

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

---

MARK L. SWANSON,	:		<b>FILED</b>
Claimant,	:	File No. 5055114	<b>FEB - 6 2019</b>
vs.	:	A P P E A L	WORKERS' COMPENSATION
PELLA CORPORATION,	:	D E C I S I O N	
Employer,	:		
Self-Insured,	:	Head Note Nos: 1402.30; 1802; 1803; 2501;	
Defendant.	:	2907, 4000.2; 5-9998	

---

Defendant Pella Corporation, self-insured employer, appeals from an arbitration decision filed on August 23, 2017, and from a ruling on defendant's application for rehearing filed on September 26, 2017. Claimant Mark L. Swanson responds to the appeal. The case was heard on March 8, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 19, 2017.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof that on September 15, 2015, he sustained a permanent material aggravation of his pre-existing right shoulder condition which arose out of and in the course of claimant's employment with defendant-employer. The deputy commissioner found claimant is entitled to receive healing period benefits for the work injury from June 22, 2016, through August 14, 2016. The deputy commissioner found claimant sustained permanent disability as a result of the work injury. The deputy commissioner awarded claimant 20 percent industrial disability for the work injury, which entitles claimant to receive 100 weeks of permanent partial disability (PPD) benefits commencing on August 15, 2016. The deputy commissioner found claimant is entitled to payment by defendant for the past requested medical expenses itemized in Exhibits 3 through 7. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendant under Iowa Code section 86.13. The deputy commissioner found claimant is not entitled to receive reimbursement from defendant under rule 876 IAC 4.33 for the cost of the impairment rating report from Jason Sullivan, M.D. The deputy commissioner found claimant is entitled to receive reimbursement from defendant under rule 876 IAC 4.33 for the cost of the medical report from Brian Crite, M.D. The deputy commissioner found claimant is entitled to receive reimbursement from defendant under rule 876 IAC 4.33 for claimant's filing fee and service fee.

In the ruling on defendant's application for rehearing, the deputy commissioner reaffirmed all of the findings contained in the arbitration decision.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained a permanent material aggravation of his pre-existing right shoulder condition. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive healing period benefits for the work injury. Defendant asserts the deputy commissioner erred in finding claimant sustained permanent disability as a result of the work injury and in awarding claimant 20 percent industrial disability. Defendant asserts the deputy commissioner erred in finding claimant is entitled to payment by defendant for the past requested medical expenses itemized in Exhibits 3 through 7.

Claimant asserts 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.

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 August 23, 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.

I affirm the deputy commissioner's finding that claimant carried his burden of proof that the September 15, 2015, work injury caused claimant to sustain a permanent material aggravation of his pre-existing right shoulder condition. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits for the work injury from June 22, 2016, through August 14, 2016. I affirm the deputy commissioner's finding that claimant sustained permanent disability as a result of the work injury and I affirm the deputy commissioner's award of 20 percent industrial disability for the work injury. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendant for the past requested medical expenses itemized in Exhibits 3 through 7. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits under Iowa Code section 86.13. I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement from defendant under rule 876 IAC 4.33 for the cost of Dr. Sullivan's impairment rating report. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendant under rule 876 IAC 4.33 for the cost of Dr. Crite's report. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendant under rule 876 IAC 4.33 for claimant's filing fee and service fee.

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 August 23, 2017, and the ruling on defendant's application for rehearing filed on September 26, 2017, are affirmed in their entirety.

Defendant shall pay claimant healing period benefits from June 22, 2016, through August 14, 2016, at the weekly rate of five hundred sixty-one and 33/100 dollars (\$561.33).

Defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the weekly rate of five hundred sixty-one and 33/100 dollars (\$561.33) commencing on August 15, 2016.

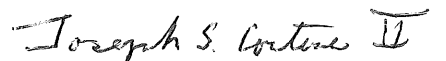
Defendant shall receive a credit for benefits previously paid.

Defendant 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).

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding including the cost of Dr. Crite's report, claimant's filing fee and claimant's service fee, 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 6<sup>th</sup> day of February, 2019.



---

JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies to:

Erik A. Luthens  
Attorney at Law  
1200 Valley West Dr., Ste. 304-01  
West Des Moines, IA 50266-1908  
[erikluthens@luthenslaw.com](mailto:erikluthens@luthenslaw.com)

David L. Jenkins  
Attorney at Law  
801 Grand Ave., Ste. 3700  
Des Moines, IA 50309-2727  
[jenkins.david@bradshawlaw.com](mailto:jenkins.david@bradshawlaw.com)