

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERIC ZALAZNIK,

Claimant,

vs.

JOHN DEERE DUBUQUE WORKS,

Employer,
Self-Insured,
Defendant.

File Nos. 5049263, 5049378

A P P E A L

D E C I S I O N

FILED

FEB 21 2018

WORKERS' COMPENSATION

Head Note Nos: 1402.20; 1802; 1803; 2402;
2501; 2502; 3003; 4000.2;
5-9998

Claimant Eric Zalaznik appeals from an arbitration decision filed on June 30, 2016, and from a ruling on application for rehearing filed on July 26, 2016. Defendant John Deere Dubuque Works, self-insured employer, cross-appeals. The case was heard on February 10, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 4, 2016.

In File No. 5049263, stipulated work-related injury date of May 21, 2012, the deputy commissioner found claimant sustained ten percent functional impairment of the body as a whole for the stipulated bilateral elbow injury, which entitles claimant to 50 weeks of PPD benefits, commencing on January 30, 2015. The deputy commissioner found claimant's alleged right shoulder injury with an alleged injury date of May 21, 2012, was not a sequela injury of the May 21, 2012, bilateral elbow injury, and the deputy commissioner found the right shoulder injury claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26. The deputy commissioner found claimant's correct average weekly wage for the May 21, 2012, injury is \$922.88, and the deputy commissioner found the correct weekly benefit rate, classification single with three exemptions, is \$591.05. The deputy commissioner found claimant is not entitled to penalty benefits for the May 21, 2012, injury. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding.

In File No. 5049378, the deputy commissioner found claimant carried his burden of proof that he sustained an injury to his right shoulder on January 17, 2013, which arose out of and in the course of his employment with defendant. The deputy commissioner found the January 17, 2013, right shoulder injury is not barred by the two-year statute of limitations contained in Iowa Code section 85.26. The deputy commissioner found claimant is entitled to receive healing period benefits from May 17, 2015, through September 13, 2015, for the January 17, 2013, injury. The deputy

commissioner found claimant sustained 20 percent industrial disability for the January 17, 2013, injury, which entitles claimant to 100 weeks of PPD benefits, commencing on September 14, 2015. The deputy commissioner found claimant is not entitled to penalty benefits for the January 17, 2013, injury. The deputy commissioner found claimant is entitled to payment by defendant for all past and ongoing medical expenses, including medical mileage, for all treatment necessitated by the January 17, 2013, right shoulder injury. The deputy commissioner found claimant is entitled to reimbursement from defendant for the cost the independent medical evaluation (IME) performed by David Tearse, M.D., on September 29, 2015. The deputy commissioner also ordered defendant to pay claimant's costs of the arbitration proceeding.

In File No. 5049263, claimant asserts on appeal that the deputy commissioner erred in failing to find claimant's correct average weekly wage for the May 21, 2012, injury is \$1,109.11, and in failing to find the correct weekly benefit rate for that injury is \$685.40.

In File No. 5049378, claimant asserts on appeal that the deputy commissioner erred in failing to award claimant at least 50 percent industrial disability for the January 17, 2013, right shoulder injury.

In File No. 5049378, defendant asserts on cross-appeal that the deputy commissioner erred in finding claimant carried his burden of proof that he sustained a work-related injury to his right shoulder on January 17, 2013. Defendant asserts the deputy commissioner erred in finding claimant's January 17, 2013, injury is not barred by the two-year statute of limitation contained in Iowa Code section 85.26. Defendant asserts the deputy commissioner erred in awarding claimant 20 percent industrial disability for the January 17, 2013, injury. Defendant asserts that any award of industrial disability for that injury should be substantially less than 20 percent.

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 June 30, 2016, and the ruling on application for rehearing filed on July 26, 2016, 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.

In File No. 5049263, I affirm the deputy commissioner's finding that claimant sustained ten percent functional impairment of the body as a whole for the stipulated bilateral elbow injury, which entitles claimant to 50 weeks of PPD benefits, commencing on January 30, 2015. I affirm the deputy commissioner's finding that claimant's alleged right shoulder injury with an alleged injury date of May 21, 2012, was not a sequela injury of the May 21, 2012, bilateral elbow injury, and I affirm the deputy commissioner's finding that the right shoulder injury claim is barred by the two-year statute of limitations contained in Iowa Code section 85.26. I affirm the deputy commissioner's finding that claimant's correct average weekly wage for the May 21, 2012, injury is \$922.88, and I affirm the deputy commissioner's finding that the correct weekly benefit rate, classification single with three exemptions, is \$591.05. I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits for the May 21, 2012, injury. I also affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding.

In File No. 5049378, I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained a work-related right shoulder injury on January 17, 2013. I affirm the deputy commissioner's finding that the January 17, 2013, right shoulder injury is not barred by the two-year statute of limitations contained in Iowa Code section 85.26. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from May 17, 2015, through September 13, 2015, for the January 17, 2013, injury. I affirm the deputy commissioner's finding that claimant sustained 20 percent industrial disability for the January 17, 2013, injury, which entitles claimant to 100 weeks of PPD benefits, commencing on September 13, 2015. I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits for the January 17, 2013, injury. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendant for all past and ongoing medical expenses, including medical mileage, for all treatment necessitated by the January 17, 2013, injury. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendant for the cost of Dr. Tearse's IME. I also affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding.

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

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be credible. Defendant asserts claimant was not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 30, 2016, and the ruling on application for rehearing filed on July 26, 2016, are affirmed in their entirety.

Regarding File No. 5049263, injury date of May 21, 2012, involving bilateral elbows:

Defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits for claimant's bilateral elbow injury at the weekly rate of five hundred ninety-one and 05/100 dollars (\$591.05) commencing on January 30, 2015.

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

Defendant shall be given credit for benefits previously paid.

Regarding File No. 5049378, injury date of January 17, 2013, involving right shoulder:

Defendant shall pay claimant healing period benefits from May 17, 2015, through September 13, 2015, at the stipulated weekly rate of five hundred nine and 20/100 dollars (\$509.20).

Defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing on September 14, 2015 at the stipulated weekly rate of five hundred nine and 20/100 dollars (\$509.20).

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

Defendant shall be given credit for benefits previously paid.

Defendant shall reimburse claimant for the cost of Dr. Tearse's IME.

Defendant shall pay all past and ongoing medical expenses, including medical mileage, for all treatment necessitated by the January 17, 2013, right shoulder injury.

Regarding both files:

Pursuant to rule 876 IAC 4.33, defendant shall pay the costs of the arbitration proceeding and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 21st day of February, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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