

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

NOV 14 2017

ROBERT WEST,

Claimant,

vs.

MITCHELL WEST FURNACE CO.,

Employer,

and

AUTO OWNERS INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

WORKERS' COMPENSATION
File No. 5050160

**A P P E A L
D E C I S I O N**

: Head Note Nos: 1108; 1803; 3001; 5-9998

Claimant Robert West appeals from an arbitration decision filed on April 21, 2016. Defendant Mitchell West Furnace Co., employer, and its insurer, Auto Owners Insurance Company, respond to the appeal. The case was heard on May 20, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 1, 2015.

The deputy commissioner found claimant failed to carry his burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on August 10, 2010, extended beyond claimant's right foot into claimant's right lower extremity or into claimant's body as a whole. The deputy commissioner found claimant failed to carry his burden of proof that the physical conditions, and the mental health conditions, for which claimant received treatment beginning November 7, 2012, are causally related to the work injury. The deputy commissioner found claimant sustained, as a result of the work injury, permanent functional scheduled member disability of seven percent of the right foot which entitles claimant to 10.5 weeks of permanent partial disability (PPD) benefits, commencing October 18, 2010. The deputy commissioner found claimant failed to carry his burden of proof that he is entitled to receive temporary disability benefits from November 7, 2012, through February 9, 2015, as alleged. The deputy commissioner found claimant's gross average weekly wage for the work injury is \$525.59, and claimant's weekly benefit rate for the work injury, classification married with two exemptions, is \$363.93. The deputy commissioner found claimant failed to carry his burden of proof that he is entitled to payment by defendants for the requested past medical expenses, and for other

claimed expenses for modifications to claimant's residence and to his vehicles, incurred beginning November 7, 2012. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$112.96 for claimant's filing fee and service fee.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that the work injury extended beyond claimant's right foot into claimant's right lower extremity or into claimant's body as a whole. Claimant asserts the deputy commissioner erred in finding claimant failed to carry his burden of proof that the physical conditions, and the mental health conditions, for which claimant received treatment beginning November 7, 2012, are causally related to the work injury. Claimant asserts the deputy commissioner erred in finding claimant sustained only permanent functional scheduled member disability of seven percent of the right foot as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to award substantially greater permanent functional scheduled member disability or, in the alternative, in failing to award substantial industrial disability or, in the alternative, in failing to award permanent total disability. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive temporary disability benefits from November 7, 2012, through February 9, 2015. Claimant asserts the deputy commissioner erred in finding claimant's gross average weekly wage for the work injury is \$525.59, and in finding claimant's weekly benefit rate for the work injury is \$363.93. Claimant asserts his correct average gross weekly wage for the work injury is \$669.82, and he asserts his correct weekly benefit rate for the work injury is \$449.72. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for the requested past medical expenses, and other claimed expenses for modifications to claimant's residence and his vehicles, incurred beginning November 7, 2012.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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 April 22, 2016, 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 failed to carry his burden of proof that the work

injury extended beyond claimant's right foot into claimant's right lower extremity or into claimant's body as a whole. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that the physical conditions, and the mental health conditions, for which claimant received treatment beginning November 7, 2012, are causally related to the work injury. I affirm the deputy commissioner's finding that claimant sustained permanent functional scheduled member disability of seven percent of the right foot as a result of the work injury. I affirm the deputy commissioner's finding that claimant is not entitled to greater permanent functional scheduled member disability or, in the alternative, to industrial disability or, in the alternative, to permanent total disability. I affirm the deputy commissioner's finding that claimant is not entitled to receive temporary disability benefits from November 7, 2012, through February 9, 2015. I affirm the deputy commissioner's finding that claimant's gross average weekly wage for the work injury is \$525.59, and I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the work injury is \$363.93. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for the requested past medical expenses, and other claimed expenses for modifications to claimant's residence and to his vehicles, incurred beginning November 7, 2012. I also affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$112.96 for claimant's filing fee and service fee. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant was not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 21, 2016, is affirmed in its entirety.

Defendants shall pay claimant ten point five (10.5) weeks of permanent partial disability benefits at the weekly rate of three hundred sixty-three and 93/100 dollars (\$363.93), commencing October 18, 2010.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

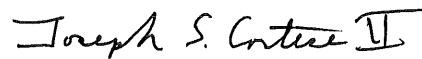
Defendants shall receive credit for all benefits paid.

Defendants shall pay claimant's past medical expenses submitted by claimant at the arbitration hearing for treatment for the work injury received through October 18, 2010.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$112.96 for claimant's filing fee and service fee, and claimant 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 as required by this agency.

Signed and filed this 14th day of November, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Martin Ozga
Attorney at Law
1441 – 29TH Street, Suite 111
West Des Moines, Iowa 50266
mozga@nbolawfirm.com

Ann C. Spellman
Attorney at Law
801 Grand Ave., Ste. 3700
Des Moines, IA 50309-8004
spellman.ann@bradshawlaw.com