

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA WALTON,

Claimant,

vs.

COMPASS GROUP USA, INC.,

Employer,

and

NEW HAMPSHIRE INS. CO.

Insurance Carrier,
Defendants.

File No. 1663689.02

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1403.10;
1803; 2501; 2502; 3002;
4000.2

Defendants Compass Group USA, Inc., employer, and its insurer, New Hampshire Insurance Company, appeal from an arbitration decision filed on December 22, 2021, and from a ruling on motions for rehearing filed on January 25, 2022. Claimant Teresa Walton responds to the appeal. The case was heard on June 24, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 22, 2021.

In the arbitration decision and in the ruling on motions for rehearing, the deputy commissioner found claimant met her burden of proof to establish she sustained injuries to her left knee, left hip, and low back caused by the stipulated December 27, 2018, work injury. The deputy commissioner found claimant sustained eight percent functional impairment of the body as a whole, which entitles claimant to receive 40 weeks of permanent partial disability benefits at the stipulated weekly rate of \$318.18, commencing on January 3, 2019. The deputy commissioner found defendants are responsible for claimant's medical expenses set forth in Exhibit 6, less \$41.00 for the cost of the electrocardiogram report, and less \$2,623.64 for the angiography of October 2, 2019. The deputy commissioner assessed defendants with a 30 percent penalty for late paid weekly benefits from May 6, 2019, through September 17, 2019, and with a 15 percent penalty for underpaid benefits from March 31, 2021, until such time as the outstanding benefits owed are satisfied. 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 examination (IME) of claimant performed by Sunil Bansal, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding consisting of the filing fee, the service of process fee, Dr. Bansal's report fee, and the cost of Amber Collum PA-C's consultation and report fee.

Defendants assert on appeal that the deputy commissioner erred in finding claimant to be a credible witness. Defendants assert the deputy commissioner erred in finding claimant proved she sustained an injury to her body as a whole. Defendants assert the deputy commissioner erred in finding claimant is entitled to penalty benefits.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant is limited to receiving permanent partial disability (PPD) benefits for her functional impairment rating because claimant was no longer working for defendant-employer at the time of the hearing, and claimant alleges her claim should be compensated industrially. Because claimant did not file a cross-appeal in this matter, I find claimant waived her claim that the deputy commissioner erred in finding claimant was limited to receiving PPD benefits for her functional impairment rating. Claimant alleges the remainder of the decision should be affirmed.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on December 22, 2021, and the ruling on motions for rehearing filed on January 25, 2022, are affirmed in part, modified in part, and reversed in part.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be a credible witness. I find the deputy commissioner correctly assessed 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. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

I affirm the deputy commissioner's finding that claimant proved she sustained injuries to her left knee, her left hip, and her low back caused by the work injury. I affirm the deputy commissioner's finding that claimant sustained eight percent functional impairment of the body as a whole, which entitles claimant to receive 40 weeks of PPD benefits commencing on January 3, 2019. I affirm the deputy commissioner's finding that defendants are responsible for claimant's medical expenses set forth in Exhibit 6, less \$41.00 for the cost of the electrocardiogram report, and less \$2,623.64 for the angiography of October 2, 2019. 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. Bansal's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding consisting of the filing fee, the service of process fee, Dr. Bansal's report fee, and the cost of Amber Collum, PA-C's consultation and report fee.

I affirm, in part, and reverse, in part, the deputy commissioner's penalty award with the following additional and substituted analysis.

Iowa Code section 86.13 governs compensation payments. Under the statute's plain language, if there is a delay in payment absent "a reasonable or probable cause or excuse," the employee is entitled to penalty benefits, of up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse. Iowa Code § 86.13(4); see also Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (citing earlier version of the statute). "The application of the penalty provision does not turn on the length of the delay in making the correct compensation payment." Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 236

(Iowa 1996). If a delay occurs without a reasonable excuse, the commissioner is required to award penalty benefits in some amount to the employee. Id.

The statute requires the employer or insurance company to conduct a “reasonable investigation and evaluation” into whether benefits are owed to the employee, the results of the investigation and evaluation must be the “actual basis” relied on by the employer or insurance company to deny, delay, or terminate benefits, and the employer or insurance company must contemporaneously convey the basis for the denial, delay, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits. Iowa Code § 86.13(4). An employer may establish a “reasonable cause or excuse” if “the delay was necessary for the insurer to investigate the claim,” or if “the employer had a reasonable basis to contest the employee’s entitlement to benefits.” Christensen, 554 N.W.2d at 260. “A ‘reasonable basis’ for denial of the claim exists if the claim is ‘fairly debatable.’” Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012). “Whether a claim is ‘fairly debatable’ can generally be determined by the court as a matter of law.” Id. The issue is whether the employer had a reasonable basis to believe no benefits were owed to the claimant. Id. “If there was no reasonable basis for the employer to have denied the employee’s benefits, then the court must ‘determine if the defendant knew, or should have known, that the basis for denying the employee’s claim was unreasonable.’” Id.

