

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ELMER GURULE,

Claimant,

vs.

LOWE'S HOME CENTERS,

Employer,
Self-Insured,
Defendant.

File No. 5066730.01

A P P E A L

D E C I S I O N

Headnotes: 1402.20; 1402.40; 1403.10;
1802; 1803; 2206; 2501; 2502;
2907; 4000.2; 5-9998

Defendant Lowe's Home Centers, self-insured employer, appeals from an arbitration decision issued on October 5, 2022. Claimant Elmer Gurule responds to the appeal. The case was heard on April 5, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 20, 2022.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish his low back condition and his need for surgery are causally related to the September 25, 2018, work injury. The deputy commissioner found claimant sustained 80 percent industrial disability as a result of the work injury, which entitles claimant to receive 400 weeks of permanent partial disability benefits commencing on December 5, 2019. The deputy commissioner found claimant is entitled to receive healing period benefits from September 25, 2018, through December 4, 2019. The deputy commissioner found claimant is entitled to receive penalty benefits from defendant in the amount of \$20,000.00 for defendant's unreasonable failure to pay weekly benefits. The deputy commissioner found defendant is responsible for claimant's requested past medical expenses itemized in Exhibits 15 and 16. The deputy commissioner found claimant is entitled to reimbursement from defendant in the amount of \$1,308.65 for medical mileage. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendant in the amount of \$2,735.35 for the cost of the independent medical examination (IME) of claimant performed by Daniel McGuire, M.D. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount \$178.00.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant proved his low back condition and his need for surgery are causally related to the work injury, and defendant asserts claimant's medical conditions are personal and pre-existing conditions. Defendant asserts the deputy commissioner erred in finding claimant sustained 80 percent industrial disability, and defendant asserts on appeal that if it is found claimant is entitled to industrial disability benefits, the award for industrial disability should be reduced to less than 40 percent. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive healing period benefits. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive penalty benefits. Defendant asserts the deputy commissioner erred in finding defendant is responsible for claimant's requested past medical expenses. Defendant asserts the deputy commissioner erred in finding claimant is entitled to reimbursement from defendant for medical mileage. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive reimbursement for the cost of Dr. McGuire's IME. Defendant asserts the deputy commissioner erred in ordering defendant to pay claimant's costs of the arbitration proceeding.

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 part of this appeal decision.

I 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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on October 5, 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 his low back condition and his need for surgery are causally related to the September 25, 2018, work injury. I affirm the deputy commissioner's finding that claimant sustained 80 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from September 25, 2018, through December 4, 2019. I affirm the deputy commissioner's finding that claimant is entitled to receive \$20,000.00 in penalty benefits for defendant's

unreasonable failure to pay weekly benefits. I affirm the deputy commissioner's finding that defendant is responsible for claimant's requested past medical expenses. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendant in the amount of \$1,308.65 for medical mileage. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendant for the cost of Dr. McGuire's IME. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount \$178.00.

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 October 5, 2022, is affirmed in its entirety.

Defendant shall pay claimant healing period benefits from September 25, 2018, through December 4, 2019, at the stipulated weekly rate of two hundred forty-two and 18/100 dollars (\$242.18).

Defendant shall pay claimant 400 weeks of permanent partial disability benefits at the stipulated weekly rate of two hundred forty-two and 18/100 dollars (\$242.18), commencing on December 5, 2019.

Defendant 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.

Defendant shall pay claimant penalty benefits in the amount of twenty thousand and 00/100 dollars (\$20,000.00) for defendant's unreasonable failure to pay weekly benefits.

Defendant is responsible for claimant's requested past medical expenses itemized in Exhibits 15 and 16.

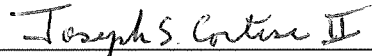
Defendant shall reimburse claimant for his medical mileage in the amount of one thousand three hundred eight and 65/100 dollars (\$1,308.65).

Pursuant to Iowa Code section 85.39, defendant shall reimburse claimant in the amount of two thousand seven hundred thirty-five and 35/100 dollars (\$2,735.35) for the cost of Dr. McGuire's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of one hundred seventy-eight and 00/100 dollars (\$178.00), and defendant shall pay 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 20th day of April, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Dennis McElwain (via WCES)

Lori Scardina Utsinger (via WCES)