

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CARL HALTOM,

Claimant,

vs.

JBS USA, LLC,

Employer,

and

AMERICAN ZURICH INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File Nos. 5054528, 5054529

A P P E A L
D E C I S I O N

Head Note Nos: 1108.50; 1402.40; 1803;
2502; 2700; 2701; 5-9998

FILED
AUG 31 2018
WORKERS' COMPENSATION

Defendants JBS USA, LLC, employer, and its insurer, American Zurich Insurance Company, appeal from an arbitration decision filed on February 13, 2017, and from a ruling on application for rehearing seeking modification/clarification filed on March 13, 2017. Claimant Carl Haltom cross-appeals. The case was heard on November 10, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 9, 2017.

In File No. 5054528, injury date of December 2, 2012, the deputy commissioner found claimant sustained 20 percent industrial disability, which entitles claimant to receive 100 weeks of permanent partial disability (PPD) benefits commencing on September 3, 2014, as a result of the stipulated left shoulder injury which arose out of and in the course of claimant's employment with defendant-employer. Pursuant to Iowa Code Section 85.34(7)(b)(1), the deputy commissioner found defendants are entitled to an apportionment credit for 28.73 weeks of PPD benefits paid to claimant by defendants pursuant to the settlement of a November 26, 2007, work-related injury sustained by claimant while working for defendant-employer. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$1,562.50 for the cost of the independent medical evaluation (IME) of claimant performed by John D. Kuhnlein, D.O., on April 21, 2015.

In File No. 5054529, injury date of September 23, 2014, the deputy commissioner found claimant carried his burden of proof that he sustained permanent disability as a result of the stipulated low back injury which arose out of and in the course of claimant's employment with defendant-employer. The deputy commissioner found claimant sustained 70 percent industrial disability as a result of the September 23,

2014, work injury, which entitles claimant to receive 350 weeks of PPD benefits. Pursuant to Iowa Code Section 85.34(7)(b)(1), the deputy commissioner found defendants are entitled to an apportionment credit for 100 weeks of PPD benefits to be paid to claimant by defendants for the award in File No. 5054528. The deputy commissioner found claimant is not entitled to payment/reimbursement by defendants for the requested past medical expenses itemized in Exhibit 17. The deputy commissioner found claimant is not entitled to receive alternate medical care for the September 23, 2014, work injury. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$2,715.00 for the cost of the IME of claimant performed by Dr. Kuhnlein on August 1, 2016.

In File No. 5054528, defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 20 percent industrial disability as a result of the December 2, 2012, work injury. Defendants assert the industrial disability award for the December 2, 2012, work injury should be reduced substantially.

In File No. 5054528, claimant asserts on cross-appeal appeal that the award of 20 percent industrial disability for the December 2, 2012, work injury should either be affirmed or, in the alternative, it should be increased substantially.

In File No. 5054529, defendants assert on appeal that the deputy commissioner erred in finding that claimant carried his burden of proof that he sustained permanent disability as a result of the September 23, 2014, work injury. Defendants assert it should be found on appeal that the September 23, 2014, work injury caused only a temporary aggravation of claimant's pre-existing low back condition. Defendants assert the deputy commissioner erred in finding claimant sustained 70 percent industrial disability as a result of the September 23, 2014, work injury. Defendants assert that if it is found on appeal that claimant did sustain permanent disability as a result of the September 22, 2014, work injury, the industrial disability award for that disability should be reduced substantially.

In File No. 5054529, claimant asserts on cross-appeal that the award of 70 percent industrial disability for the September 23, 2014, work injury should either be affirmed or, in the alternative, it should be increased substantially. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment/reimbursement by defendants for the requested past medical expenses itemized in Exhibit 17. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive alternate medical care for the September 23, 2014, work injury.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and 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 February 13, 2017, and the ruling on application for rehearing seeking modification/clarification filed on March 13, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

In File No. 5054528, I affirm the deputy commissioner's finding that claimant sustained 20 percent industrial disability as a result of the December 2, 2012, work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code Section 85.34(7)(b)(1), defendants are entitled to an apportionment credit for 28.73 weeks of PPD benefits paid to claimant by defendants pursuant to the settlement of the November 26, 2007, work-related injury sustained by claimant while working for defendant employer. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants in the amount of \$1,562.50 for the cost of Dr. Kuhnlein's April 21, 2015, IME of claimant.

In File No. 5054529, I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained permanent disability as a result of the September 23, 2014, work injury. I affirm the deputy commissioner's finding that claimant sustained 70 percent industrial disability as result of the September 23, 2014, work injury. I affirm the deputy commissioner's finding that defendants are entitled to an apportionment credit for the 100 weeks of PPD benefits to be paid to claimant by defendants for the award in File No. 5054528. I affirm the deputy commissioner's finding that claimant is not entitled to payment/reimbursement by defendants for the requested past medical expenses itemized in Exhibit 17. I affirm the deputy commissioner's finding that claimant is not entitled to receive alternate medical care for the September 23, 2014, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants in the amount of \$2,715.00 for the cost of Dr. Kuhnlein's August 1, 2016, IME of claimant.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 13, 2017, and the ruling on application for rehearing seeking modification/clarification filed on March 13, 2017, are affirmed in their entirety.

Regarding File No. 5054528, injury date of December 2, 2012:

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the weekly rate of six hundred ninety-four and 43/100 dollars (\$694.43) commencing on September 3, 2014.

Pursuant to Iowa Code Section 85.34(7)(b)(1), defendants shall receive an apportionment credit for the 28.73 weeks of PPD benefits paid to claimant by defendants pursuant to the settlement of the November 26, 2007, work-related injury sustained by claimant while working for defendant employer.

Defendants shall receive a credit for all other benefits paid to date in File No. 5054528.

All past due weekly benefits shall be paid in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall reimburse claimant for Dr. Kuhnlein's IME fee in the amount of one thousand five-hundred sixty-two and 50/100 dollars (\$1,562.50).

Pursuant to rule 876 IAC 4.33, the parties shall split 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.

Regarding File No. 5054529, injury date of September 23, 2014:

Defendants shall pay claimant three hundred fifty (350) weeks of permanent partial disability benefits at the weekly rate of six hundred seventy-seven and 41/100 dollars (\$677.41) commencing at the conclusion of the payment of the award in File No. 5054528.

Pursuant to Iowa Code Section 85.34(7)(b)(1), defendants shall receive an apportionment credit for the 100 weeks of PPD benefits paid to claimant by defendants for the award in File No. 5054528.

Defendants shall receive a credit for all other benefits paid to date in File No. 5054529.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten 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 percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall reimburse claimant for Dr. Kuhnlein's IME fee in the amount of two thousand seven-hundred fifteen and 00/100 dollars (\$2,715.00).

Pursuant to rule 876 IAC 4.33, the parties shall split 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 31st day of August, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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