

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIKE ANDORF,
Claimant,

vs.

HOLMES & BRADEN CONSTRUCTION,
Employer,

and

GRINNELL MUTUAL REINSURANCE
COMPANY,

Insurance Carrier,

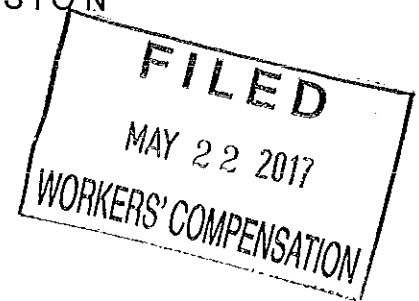
SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5055943

ARBITRATION

DECISION



Head Note No.: 1401

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. Claimant, Mike Andorf, filed a petition alleging a work injury in the employ of defendant Holmes and Braden Construction on December 4, 2015, and now seeks benefits under the Iowa Workers' Compensation Act. Claimant also sought Second Injury Fund (Fund) benefits contending he also sustained a first loss of February 16, 2010 to the right knee.

In an e-mail, dated April 24, 2017, claimant's counsel indicated claimant had died in early April of 2017. Claimant's counsel indicated he had been in contact with a person named as executor of Mr. Andorf's estate and they did not intend to open a probate estate, and did not wish to pursue claimant's claim for workers' compensation benefits. Claimant's counsel indicated no probate estate had been opened for Mr. Andorf and no executor had been appointed for Mr. Andorf. Claimant's counsel noted that, in the absence of direction from the district court, he did not believe he had the authority to dismiss, settle or proceed with claimant's claim concerning a December 4, 2015 date of injury.

The case was scheduled for hearing in Des Moines, Iowa, on May 22, 2017. None of the parties appeared and no evidence was offered. A review of the agency file shows that no continuance motion has been filed, no dismissal has been filed, and the agency has not been notified of any settlement.

The record is now declared closed.

ISSUES

The parties did not file a hearing report, so the issues in dispute are unknown.

FINDINGS OF FACT

Absent any record evidence, no findings of fact can be made.

CONCLUSIONS OF LAW

The burden of proof in an administrative proceeding is on the party asserting the affirmative of any issue; that is, "on the party who would suffer loss if the issue were not established." Wonder Life Co. v. Liddy, 207 N.W.2d 27 (Iowa 1973).

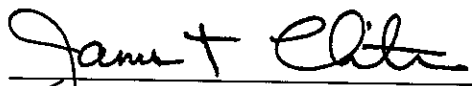
Claimant has the burden of proving entitlement to the relief sought. That burden has not been met.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing from this proceeding.

Signed and filed this 22nd day of May, 2017.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFC/kjw

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.