

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JERRY POSTELL,	:	FILED
	:	FEB 12 2018
Claimant,	:	File No. 5050086
	:	WORKERS' COMPENSATION
vs.	:	A P P E A L
THE WEITZ GROUP,	:	D E C I S I O N
	:	
Employer,	:	
	:	
And	:	
	:	
ACE AMERICAN INSURANCE,	:	Head Note Nos.: 1800, 1108, 1802,
	:	1803, 2800, 4000,
Insurance Carrier,	:	5-9999
Defendants.	:	

STATEMENT OF THE CASE

On October 26, 2017, Joseph S. Cortese II, Iowa Workers' Compensation Commissioner, delegated the authority to the undersigned to issue the final agency decision on the intra-agency appeal currently pending before this agency. The decision in this matter shall be the final agency action.

This arbitration hearing was held on May 19, 2015 in Cedar Rapids, Iowa. The parties filed post-hearing briefs. The case was deemed fully submitted on June 23, 2015. The deputy issued the arbitration decision on April 7, 2016.

The deputy commissioner determined claimant was entitled to: (1) Two hundred (200) weeks of permanent partial disability benefits at the weekly benefit rate of eight hundred ninety-three and 10/100 dollars (\$893.10) and commencing on September 4, 2014; (2) healing period benefits from February 5, 2014 through September 3, 2014 at the rate of eight hundred and ninety-three and 10/100 (\$893.10) per week; (3) Defendants were ordered to pay accrued weekly benefits in a lump sum with interest on unpaid weekly benefits; (4) Defendants were ordered to pay medical expenses as outlined in claimant's exhibit 7 in a manner consistent with the decision. Defendants were ordered to pay a penalty in the amount of twelve thousand and no/100 dollars

(\$12,000); and, (5) Defendants were ordered to pay the costs as set forth in the decision.

On April 21, 2016, defendants filed their notice of appeal. The appeal brief was filed on July 8, 2016. In the brief, defendants listed the issues as:

1. Claimant failed to meet his burden of proof that his left shoulder condition is causally related to an injury on 02/03/14.
2. The deputy erred in finding claimant sustained a 40% loss of earning capacity due to the alleged 02/03/14 injury.
3. The deputy erred in assessing a \$12,000 penalty against defendants.

Claimant filed his brief on July 25, 2016. Claimant stated in his brief:

1. The evidence in the record overwhelmingly supports the conclusion Jerry Postell sustained an injury that arose out of and in the course of his employment with the Weitz Group on February 3, 2014.
2. Jerry Postell sustained at least a 40% loss of his earning capacity as a result of his February 3, 2014 workplace injury, and the arbitration decision should therefore be affirmed.
3. A \$12,000 penalty was correctly imposed under Iowa Code section 86.13 due to defendants' improper denial of Postell's claims, and that decision should be affirmed.

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

The record in this case was reviewed de novo. Both sides dictated the issues to be determined on appeal. See: Iowa Code section 17A.15; and Rule 876 IAC 4.28(7). The party who would suffer a loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule App. P. 6.14(6).

Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on April 7, 2016 which relate to the issues properly raised on intra-agency appeal.

I find the deputy workers' compensation commissioner provided a detailed analysis of the issues raised during the arbitration proceedings. I affirm the deputy's findings of fact, rationale, and conclusions of law pertaining to those issues.

The hearing deputy found claimant sustained an injury which arose out of and in the course of his employment. The deputy found claimant's sworn testimony to be credible. Moreover, the deputy wrote in his decision:

This is primarily based upon the fact that I find his sworn testimony to be credible. There was nothing about his demeanor which was cause for concern. His testimony is generally consistent with the Supervisor Incident Report, dated February 5, 2014. His testimony is consistent with a contemporaneous medical report on February 6, 2014. His testimony is consistent with the statement he provided to the insurance carrier on February 10, 2014. His testimony is consistent with his prior sworn testimony at deposition.

(Arbitration Decision, page 6)

The undersigned defers to the hearing deputy on the issue of credibility. He had the opportunity to observe claimant throughout the course of the arbitration proceeding. This author did not have the ability to observe claimant.

The hearing deputy provided a comprehensive and exhaustive explanation why he awarded a 40 percent permanent partial disability. It was especially noteworthy when the hearing deputy explained the following:

I find the opinions of Dr. Tearse and Dr. Switzer to be the most convincing opinions regarding Mr. Postell's medical condition following surgery. These restrictions are severely disabling for a person with claimant's skills in heavy manual labor, such as millwright, mechanic and machinist. The primary factors considered in assessing his substantial loss of earning capacity, are the foregoing restrictions and claimant's inability to perform past employment.

(Arbitration Decision, page 9)

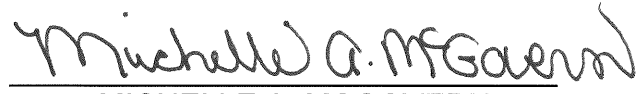
Finally, the hearing deputy explained in depth why he was awarding a \$12,000 penalty pursuant to Iowa Code section 86.13. The deputy incorporated eighteen specific factual findings into his decision to award penalty benefits. Those specific findings were detailed on pages 13 and 14 of the arbitration decision. The deputy clearly described the bases for his decision.

ORDER

THEREFORE, IT IS ORDERED: The arbitration decision filed on April 7, 2016 is AFFIRMED in its entirety.

IT IS FURTHER ORDERED: Defendants shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 12th day of February, 2018.


MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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