

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LLOYD SMITH,
Claimant,

vs.

EMERSON PROCESS MANAGEMENT
LLP d/b/a FISHER CONTROLS
INTERNATIONAL LLC,

Employer,

and

OLD REPUBLIC INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

NOV 17 2017

WORKERS' COMPENSATION

File No. 5049176

A P P E A L

D E C I S I O N

Head Note Nos: 1402.30; 1402.40; 1403.30;
1803; 2208; 2401;
5-9998

Defendants Emerson Process Management LLP d/b/a Fisher Controls International LLC, employer, and its insurer, Old Republic Insurance Company, appeal from an arbitration decision filed on May 24, 2016. Claimant Lloyd Smith responds to the appeal. The case was heard on January 4, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 29, 2016.

The deputy commissioner found claimant carried his burden of proof that he sustained occupational hearing loss and tinnitus which arose out of and in the course of claimant's employment with defendant-employer. The deputy commissioner found the work injury caused claimant to sustain ten percent industrial disability, which entitles claimant to 50 weeks of permanent partial disability benefits commencing on August 28, 2014. The deputy commissioner found defendants failed to carry their burden of proof that claimant's claim is barred by the application of Iowa Code section 85.23. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried his burden of proof that he sustained occupational hearing loss and tinnitus which arose out of and in the course of claimant's employment with defendant-employer. Defendants assert the deputy commissioner erred in finding claimant sustained ten percent industrial disability as a result of the work injury. Defendants assert the deputy commissioner erred in finding defendants failed to carry their burden of proof that claimant's claim is barred by the application of Iowa Code section 85.23.

Defendants also assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts 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.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 May 24, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis 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 carried his burden of proof that he sustained occupational hearing loss and tinnitus which arose out of and in the course of claimant's employment with defendant-employer. I affirm the deputy commissioner's finding that the work injury caused claimant to sustain ten percent industrial disability, which entitles claimant to 50 weeks of permanent partial disability benefits commencing on August 28, 2014. I affirm the deputy commissioner's finding that defendants failed to carry their burden of proof that claimant's claim is barred by the application of Iowa Code section 85.23. I also affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 24, 2016, is affirmed in its entirety.

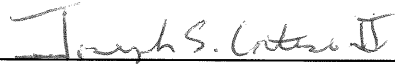
Defendants shall pay claimant fifty (50) weeks of permanent partial disability benefits at the rate of seven hundred fifty-eight and 76/100 dollars (\$758.76) per week commencing on August 28, 2014.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 this 17th day of November, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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