

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KATHY SNODGRASS,

Claimant,

vs.

FIRST STUDENT, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

MAR 27 2017

WORKERS' COMPENSATION

File No. 5049340

A P P E A L

D E C I S I O N

Head Note Nos.: 1100, 1803, 1700

Defendants First Student, Inc., employer, and its insurer, New Hampshire Insurance Company, appeal from an arbitration decision filed on October 16, 2015. Claimant Kathy Snodgrass cross-appeals. The case was heard on August 4, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 25, 2015.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proof that the stipulated work injury which arose out of and in the course of claimant's employment with defendant- employer on April 1, 2014, caused claimant to sustain a permanent aggravation of a pre-existing low back condition. The deputy commissioner found claimant sustained 50 percent industrial disability resulting from the work injury. The award entitles claimant to 250 weeks of permanent partial disability (PPD) benefits commencing on September 8, 2013. The deputy commissioner found claimant failed to carry her burden of proof she is entitled to permanent total disability benefits under the odd-lot doctrine. The parties stipulated that claimant's gross average weekly earnings for the work injury were \$270.00, and that claimant's weekly benefit rate for the injury is \$190.24. Prior to the hearing, defendants paid claimant 32 weeks of benefits at the weekly rate of \$346.58. The deputy commissioner found defendants are entitled to a credit of 32 weeks of benefits at the weekly rate of \$190.24, pursuant to Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129 (Iowa 2010). The deputy commissioner found defendants are entitled to a credit for the overpayment of the 32 weeks of benefits against future benefits for a subsequent work-related injury and not

against ongoing benefits for this injury. The deputy commissioner also taxed defendants with claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that the work injury of April 1, 2014, caused a permanent aggravation of claimant's pre-existing low back condition. Defendants assert the deputy commissioner erred in finding the work injury caused anything more than a temporary aggravation of claimant's pre-existing condition. Defendants assert the deputy commissioner erred in awarding claimant 50 percent industrial disability.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof she is entitled to permanent total disability benefits under the odd-lot doctrine.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a 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 October 16, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 that claimant carried her burden of proof that the work injury caused claimant to sustain a permanent aggravation of her pre-existing low back condition. I affirm the deputy commissioner's award of 50 percent industrial disability for the work injury, which entitles claimant to 250 weeks of PPD benefits commencing on September 8, 2013. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof she is entitled to permanent total disability benefits under the odd-lot doctrine. I affirm the deputy commissioner's finding that defendants are entitled to a credit of 32 weeks of benefits at the weekly rate of \$190.24 pursuant to the Deutmeyer directive. I also affirm the deputy commissioner's order taxing defendants with claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding 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. 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.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of October 16, 2015, is affirmed in its entirety.

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the rate of one hundred ninety and 24/100 dollars (\$190.24) per week from September 8, 2014.

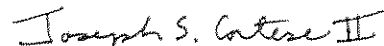
Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall receive credit for all benefits paid to date subject to the Deutmeyer directive as described in the arbitration decision.

Pursuant to rule 876 IAC 4.33, defendants are taxed with claimant's costs of the arbitration proceeding, 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 this 27th day of March, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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