

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL L. KUEHL,

Claimant,

vs.

FOLEY COMPANY,

Employer,

and

CNA INSURANCE,

Insurance Carrier,  
Defendants.

File No. 5061645

A P P E A L

D E C I S I O N

: Head Notes: 1402.40; 1402.60; 1803; 1804;  
: 2501; 2907; 4100

Claimant Michael Kuehl appeals from an arbitration decision filed on September 2, 2020. Defendants Foley Company, employer, and its insurer, CNA Insurance, respond to the appeal. The case was heard on February 24, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 15, 2020.

The deputy commissioner found claimant sustained 70 percent industrial disability as a result of the stipulated work injury which occurred on July 24, 2017, which entitles claimant to receive 350 weeks of permanent partial disability benefits commencing on February 9, 2018. The deputy commissioner found claimant failed to prove he is permanently and totally disabled as a result of the work injury under either the traditional industrial disability analysis or under the odd-lot analysis. The deputy commissioner found claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 7, with the exception of the charges for the emergency department treatment received by claimant at Baum Harmon Mercy Hospital on September 29, 2018. The deputy commissioner found claimant is not entitled to reimbursement from defendants in the amount of \$900.00 for the cost of a functional capacity evaluation (FCE) performed by Daryl Short, DPT, on July 23, 2018. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$2,196.00.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant sustained 70 percent industrial disability as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to find claimant is

permanently and totally disabled as a result of the work injury under either the traditional industrial disability analysis or under the odd-lot analysis. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendants for the cost of the FCE.

Defendants 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 performed a de novo review of the evidentiary record and the detailed arguments of the parties. 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 September 2, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of 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 70 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove he is permanently and totally disabled as a result of the work injury under either the traditional industrial disability analysis or under the odd-lot analysis. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 7, with the exception of the charges for the emergency department treatment received by claimant at Baum Harmon Mercy Hospital on September 29, 2018. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendants for the cost of claimant's FCE. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$2,196.00.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 2, 2020, is affirmed in its entirety.

Defendants shall pay claimant three hundred and fifty weeks (350) weeks of permanent partial disability benefits commencing on February 9, 2018, at the weekly rate of eight hundred eight and 31/100 dollars (\$808.31).

Defendants shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

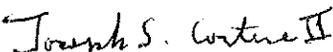
Defendants shall pay the requested past medical expenses itemized in Exhibit 7, with the exception of the charges for the emergency department treatment received by claimant at Baum Harmon Mercy Hospital on September 29, 2018.

Defendants shall provide claimant with all future medical care causally related to the work injury.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two thousand one hundred ninety-six and no/100 dollars (\$2,196.00), 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 shall file subsequent reports of injury as required by this agency.

Signed and filed on this 3<sup>rd</sup> day of February, 2021.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Walter Thomas (via WCES)  
L. Tyler Laflin (via WCES)  
Michael R. Faz (via WCES)