

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KAREN M. FOSTER,

Claimant,

vs.

EAST PENN MANUFACTURING
CO., INC.,

Employer,

and

SEDGWICK/SENTINEL INSURANCE
CO., LTD,Insurance Carrier,
Defendants.

File No. 1592106.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1802; 1803; 2907;
4000.2; 5-9999

Defendants East Penn Manufacturing Co., Inc., employer, and its insurer, Sedgwick/Sentinel Insurance Co., Ltd., appeal from an arbitration decision filed on November 24, 2020. Claimant Karen Foster responds to the appeal. The case was heard on September 4, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 24, 2020.

In the arbitration decision, the deputy commissioner found claimant sustained permanent disability as a result of the stipulated work-related right shoulder injury which occurred on July 30, 2013. The deputy commissioner found claimant sustained 65 percent industrial disability as a result of the work injury, which entitles claimant to receive 325 weeks of permanent partial disability benefits commencing on September 10, 2015. The deputy commissioner found claimant is entitled to receive additional temporary disability benefits from April 18, 2014, through September 9, 2015. The deputy commissioner found claimant is entitled to receive penalty benefits from defendants in the amount of \$6,500.00 for an unreasonable delay in the payment of weekly benefits from April 18, 2014, through December 17, 2014. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained permanent disability and in finding claimant sustained 65 percent industrial disability as a result of the work injury. Defendants assert the award for industrial disability should either be reversed entirely or it should be reduced

substantially. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive additional temporary disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

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

The parties advised the undersigned that on or about November 27, 2020, three days after the arbitration decision was issued by the deputy commissioner, claimant died from natural causes unrelated to the work injury. (See claimant's notice of appeal response filed on December 21, 2020, see defendants' brief on appeal filed on January 29, 2021, and see defendants' reply to "claimant's" reply, motion to strike, and motion to dismiss filed on February 26, 2021) As a result of claimant's death, pursuant to Iowa Code section 85.31(4), claimant cannot be awarded benefits in this matter for any dates beyond November 27, 2020, the date of claimant's death.

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

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 arbitration decision filed on November 24, 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 permanent disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant sustained 65 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive additional temporary disability benefits from April 18, 2014, through September 9, 2015. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits from defendants in the amount of \$6,500.00 for an unreasonable delay in the payment of weekly benefits from April 18, 2014, through December 17, 2014. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues. However, I modify the arbitration decision to reflect that pursuant to Iowa Code section 85.31(4), no benefits can be paid to claimant's representative beyond claimant's date of death, which is November 27, 2020.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 24, 2020, is affirmed in part and modified in part.

All weekly benefits shall be paid at the stipulated weekly rate of four hundred fifty-eight and 14/100 dollars (\$458.14).

Defendants shall pay claimant's representative temporary disability benefits from April 18, 2014, through September 9, 2015.

Defendants shall pay claimant's representative permanent partial disability benefits from September 10, 2015, through November 27, 2020.

Defendants shall receive the stipulated credits against this award.

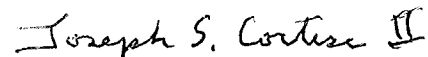
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 pay claimant's representative penalty benefits in the amount of six thousand five hundred and no/100 dollars (\$6,500.00) for defendants' unreasonable delay in the payment of weekly benefits from April 18, 2014, through December 17, 2014.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00), and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury (SROI) as required by this agency.

Signed and filed on this 29th day of April, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Diana Rolands (via WCES)

Tiernan Siems (via WCES)