

85.34(2)(s), the deputy commissioner determined claimant failed to prove two separate qualifying injuries against the Fund.

On appeal, claimant asserts her left knee condition is a separate and distinct injury. Claimant likewise asserts she sustained two qualifying injuries for purposes of her claim against the Fund. Claimant asserts the combination of the two qualifying injuries results in substantial industrial disability which should be paid by the Fund.

Defendants employer, insurer and the Fund 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 decision filed on December 16, 2020, which relate to the issues properly raised on intra-agency appeal with the following brief analysis:

In her brief on appeal, claimant cites the Iowa Supreme Court's recent decision in Gumm v. Easter Seal Society of Iowa, 943 N.W.2d 23 (2020) at length. In Gumm, however, the court reaffirmed the following proposition:

The standard that must be met to establish two separate work-related injuries requires a claimant to demonstrate a distinct and discrete "disability attributable to ... work activities" that occurs after an initial injury. It is not enough for the worker to show disability has been increased by subsequent work activities. These circumstances may serve to increase the disability attributable to the first injury, but do not establish a separate and discrete disability. To establish a separate injury claim, the subsequent condition of the claimant must not be a consequence of the first injury.

Id. at 33 (emphasis added) (citations omitted).

Claimant testified at hearing that she "started to baby" her right knee when she returned to work after the March 10, 2014, injury, and that is what caused her left knee to hurt. (Hearing Transcript, p. 65) Claimant's testimony is consistent with the opinions of John Kuhnlein, D.O., who indicated claimant's "left knee condition developed as a sequelae to the right knee condition as [claimant] accommodated for the right knee injury." (Claimant's Exhibit 4, p. 10) For the reasons set forth by the deputy commissioner, I find Dr. Kuhnlein's opinion most persuasive and I find claimant failed to

prove her left knee condition is the result of a separate and distinct injury. I find claimant's left knee condition is a consequence of the March 10, 2014, right knee injury.

Therefore, with this brief additional analysis, I affirm the deputy commissioner's finding that claimant did not sustain a new, separate, and distinct injury on December 5, 2014. I affirm the deputy commissioner's finding that claimant's left knee condition is a sequela of her March 10, 2014, right knee injury. I affirm the deputy commissioner's finding that claimant sustained three percent whole body functional impairment compensable under Iowa Code section 85.34(2)(s). I likewise affirm the deputy commissioner's finding that claimant failed to prove she sustained two separate qualifying injuries for her claim against the Fund and I affirm the deputy commissioner's finding that claimant is not entitled to receive benefits from the Fund.

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 December 16, 2020, is affirmed in its entirety.

File No: 1580224.01

All weekly benefits shall be paid at the stipulated rate of four hundred nine and 82/100 dollars (\$409.82).

Defendants employer and insurer shall pay claimant fifteen (15) weeks of permanent partial disability benefits commencing on July 14, 2016. Defendants shall receive credit for all benefits paid to date.

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).

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

File No: 20006580.01

Claimant shall take nothing from these proceedings.

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

Signed and filed on this 18th day of May, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served, as follows:

Michael O. Carpenter (via WCES)

Abigail A. Wenninghoff (via WCES)

Sarah C. Timko (via WCES)