

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, 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 filed in this matter on February 3, which relate to the following issues:

I affirm the deputy commissioner's finding that based on the combined effects of the two injuries, claimant is entitled to receive permanent total disability benefits from the Fund under the traditional industrial disability analysis, commencing on the stipulated commencement date of January 2, 2017. I affirm the deputy commissioner's findings, conclusions and analysis regarding that issue.

I reverse the deputy commissioner's finding that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from the Fund for the cost of Ms. Laughlin's vocational report and I provide the following analysis for this reversal:

The Second Injury Fund Act does not provide for costs to be paid from the Fund. (Iowa Code section 85.64) Additionally, subsection 2 of Iowa Code section 85.66, which codifies the creation of the Fund, specifically states, in pertinent part ". . . Moneys collected in the second injury fund shall be disbursed only for the purposes stated in this subchapter, and shall not at any time be appropriated or diverted to any other use or purpose." The plain language of Iowa Code section 85.66 does not allow for the assessment of costs against the Fund. Houseman v. Second Injury Fund, File No. 5052139 (Arb. Dec. Aug. 8, 2016); see also DART v. Young, 867 N.W.2d 839, at 845 (Iowa 2015) (declaring an agency's authority to tax costs cannot go beyond the scope of the powers delegated in the governing statute). The Fund cannot be assessed the cost of Ms. Laughlin's vocational report. I therefore reverse the deputy commissioner's finding that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from the Fund for the cost of Ms. Laughlin's vocational report.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 3, 2017, is MODIFIED as follows:

Defendant Second Injury Fund of Iowa shall pay claimant permanent total disability benefits commencing on the stipulated commencement date of January 2, 2017, at the stipulated weekly rate of seven hundred and 22/100 dollars (\$700.22) and continuing into the future for as long as claimant shall remain totally disabled.

Defendant Second Injury Fund of Iowa shall pay interest on all accrued weekly benefits pursuant to Iowa Code section 85.30. Interest accrues on unpaid Second Injury Fund benefits from the date of this decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990). All interest on past due weekly compensation benefits accruing in this matter 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).

Defendant Second Injury Fund of Iowa is entitled to a credit of eighty-one (81) weeks for the first injury and twenty-six point four (26.4) weeks for the second injury.

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), defendant Second Injury Fund of Iowa shall file subsequent reports of injury as required by this agency.

Signed and filed on this 25th day of July, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Daniel J. Anderson
Attorney at Law
PO Box 849
Cedar Rapids, IA 52402
danderson@wertzlaw.com

Amanda Rutherford
Assistant Attorney General
Special Litigation
Hoover State Office Bldg.
Des Moines, IA 50319-0106
Amanda.rutherford@iowa.gov