

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHERYL HERMANSTORFER,

Claimant,

vs.

LENNOX INDUSTRIES, INC.,

Employer,

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Defendants.

File No. 19002216.01

A P P E A L

D E C I S I O N

: Head Notes: 1402.20; 1402.40; 1803;
: 1803.1; 2907; 3001; 3002;
: 3003; 5-9998

Claimant Sheryl Hermanstorfer appeals from an arbitration decision filed on April 4, 2023. Defendants Lennox Industries, Inc., employer, and its insurer, Indemnity Insurance Company of North America, respond to the appeal. The case was heard on October 19, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 28, 2022.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proof to establish she sustained permanent disability of her body as a whole as a result of the stipulated work injury which occurred on August 21, 2019. The deputy commissioner found that at the time of the arbitration hearing, claimant's earnings were greater than they were at the time of the injury, with the result that pursuant to Iowa Code section 85.34(2)(v), claimant is entitled to receive compensation only for her functional disability resulting from the injury, and the deputy commissioner found claimant is not entitled to receive industrial disability benefits for the injury. The deputy commissioner found claimant's functional disability resulting from the injury is seven percent of the body as a whole, thus entitling claimant to receive 35 weeks of permanent partial disability benefits commencing on March 29, 2021. The deputy commissioner found claimant's correct gross average weekly wage for the injury is \$880.89, and the deputy commissioner found claimant's correct weekly benefit rate for the injury is \$580.56. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$350.33.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant's earnings at the time of the arbitration hearing were greater than they were at the time of the injury. Claimant asserts the deputy commissioner erred in finding that pursuant to Iowa Code section 85.34(2)(v), claimant is entitled to receive compensation only for her functional disability resulting from the injury, and claimant asserts the

deputy commissioner erred in finding claimant is not entitled to receive industrial disability benefits for the injury. Claimant asserts the deputy commissioner erred in finding claimant's correct gross average weekly wage for the injury is \$880.89, and in finding claimant's correct weekly benefit rate for the injury is \$580.56. Claimant asserts on appeal it should be found claimant's correct gross average weekly wage for the injury is \$1006.65, and claimant asserts it should be found claimant's correct weekly benefit rate for the injury is \$655.14.

Defendants assert on cross-appeal that the deputy commissioner erred in finding claimant sustained any permanent disability as a result of the injury, and defendants assert it should be found claimant is not entitled to receive any permanent disability benefits. Defendants assert if it is found on appeal that claimant did sustain permanent disability as a result of the injury, it should be found that at the time of the arbitration hearing, claimant's earnings were greater than they were at the time of the injury, with the result that it should be found pursuant to Iowa Code section 85.34(2)(v) that claimant is entitled to receive compensation only for her functional disability resulting from the injury, and it should be found claimant's functional disability resulting from the work injury is 1.5 percent of the body as a whole, which would entitle claimant to receive 7.5 weeks of permanent partial disability benefits. Defendants assert if it is found on appeal that claimant is entitled to receive industrial disability benefits for the injury, it should be found claimant is entitled to receive only minimal industrial disability benefits. Defendants assert the deputy commissioner erred in finding claimant's correct gross average weekly wage for the injury is \$880.89, and in finding claimant's correct weekly benefit rate for the injury is \$580.56. Defendants assert it should be found on appeal that claimant's correct gross average weekly wage for the injury is \$794.64, and defendants assert it should be found claimant's correct weekly benefit rate for the injury is \$529.06. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

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

I 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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on April 4, 2023, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 proved she sustained permanent disability of her body as a whole as a result of the work injury. I affirm the deputy commissioner's finding that at the time of the arbitration hearing, claimant's earnings were greater than they were at the time of the injury, I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(2)(v), claimant is entitled to receive compensation only for her functional disability resulting from the injury, and I affirm the deputy commissioner's finding that claimant is not entitled to receive industrial disability benefits for the injury. I affirm the deputy commissioner's finding that claimant's functional disability resulting from the injury is seven percent of the body as a whole. I affirm the deputy commissioner's finding that claimant's correct gross average weekly wage for the injury is \$880.89, and I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the injury is \$580.56. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$350.33.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding the above-stated issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 4, 2023, is affirmed in its entirety.

Defendants shall pay claimant thirty-five (35) weeks of permanent partial disability benefits at the weekly rate of five hundred eighty and 56/100 dollars (\$580.56), commencing on March 29, 2021.

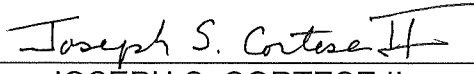
Defendants shall receive credit for benefits previously paid and stipulated to in the hearing report.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of three hundred fifty and 33/100 dollars (\$350.33) and the parties shall split 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 as required by this agency.

Signed and filed on this 14th day of August, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James M. Ballard (via WCES)

Robert Cardell Gainer (via WCES)