BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBORAH HALLADAY,

Claimant,

vs.

MENARDS,

Employer,

and

ZURICH NORTH AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5051327

APPEAL

DECISION

DEBORAH HALLADAY,

Claimant,

vs.

MENARDS,

Employer,

And

PRAETORIAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File Nos. 5051329, 5051330

APPEAL

DECISION

Head Note Nos. 1803, 1108

Defendants Menards, employer, and its insurers, Zurich North American Insurance Company and Praetorian Insurance Company, appeal from an arbitration decision filed on November 16, 2016. The case was heard on December 14, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 19, 2016. The deputy commissioner considered three separate injuries.

In File No. 5051327, the deputy commissioner found claimant sustained 25 percent industrial disability as a result of a cumulative right shoulder injury which arose out of and in the course of her employment with defendant-employer and which

manifested on August 31, 2011. This finding entitled claimant to 125 weeks of permanent partial disability (PPD) benefits at the stipulated weekly rate of $397.41, commencing on March 8, 2013. The deputy commissioner further found defendants were entitled to a credit for 25 weeks of PPD benefits previously paid.

In File No. 5051329, the deputy commissioner found claimant sustained a neck injury arising out of and in the course of her employment with defendant-employer on August 22, 2013, but the deputy commissioner found claimant's injury did not result in any permanent disability.

In File No. 5051330, the deputy commissioner found claimant sustained permanent disability due to a permanent aggravation of a skin allergy. Considering claimant's disability in totality, the deputy commissioner found claimant sustained 60 percent industrial disability. The deputy commissioner found defendants are entitled to a credit in the amount of 125 weeks for claimant's right shoulder disability, with the result that claimant is entitled to an additional 175 weeks of PPD benefits in File No. 5051330 at the stipulated rate of $351.36, commencing on October 28, 2014.

The deputy commissioner also taxed costs to defendants.

In File No. 5051327, defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a shoulder injury which arose out of and in the course of her employment. Defendants alternatively assert that the 25 percent industrial disability awarded by the deputy commissioner was too high. Defendants also seek a credit against weekly benefits owed for their overpayment of $922.48.

There is no appeal in File No. 5051329.

In File No. 5051330, defendants assert on appeal that the deputy commissioner erred in finding claimant sustained an injury which arose out of and in the course of her employment with defendant-employer. In the alternative, defendants assert the aggravation of claimant's pre-existing dermatitis/eczema condition was only temporary in nature, and if permanent, caused very little disability that was limited to her arms and did not extend to her body as a whole. Defendants assert if claimant's dermatitis/eczema condition is deemed to be a permanent whole body injury, defendants assert they are entitled to a credit for the permanent disability sustained by claimant due to her right shoulder injury pursuant to Iowa Code section 85.34(7)(b).

Finally, defendants also assert the deputy commissioner erred in taxing costs against them.

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, pursuant to Iowa Code sections 86.24 and 17A.15, I respectfully disagree with portions of the presiding deputy commissioner's findings,

analysis, and conclusions. Therefore, the arbitration decision is affirmed with additional analysis with respect to File No. 5051327 and modified with respect to File No. 5051330.

In File No. 5051327:

I affirm and adopt as the final agency decision those portions of the proposed arbitration decision, filed on November 16, 2016, which relate to the issues properly raised on intra-agency appeal, with additional analysis as it relates to defendants' claim for credit due to an overpayment in the amount of $922.48 and the taxation of costs against defendants.

I find the deputy commissioner provided a well-reasoned analysis 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 her burden of proof that she sustained a cumulative injury to her right shoulder which arose out of and in the course of her employment with defendant-employer and which manifested on August 31, 2011. I affirm the deputy commissioner's finding that claimant's repetitive work activities substantially contributed to the development of the conditions and permanent disability in her right shoulder. I affirm the deputy commissioner's finding that claimant sustained 25 percent industrial disability as a result of the right shoulder injury. I affirm the deputy commissioner's order that defendants shall be given credit for the 25 weeks of PPD benefits paid prior to the arbitration hearing. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

The deputy commissioner did not specifically address whether defendants were entitled a credit for their overpayment in the amount of $922.48 due to their initial miscalculation of the rate. I find defendants overpaid by $31.06 dollars per week for 25 weeks, totaling $776.50. (Exhibit Y) Pursuant to Iowa Code section 85.34(5), defendants are entitled to a credit for this overpayment against their liability for weekly benefits for a subsequent injury. Thus, I conclude defendants are entitled to a credit in the amount of $776.50 against any future weekly benefits due for a subsequent injury to claimant sustained while still employed by defendant-employer.

