

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK SMITH,

Claimant,

VS.

BARR-NUNN TRANSPORTATION,

Employer,

and

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 20009501.01

A P P E A L

DECISION

Head Notes: 1402.40; 1402.60; 1403.10;;
1803; 2501; 2701; 2907;
3001; 3002; 4000.2; 5-9998

Claimant Mark Smith appeals from an arbitration decision filed on October 7, 2021. Defendants Barr-Nunn Transportation, employer, and its insurer, Ace American Insurance Co., respond to the appeal. The case was heard on December 18, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 1, 2021.

In the arbitration decision, the deputy commissioner found that pursuant to the permanent impairment rating of Brandon Taylor, M.D., claimant sustained permanent scheduled member disability of one percent of the left lower extremity as a result of claimant's stipulated work injury which occurred on May 4, 2019, which entitles claimant to receive 2.2 weeks of permanent partial disability (PPD) benefits commencing on July 15, 2020. The deputy commissioner found claimant had reached maximum medical improvement (MMI) by the time of the arbitration hearing and was not entitled to a running award of healing period benefits. The deputy commissioner found claimant's correct average weekly wage for the work injury is \$1,574.63, and the deputy commissioner found claimant's correct weekly benefit rate for the injury is \$906.00. The deputy commissioner found claimant is entitled to receive \$1,488.56 in penalty benefits from defendants for an unreasonable delay in the payment of weekly benefits. The deputy commissioner found defendants are responsible for the requested past medical expenses itemized in claimant's Exhibit 8, with the exception of the charges from PharmacyOne. The deputy commissioner found claimant failed to prove he is entitled

to alternate medical care. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$197.80.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant had reached MMI by the time of the hearing and in failing to award running healing period benefits. In the alternative, claimant asserts if it is found on appeal that claimant did reach MMI by the time of the hearing, it should be found that pursuant to the permanent impairment rating of Mark Bornstein, D.P.M., claimant's correct impairment rating is 41 percent of the left lower extremity, which would entitle claimant to receive 90.2 weeks of PPD benefits commencing on July 15, 2020. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to alternate medical care for the work injury.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration 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 October 7, 2021, 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.

I affirm the deputy commissioner's finding that pursuant to Dr. Taylor's impairment rating, claimant sustained permanent scheduled member disability of one percent of the left lower extremity as a result of the work injury. I affirm the deputy commissioner's finding that claimant reached MMI by the time of the arbitration hearing and is not entitled to receive a running award of healing period benefits. I affirm the deputy commissioner's finding that claimant's correct average weekly wage for the work injury is \$1,574.63, and I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the injury is \$906.00. I affirm the deputy commissioner's finding that claimant is entitled to receive \$1,488.56 in penalty benefits from defendants for an unreasonable delay in the payment of weekly benefits. I affirm the deputy commissioner's finding that defendants are responsible for the requested past medical charges itemized in Exhibit 8, with the exception of the charges from PharmacyOne.

I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to alternate medical care. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$197.80.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 7, 2021, is affirmed in its entirety.

Defendants shall pay claimant two point two (2.2) weeks of permanent partial disability benefits, commencing on July 15, 2020, at the weekly rate of nine hundred six and 00/100 dollars (\$906.00).

Defendants shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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 (Appeal April 2018).

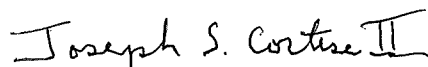
Defendants shall pay claimant penalty benefits in the amount of one thousand four hundred eighty-eight and 56/100 dollars (\$1,488.56).

Defendants are responsible for payment of the requested past medical charges itemized in claimant's Exhibit 8, with the exception of the charges from PharmacyOne.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred ninety-seven and 80/100 dollars (\$197.80), 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 24th day of March, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Casey Steadman (via WCES)

Chris Scheldrup (via WCES)