

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLARD C. FOX, JR.,

Claimant,

vs.

TRI-CITY ELECTRIC CO.,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5054478

A P P E A L

D E C I S I O N

Head Note Nos: 1802; 1803; 4000;
4100; 5-9998

FILED
MAR - 5 2019
WORKERS' COMPENSATION

Defendants Tri-City Electric Co., employer, and its insurer, Zurich American Insurance Company, appeal from an arbitration decision filed on November 8, 2017. Claimant Willard C. Fox, Jr., cross-appeals. The case was heard on March 1, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 14, 2017.

The deputy commissioner found claimant sustained 35 percent industrial disability as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on June 25, 2015, which entitles claimant to receive 175 weeks of permanent partial disability (PPD) benefits commencing on April 7, 2016. The deputy commissioner found claimant failed to carry his burden of proof that he is permanently and totally disabled under the odd-lot analysis. The deputy commissioner found claimant is entitled to receive healing period benefits from November 6, 2015, through April 6, 2016. The deputy commissioner found claimant is entitled to receive \$9,750.00 in penalty benefits for an unreasonable denial of healing period benefits. The deputy commissioner found claimant is entitled to receive \$795.00 in penalty benefits for an unreasonable underpayment of PPD benefits paid prior to the arbitration hearing. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to receive any healing period benefits. Defendants assert the deputy

commissioner erred in finding claimant is entitled to receive \$9,750.00 in penalty benefits for an unreasonable denial of healing period benefits.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to award greater amounts of penalty benefits for the unreasonable denial of healing period benefits and for the unreasonable underpayment of PPD benefits paid prior to the arbitration hearing.

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 November 8, 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 sustained 35 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he is permanently and totally disabled under the odd-lot analysis. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from November 6, 2015, through April 6, 2016. I affirm the deputy commissioner's finding that claimant is entitled to receive \$9,750.00 in penalty benefits for an unreasonable denial of healing period benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive \$795.00 in penalty benefits for an unreasonable underpayment of PPD benefits paid prior to the arbitration hearing. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 8, 2017, is affirmed in its entirety.

All weekly benefits shall be paid at the stipulated weekly rate of one thousand one hundred twenty six and 97/100 dollars (\$1,126.97).

Defendants shall pay claimant healing period benefits from November 6, 2015, through April 6, 2016.

Defendants shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability benefits commencing on April 7, 2016.

Defendants shall receive a credit for all weekly benefits paid to date. The parties stipulated defendants are entitled to receive a credit for twenty five (25) weeks of benefits paid at the weekly rate of one thousand forty-seven and 16/100 dollars (\$1,047.16).

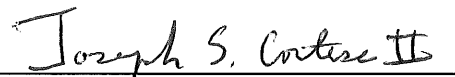
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 pay claimant penalty benefits of nine thousand seven hundred fifty and 00/100 dollars (\$9,750.00) for an unreasonable denial of healing period benefits, plus defendants shall pay claimant penalty benefits of seven hundred ninety five and 00/100 dollars (\$795.00) for an unreasonable underpayment of permanent partial disability benefits paid prior to the arbitration hearing.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, 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 on this 5th day of March, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Stephen D. Lombardi
Katrina M. Phillip
Attorneys at Law
5000 Westown Pkwy., Ste. 440
West Des Moines, IA 50266
sdlombardi@aol.com
katrina.phillip8@gmail.com

Timothy W. Wegman
Attorney at Law
6800 Lake Drive, Suite 125
West Des Moines, IA 50266
tim@peddicord.law