

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT HART,

Claimant,

vs.

YELLOW FREIGHT,

Employer,
Self-Insured,
Defendant.

File No. 5023131

A P P E A L

D E C I S I O N

Head Note Nos.: 1803; 4400

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 September 24, 2008 filed in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis:

A significant portion of the award of industrial disability is based upon claimant's testimony that he was compelled by this injury to move to a lower paying job. The hearing deputy believed claimant. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing. The deputy who presided at the hearing had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. My ability to find the true facts that are affected by witness demeanor and credibility cannot be expected to be superior to that of the deputy who presided at the hearing. If anything, my ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation.

While I agree that the voluntary payment of permanency disability benefits for a five percent industrial disability may have been appropriate to avoid penalty, defendant offered no reason for the considerable delay in making that payment following claimant's return to work. Given claimant's high weekly rate of compensation, the \$10,000 penalty is appropriate.

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

Signed and filed this 29th day of July, 2009.



LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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