

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHANNON GARDNER,

Claimant,

vs.

MENARD, INC.,

Employer,

PRAETORIAN/XL INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5054642

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 1402.40; 1802; 1803;
2501; 2907; 5-9998

Defendants Menard, Inc., employer, and its insurer, Praetorian/XL Insurance Co., appeal from an arbitration decision filed on December 20, 2019. Claimant Shannon Gardner responds to the appeal. The case was heard in two sessions, the first on March 12, 2018, and the second on July 18, 2018. The case was considered fully submitted in front of the deputy workers' compensation commissioner on September 19, 2018.

In the arbitration decision, the deputy commissioner found claimant to be credible. The deputy commissioner found claimant sustained injuries that arose out of and in the course of her employment on April 25, 2015 (File No. 5054642) and on October 8, 2016 (File No. 5062921). The deputy commissioner found claimant sustained both temporary and permanent disability of her low back due to the April 25, 2015, date of injury, but not due to the October 8, 2016 date of injury.

As a result, in File No. 5054642, the deputy commissioner found claimant is entitled to receive healing period benefits from November 15, 2016, through November 27, 2016. The deputy commissioner found claimant sustained 35 percent industrial disability, which entitles claimant to receive 175 weeks of permanent partial disability benefits commencing on February 2, 2016. The deputy commissioner found claimant's weekly benefit rate for the April 25, 2015, work injury is \$411.27. The deputy commissioner found claimant is entitled to payment or reimbursement for the medical expenses related to her treatment with Benjamin MacLennon, M.D. The deputy commissioner found defendants are entitled to a credit for permanent partial disability (PPD) benefits previously paid, and for overpayment of the weekly benefit rate.

In File No. 5062921, the deputy commissioner awarded claimant the cost of the independent medical examination (IME) performed by Richard Kreiter, M.D.

Defendants appeal only in File No. 5054642.

Defendants assert on appeal that the deputy commissioner erred in finding claimant was credible. Defendants assert the deputy commissioner erred in finding claimant sustained a work-related injury on April 25, 2015, as alleged. Defendants assert the deputy commissioner erred in finding defendants are responsible for temporary disability benefits, for permanent disability benefits, and for the medical expenses related to claimant's treatment with Dr. MacLennon. In the alternative, defendants assert if it is found on appeal that claimant did sustain a work injury as alleged, it should be found claimant sustained only minimal industrial disability, if any.

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 December 20, 2019, 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.

While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. The deputy commissioner found claimant to be credible. I find the deputy commissioner correctly assessed claimant's credibility. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

I affirm the deputy commissioner's finding that claimant sustained a work-related injury on April 25, 2015. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from November 15, 2016, through November 27, 2016. I affirm the deputy commissioner's finding that claimant's injury resulted in permanent disability. More specifically, I affirm the deputy commissioner's finding that claimant sustained 35 percent industrial disability as a result of the injury. I affirm the deputy commissioner's finding that claimant is entitled to payment or reimbursement for the medical expenses related to her treatment with Dr. MacLennon.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 20, 2019, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits at the weekly rate of four hundred eleven and 27/100 dollars (\$411.27) from November 15, 2016, through November 27, 2016.

Defendants shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability benefits at the weekly rate of four hundred eleven and 27/100 dollars (\$411.27), commencing on February 2, 2016.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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).

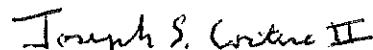
Defendants shall receive credit for PPD benefits previously paid as set forth in Exhibit 22, with the exception of those paid from November 15, 2016, through November 27, 2016. Defendants shall also receive credit for rate overpayment of healing period benefits as set forth in the arbitration decision.

Defendants are responsible for the medical expenses of Dr. MacLennan as set forth in Exhibits 18 and 19, consistent with the arbitration decision.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and 00/100 dollars (\$100.00), 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 24th day of September, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas M. Wertz (via WCES)

Charles Blades (via WCES)