While the deputy commissioner awarded costs, he did not specifically address which costs were attributable to File No. 5051327. I find that claimant was generally successful in her claim. Thus, like the deputy commissioner, I exercise my discretion and find an assessment of costs against defendants is appropriate. I find and conclude it is appropriate to assess the cost of the $100.00 filing fee. 876 IAC 4.33(7) However, I find it is not appropriate to assess costs for medical record retrieval, as this is not an allowable cost under rule 4.33. Thus, in total, I find defendants are responsible for claimant's costs in File No. 5051327 in the amount of $100.00.

In File No. 5051330:

FINDINGS OF FACT

On March 5, 2014, claimant reported to defendant-employer that she had a rash on her hands. (Hearing Transcript, page 47) Claimant had been battling the rash intermittently for several years and was first seen by a physician for it on June 25, 2012. (Ex. 9a, p. 57) At the time, the rash was attributed primarily to stress. (Ex. 9a, p. 58) Claimant continued to receive follow-up treatment for the rash in 2012 and 2013, but by December 27, 2013, claimant's hands were dry, bleeding, flaking and cracked. (Ex. 9a, p. 62) After seeing an allergist and a dermatologist on her own, claimant concluded she needed to report the dermatitis as a work injury.

After claimant reported the injury, defendant sent claimant to see Stephen L. Runde, M.D. on March 6, 2014. Dr. Runde diagnosed contact dermatitis (Ex. 9c, p. 89):

> This 59-year-old comes in with a rash on her hands that she has been battling for [sic] least several weeks. She has been to her family doctor, dermatologist, and an allergist [sic] nobody can figure out exactly what is causing the rash. The allergist had her get some special strong over-the-counter her [sic] hand lotion and that seemed to start to work and then she just by coincidence had several days off from work back to back while she was off work [sic] the rash pretty much went away. Then she returned to work a couple of days ago and within a few hours at work she had a [sic] red, raised rashy areas on both hands again, even though she is trying to wear white count [sic] gloves when she is at work at the Menards store where she works . . .

(Ex. 9c, pp. 89-90)

Dr. Runde indicated he would first try to get the rash under control and then determine whether something at the workplace was causing it. (Ex. 9c, p. 90) He noted it was "not clear that the rash initially was linked to the work place, but it definitely flared up this time after she returned to work from several days off." (Ex. 9c, p. 90)

After following up with Dr. Runde through the end of March, claimant was referred by Dr. Runde to a dermatologist, Robert Barry, M.D. Dr. Barry confirmed the diagnosis of eczema. (Ex. 9h, pp. 132-33, 145) Significantly, throughout claimant's course of treatment with Dr. Barry, claimant noticed improvement in her rash during periods when Dr. Barry removed her from work. (Ex. 9h, pp. 141-43)

On June 3, 2014, Dr. Barry provided the following opinion: "It is my professional opinion that she suffers from work related hand eczema as mentioned above, she will not be able to return to her previous job. Whether or not she could tolerate some sort of office work remains to be seen, but is an option for you to explore with her." (Ex. 9h, p. 145) Dr. Barry similarly opined in a later statement that claimant "cannot work at

Menards or in any other job environment where she would be exposed to similar products. This restriction is permanent." (Ex. 4, p. 22)

In his deposition taken on December 7, 2015, Dr. Barry agreed it was more likely than not that claimant's allergic contact dermatitis was permanently flared due to her exposure at Menards. (Ex. 6, p. 36, depo. tr. p. 38) While he acknowledged he could not be "sure" whether claimant's allergy was "permanently lit up," he again confirmed later in the deposition that "more likely than not" claimant's exposure at Menards permanently flared her allergy. (Ex. 6, pp. 38-39, depo. tr. pp. 48-49])

In January 2015, defendants sent claimant for an evaluation with Jay Brown, M.D. (Ex. E) At the time of her appointment, claimant's dermatitis was "largely resolved." (Ex. E, p. 2) Dr. Brown opined as follows: "I do believe that this dermatitis was exacerbated by the work place. I do not believe there is any impairment, currently." (Ex. E, p. 2)

