in its entirety.

The award of 50 percent industrial disability contained in the September 13, 2013, arbitration decision remains unchanged.

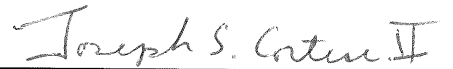
Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall be given credit for 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.

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

Signed and filed this 18th day of September, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Nicholas W. Platt
Platt Law Firm, P.C.
2900 100th Street, Suite 304
Urbandale, IA 50322
plattlawpc@outlook.com

Charles A. Blades
Attorney at Law
PO Box 36
Cedar Rapids IA 52406
cblades@scheldruplaw.com