

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

CHARLES E. WOOD,

Claimant,

vs.

A-TEC RECYCLING, INC.,

Employer,

and

EMCASCO,

Insurance Carrier,
Defendants.

APR - 6 2018

WORKERS' COMPENSATION

File No. 5049820

A P P E A L

D E C I S I O N

: Head Note Nos: 1803; 2500; 2502; 5-9998

Defendants A-Tec Recycling, Inc., employer, and its insurer, EMCASCO Insurance Co., appeal from an arbitration decision filed on September 13, 2016. Claimant Charles E. Wood cross-appeals. The case was heard on March 1, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 18, 2016.

The deputy commissioner found claimant carried his burden of proof that he sustained permanent disability as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on March 4, 2013. The deputy commissioner found claimant sustained ten percent industrial disability as a result of the work injury, which entitles claimant to receive 50 weeks of permanent partial disability (PPD) benefits commencing on April 9, 2013. The deputy commissioner found claimant is entitled to payment by defendants in the amount of \$2,275.71 for claimant's co-pay for medical treatment received by claimant in a hospital emergency department on April 22, 2014. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement for the cost of the independent medical evaluation (IME) performed by Joel Kline, M.D., on February 23, 2015. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert the deputy commissioner erred in finding claimant carried his burden of proof that he sustained permanent disability as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant sustained ten percent industrial disability as a result of the work injury.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to find claimant sustained substantially more than ten percent industrial disability as a result of the work injury.

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 September 13, 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 finding that claimant carried his burden of proof that he sustained permanent disability as a result of the March 4, 2013, work injury. I affirm the deputy commissioner's finding that claimant sustained ten percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants in the amount of \$2,275.71 for claimant's co-pay for medical treatment received by claimant in a hospital emergency department on April 22, 2014. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement for the cost of Dr. Kline's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be credible. Defendants assert claimant was not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 13, 2016, is affirmed in its entirety.

Defendants shall pay claimant fifty (50) weeks of permanent partial disability benefits commencing April 9, 2013, at the weekly rate of four hundred forty-five and 75/100 dollars (\$445.75).

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

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

Defendants shall pay two thousand two hundred seventy-five and 71/100 dollars (\$2,275.71) for claimant's co-pay for medical treatment received by claimant in a hospital emergency department on April 22, 2014.

Defendants shall reimburse claimant in the amount of two thousand two hundred fifty-six and no/100 dollars (\$2,256.00) for Dr. Kline's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 6th day of April, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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