

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WESLEY LOVE,

Claimant,

vs.

AGRI ZONE d/b/a AGRIZONE, INC.,

Employer,

and

CALIFORNIA INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

JUN 14 2017

WORKERS' COMPENSATION

File No. 5048328

A P P E A L

D E C I S I O N

Head Note Nos: 1703; 1803

Claimant Wesley Love appeals from an arbitration decision filed on January 26, 2016. Defendants Agri Zone, d/b/a Agrizone, Inc., employer, and its insurer, California Insurance Co., cross-appeal. The case was heard on February 12, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 6, 2015.

In the arbitration decision, the deputy commissioner found the stipulated work injury which arose out of and in the course of claimant's employment with defendant-employer on September 12, 2011, caused claimant to sustain 50 percent industrial disability, which entitles claimant to 250 weeks of permanent partial disability (PPD) benefits commencing on May 14, 2014. The deputy commissioner found claimant failed to carry his burden of proof that he is entitled to permanent total disability (PTD) benefits. The deputy commissioner found claimant is entitled to payment of requested out-of-pocket past medical expenses totaling \$275.30 and requested medical mileage expense totaling \$130.48. The deputy commissioner found that pursuant to Iowa Code section 85.34(4), defendants are entitled to a credit in the amount of \$13,477.94 against PPD benefits owed because of an overpayment of temporary total disability (TTD) benefits. The deputy commissioner found claimant is not entitled to penalty benefits for an unreasonable delay or denial of weekly benefits. The deputy commissioner also taxed defendants with claimant's costs of the arbitration proceeding totaling \$3,141.00.

Claimant asserts on appeal that the deputy commissioner erred in failing to award PTD benefits.

Defendants assert on cross-appeal that the deputy commissioner erred in awarding claimant 50 percent industrial disability. Defendants assert the deputy commissioner should have awarded substantially less industrial disability.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 January 26, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's award of 50 percent industrial disability, which entitles claimant to 250 weeks of PPD benefits commencing on May 14, 2014. I affirm the deputy commissioner's finding that claimant is not entitled to PTD benefits. I affirm the deputy commissioner's finding that claimant is entitled to payment of requested out-of-pocket past medical expenses totaling \$275.30 and requested medical mileage expense totaling \$130.48. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(4), defendants are entitled to a credit in the amount of \$13,477.94 against PPD benefits owed because of an overpayment of TTD benefits. I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits for an unreasonable delay or denial of weekly benefits. I also affirm the deputy commissioner's order taxing defendants with claimant's costs of the arbitration proceeding totaling \$3,141.00. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 26, 2016, is affirmed in its entirety.

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing May 14, 2014, at the weekly rate of four hundred fourteen and 91/100 dollars (\$414.91).

Defendants shall receive credit for benefits paid, including a credit in the amount of thirteen thousand four hundred seventy-seven and 94/100 dollars (\$13,477.94) for the overpayment of temporary total disability/healing period benefits to be applied against the permanent partial disability benefits awarded herein.

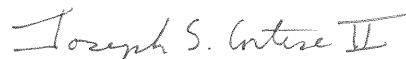
Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall pay claimant's out-of-pocket medical expenses in the amount of two hundred seventy-five and 30/100 dollars (\$275.30) and medical mileage in the amount of one hundred thirty and 48/100 dollars (\$130.48).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$3,141.00, 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 this 14th day of June, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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