

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEISA A. BROWN,

Claimant,

vs.

FORT DODGE COMMUNITY
SCHOOL DISTRICT,

Employer,

and

EMPLOYERS MUTUAL CAS. CO.,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 21000859.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1803; 2907; 3202;
5-9999

Claimant Leisa Brown appeals from an arbitration decision filed on April 26, 2023. The employer, the insurance carrier, and the Second Injury Fund of Iowa (the Fund), all respond to the appeal. This case was heard on December 2, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 3, 2023.

In the arbitration decision, the deputy commissioner found claimant failed to carry her burden of proof to establish she sustained permanent disability of her right knee as a result of the stipulated work injury which occurred on December 11, 2020. The deputy commissioner also found claimant failed to carry her burden of proof to establish a qualifying first injury for purposes of her claim against the Fund. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove she sustained permanent disability of her right knee as a result of the work injury. Claimant further asserts the deputy commissioner erred in finding claimant failed to prove she sustained a qualifying first injury for her Fund claim. Claimant asserts scheduled member permanent disability benefits should be awarded against the employer, and claimant asserts industrial disability benefits should be

awarded against the Fund. Finally, claimant asserts the deputy commissioner erred in declining to assess claimant's costs of the arbitration proceeding against the employer and the insurance carrier.

The employer, the insurance carrier, and the Fund all assert 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 performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, the arbitration decision filed on April 26, 2023, is affirmed.

I affirm the deputy commissioner's finding that claimant failed to prove she sustained permanent disability of her right leg as a result of the work injury. I concur with the deputy commissioner's analysis of the competing medical opinions. I concur that Dr. Beecher's permanent impairment rating cannot be relied upon because it is not clear whether his impairment rating was generated using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

I also concur with the deputy commissioner's analysis of Dr. Stoken's opinion. Dr. Stoken fails to discuss or explain the significance of claimant's pre-existing right knee condition. Claimant sought treatment for her right knee only days before the work injury and reported significant symptoms, including a nine-out-of-ten pain scale rating four days prior to the work injury. Dr. Stoken's failure to acknowledge this treatment and condition in any significant way, as well as her failure to explain how the December 11, 2020, work injury caused a new condition or a material aggravation of the pre-existing condition, renders Dr. Stoken's opinion less than convincing. Claimant also acknowledged during her hearing testimony that Dr. Stoken had an inaccurate history. Ultimately, I concur with the deputy commissioner's assessment and I do not find Dr. Stoken's opinion to be grounded in accurate facts and an accurate history.

The deputy commissioner similarly found Dr. Stoken's impairment rating was "invalid" under the plain language and the directives of the AMA Guides, Fifth Edition. I concur with, and adopt, the deputy commissioner's thorough analysis, findings, and conclusions relative to Dr. Stoken's impairment rating. Therefore, I affirm the deputy commissioner's rejection of Dr. Stoken's impairment rating. Ultimately, I affirm the deputy commissioner's finding that claimant failed to produce credible and convincing evidence to establish she sustained permanent disability of the right leg as a result of the work injury.

Having affirmed the deputy commissioner's findings and conclusions relative to the December 11, 2020, right knee injury, I find claimant is not entitled to an award of permanent disability. The deputy's decisions is affirmed on this issue. Similarly, I find claimant failed to prove a second qualifying injury for purposes of the Fund claim.

Having failed to prove a second qualifying work injury, claimant's Fund claim fails, and all other arguments, findings, and conclusions are rendered moot and not specifically considered or decided in this appeal decision.

Claimant failed to establish entitlement to an award of benefits against the employer and the insurance carrier. Therefore, I affirm the deputy commissioner's refusal to assess claimant's costs of the arbitration proceeding against the employer and insurance carrier. I also find the costs of this appeal, including the cost of the hearing transcript, should be assessed against claimant.

ORDER

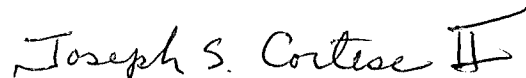
IT IS THEREFORE ORDERED that the arbitration decision filed April 26, 2023, is affirmed.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 26th day of September, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Erik A. Luthens (via WCES)

David Brian Scieszinski (via WCES)

Meredith C. Cooney (via WCES)