Claimant was also evaluated by Robin Sassman, M.D., for an independent medical examination (IME) at claimant's attorney's request. (Ex. 2) Dr. Sassman concluded claimant sustained a five percent whole body impairment due to her skin disorder. (Ex. 2, p. 17)

The initial question to be decided on appeal is whether claimant sustained an injury that arose out of and in the course of her employment with defendant-employer. Dr. Barry opined that claimant developed "contact eczema which historically were [sic] related to exposure to substances at Menards." (Ex. 4, p. 22) This opinion is supported by the fact that claimant's skin condition continually improved when she was away from work and worsened when she returned. (See Ex. 9h, pp. 141-43) Defendants' own expert, Dr. Brown, agreed, noting claimant's "dermatitis was exacerbated by the work place." (Ex. E, p. 2) Thus, I find claimant sustained an aggravation of her dermatitis/eczema that arose out of and in the course of her employment with defendant-employer. The deputy commissioner's finding that claimant sustained a work-related injury on March 5, 2014, is therefore affirmed.

Having found claimant sustained a work-related aggravation of her dermatitis/eczema, the next issue to be decided is whether that aggravation was temporary or resulted in permanent disability. Like the deputy commissioner, I find the opinion of Dr. Barry to be most persuasive. Dr. Barry opined, more likely than not, that claimant's allergic contact dermatitis was permanently flared due to her exposure at Menards. (Ex. 6, p. 36, depo. tr. p. 38) While Dr. Brown opined that claimant did not sustain any impairment, his opinion appears to be based solely on the condition of her skin at the time of his one-time evaluation of claimant. (Ex. E, p. 2) ("I do not believe there is any impairment, currently." (emphasis added)). Dr. Barry also had the benefit of treating claimant over a several-month span and observing the waxing and waning of claimant's condition as she was taken off of, and returned to, work.

Dr. Barry's opinion was additionally bolstered by the opinion of Dr. Sassman, who assigned a five percent whole body impairment due to claimant's skin condition. Dr. Sassman's rating was based on Table 8-2 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Ex. 2, p. 17) I find claimant's symptoms and presentation are consistent with the criteria for Class 1 impairment in Table 8-2, and I further find Dr. Sassman's five percent rating is within the range allowed for Class 1 impairment due to skin disorders. Guides, p. 178. Based on the opinions of Dr. Barry and Dr. Sassman, I find claimant sustained permanent disability as a result of the aggravation of her dermatitis/eczema. The deputy commissioner's finding that claimant sustained a permanent disability as result of her March 5, 2014, injury is therefore affirmed.

Having found claimant sustained a permanent disability, the next question to be answered is whether that disability is limited to her bilateral arms or extends to the body as a whole. This agency previously found dermatitis to be an unscheduled injury, and that determination was upheld by the Iowa Court of Appeals. See Hennigar v. Second Injury Fund, 797 N.W.2d 621 (Iowa Ct. App. 2011) (table). Thus, I find the permanent aggravation of claimant's dermatitis/eczema is an unscheduled injury compensable under Iowa Code section 85.34(2)(u). The deputy commissioner's finding that claimant sustained industrial disability as a result of her May 5, 2014, injury is therefore affirmed.

Having found claimant sustained a permanent disability to her body as a whole, the next issue to be resolved is the extent of claimant's industrial disability. The deputy commissioner found claimant sustained 60 percent industrial disability as a result of her eczema combined with her right shoulder condition. Defendants argue this finding is excessive in light of the fact that claimant's post-injury earning capacity is nearly identical to her earning capacity at the time of her initial work injury in 2011 and because claimant lacked motivation to find work after her separation from Menards.

Sometime in May 2014, after Dr. Barry told claimant she should avoid anything but office work at Menards, claimant contacted Menards and was told they had no work for her. (Tr., p. 54) Claimant was eventually terminated in October 2014. (Ex. 11)

Claimant did not obtain new employment until May 2015, when she started working part-time at Arby's. (Ex. T) She began working as a cashier and also wiping down tables. (Tr. p. 58) Over time, when she sought more hours, she was asked to do food preparation as well. (Tr. pp. 58-60) Eventually, her eczema flared up, and she returned to Dr. Barry who advised her not to wash her hands as much as she was. (Tr. p. 59; Ex. 9h, pp. 150-51) Claimant ultimately quit her job at Arby's because she felt she was not able to perform the work per company policy. (Tr. p. 60)

However, claimant testified both at her deposition and at hearing that she believes she is still physically capable of returning to work in office settings. More specifically, claimant believes she could return to her former job as a receptionist at a law office and her job at Iowa Title. (Ex. A, p. 14, depo. tr. pp. 53-55; Tr. pp. 69, 71). Importantly, not only does claimant have experience in office settings, but she holds an

associate of applied science degree and an administrative assistant degree. (Ex. T, p. 2) Thus, I find claimant still has the physical capacity to return to the work for which she is fitted.

