

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT A. ESTES,
Claimant,

vs.

HY-VEE, INC.,
Employer,

and

EMCASCO INSURANCE COMPANY,
Insurance Carrier,
Defendants.

File Nos. 5054548, 5054549

A P P E A L
D E C I S I O N

Head Notes: 1108.50; 1803; 2500; 3001;
3002; 4000.2; 5-9998

FILED
MAY - 7 2019
WORKERS' COMPENSATION

Claimant Robert Estes appeals from an arbitration decision filed on December 29, 2017. Defendants, Hy-Vee, Inc., employer, and its insurer, EMCASCO Insurance Company, respond to the appeal. The case was heard on November 2, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 9, 2016.

In File No. 5054548, the deputy commissioner found claimant proved he sustained scheduled member functional disability of five percent of the right upper extremity, which entitles claimant to receive 12.5 weeks of permanent partial disability benefits commencing on June 22, 2014, as a result of a stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on June 21, 2014. The deputy commissioner found claimant's gross average weekly wage for the June 21, 2014, work injury is \$584.00, and the deputy commissioner found claimant's weekly benefit rate for the injury, classification single with one exemption, is \$363.87. The deputy commissioner found claimant is not entitled to receive penalty benefits for alleged unreasonable delay in the payment of weekly benefits or for alleged unreasonable underpayment of weekly benefits. The deputy commissioner found claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 28. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5054549, the deputy commissioner found claimant failed to carry his burden of proof that he sustained any permanent disability as a result of a stipulated injury which arose out of and in the course of claimant's employment with defendant-

employer on August 5, 2014. The deputy commissioner found claimant's gross average weekly wage for the August 5, 2014, work injury is \$584.00, and the deputy commissioner found claimant's weekly benefit rate for the injury, classification single with one exemption, is \$364.22. The deputy commissioner found claimant is not entitled to receive penalty benefits for alleged unreasonable delay in the payment of weekly benefits or for alleged unreasonable underpayment of weekly benefits. The deputy commissioner found claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 28. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5054548, claimant asserts on appeal that the deputy commissioner erred in finding claimant sustained scheduled member functional disability of five percent of the right upper extremity. Claimant asserts the award for permanent disability should be increased substantially. Claimant asserts the deputy commissioner erred in finding claimant's gross average weekly wage for the June 21, 2014, work injury is \$584.00, and in finding claimant's weekly benefit rate for the injury is \$363.87. Claimant asserts it should be found that his gross average weekly wage and his weekly benefit rate for the June 21, 2014, work injury are substantially higher. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits for an unreasonable delay in the payment of weekly benefits and for an unreasonable underpayment of weekly benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 28. Claimant asserts the deputy commissioner erred in failing to order defendants to pay claimant's costs of the arbitration proceeding.

In File No. 5054549, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to prove he sustained any permanent disability as a result of the August 5, 2014, work injury. Claimant asserts he should be awarded a substantial amount of industrial disability for the work injury. Claimant asserts the deputy commissioner erred in finding claimant's gross average weekly wage for the August 5, 2014, work injury is \$584.00, and in finding claimant's weekly benefit rate for the injury is \$364.22. Claimant asserts it should be found that his gross average weekly wage and his weekly benefit rate for the August 5, 2014, work injury are substantially higher. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits for an unreasonable delay in the payment of weekly benefits and for an unreasonable underpayment of weekly benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 28. Claimant asserts the deputy commissioner erred in failing to order defendants to pay claimant's costs of the arbitration proceeding.

In both files, pursuant to rule 876 IAC 4.36, the deputy commissioner ordered claimant to pay the appearance fee for the court reporter for claimant's failure to appear for the originally scheduled arbitration hearing set for September 8, 2016.

Defendants assert 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 December 29, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding.

In File No. 5054548, I affirm the deputy commissioner's finding that claimant proved he sustained scheduled member functional disability of five percent of the right upper extremity as a result of the June 21, 2014, work injury. I affirm the deputy commissioner's finding that claimant's gross average weekly wage for the June 21, 2014, work injury is \$584.00, and that claimant's weekly benefit rate for the injury is \$363.87. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits for the June 21, 2014, work injury. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 28. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

In File No. 5054549, I affirm the deputy commissioner's finding that claimant failed to prove he sustained any permanent disability as a result of the August 5, 2014, work injury. I affirm the deputy commissioner's finding that claimant's gross average weekly wage for the August 5, 2014, work injury is \$584.00, and that claimant's weekly benefit rate for the injury is \$364.22. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits for the August 5, 2014, work injury. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 28. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

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 December 29, 2017, is affirmed in its entirety.

File No. 5054548 - Date of Injury: June 21, 2014:

Defendants shall pay claimant twelve and one-half (12.5) weeks of permanent partial disability benefits at the weekly rate of three hundred sixty-three and 87/100 dollars (\$363.87) per week commencing June 22, 2014.

Defendants shall receive a credit for all weekly benefits paid to date.

Accrued benefits, if any, shall be paid in a lump sum along with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant 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.

File No. 5054549 - Date of Injury: August 5, 2014:

Defendants are not responsible for any permanent disability benefits.

The correct rate of compensation for all temporary benefits paid to the claimant is three hundred sixty-four and 22/100 dollars (\$364.22) per week. Defendants shall correct all underpayments of temporary disability benefits paid for this injury.

Accrued benefits, if any, shall be paid in a lump sum along with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant 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.

Both Files:

Pursuant to rule 876 IAC 4.36, claimant shall pay the appearance fee for the court reporter for claimant's failure to appear for the originally scheduled arbitration hearing set for September 8, 2016.

Signed and filed on this 7th day of May, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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