

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH SMITH,

Claimant,

vs.

H.D. SUPPLY MANAGEMENT, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE  
COMPANY,Insurance Carrier,  
Defendants.

File No. 20006595.02

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.30; 1402.40;  
1802; 1803; 1803.1; 1804;  
2206; 2502; 2701; 2907; 3001;  
3002; 4000.2; 5-9998

Defendants H.D. Supply Management, Inc., employer, and its insurer, New Hampshire Insurance Company, appeal from an arbitration decision filed on November 14, 2022. The case was heard on June 14, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 25, 2022.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish that on June 4, 2020, he sustained permanent injuries to his right arm and right shoulder that arose out of and in the course of his employment with defendant-employer. The deputy commissioner found that claimant's injury is properly compensated industrially under Iowa Code section 85.34(2)(v), and the deputy commissioner found claimant proved he sustained permanent total disability as a result of the injury, which entitles claimant to receive permanent total disability benefits commencing on June 4, 2020. The deputy commissioner found claimant's gross average weekly wage for the injury is \$754.00, and the deputy commissioner found claimant's weekly benefit rate for the injury is \$487.87. The deputy commissioner found defendants are responsible for payment, or reimbursement, or to otherwise hold claimant harmless, for all causally related medical expenses and medical mileage itemized in claimant's Exhibits 6 and 7. The deputy commissioner found that pursuant to Iowa Code section 85.27, defendants are liable for all reasonable and causally-related ongoing medical care needed by claimant for the work injury. The deputy commissioner found claimant is entitled to penalty benefits in the amount of \$19,000.00 for defendants' unreasonable denial of claimant's claim. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement

from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Mark Taylor, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$237.91.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a work-related injury as alleged, and in finding claimant is entitled to receive indemnity benefits and medical benefits, and in finding claimant is entitled to receive reimbursement from defendants for Dr. Taylor's IME. In the alternative, defendants assert if it is found on appeal that claimant did sustain a compensable work injury, it should be found claimant sustained a scheduled member injury to his right shoulder only, and not an industrial injury, and it should be found claimant is entitled to be compensated for a scheduled member shoulder injury only under Iowa Code section 85.34(2)(n). Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

Claimant asserts 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 November 14, 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 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 claimant proved he sustained permanent work-related injuries to his right arm and right shoulder on June 4, 2020, as alleged. I affirm the deputy commissioner's finding that claimant's injury is properly compensated industrially under Iowa Code section 85.34(2)(v), and I affirm the deputy commissioner's finding that claimant proved he sustained permanent total disability as a result of the work injury, which entitles claimant to receive permanent total disability benefits. I affirm the deputy commissioner's finding that claimant's gross average weekly wage for the injury is \$754.00, and I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the injury is \$487.87. I affirm the deputy commissioner's finding that defendants are responsible for payment, or reimbursement, or to otherwise hold claimant harmless, for all causally related medical expenses and medical mileage itemized in claimant's Exhibits 6 and 7. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.27, defendants are liable

for all reasonable and causally related ongoing medical care needed by claimant for the work injury. I affirm the deputy commissioner's finding that claimant is entitled to penalty benefits in the amount of \$19,000.00 for defendants' unreasonable denial of claimant's claim. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is 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 arbitration proceeding in the amount of \$237.91.

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 November 14, 2022, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits at the weekly rate of four hundred eighty-seven and 87/100 dollars (\$487.87), commencing on June 4, 2020, and continuing during claimant's period of permanent total disability.

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.

Defendants shall pay claimant penalty benefits in the amount of nineteen thousand and 00/100 dollars (\$19,000.00).

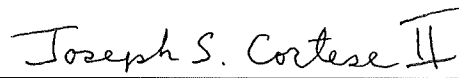
Defendants are responsible for payment, or reimbursement, or to otherwise hold claimant harmless, for all causally related medical expenses and medical mileage itemized in claimant's Exhibits 6 and 7.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of three thousand six hundred thirty-seven and 50/100 dollars (\$3,637.50) for the cost of Dr. Taylor's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two hundred thirty-seven and 91/100 dollars (\$237.91), 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 March, 2023.

Handwritten signature of Joseph S. Cortese II in black ink.

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)

Kathryn Hartnett (via WCES)