Defendants' Exhibit S is comprised of letters from several of the employers to whom claimant allegedly submitted applications, but these employers all indicate no application was made by claimant. (Ex. S) While this discrepancy may be due, in part, to claimant equating an informal job inquiry with a formal application, it does raise questions about the tenacity of claimant's job search. Claimant also acknowledged she ended at least two potential job opportunities because she did not want to work nights or drive across town. (Tr. pp. 107-108)

Lana Sellner, M.S., provided a vocational opinion for defendants. Ms. Sellner identified numerous jobs she believes are suitable for claimant, though Ms. Sellner acknowledged at hearing that the fast food industry is not appropriate for claimant given her experience at Arby's. (Ex. M; Tr. pp. 125-26) However, the remaining suitable work included jobs like sales clerk, entry-level office positions, and call center clerk, among others. (Ex. M; Tr. pp. 126-132) Claimant provided no evidence suggesting Ms. Sellner's report, findings, and testimony were not credible. Thus, I find claimant has the skills and physical capacity to find work for which she is suited.

Considering all factors appropriate for industrial disability, I find claimant has sustained 40 percent industrial disability, which equates to 200 weeks of PPD benefits. Thus, the deputy commissioner's finding with respect to claimant's industrial disability is modified.

Having found claimant sustained 40 percent industrial disability, the next issue to be decided is defendants' entitlement to a successive disability credit. Claimant produced no evidence that her earnings at the time of the March 5, 2014 injury were less than her earnings would have been had her right shoulder disability not occurred. Thus, I find defendants are entitled to a credit for claimant's right shoulder disability in the amount of 125 weeks. I find defendants are also entitled to an additional credit in the amount of $776.50 for their overpayment in File No. 5051327.

The final issue to be decided is claimant's entitlement to costs. I find claimant was generally successful in her claim. Thus, I exercise my discretion and I find an assessment of costs against defendants is appropriate. I find it is appropriate to assess the cost of the $100.00 filing fee. 876 IAC 4.33(7). While Dr. Barry did not differentiate between an exam fee and a report fee with respect to the $300.00 claimed by claimant, it does not appear there was a separate examination performed by Dr. Barry prior to issuing his written opinions. In other words, it appears Dr. Barry's written opinions were based on his previous examinations as claimant's authorized treating physician. Thus, I find the $300.00 charge was for Dr. Barry's report itself, making it taxable as a cost. However, I find it is not appropriate to assess costs for medical record retrieval, as this is not an allowable cost under rule 4.33. Thus, in total, I find defendants are responsible for costs in the amount of $400.00.

CONCLUSIONS OF LAW

The initial inquiry in this case is whether claimant sustained an injury that arose out of and in the course of her employment. The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

Based on the findings of fact above, I conclude claimant sustained an aggravation of her dermatitis/eczema which arose out of and in the course of her employment with defendant-employer. All experts, including defendants' expert, Dr. Brown, agree that claimant's skin condition was aggravated by exposures at Menards. Thus, the deputy commissioner's conclusion that claimant sustained a work-related injury on March 5, 2014 is affirmed.

Having concluded claimant sustained a work-related aggravation of her dermatitis/eczema, the next issue to be decided is whether that aggravation was temporary or resulted in permanent disability. The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

Based on the above fact findings, I find claimant sustained permanent disability as a result of the aggravation of her dermatitis/eczema. Dr. Barry credibly opined claimant's allergic contact dermatitis was permanently aggravated, and Dr. Sassman's five percent body as a whole rating was consistent with the Guides. Thus, the deputy commissioner's finding that claimant sustained permanent disability as a result of her March 5, 2014, injury is therefore affirmed.

