

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WALTER J. DUNHAM,

Claimant,

vs.

UNITED PARCEL SERVICE, INC.

Employer,

and

LIBERTY INS. CORP.,

Insurance Carrier,
Defendants.

File No. 5062713

A P P E A L

D E C I S I O N

Head Note Nos.: 1803, 1804, 1806,
1703

FILED
JUN - 3 2019
WORKERS' COMPENSATION

Defendants United Parcel Service, Inc., employer, and Liberty Insurance Corporation, insurer, appeal from an arbitration decision filed on May 11, 2018.

On May 22, 2019, the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a final agency decision in this matter. Therefore, this appeal decision is entered as final agency action pursuant to Iowa Code section 17A.15(3) and Iowa Code section 86.24.

In the arbitration decision, the deputy commissioner determined claimant was not permanently and totally disabled but instead sustained a 70 percent loss of earning capacity as a result of his work-related injury on March 23, 2015. Claimant had a previous work-related injury in 2010 that was settled via agreement for settlement, so applying the formula set forth in Warren Properties v. Stewart, 864 N.W.2d 307, 319 n. 6 (Iowa 2015), the deputy commissioner found claimant was entitled to 295 weeks of permanent partial disability (PPD) benefits for the March 23, 2015 injury. The deputy commissioner also determined defendants were entitled to a credit of 65 weeks of PPD benefits at the stipulated rate of \$820.75 against their current liability and an overpayment credit of \$1,348.75 against any future liability for a subsequent injury.

On appeal, defendants assert the deputy commissioner's industrial disability award was too high. Defendants additionally argue the overpayment credit in the

amount of \$1,348.78 should apply to this claim and not to defendants' future liability for a subsequent injury.

On cross-appeal, claimant argues the deputy erred by not finding claimant to be permanently and totally disabled.

I performed a de novo review of the evidentiary record before the presiding deputy workers' compensation commissioner and the detailed arguments of the parties. Pursuant to Iowa Code section 86.24 and 17A.15, those portions of the proposed arbitration decision filed on May 11, 2018 that relate to issues properly raised on intra-agency appeal and cross-appeal are affirmed in their entirety with additional analysis regarding the overpayment credit.

The deputy commissioner's determination that claimant was not permanently and totally disabled but sustained a 70 percent loss of earning capacity as a result of his work-related injury on March 23, 2015 is affirmed without additional comment.

With respect to the overpayment credit, defendants assert in their appeal brief that the 65 weeks of PPD benefits paid at the rate of \$841.50 were paid to claimant for his 2010 injury and not his March 23, 2015 injury at issue in this case. As such, defendants argue these weeks should be credited against claimant's 2015 injury, which was a "subsequent injury to the same employee." See Iowa Code § 85.34(5).

I do not find this argument persuasive, however, because defendants indicated both on the record at hearing and in their addendum to the hearing report that these 65 weeks of benefits were paid for claimant's 2015 injury. At hearing, the presiding deputy commissioner asked defendants' counsel whether the 65 weeks of benefits paid at the rate of \$841.50 were paid "on the prior claim" or "on this claim." (Hearing Transcript, p. 5) Defendants' counsel replied, "Those - - that 65 weeks were **paid for this particular injury.**" (Hearing Transcript, page 5) (emphasis added) In their addendum to the hearing report, defendants asserted a credit for "the 65 weeks of benefits **paid for the 2015 injury.**" (Hrg. Report Addendum) (emphasis added)

Based on defendants' assertions, I agree with the deputy commissioner that the 65 weeks of benefits paid at the higher rate of \$841.50 were paid for claimant's March 23, 2015 date of injury. As a result, I affirm the deputy commissioner's determination that the overpayment in the amount of \$1,348.75 can be asserted by defendants as a credit against any future benefits to which claimant may be entitled for a subsequent injury with defendant-employer. With this additional analysis, the deputy commissioner's determination regarding defendants' overpayment credit is affirmed.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 11, 2018 is affirmed in its entirety with the above-stated additional analysis.

Defendants shall pay claimant two hundred thirty (230) weeks of permanent partial disability benefits commencing February 25, 2016 at the weekly rate of eight hundred twenty and 75/100 dollars (\$820.75).

Defendants shall have a credit to apply against any future work injury of one thousand three hundred forty-eight and 75/100 dollars (\$1,348.75).

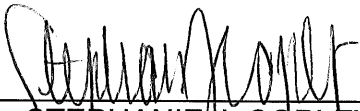
Defendants shall pay claimant costs in the amount of two hundred dollars (\$200.00).

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be 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 (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

The parties shall split the cost of this appeal, including the preparation of the hearing transcript.

Signed and filed this 3rd day of June, 2019.



STEPHANIE J. COPLEY
WORKERS' COMPENSATION
COMMISSIONER

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