

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TOMAS M. SALAZAR,

Claimant,

vs.

KINDER MORGAN, INC.,

Employer,

and

ACE AMERICAN INSURANCE  
COMPANY,

Insurance Carriers,  
Defendants.

**FILED**

**FEB 13 2018**

WORKERS' COMPENSATION

File No. 5049390

APPEAL DECISION

Head Note Nos.: 1804; 2907; 4100

Defendants Kinder Morgan, Inc. ("Kinder Morgan") and Ace American Insurance Company ("Ace") appeal from an arbitration decision filed on March 28, 2016. Claimant Tomas Salazar responds to the appeal.

On November 16, 2017, Iowa Workers' Compensation Commissioner Joseph S. Cortese II delegated the authority to the undersigned to issue the final agency decision on the intra-agency appeal currently pending before this agency. The decision in this matter shall be the final agency action.

An arbitration hearing was held on December 4, 2015, in Cedar Rapids, Iowa. The parties filed post-hearing briefs. The matter was deemed fully submitted on January 18, 2016. The deputy workers' compensation commissioner issued the arbitration decision on March 28, 2016, awarding the claimant, Tomas Salazar, permanent total disability benefits, at the rate of \$748.00 per week, from October 31, 2012, and into the future during the period of Salazar's continued disability, and assessing costs to Kinder Morgan and Ace.

On April 18, 2016, Kinder Morgan and Ace filed a notice of appeal. The parties requested additional time to submit their appeal briefs. The requests were granted. Salazar filed a notice of cross-appeal. Kinder Morgan and Ace filed a motion to dismiss the cross-appeal. The appeal was deemed untimely and dismissed.

On July 12, 2016, Kinder Morgan and Ace filed an appeal brief asserting the deputy commissioner erred in concluding Salazar is permanently and totally disabled as

a result of his work injury at Kinder Morgan, and in concluding Salazar is permanently and totally disabled when the evidence shows he worked seasonally as a maintenance laborer following the work injury. Salazar filed his appeal brief on July 27, 2016, asserting the deputy commissioner's decision should be affirmed.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as 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 arbitration decision filed on March 28, 2016, which relate to the issues properly raised on intra-agency appeal. I find the deputy commissioner provided a well-reasoned analysis 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 Salazar is permanently and totally disabled as a result of the work injury, entitling Salazar to permanent total disability benefits at the stipulated rate of \$748.00 per week from October 31, 2012<sup>1</sup> and into the future throughout the time Salazar remains permanently and totally disabled.

#### ORDER

IT IS THEREFORE ORDERED, that the arbitration decision filed on March 28, 2016, is affirmed in its entirety.

Defendants shall pay the claimant permanent total disability benefits at the stipulated rate of seven hundred forty-eight and 00/100 dollars (\$748.00) per week from the stipulated date of October 31, 2012, and throughout the time the claimant remains permanently and totally disabled.

All past due weekly benefits shall be paid in a lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall reimburse the claimant for Dr. Sassman's IME fee.

Defendants shall be entitled to credit for all weekly benefits paid to date.

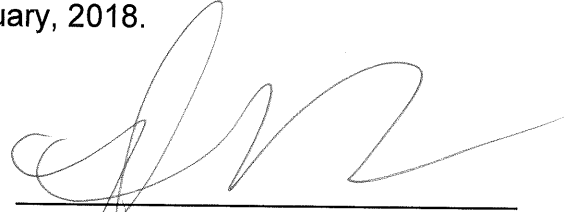
Defendants shall reimburse the claimant's costs.

---

<sup>1</sup> While an award of permanent total disability commences on the date of injury, the parties did not raise the issue on appeal, and stipulated the commencement date for permanent partial disability benefits is October 31, 2012.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 13th day of February, 2018.



---

HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies To:

Emily Anderson  
Attorney at Law  
425 – 2<sup>nd</sup> St. SE, Ste. 1140  
Cedar Rapids, IA 52401-1848  
[eanderson@fightingforfairness.com](mailto:eanderson@fightingforfairness.com)

Theresa C. Davis  
Attorney at Law  
PO Box 2107  
Cedar Rapids, IA 52406-2107  
[tcd@shuttleworthlaw.com](mailto:tcd@shuttleworthlaw.com)