Having concluded claimant sustained permanent disability, the next determination is whether claimant's disability was limited to the schedule or extended

into the body as a whole. Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u).

Dermatitis is an unscheduled injury compensated under Iowa Code section 85.34(2)(u). See Hennigar v. Second Injury Fund, 797 N.W.2d 621 (Iowa Ct. App. 2011) (table). Thus, I conclude the permanent aggravation of claimant's dermatitis/eczema is an unscheduled injury compensable under Iowa Code section 85.34(2)(u). The deputy commissioner's finding that claimant sustained industrial disability as a result of her May 5, 2014, injury is therefore affirmed.

Having concluded claimant sustained industrial disability, the next issue to be considered is the extent of that disability. Because claimant has an impairment of the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Based on the above findings of fact, I find claimant sustained 40 percent industrial disability. As explained above, claimant's functional impairment, age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, and inability to engage in employment for which the she is fitted were all contemplated when determining her industrial disability. More specifically, while it is acknowledged that claimant lost her job due to the work-related aggravation of her dermatitis/eczema, I found there is work available for which claimant is qualified. Ultimately, while it may be true claimant's dermatitis/eczema may manifest unexpectedly in future employment, no doctor was able to determine exactly what exposure at Menards caused the aggravation of claimant's allergy. Thus, it would be inappropriate at this juncture to speculate as to the ease or difficulty of claimant's future employment endeavors.

Claimant's 40 percent industrial disability entitles her to 200 weeks of PPD benefits. Thus, the deputy commissioner's conclusion that claimant was entitled to 300 weeks of PPD benefits is modified.

Having concluded claimant sustained 40 percent industrial disability, the next issue to be decided is defendants' entitlement to a successive disability credit.

Iowa Code section 85.34(7) governs an employer's liability for overall disability compensation when an employee has successive disabilities that arise out of and in the course of employment with that employer.

When successive disabilities all are compensable under the same paragraph of section 2 of section 85.34, the employer is liable for the combined disability from all injuries as measured in relation to the employee's condition immediately prior to the first injury. Once the assessment is made, the employer's liability for the combined disability is considered partially satisfied to the extent of the percentage of disability for which the employer has previously compensated the employee, unless the employee has demonstrated that the earlier disability or disabilities have caused the employee's earnings with the employer to be less when last injured than those earnings with the employer would have been had the prior injury or injuries not occurred. Iowa Code section 85.34(7)(b)(1)-(2).

Where the employee has demonstrated the employee's current earnings are actually less than those earnings would have been had the prior work injury or injuries and related disability not occurred, the demonstrated percentage of decreased earnings are subtracted from the overall percentage of compensation the employer previously paid the employee because of the earlier disabling injury or injuries. Iowa Code section 85.34(7)(b)(2).

I found claimant sustained 40 percent industrial disability. Claimant has not demonstrated that her pre-existing 25 percent industrial disability from her right shoulder injury caused her earnings to be less at the time of the March 5, 2014, injury than they would have been had the right shoulder injury not occurred. Defendants, therefore, already partially satisfied 25 percent of the overall 40 percent industrial disability that claimant has sustained and are liable only for an additional 15 percent industrial disability. Thus, it is concluded that claimant is entitled to receive 75 additional weeks of PPD benefits for the March 5, 2014, injury.

The final issue to be decided is claimant's entitlement to costs. Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I assess costs in the amount of $400.00 for the $100.00 filing fee and the $300.00 charge for Dr. Barry's report. See 876 IAC 4.33(7); DART v. Young, 867 N.W.2d 839 (Iowa 2015).

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 16, 2016, is affirmed in part and modified in part.

Regarding File No. 5051327, injury date of August 31, 2011:

Defendants shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the weekly rate of three hundred ninety-seven and 41/100 dollars ($397.41) commencing March 8, 2013.

Defendants shall receive a credit for all benefits previously paid.

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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs in the amount of $100.00 for claimant's filing fee, 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.

Regarding File No. 5051330, injury date of March 5, 2014:

Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits at the weekly rate of three hundred fifty-one and 36/100 dollars ($351.36) commencing October 28, 2014.

Defendants shall receive a credit for all benefits previously paid.

Defendant shall receive a credit of $776.50 for overpayment made in File No. 5051327.

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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of $400.00 for claimant's filing fee and for Dr. Barry's report, 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 on this 19th day of July, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
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