

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GERARDO LEYVA,

Claimant,

vs.

JBS USA LLC,

Employer,

and

AMERICAN ZURICH INS. CO.,

Insurance Carrier,
Defendants.

FILED

FEB 23 2018

WORKERS' COMPENSATION

File No. 5047991

A P P E A L

D E C I S I O N

Head Note Nos: 1802; 2701; 5-9998

Defendants JBS USA LLC, employer, and its insurer, American Zurich Insurance Company, appeal from an arbitration decision filed on August 10, 2016. Claimant Gerardo Leyva cross-appeals. The case was heard on August 25, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 11, 2015.

The deputy commissioner found claimant sustained injuries to his bilateral hands, wrists, elbows and shoulders as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on May 19, 2014. The deputy commissioner found claimant is not at maximum medical improvement (MMI) for the hands, wrist, elbow and shoulder conditions, and the deputy commissioner found claimant is entitled to a running award of healing period benefits from April 17, 2015, for those conditions. The deputy commissioner found the issue of claimant's permanent disability for the work injuries is not ripe for determination. The deputy commissioner found defendants did not abandon claimant's medical care, so the deputy commissioner found claimant is not entitled to alternate medical care and the deputy commissioner ordered defendants to authorize an orthopedic specialist other than Benjamin Paulson, M.D., to evaluate and treat claimant for the hand, wrist, elbow and shoulder conditions. The deputy commissioner found claimant is entitled to payment by defendants for claimant's medical mileage itemized in Exhibit 11. The deputy commissioner found claimant is not entitled to penalty benefits for an unreasonable delay or denial of weekly benefits. The deputy commissioner found claimant is entitled to receive reimbursement from defendants for the cost of the independent medical evaluation (IME) performed by Farid Manshadi, M.D. on June 30, 2015. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant's injuries extend beyond his bilateral upper extremities into his shoulders. Defendants assert the deputy commissioner erred in failing to find claimant only sustained compensable scheduled member injuries to his bilateral upper extremities and failing to award permanent disability benefits for those scheduled member injuries. Defendants assert the deputy commissioner erred in finding claimant is entitled to a running award of healing period benefits. Defendants assert the deputy commissioner erred in ordering defendants to authorize an orthopedic specialist other than Dr. Paulson to evaluate and treat claimant for the hand, wrist, elbow and shoulder conditions.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding defendants did not abandon claimant's medical care and in finding claimant is not entitled to alternate medical care.

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 August 10, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant sustained injuries to his bilateral hands, wrists, elbows and shoulders as a result of the May 19, 2014, work injury. I affirm the deputy commissioner's finding that claimant is not at MMI for the hand, wrist, elbow and shoulder conditions, and I affirm the deputy commissioner's finding that claimant is entitled to a running award of healing period benefits from April 17, 2015, for those conditions. I affirm the deputy commissioner's finding that defendants did not abandon claimant's medical care and that claimant is not entitled to alternate medical care. I affirm the deputy commissioner's order that defendants authorize an orthopedic specialist other than Dr. Paulson to evaluate and treat claimant for the hand, wrist, elbow and shoulder conditions. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the medical mileage itemized in Exhibit 11. I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants for the cost of Dr. Manshadi'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.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 10, 2016, is affirmed in its entirety.

Defendants shall pay claimant a running award of healing period benefits commencing April 17, 2015, and going forward until such time as benefits may cease pursuant to Iowa Code section 85.34(1), at the stipulated weekly rate of three hundred seventy-two dollars and 78/100 (\$372.78).

Either party may file a new petition for arbitration for the purpose of assessment of permanent partial disability, when appropriate.

Defendants shall be given credit for sixty-five (65) weeks of benefits previously paid at the stipulated weekly rate of three hundred seventy-two dollars and 78/100 (\$372.78).

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

Defendants shall authorize an orthopedic specialist other than Dr. Paulson to evaluate claimant's need for further treatment for his bilateral hands, wrists, elbows and shoulders consistent with this decision. Defendants shall complete this by sending correspondence to claimant's counsel within thirty (30) days from the date of this decision naming the new authorized physician.

Defendants shall reimburse claimant for Dr. Manshadi's IME charge in the amount of one thousand two hundred and no/100 dollars (\$1,200.00).

Defendants shall pay claimant's medical mileage as itemized in Exhibit 11.

Defendants shall pay claimant's wages as agreed at hearing. (Transcript, p. 6)

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 this 23rd day of February, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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