

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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KEVIN BENSON,

Claimant,

vs.

RABINER TREATMENT CENTER,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,  
Defendants.

**FILED**

**MAY 3 2018**

**WORKERS' COMPENSATION**

File No. 5054312

**A P P E A L**

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

Head Note Nos: 1803, 4000.2

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Defendants Rabiner Treatment Center, employer, and its insurer, Zurich American Insurance Co., appeal from an arbitration decision filed on December 19, 2016. Claimant Kevin Benson cross-appeals. The case was heard on August 30, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 3, 2016.

The deputy commissioner found claimant sustained 70 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 February 14, 2014, which entitles claimant to receive 350 weeks of permanent partial disability (PPD) benefits, commencing on February 17, 2015. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$4,200.00 for an unreasonable delay by defendants in paying PPD benefits from February 17, 2015, through January 14, 2016.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 70 percent industrial disability as a result of the work injury. Defendants assert the award for industrial disability should be reduced substantially.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to find claimant is permanently and totally disabled 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 December 19, 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 findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant sustained 70 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$4,200.00 for an unreasonable delay by defendants in paying PPD benefits from February 17, 2015, through January 14, 2016. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 19, 2016, is affirmed in its entirety.

Defendants shall pay three hundred fifty (350) weeks of permanent partial disability benefits at the stipulated weekly rate of one hundred eighty-two and 23/100 dollars (\$182.23) commencing on the stipulated date of February 17, 2015.

Defendants shall be entitled to credit for all weekly benefits paid to date.


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 penalty benefits in the amount of four thousand two hundred and no/100 dollars (\$4,200.00).

Pursuant to rule 876 IAC 4.33, 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 3<sup>rd</sup> day of May, 2018.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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