

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DALE HAYES,

Claimant,

vs.

GEORGIA PACIFIC CORP.,

Employer,

and

OLD REPUBLIC INSURANCE,

Insurance Carrier,  
Defendants.

File No. 5067990.02

A P P E A L

D E C I S I O N

Headnotes: 1402.40; 1804; 2206; 2209;  
2502; 2701; 2905; 2907; 4000.2;  
4100; 5-9998

Defendants Georgia Pacific Corp., employer, and its insurer, Old Republic Insurance, appeal from a review-reopening decision filed on July 15, 2022. Claimant Dale Hayes responds to the appeal. The review-reopening hearing was held in this matter on March 23, 2022, and the case was considered fully submitted in front of the deputy workers' compensation commissioner on June 3, 2022.

On March 15, 2018, claimant sustained the work-related injury which is at issue in this matter. In the underlying arbitration decision filed in this case on September 29, 2020, the deputy commissioner: (1) found claimant proved the work injury caused permanent disability of his low back; and (2) found claimant established he sustained ten percent industrial disability because of the work injury. In an appeal decision issued by the undersigned in this matter on March 10, 2021, the award for industrial disability was increased to 25 percent, which entitled claimant to receive 125 weeks of permanent partial disability benefits at the stipulated weekly benefit rate of \$484.98, beginning on the stipulated commencement date of January 3, 2019. The March 10, 2021, appeal decision was not appealed for judicial review.

On October 1, 2021, claimant filed a review-reopening petition in this matter asserting that after the September 29, 2020, arbitration decision was filed, claimant sustained a physical change of condition based on the low back injury resulting from the March 15, 2018, work injury. Claimant asserted that due to the alleged physical change of condition, he is now entitled to receive permanent total disability benefits for the work injury. In the alternative, claimant asserted entitlement to a running award of healing period benefits. Claimant asserted entitlement to penalty benefits due to alleged late

payment by defendants of weekly benefits. Claimant asserted entitlement to alternate medical care. Claimant asserted entitlement under Iowa Code section 85.39 for reimbursement from defendants for the cost of an independent medical evaluation (IME) of claimant performed by Mark Taylor, M.D.

Defendants asserted claimant failed to prove a change of condition or, in the alternative, claimant proved a minor change of condition that would allow for a very small increase in claimant's industrial disability resulting from the work injury.

In the review-reopening decision filed in this matter on July 15, 2022, the deputy commissioner found claimant carried his burden of proof to establish he sustained a physical change of condition related to the work injury after the arbitration decision was filed on September 29, 2020. The deputy commissioner found that as a result of the change in claimant's physical condition, claimant is now entitled to receive permanent total disability benefits under the odd-lot doctrine for the work injury commencing on October 1, 2021, the date the review-reopening petition was filed. The deputy commissioner found claimant is not entitled to receive a running award of healing period benefits. The deputy commissioner found claimant is not entitled to receive penalty benefits. The deputy commissioner found claimant is not entitled to alternate medical care. The deputy commissioner found claimant is not entitled to reimbursement from defendants for the cost of Dr. Taylor's IME. The deputy commissioner ordered defendants to pay claimant's costs of the review-reopening proceeding in the amount of \$1,015.50.

Defendants assert on appeal that the deputy commissioner erred in finding claimant proved he sustained a physical change of condition related to the work injury after the arbitration decision was filed. Defendants assert the deputy commissioner erred in finding that as a result of the change of claimant's physical condition, claimant is now entitled to receive permanent total disability benefits under the odd-lot doctrine for the work injury. Defendants assert if it is found on appeal that claimant did sustain a physical change of condition, it should be found claimant proved a minor change of condition that would allow for a very small increase in claimant's industrial disability resulting from the work injury.

Claimant asserts on appeal that the review-reopening decision should be affirmed in its entirety.

Those portions of the proposed review-reopening decision pertaining to issues not raised on appeal are adopted as 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 review-reopening decision filed on July 15, 2022, 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 review-reopening 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 proved he sustained a physical change of condition related to the work injury after the arbitration decision was filed on September 29, 2020. I affirm the deputy commissioner's finding that as a result of the change in claimant's physical condition, claimant is now entitled to receive permanent total disability benefits for the work injury under the odd-lot doctrine commencing on October 1, 2021. I affirm the deputy commissioner's finding that claimant is not entitled to receive a running award of healing period benefits. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendants for the cost of Dr. Taylor's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the review-reopening proceeding in the amount of \$1,015.50.

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

#### ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed in this matter on July 15, 2022, is affirmed in its entirety.

Claimant has proven entitlement to review-reopening benefits pursuant to Iowa Code section 86.14.

Claimant is not entitled to a "running award" of healing period benefits.

Defendants shall pay claimant permanent total disability benefits at the stipulated weekly rate of four hundred eighty-four and 98/100 dollars (\$484.98) from October 1, 2021, through the date of the review-reopening hearing, and continuing into the future during the period of claimant's total disability.

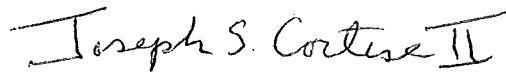
Defendants shall receive credit for all benefits paid to date.

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.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the review-reopening proceeding in the amount of one thousand fifteen and 50/100 dollars (\$1,015.50), 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 on this 29<sup>th</sup> day of December, 2022.

A handwritten signature in black ink, reading "Joseph S. Cortese II". The signature is written in a cursive style with a horizontal line extending from the end.

---

JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Mark Sullivan (via WCES)

Christopher Fry (via WCES)