Benefits must be paid beginning on the 11th day after the injury, and “each week thereafter during the period for which compensation is payable, and if not paid when due,” interest will be imposed. Iowa Code § 85.30. In Robbennolt, the Iowa Supreme Court noted, “[i]f the required weekly compensation is timely paid at the end of the compensation week, no interest will be imposed As an example, if Monday is the first day of the compensation week, full payment of the weekly compensation is due the following Monday.” Robbennolt, 555 N.W.2d at 235. A payment is “made” when the check addressed to the claimant is mailed, or personally delivered to the claimant. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996) (abrogated by Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299 (Iowa 2005) (concluding the employer’s failure to explain to the claimant why it would not pay permanent benefits upon the termination of healing period benefits did not support the commissioner’s award of penalty benefits)).

When considering an award of penalty benefits, the commissioner considers “the length of the delay, the number of the delays, the information available to the employer regarding the employee’s injuries and wages, and the prior penalties imposed against the employer under section 86.13.” Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 336 (Iowa 2008). The purposes of the statute are to punish the employer and insurance company and to deter employers and insurance companies from delaying payments. Robbennolt, 555 N.W.2d at 237.

Gregory Hill, M.D., the treating orthopedic surgeon placed claimant at maximum medical improvement on May 6, 2019 and imposed permanent work restrictions. Dr. Hill did not issue a rating until September 4, 2019. Defendants did not commence permanent partial disability benefits until September 18, 2019. The deputy commissioner found defendants did not offer an explanation for the delay in benefits and assessed defendants a 30 percent penalty for benefits from May 6, 2019, through

September 17, 2019. I find the deputy commissioner erred in assessing defendants with penalty benefits for this period.

The record reflects defendants requested Dr. Hill provide an impairment rating on May 24, 2019. (Ex. D, p. 4) Dr. Hill did not provide the impairment rating until September 4, 2019. (JE 4, p. 52) The record supports defendants timely requested an impairment rating from Dr. Hill and promptly commenced payment of permanent partial disability benefits after they received Dr. Hill's impairment rating. I find defendants acted reasonably in this case and no penalty should be awarded for the period between the date Dr. Hill placed claimant at maximum medical improvement and the date when defendants commenced paying claimant permanent partial disability benefits.

Defendant initially paid claimant benefits using one exemption. Claimant listed one exemption with the defendant-employer during her employment. The deputy commissioner found claimant provided defendants with a copy of her tax returns on March 31, 2021, which showed she was entitled to two exemptions. At the June 24, 2021, arbitration hearing, the parties stipulated claimant's weekly rate is \$318.18 and defendants had paid claimant 15.4 weeks of benefits at the rate of \$308.02 per week. The deputy commissioner found defendants offered no explanation for the underpayment of benefits and assessed defendants with a 15 percent penalty for underpaid benefits from March 31, 2021, until such time as the outstanding benefits owed are satisfied.

The parties agree the record reflects defendants underpaid claimant's weekly rate by \$10.16 for 15.4 weeks for a total underpayment of \$156.46. Multiplying \$156.46 by 15 percent totals \$23.47. Defendants assert they reasonably relied on claimant's assertions on her tax information at work in calculating the rate. Defendants did not offer any explanation for the late payment of the benefits after receiving claimant's tax returns in March 2021. The deputy commissioner's finding that defendants should be assessed a 15 percent penalty for the underpayment is affirmed with this additional analysis.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 22, 2021, and the ruling on motions for rehearing filed on January 25, 2022, are affirmed in part, and reversed in part, with the above-stated additional analysis.

Defendants shall pay claimant forty (40) weeks of permanent partial disability benefits at the stipulated weekly rate of three hundred eighteen and 18/100 dollars (\$318.18), commencing on January 3, 2019.

Defendants shall receive a 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's medical expenses set forth in Exhibit 6 less forty-one and 00/100 dollars (\$41.00) for the cost of the electrocardiogram report and less two thousand six hundred twenty-three and 64/100 dollars (\$2,623.64) for the angiography of October 2, 2019. The medical expenses shall be limited to the actual amounts owed or paid after allowable insurance or provider adjustments.

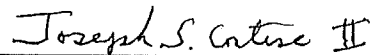
Defendants shall pay claimant twenty-three and 47/100 dollars (\$23.47) in penalty benefits.

Defendants shall reimburse claimant two thousand seven hundred eighty-one and 00/100 dollars (\$2,781.00) for the cost of Dr. Bansal's independent medical examination.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding consisting of the filing fee, the service of process fee, the report fee of Dr. Bansal, and the consult and report fee of Amber Collum, PA-C, 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), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 20th day of June, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

Nathan McConkey (via WCES)