

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TAMMY L. NEWCOMB,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured,
Defendant.

File No. 5048104

A P P E A L

D E C I S I O N

TAMMY L. NEWCOMB,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured,
Defendant.File Nos. 5052805
5052806
5052807

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1802; 1803; 1804;
2501; 2701; 2907; 5-9998

Defendant John Deere Davenport Works, self-insured employer, appeals from a combined arbitration and review-reopening decision filed on May 3, 2019. Claimant Tammy Newcomb, responds to the appeal and cross-appeals. The case was heard on August 3, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 30, 2018.

The combined review-reopening and arbitration decision addressed File Nos. 5048104, 5052805, 5052806, and 5052807. Claimant dismissed File No. 5052806 following the evidentiary hearing. The parties did not appeal any of the deputy commissioner's findings with respect to claimant's petition for review-reopening, File No. 5048104. Therefore, the appeal is limited to File Nos. 5052805 and 5052807.

In File No. 5052805, the deputy commissioner found claimant carried her burden of proof to establish that the stipulated back injury, which arose out of and in the course of claimant's employment with defendant on September 11, 2014, caused claimant to sustain permanent total disability under the traditional industrial disability analysis. The deputy commissioner awarded claimant permanent total disability benefits commencing on April 11, 2018. The deputy commissioner found claimant failed to carry her burden of proof to establish that she sustained injuries to her neck, left arm, and right knee as a

result of the September 11, 2014, work injury. Lastly, the deputy commissioner found claimant failed to carry her burden of proof to establish entitlement to alternate medical care.

In File No. 5052807, the deputy commissioner found claimant carried her burden of proof to establish she sustained permanent impairment of her left knee as a result of the May 6, 2015, work injury. The deputy commissioner further found the claimant carried her burden of proof to establish that the need for the left partial knee replacement was causally related to the May 6, 2015, work injury. In this regard, the deputy commissioner found the May 6, 2015, injury and initial surgery accelerated the need for the partial knee replacement. The deputy commissioner found claimant sustained 37 percent permanent impairment of the left lower extremity, which entitles claimant to receive 81.4 weeks of permanent partial disability (PPD) benefits commencing on January 20, 2016. Lastly, the deputy commissioner found claimant failed to carry her burden of proof to establish entitlement to alternate medical care.

The deputy commissioner found claimant failed to carry her burden of proof to establish her depression and anxiety are sequela injuries of the work injuries which occurred on September 11, 2014, and May 6, 2015. Given this finding, the deputy commissioner found claimant failed to prove entitlement to healing period benefits from May 18, 2016, through June 4, 2017.

Consistent with the undersigned's July 12, 2017, Declaratory Order Regarding Profit Sharing Bonus and Continuous Improvement Pay Plan, the deputy commissioner adopted defendant's weekly benefit rate calculation of \$542.79 for the September 11, 2014, work injury, and \$537.89, for the May 6, 2015, work injury.

Lastly, the deputy commissioner found claimant is entitled to receive reimbursement from defendants in the amount of \$3,340.62 for the cost of Dr. Bansal's Independent Medical Examination (IME), \$2,341.60 for the cost of Ms. Laughlin's vocational report, \$2,553.65 for the cost of various deposition fees, and \$200.00 for the filing fees associated with the two claims.

On appeal, defendant asserts the deputy commissioner erred in finding claimant is permanently and totally disabled under either the traditional industrial disability analysis or the odd-lot analysis. Defendant further asserts the deputy commissioner erred in finding claimant met her burden of proof to establish the need for her left partial knee replacement was causally related to the May 6, 2015, work injury.

On cross-appeal, claimant asserts she met her burden of proof to establish permanent total disability under both the traditional industrial disability analysis and under the odd-lot doctrine. Claimant further asserts the deputy commissioner erred by relying on the July 12, 2017, declaratory order to accept defendant's weekly benefit rate calculation. In this respect, claimant asserts defendant's annual profit sharing payments are regular and should be included in claimant's average weekly wage calculation.

Claimant asserts she is raising this issue to preserve the issue in the event this case is appealed further.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. 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 May 3, 2019, 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. 5052805, I affirm the deputy commissioner's finding that claimant carried her burden of proof to establish that the work injury caused claimant to sustain permanent total disability under the traditional industrial disability analysis. I affirm the deputy commissioner's award of permanent total disability benefits commencing on April 11, 2018.

In File No. 5052807, I affirm the deputy commissioner's finding that claimant carried her burden of proof to establish the need for the left partial knee replacement was causally related to the May 6, 2015, work injury. I affirm the deputy commissioner's finding that claimant sustained 37 percent permanent impairment of her left lower extremity.

I affirm the deputy commissioner's finding that claimant's profit sharing bonus should not be included in the calculation of claimant's weekly benefit rate pursuant to In re Declaratory Order Regarding Profit Sharing Bonus and Continuous Improvement Pay Plan, (July 12, 2017). As such, I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the September 11, 2014, work injury is \$542.79, and I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the May 6, 2015, work injury is \$537.89.

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

ORDER

IT IS THEREFORE ORDERED that the combined arbitration and review-reopening decision filed on May 3, 2019, is affirmed in its entirety.

File No. 5052805 – Date of Injury: September 11, 2014:

Defendant shall pay claimant permanent total disability benefits so long as claimant is totally disabled, at the weekly rate of five hundred forty-two and 79/100 dollars (\$542.79), commencing on April 11, 2018.

File No. 5052807 – Date of Injury: May 6, 2015:

Defendant shall pay claimant eighty-one point four (81.4) weeks of permanent partial disability benefits commencing on January 20, 2016, at the weekly rate of five hundred thirty-seven and 89/100 dollars (\$537.89).

File Nos. 5052805 and 5052807:

Defendant shall receive credit for all benefits previously paid.

Defendant shall provide claimant with ongoing medical care as set forth in the arbitration decision.

Defendant 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).

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of eight thousand four hundred thirty-five and 87/100 dollars (\$8,435.87), 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 14th day of July, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Jerry A. Soper (Via WCES)

Troy A. Howe (Via WCES)