BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
FEB 15 2017
WORKERS' COMPENSATION

MARK MITCHELL,

Claimant,

vs.

LABOR WORLD OF IOWA INC.,

Employer,

and

ZURICH AMERICAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5048278

APPEAL

DECISION

Head Note Nos.: 1803, 1402.40, 3001

Claimant Mark Mitchell appeals from an arbitration decision filed on August 7, 2015. Defendants Labor World of Iowa, Inc., employer, and its insurer, Zurich American Insurance Company, respond to the appeal. The case was heard on April 17, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 22, 2015.

In the arbitration decision, the deputy commissioner found claimant is entitled to 40 percent industrial disability for the stipulated work-related injury which arose out of and in the course of claimant's employment with defendant- employer on August 15, 2011. The award entitles claimant to 200 weeks of permanent partial disability (PPD) benefits commencing on September 18, 2013. The deputy commissioner found claimant failed to carry his burden of proof that he is entitled to permanent total disability benefits under an industrial disability analysis and also under the odd-lot doctrine. The deputy commissioner found claimant's gross average weekly earnings for the work injury were $470.00, and claimant's weekly benefit rate for the injury, classification married with three exemptions, is $334.86. The deputy commissioner found claimant is entitled to payment of certain requested past medical expenses. The deputy commissioner also taxed defendants with $100.00 of the costs requested by claimant in the arbitration proceeding.

In the ruling on claimant's motion for rehearing/reconsideration filed on September 9, 2015, the deputy commissioner found claimant is entitled to payment by defendants of certain additional past medical expenses which were not awarded in the arbitration decision.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he is entitled to permanent total disability benefits under either an industrial disability analysis or under the odd-lot doctrine. In the alternative, claimant asserts if he is found not to be permanently and totally disabled, the deputy commissioner erred in failing to award claimant substantially more than 40 percent industrial disability, at least 65 percent.

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

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 August 7, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of 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 is entitled to 40 percent industrial disability for the work injury of August 15, 2011. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he is entitled to permanent total disability benefits under either an industrial disability analysis or under the odd-lot doctrine. I affirm the deputy commissioner's finding that claimant's gross average weekly earnings for the work injury were $470.00, and claimant's weekly benefit rate for the injury is $334.86. I affirm the deputy commissioner's finding that claimant is entitled to payment of requested past medical expenses as detailed in the arbitration decision and also as detailed in the ruling on claimant's motion for rehearing/reconsideration. I also affirm the deputy commissioner's order taxing defendants with $100.00 of the costs requested by claimant in the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of August 7, 2015, is affirmed in its entirety.

Defendants shall pay claimant two hundred (200) weeks of permanent partial disability benefits at the weekly rate of three hundred thirty-four and 86/100 dollars ($334.86) commencing on September 18, 2013.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall receive credit for all benefits paid to date.

Defendants are responsible for payment of past medical expenses as set forth in the arbitration decision and as set forth in the ruling on claimant's motion for rehearing/ reconsideration.

Pursuant to rule 876 IAC 4.33, defendants are taxed claimant's costs in the arbitration proceeding in the amount of one hundred and no/100 dollars ($100.00), 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 this 15th day of February, 2017.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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