

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CYNTHIA MAHONEY,

Claimant,

vs.

ROBERT HALF INTERNATIONAL (RHI),

Employer,

INS. CO. OF PA.,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.

File Nos. 5056921, 5056922

A P P E A L

D E C I S I O N

Head Note Nos. 3200, 1803

Claimant Cynthia Mahoney appeals from an arbitration decision filed on March 28, 2018. Defendants, Robert Half International (RHI), employer, and its insurer, Insurance Company of the State of Pennsylvania (ICSP), respond to the appeal. Defendant Second Injury Fund of Iowa (the Fund) cross-appeals. The case was heard on June 22, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 31, 2017.

At hearing, claimant sought Fund benefits under two theories: (1) the October 2006 right upper extremity injury combined with the stipulated October 20, 2014, acute left wrist injury; and/or (2) the stipulated October 20, 2014, acute left wrist injury combined with the disputed March 2, 2015, cumulative right wrist injury. The presiding deputy commissioner issued an arbitration decision on March 28, 2018, awarding Fund benefits under Mahoney's first theory, but not the second.

In File No. 5056921, the deputy commissioner found claimant sustained 12 percent loss of function of her left upper extremity as a result of the October 20, 2014, work injury. The deputy commissioner further found claimant carried her burden of proof that an injury to claimant's right upper extremity, which she sustained on October 16, 2006, is a qualifying first injury pursuant to Iowa Code section 85.64 which entitles claimant to receive benefits from the Fund. The deputy commissioner found the effects of the two injuries combined result in 30 percent industrial disability, which entitles claimant to receive 150 weeks of permanent partial disability benefits, less credit to the Fund. The deputy commissioner found the Fund is entitled to a credit of 25 weeks for the October 16, 2006, first qualifying injury and a credit of 30 weeks for the October 20, 2014, second qualifying injury, for a total credit of 55 weeks. The deputy commissioner ordered defendants to pay the costs of the arbitration proceeding.

In File No. 5056922, the deputy commissioner found claimant failed to carry her burden of proof she sustained a cumulative injury that arose out of and in the course of her employment with the defendant-employer on or about March 2, 2015. Because it was found claimant failed to carry her burden of proof she sustained an injury that arose out of and in the course of her employment, the remainder of the disputed issues were rendered moot and the deputy commissioner did not address those issues, which included whether claimant's claim is barred for failure to give timely notice pursuant to Iowa Code section 85.23, the extent of permanent functional disability as a result of the March 2, 2015, injury, if any, whether claimant's October 20, 2014, injury qualifies as a first injury for Fund liability pursuant to Iowa Code section 85.34, the extent of claimant's industrial disability as a combined result of the October 20, 2014, left upper extremity injury and the March 2, 2015, right upper extremity injury, and whether claimant is entitled to penalty benefits.

Claimant asserts on appeal that the deputy commissioner erred in File No. 5056922 in finding claimant did not sustain a compensable, cumulative work injury to her right upper extremity on or about March 2, 2015. Claimant further asserts the deputy commissioner erred in failing to address the other issues raised in File No. 5056922. Specifically, claimant asserts the deputy commissioner erred in not addressing the extent of permanent functional disability caused by the alleged March 2, 2015, work injury. Claimant asserts the deputy commissioner erred in not assessing penalty benefits for defendant employer and defendant insurer's unreasonable denial of benefits related to the alleged March 2, 2015, cumulative injury. Lastly, claimant asserts the deputy commissioner erred in not assessing the extent of claimant's industrial disability as a combined result of the October 2014 and March 2015 injuries.

The Fund asserts on cross-appeal that the deputy commissioner erred in File No. 5056921 in finding claimant sustained a first qualifying injury of the right upper extremity on October 16, 2006. The Fund also asserts the deputy commissioner erred in finding claimant sustained industrial disability in excess of Fund credits. Lastly, the Fund asserts the deputy commissioner erred in assessing costs against the Fund.

Defendants RHI and ICSP 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 March 28, 2018, which relate to the issues properly raised on intra-agency appeal.

In File No. 5056921, 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 sustained scheduled member functional impairment of 12 percent of the left upper extremity as a result of the October 20, 2014, work injury which entitles her to receive 30 weeks of PPD benefits from defendants employer and insurer, commencing November 18, 2015. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.64, claimant is entitled to receive benefits from the Fund as claimant sustained a first qualifying injury to her right upper extremity on October 16, 2006, and because claimant's October 20, 2014, work-related left upper extremity injury is a second qualifying injury. I affirm the deputy commissioner's finding that the combined effects of the two injuries result in 30 percent industrial disability, which entitles claimant to 150 weeks of PPD benefits, less credit to the Fund. I affirm the deputy commissioner's finding that the Fund is entitled to a credit of 25 weeks of PPD benefits for the October 16, 2006, first injury and a credit of 30 weeks of PPD benefits for the October 20, 2014, second injury for a total credit of 55 weeks of PPD benefits. I affirm the deputy commissioner's finding that after the deduction of the credit, claimant is entitled to receive 95 weeks of PPD benefits from the Fund commencing 30 weeks after November 18, 2015. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

In File No. 5056922, 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 her burden of proof that she sustained a cumulative injury to her right upper extremity arising out of and in the course of her employment on or about March 2, 2015. Because I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof on the issues of causation and compensability, I affirm the deputy commissioner's finding that it is unnecessary to address the other issues raised in the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues. I provide the following additional analysis for my decision:

Further analysis is appropriate to respond to the Fund's assertions regarding costs. The Fund seeks clarification with respect to the deputy commissioner's general order that, "costs are taxed to defendants." (Arbitration Decision, page 10)

The Second Injury Fund Act does not provide for costs to be paid by 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 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).

Therefore, I amend the arbitration decision to reflect claimant is entitled to reimbursement from RHI and ICSP for costs associated with the underlying arbitration decision. Claimant is not entitled to reimbursement for costs from the Fund.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 28, 2018, is affirmed in part and modified in part.

File No. 5056921 – Date of Injury: October 20, 2014:

Defendants RHI and ICSP shall pay claimant thirty (30) weeks of permanent partial disability benefits commencing November 18, 2015, at the stipulated weekly rate of five hundred ninety and 26/100 dollars (\$590.26).

Defendants employer and insurer shall be given credit for benefits previously paid as stipulated by the parties.

Defendants employer and insurer 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).

Defendant Fund shall pay claimant ninety-five (95) weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred ninety and 26/100 dollars (\$590.26), commencing thirty (30) weeks after November 18, 2015.

Defendant Fund shall pay accrued weekly benefits in a lump sum. Pursuant to Iowa Code section 85.30, interest accrues on unpaid Second Injury Fund benefits from the date of the filing of this decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990).

Pursuant to rule 876 IAC 4.33, defendants RHI and ICSP shall pay the costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript. The Fund shall not be liable for costs in this matter. Second Injury Fund of Iowa v. Greenman, No. 05-0855 (Iowa Ct. of Appeals, October 25, 2006) Unpublished, 725 N.W.2d 658 (Table).

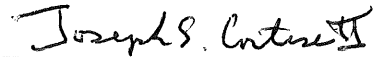
Pursuant to rule 876 IAC 3.1(2), defendants RHI, ICSP, and the Fund shall file subsequent reports of injury as required by this agency.

File No. 5056922 – Date of Injury: March 2, 2015:

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, claimant shall pay the costs of the appeal.

Signed and filed on this 8th day of November, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Thomas M. Wertz (Via WCES)

Abigail Wenninghoff (Via WCES)

Jonathan Bergman (Via WCES)