

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TWILA MARCHANT,

Claimant,

vs.

SALVATION ARMY,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

FILED

OCT 25 2018

WORKERS' COMPENSATION

File Nos. 5055127, 5055128

A P P E A L

D E C I S I O N

Head Note Nos: 1803; 2501; 2701;
3202; 4000; 5-9998

Claimant Twila Marchant appeals from an arbitration decision filed on April 14, 2017. Defendants Salvation Army, employer, and its insurer, Zurich American Insurance Co., and defendant Second Injury Fund of Iowa respond to the appeal. The case was heard on November 30, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 11, 2017.

In File No. 5055128, stipulated work-related injury date of January 25, 2014, the deputy commissioner found claimant sustained permanent scheduled member functional disability of two percent of the left lower extremity, which entitles claimant to receive 4.4 weeks of permanent partial disability (PPD) benefits commencing on September 30, 2014. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$400.00 for an unreasonable failure by defendants employer and insurer to pay weekly benefits. The deputy commissioner found claimant is entitled to payment by defendants employer and insurer of the past requested medical expenses itemized in Exhibit 14 which were necessitated by the January 25, 2014, work injury. The deputy commissioner found pursuant to Iowa Code section 85.39 that claimant is not entitled to receive reimbursement from defendants employer and insurer for the cost of an independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D., on October 5, 2016. The deputy commissioner

ordered defendants employer and insurer to pay claimant's costs of the arbitration proceeding in the amount of \$259.12.

In File No. 5055127, stipulated work-related injury date of October 10, 2014, the deputy commissioner found claimant sustained permanent scheduled member functional disability of two percent of the right lower extremity, which entitles claimant to receive 4.4 weeks of PPD benefits commencing on August 7, 2015. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$400.00 for an unreasonable failure by defendants employer and insurer to pay weekly benefits. The deputy commissioner found claimant is entitled to payment by defendants employer and insurer of the past requested medical expenses itemized in Exhibit 14 which were necessitated by the October 10, 2014, work injury. The deputy commissioner found pursuant to Iowa Code section 85.39 that claimant is not entitled to reimbursement by defendants employer and insurer for the cost of Dr. Bansal's IME.

With regard to the Second Injury Fund claim in File No. 5055127, the deputy commissioner found the January 25, 2014, work injury in File No. 5055128 is a qualifying first injury for Fund purposes, and the deputy commissioner found the October 10, 2014, work injury in File No. 5055127 is a qualifying second injury for Fund purposes. The deputy commissioner found the combined effects of the two injuries has caused claimant to sustain five percent industrial disability, which entitles claimant to receive 25 weeks of PPD benefits, with a total credit of 8.8 weeks for the scheduled member functional disability awarded to claimant for the two injuries. Pursuant to rule 876 IAC 4.33, the deputy commissioner ordered the Fund to reimburse claimant in the amount of \$312.00 for the cost of the vocational report of Carma Mitchell.

In File No. 5055128, claimant asserts on appeal that the deputy commissioner erred in finding claimant is not entitled to receive reimbursement from defendants employer and insurer for the cost of Dr. Bansal's IME.

In File No. 5055128, defendants employer and insurer assert on appeal that the arbitration decision should be affirmed in its entirety.

In File No. 5055127, claimant asserts on appeal that the deputy commissioner erred in finding claimant is not entitled to receive reimbursement from defendants employer and insurer for the cost of Dr. Bansal's IME. Claimant also asserts the deputy commissioner erred in failing to award substantially more than five percent industrial disability for the combined effects of the two injuries.

In File No. 5055127, defendants employer and insurer assert on appeal that the arbitration decision should be affirmed in its entirety.

In File No. 5055127, the Fund asserts on appeal that the deputy commissioner erred in awarding claimant any industrial disability for the combined effects of the two injuries.

Those portions of the proposed agency 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 April 14, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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.

