

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH LACKEY,

Claimant,

vs.

DAVE KOPPES TRUCKING, INC.,

Employer,

and

INTEGRITY MUTUAL INS. CO.,

Insurance Carrier,  
Defendants.

File No. 5064363.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 1803.1; 2502;  
2907; 5-9998

Defendants Dave Koppes Trucking, Inc., employer, and its insurer, Integrity Mutual Ins. Co., appeal from an arbitration decision filed on August 29, 2022. Claimant Kenneth Lackey responds to the appeal. The case was heard on June 20, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 19, 2022.

In the arbitration decision, the deputy commissioner found that while claimant sustained permanent disability to his body as a whole as a result of the stipulated February 20, 2018, work injury, pursuant to Iowa Code section 85.34(2)(v) claimant's recovery in this matter is limited to claimant's functional impairment because, at the time of the arbitration hearing, claimant continued to be employed by defendant-employer and claimant was receiving greater earnings than he received at the time of the work injury. The deputy commissioner found that based on the opinions of David Segal, M.D., claimant's total combined functional impairment for the work injury is 53 percent of claimant's body as a whole, which entitles claimant to receive 265 weeks of permanent partial disability (PPD) benefits commencing on the stipulated commencement date of October 11, 2021. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Dr. Segal. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendants assert on appeal that the deputy commissioner erred in finding claimant's functional impairment caused by the work injury is 53 percent of claimant's body as a whole based on Dr. Segal's opinions. Defendants assert the deputy commissioner erred in failing to adopt the opinion of Matthew Karam, M.D., that claimant's total functional impairment resulting from the work injury is seven percent of claimant's body as a whole, which would entitle claimant to receive 35 weeks of PPD benefits.

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 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 August 29, 2022, 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 claimant's recovery in this matter is limited to claimant's functional impairment pursuant to Iowa Code section 85.34(2)(v). I affirm the deputy commissioner's finding that based on the opinions of Dr. Segal, claimant's total combined functional impairment for the work injury is 53 percent of claimant's body as a whole, which entitles claimant to receive 265 weeks of permanent partial disability benefits. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of Dr. Segal's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

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 August 29, 2022, is affirmed in its entirety.

Defendants shall pay claimant two hundred sixty-five (265) weeks of permanent partial disability benefits at the stipulated weekly rate of eight hundred seventeen and 92/100 dollars (\$817.92) commencing on the stipulated commencement date of October 11, 2021.

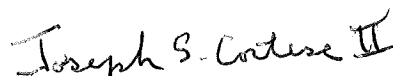
Defendants shall receive credit for all benefits previously paid.

Defendants 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.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and 00/100 dollars (\$100.00), and defendants shall pay 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 on this 9<sup>th</sup> day of December, 2022.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

Coreen Sweeney (via WCES)