

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL GABRIEL,

Claimant,

vs.

WHITTER'S CONSTRUCTION,

Employer,

and

ZURICH NORTH AMERICA,

Insurance Carrier,  
Defendants.

File No. 5024720

A P P E A L

D E C I S I O N

Head Note No.: 1803

**FILED**  
JUL 29 2009  
WORKERS' COMPENSATION


Upon written delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa workers' compensation commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of February 24, 2009 filed in this matter that relate to issues properly raised on intra-agency appeal with the following exception:

While I agree with the finding and award for a nine percent industrial disability, I cannot agree with the hearing deputy that this injury has no impact on his employment. Dr. Milas recommended that that he reduce his exposure to heavy lifting since he is at increased risk for recurrent hernia. (Exhibit 9, page 2) At hearing, clamant stated that with a history of hernia, he is precluded from construction jobs requiring a lot of lifting. (Transcript, p. 24)

Defendants shall pay the costs of the appeal including transcription of the hearing.

Signed and filed this 29<sup>TH</sup> day of July, 2009.

  
LARRY WALSHIRE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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