In File No. 5055128, injury date of January 25, 2014, I affirm, the deputy commissioner's finding that claimant sustained permanent scheduled member functional disability of two percent of the left lower extremity, which entitles claimant to receive 4.4 weeks of PPD benefits commencing on September 30, 2014. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$400.00 for an unreasonable failure by defendants employer and insurer to pay weekly benefits. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants employer and insurer of the past requested medical expenses itemized in Exhibit 14 which were necessitated by the January 25, 2014, work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants employer and insurer for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that defendants employer and insurer pay claimant's costs of the arbitration proceeding in the amount of \$259.12.

In File No. 5055127, injury date of October 10, 2014, I affirm the deputy commissioner's finding that claimant sustained permanent scheduled member functional disability of two percent of the right lower extremity, which entitles claimant to receive 4.4 weeks of permanent partial disability (PPD) benefits commencing on August 7, 2015. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$400.00 for an unreasonable failure by defendants employer and insurer to pay weekly benefits. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants employer and insurer of the past requested medical expenses itemized in Exhibit 14 which were necessitated by the October 10, 2014, work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants employer and insurer for the cost of Dr. Bansal's IME.

With regard to the Second Injury Fund claim in File No. 5055127, I affirm the deputy commissioner's finding that the January 25, 2014, work injury in File No. 5055128 is a qualifying first injury for Fund purposes, and I affirm the deputy commissioner's finding that the October 10, 2014, work injury in File No. 5055127 is a

qualifying second injury for Fund purposes. I affirm the deputy commissioner's finding that the combined effects of the two injuries has caused claimant to sustain five percent industrial disability, which entitles claimant to receive 25 weeks of PPD benefits, with a total credit against the award of industrial disability of 8.8 weeks for the scheduled member functional disability awarded to claimant for the two injuries. Pursuant to rule 876 IAC 4.33, I affirm the deputy commissioner's order that the Fund reimburse claimant in the amount of \$312.00 for the cost of Ms. Mitchell's vocational report.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 14, 2017, is affirmed in its entirety.

Regarding File Number 5055128 – injury date of January 25, 2014

Defendants Salvation Army and Zurich American Insurance Company shall pay claimant four point four (4.4) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of three hundred forty-five and 85/100 dollars (\$345.85) commencing on the stipulated date of September 30, 2014.

Accrued benefits shall be paid in a lump sum, together with interest, as provided by law.

Defendants Salvation Army and Zurich American Insurance Company shall pay claimant four hundred and 00/100 dollars (\$400.00) in penalty benefits pursuant to Iowa Code section 86.13.

Defendants Salvation Army and Zurich American Insurance Company shall pay all medical expenses and all medical mileage related to the January 25, 2014, injury as detailed in Exhibit 14.

Pursuant to rule 876 IAC 4.33, defendants Salvation Army and Zurich American Insurance Company shall pay claimant's costs of the arbitration proceeding in the amount of \$259.12, 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 Salvation Army and Zurich American Insurance Company shall file subsequent reports of injury as required by this agency.

Regarding File Number 5055127 – injury date of October 10, 2014

Defendants Salvation Army and Zurich American Insurance Company shall pay claimant four point four (4.4) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of three hundred forty-four and 39/100 dollars (\$344.39) commencing on the stipulated date of August 7, 2015.

Accrued benefits shall be paid in a lump sum, together with interest as provided by law,

Defendants Salvation Army and Zurich American Insurance Company shall pay claimant four hundred and 00/100 dollars (\$400.00) in penalty benefits as provided by Iowa Code section 86.13.

Defendants Salvation Army and Zurich American Insurance Company shall pay all medical expenses and all medical mileage related to the October 10, 2014, injury as detailed in Exhibit 14.

Defendant Second Injury Fund of Iowa shall pay claimant sixteen point two (16.2) weeks of benefits from the Fund at the rate of three hundred forty-four and 39/100 dollars (\$344.39), and those benefits shall commence after all benefits have been paid by defendants Salvation Army and Zurich American Insurance Company.

Interest accrues on unpaid Second Injury Fund benefits from the date of this decision 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 Second Injury Fund shall reimburse claimant in the amount of, \$312.00 for the cost of Ms. Mitchell's vocational report, 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 Salvation Army and Zurich American Insurance Company and defendant Second Injury Fund shall file subsequent reports of injury as required by this agency.

Signed and filed this 25th day of October, 2018.


JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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