

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 BERNARD HORNE,

Claimant,

vs.

UNITED TECHNOLOGIES CORP.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,
Defendants.

File No. 21005075.01

A P P E A L

D E C I S I O N

 Headnotes: 1402.40; 1803; 1803.1; 2907;
3202; 5-9998

Defendant Second Injury Fund of Iowa (the Fund) appeals from an arbitration decision filed on February 3, 2023. Claimant Bernard Horne responds to the appeal. Defendants United Technologies Corp., employer and its insurer, New Hampshire Ins. Co., did not participate in the appeal. The case was heard on August 25, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 21, 2022.

In the arbitration decision, with regard to claimant's claim against the Fund, the deputy commissioner found claimant is entitled to receive benefits from the Fund. At hearing, the parties stipulated claimant sustained a first qualifying injury to his right leg on January 2, 2019. The deputy commissioner found that the stipulated work injury, which occurred on September 5, 2019, resulted in permanent disability of claimant's right arm, and the deputy commissioner found claimant's right arm injury is a second qualifying injury which entitles claimant to receive benefits from the Fund. The deputy commissioner found the combined effects of the two injuries result in ten percent industrial disability, which entitles claimant to receive 50 weeks of permanent partial disability benefits, less appropriate credits to the Fund. The deputy commissioner found the Fund is entitled to a credit of 4.4 weeks for the January 2, 2019, first qualifying injury, and a credit of five weeks for the second qualifying September 5, 2019, work injury, for a total credit of 9.4 weeks, with the result that claimant is entitled to receive 40.6 weeks of permanent partial disability benefits from the Fund.

The Fund asserts on appeal that the deputy commissioner erred in finding the September 5, 2019, work injury resulted in a second qualifying injury, and the Fund asserts the deputy commissioner erred in finding claimant is entitled to receive benefits from the Fund. The Fund also asserts the deputy commissioner erred by incorrectly calculating the Fund's credit.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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 February 3, 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 the September 5, 2019, work injury resulted in permanent disability of claimant's right arm, and I affirm the deputy commissioner's finding that claimant's right arm injury is a second qualifying injury which entitles claimant to receive benefits from the Fund. I affirm the deputy commissioner's finding that the combined effects of the January 2, 2019, first qualifying injury and the September 5, 2019, second qualifying work injury result in ten percent industrial disability, which entitles claimant to receive 50 weeks of permanent partial disability benefits, less appropriate credits to the Fund. I affirm the deputy commissioner's finding that the Fund is entitled to a credit of 4.4 weeks for the January 2, 2019, first qualifying injury, and a credit of five weeks for the second qualifying September 5, 2019, work injury, for a total credit of 9.4 weeks, with the result that claimant is entitled to receive 40.6 weeks of permanent partial disability 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 February 3, 2023, is affirmed in its entirety.

Employer United Technologies and insurer New Hampshire Ins. Co. shall pay claimant 33 weeks of permanent partial disability benefits, commencing on the stipulated commencement date of December 22, 2021, at the stipulated weekly rate of one thousand one hundred fifty-two and 14/100 dollars (\$1,152.14).

Employer United Technologies and insurer New Hampshire Ins. Co. 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.

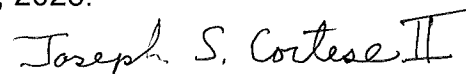
The Fund shall pay claimant 40.6 weeks of permanent partial disability benefits at the stipulated weekly rate of one thousand one hundred fifty-two and 14/100 dollars (\$1,152.14), commencing after the expiration of employer United Technologies and insurer New Hampshire Ins. Co.'s liability.

The Fund 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).

Pursuant to rule 876 IAC 4.33, employer United Technologies and insurer New Hampshire Ins. Co. shall pay claimant's costs of the arbitration proceeding in the amount of two hundred seventy-eight and 47/100 dollars (\$278.47), and the Fund shall pay the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), employer United Technologies and insurer New Hampshire Ins. Co. and the Fund shall file subsequent reports of injury as required by this agency.

Signed and filed on this 29th day of June, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Nate Willems (via WCES)

Emily Schott Hood (via WCES)

Lee P. Hook (via WCES)

Tyler Smith (via WCES)

Sarah Timko (via WCES)