

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERRY SANDBERG,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5060861
CROELL REDI-MIX, INC.,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
OLD REPUBLIC INSURANCE	:	
COMPANY,	:	
	:	Head Notes: 1108.50; 1402.40; 1703; 1803;
Insurance Carrier,	:	2600; 2907; 4000; 5-9999
Defendants.	:	

Defendants Croell Redi-Mix, Inc., employer, and its insurer, Old Republic Insurance Company, appeal from an arbitration decision filed on February 21, 2019. Claimant Terry Sandberg responds to the appeal. The case was heard on January 17, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 8, 2019.

The deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability as a result of the stipulated injury which arose out of and in the course of his employment with defendant-employer on December 29, 2014. The deputy commissioner found claimant sustained 25 percent industrial disability as a result of the work injury, which entitles him to receive 125 weeks of permanent partial disability (PPD) benefits commencing on February 16, 2016. The deputy commissioner found that due to an overpayment of temporary total disability benefits, defendants are entitled to a credit of \$1,223.82 against their liability for a subsequent injury.¹ The

¹ In the deputy commissioner's conclusions of law, she found defendants are entitled to a credit of \$1,223.82 against their liability for a subsequent injury, pursuant to Iowa Code section 85.34(4), (5). (Arbitration Dec., p. 10) However, the order on page 12 of the decision states defendants are entitled to a credit of \$1,735.91 "against claimant's permanent partial disability for their overpayment of temporary total disability/healing period benefits." The dollar amount in the order is due to a typographical error, and should be \$1,223.82. With that correction, I find that the order takes precedence over the findings of fact and conclusions of law, and modify the conclusions of law accordingly below.

deputy commissioner found that due to an unreasonable underpayment of weekly benefits, claimant is entitled to receive penalty benefits from defendants in the amount of \$2,000.00. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$511.54.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried his burden of proof to establish he sustained permanent disability as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive any industrial disability benefits for the work injury. In the alternative, defendants assert the award for industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in finding defendants are entitled to a credit in the amount of \$1,223.82 against their possible future liability for a subsequent injury. Defendants assert the deputy commissioner erred in failing to find defendants are entitled to a credit in the amount of \$2,768.67 against their liability for permanent disability resulting from this injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits from defendants. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding in the amount of \$511.54.

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. Pursuant to Iowa Code section 86.24 and 17A.15, those portions of the proposed arbitration decision filed on February 21, 2019 that relate to issues properly raised on intra-agency appeal and cross-appeal are affirmed in part without additional comment and modified in part.

I affirm the deputy commissioner's finding that claimant carried his burden of proof to establish he sustained permanent disability as a result of the December 29, 2014, work injury. I affirm the deputy commissioner's finding that claimant sustained 25 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that due to an unreasonable underpayment of weekly benefits, claimant is entitled to receive penalty benefits from defendants in the amount of \$2,000.00. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$511.54.

I find the deputy commissioner provided a well-reasoned analysis of the issues noted above. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

With respect to the issue of defendants' credit for overpayment of temporary total disability/healing period benefits, the deputy commissioner's conclusions of law pertaining to that issue are modified as follows:

The overpayment of temporary total disability/healing period benefits is controlled by Iowa Code section 85.34(4), which states:

4. *Credits for excess payments.* If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for permanent partial disability under section 85.34, subsection 2, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

Iowa Code section 85.34(4) (2013) (emphasis added).

There is no suggestion in this case that defendants failed to act in good faith with respect to determining and notifying claimant when the benefits were terminated. The penalty award was based on payment of benefits at a rate significantly lower than the stipulated rate, without a reasonable basis to do so. I therefore conclude Iowa Code section 85.34(4) governs defendants' credit for the overpayment of healing period benefits.

Pursuant to Iowa Code section 85.34(4), defendants are entitled to a credit for overpayment of temporary total disability/healing period benefits in the amount of \$1,223.82 against their permanent partial disability liability in this case. See also Ahlgren v. BBU, Inc., File No. 5054860 (App. Dec. May 17, 2019); Reynolds v. HyVee, File No. 5046203 (App. Dec. October 31, 2017); Love v. Agri Zone, File No. 5048328 (App. June 14, 2017); McBride v. Casey's Marketing Co., File No. 5037617 (Remand February 9, 2015).

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 21, 2019, is affirmed in part and modified in part.

Defendants shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the stipulated weekly rate of seven hundred fifteen and 73/100 dollars (\$715.73), commencing on the stipulated commencement date of February 16, 2016.

Defendants are entitled to a credit in the amount of one thousand two hundred twenty-three and 82/100 dollars (\$1,223.82) against claimant's permanent partial disability in this case for their overpayment of temporary total disability/healing period benefits.

Defendants are also entitled to a credit for all benefits previously paid.

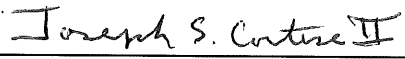
Defendants shall pay accrued weekly benefits, including but not limited to the underpayment of the weekly rate, in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly 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 pay claimant penalty benefits in the amount of two thousand and 00/100 dollars (\$2,000.00).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of five hundred eleven and 54/100 dollars (\$511.54), 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 20th day of February, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Sara Riley Via WCES

James M. Peters Via WCES