

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERIC ZALAZNIK,

Claimant,

vs.

JOHN DEERE DUBUQUE WORKS
OF DEERE & COMPANYEmployer,
Self-Insured,
Defendant.

File Nos. 5066386 and 5067224

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1703; 1803; 2501;
2502; 2907

Claimant Eric Zalaznik appeals from an arbitration decision filed on July 21, 2021. Defendant John Deere Dubuque Works of Deere & Company, self-insured employer, responds to the appeal. The case was heard on January 29, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 26, 2021.

In the arbitration decision, the deputy commissioner found claimant sustained 40 percent industrial disability as a result of the stipulated September 5, 2017, work injury (File No. 5066386), and the deputy commissioner found claimant sustained 50 percent industrial disability as a result of the stipulated May 15, 2018, work injury (File No. 5067224). In doing so, the deputy commissioner found the opinions of Mark Taylor, M.D., to be most persuasive. The deputy commissioner applied the apportionment provisions of Iowa Code section 85.34(7) (post-July 1, 2017) and gave defendant credit for workers' compensation benefits paid in relation to work injuries in 2012 and 2013. After credits were applied, the deputy commissioner found claimant is entitled to receive 50 weeks of permanent partial disability (PPD) benefits for the September 5, 2017, injury, and 50 additional weeks of PPD benefits for the May 15, 2018, work injury. The deputy commissioner found claimant is entitled to receive reimbursement for 40 percent of the cost of Dr. Taylor's report.

On appeal, claimant asserts the compensation for both dates of injury should be based only upon his functional impairment for each injury under Iowa Code section 85.34(2)(v) because he returned to work with defendant and continued to receive the same or greater salary, wages, or earnings. Claimant also asserts defendant should not be entitled to a credit for past injuries. In its response on appeal, defendant agrees.

Claimant also asserts he is entitled to reimbursement for more than 40 percent of Dr. Taylor's bill.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I 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, the arbitration decision is reversed in part, modified in part, and affirmed in part.

Iowa Code section 85.34(2)(v), as amended in 2017, provides, in relevant part, as follows:

If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

Both parties agree claimant's earnings increased after his injuries and both parties agree that as a result, claimant's compensation should be limited to his functional impairment for each injury. Given the parties' positions, the deputy commissioner's industrial disability award for the reduction in claimant's earning capacity is respectfully reversed. I find claimant is entitled to PPD benefits based only on his functional impairment for each injury.

For the reasons set out by the deputy commissioner, I find the opinions of Dr. Taylor to be most convincing. Thus, as it relates to the September 5, 2017, injury, I find claimant sustained 19 percent whole body impairment, which entitles claimant to receive 95 weeks of PPD benefits. As it relates to the May 15, 2018, injury, I find claimant sustained 12 percent whole body impairment, which entitles claimant to receive 60 weeks of PPD benefits. The deputy commissioner's award of PPD benefits is therefore modified.

Both parties agree apportionment under the successive disability/apportionment doctrine is not applicable in this matter, so I will not address it in this appeal decision.

I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement of 40 percent of the expenses related to Dr. Taylor's report. I find the deputy commissioner provided a well-reasoned analysis of this issue and I affirm his findings of fact and conclusions of law pertaining to it.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 21, 2021, is reversed in part, modified in part, and affirmed in part.

File No. 5066386 – Injury Date of September 5, 2017:

Defendant shall pay claimant ninety-five (95) weeks of permanent partial disability benefits at the weekly rate of seven hundred twelve and 46/100 dollars (\$712.46) commencing on August 8, 2018.

Defendant shall receive credit for all benefits previously paid.

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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.

File No. 5067224 – Injury Date of May 18, 2018:

Defendant shall pay claimant sixty (60) weeks of permanent partial disability benefits at the weekly rate of seven hundred thirty-nine and 47/100 (\$739.47) commencing on July 29, 2020.

Defendant shall receive credit for all benefits previously paid.

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendant shall pay claimant's requested past medical expenses itemized in Exhibits 4 and 5.

Both Files:

Defendant shall pay claimant two thousand five hundred two and 00/100 dollars (\$2,502.00) in reimbursement for Dr. Taylor's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs as set forth in the arbitration decision, 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 11th day of January, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

Dirk Hamel (via WCES)