

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROXANNA WALKER (f/k/a FIRLICK),

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,

Insurance Carrier,  
Defendants.

**FILED**

**JUL 6 2018**

File No. 5044625 **WORKERS' COMPENSATION**

**A P P E A L**

**D E C I S I O N**

Head Note Nos: 2905; 1804; 4000.2;  
5-9998

Defendants Quaker Oats Company, employer, and its insurer, Indemnity Insurance Company of North America, appeal from a review-reopening decision filed on January 10, 2017. Claimant Roxanna Walker responds to the appeal. The case was heard on August 2, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 9, 2016.

The deputy commissioner found claimant is entitled to review-reopening against defendants in this matter because the deputy commissioner found claimant carried her burden of proof that she sustained a physical change of condition after an agreement for settlement was approved in this matter on August 26, 2014, for injuries which occurred on October 23, 2011, which arose out of and in the course of claimant's employment with defendant-employer. In the agreement for settlement, claimant was awarded 32.5 percent industrial disability, which entitled claimant to 162.5 weeks of permanent partial disability benefits. Based on the finding in the review-reopening decision of a change of physical condition, the deputy commissioner found claimant is now permanently and totally disabled as a result of the work injury, which entitles claimant to receive permanent total disability benefits, commencing on March 1, 2015. The deputy commissioner found the review-reopening is not barred by res judicata and by judicial estoppel. The deputy commissioner found claimant is entitled to penalty benefits in the amount of \$350.00 for an unreasonable underpayment of healing period benefits and temporary partial disability benefits. The deputy commissioner found claimant is entitled to receive reimbursement from defendants for her out-of-pocket medical expenses itemized in Exhibit 8. The deputy commissioner found claimant is entitled to receive reimbursement from defendants for mileage expense itemized in Exhibit 9. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to review-reopening because defendants assert the deputy commissioner erred in finding claimant sustained a physical change of condition after the approval of the agreement for settlement on August 26, 2014. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive permanent total disability benefits. Defendants assert the deputy commissioner erred in failing to find the review-reopening was barred by res judicata and by judicial estoppel. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

Claimant asserts on appeal that the review-reopening 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.

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 review-reopening decision filed on January 10, 2017, 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 review-reopening 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 is entitled to review-reopening against defendant in this matter because I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained a physical change of condition after the August 26, 2014, agreement for settlement. I affirm the deputy commissioner's finding that claimant is now permanently and totally disabled as a result of the work injury, which entitles claimant to receive permanent total disability benefits, commencing on March 1, 2015. I affirm the deputy commissioner's finding that the review-reopening is not barred by res judicata and by judicial estoppel. I affirm the deputy commissioner's finding that claimant is entitled to penalty benefits in the amount of \$350.00 for an unreasonable underpayment of healing period benefits and temporary partial disability benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants for her out-of-pocket medical expenses itemized in Exhibit 8. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants for mileage expense itemized in Exhibit 9. 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.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on January 10, 2017, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits at the weekly rate of eight hundred sixty four and 30/100 dollars (\$864.30) beginning March 1, 2015, and continuing during the period of disability.

Defendants shall be entitled to a credit for all weekly benefits paid to date, and defendants shall also be entitled to the stipulated credit in the amount of eighteen thousand six hundred sixty-one and 24/100 dollars (\$18,661.24) for sick pay/disability benefits as contained in the hearing report.

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 in the amount of three hundred fifty and no/100 dollars (\$350.00).

Defendants shall reimburse claimant for her out-of-pocket medical expenses itemized in Exhibit 8, page 2 and shall pay, reimburse, or otherwise satisfy all remaining medical expenses contained therein.

Defendants shall reimburse claimant for the mileage expense itemized in Exhibit 9.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants 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.

Signed and filed on this 6<sup>th</sup> day of July, 2018.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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