

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD WILSON,

Claimant,

vs.

CRST EXPEDITED, INC.,

Employer,

and

AIG,

Insurance Carrier,
Defendants.

FILED

APR 24 2019

WORKERS' COMPENSATION

File No. 5049369

A P P E A L

D E C I S I O N

Head Note Nos: 1802; 1803; 2500; 4000

Defendants CRST Expedited, Inc., employer, and AIG, insurer, appeal from an arbitration decision filed on November 30, 2017. The case was heard on February 7, 2017, and considered fully submitted on May 19, 2017.

In the arbitration decision, the deputy commissioner found claimant sustained a work-related low back injury on April 29, 2014, but had not yet reached maximum medical improvement (MMI) for that condition. The deputy commissioner also found claimant had not returned to work and was not medically capable of returning to substantially similar employment at the time of the arbitration hearing. As such, the deputy commissioner concluded claimant was entitled to a running award of healing period benefits.

Defendants on appeal argue the deputy erred in his determination that claimant was entitled to a running award of healing period benefits. More specifically, defendants argue claimant's low back injury was a temporary exacerbation that returned to baseline or, in the alternative, that claimant reached MMI for his low back condition. Defendants assert the issue of permanency is ripe for adjudication and that claimant sustained only a moderate industrial disability due to his April 29, 2014, 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.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. 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 November 30, 2017, that relate to the issues properly raised on intra-agency appeal with the following additional analysis regarding defendants' argument that the work-related exacerbation of claimant's pre-existing low back condition has since returned to baseline:

Defendants argue on appeal that after May 2015, claimant did not actively treat for his low back condition for roughly a year and a half, during which time claimant returned to baseline and the direct causal connection to his work injury dissolved. I do not find this argument convincing.

On May 12, 2015, claimant was evaluated by Qualls Stevens, D.O., for persistent neck symptoms and low back pain with radiation into his lower extremities. (Joint Exhibit G, page 7) At that appointment, based on the severity of claimant's neck condition, Dr. Stevens recommended surgical decompression of claimant's neck. (Id.) I agree with the deputy commissioner that Dr. Steven's focus after this point turned toward treating claimant's cervical spine.

Even so, Dr. Stevens continued to note ongoing complaints of back pain in claimant's post-operative follow-up appointments. In claimant's first follow-up appointment after surgery, for example, Dr. Stevens indicated claimant's neck was improving but claimant was still complaining of back pain. (Jt. Ex. G, p. 11) Those complaints continued beyond January of 2016, when Dr. Stevens placed claimant at MMI for his neck condition. (See Jt. Ex. G, pp. 15-24, 29-30) In fact, in December of 2016, just two months before the hearing in this case, Dr. Stevens recommended another round of lumbar epidural steroid injections for claimant's ongoing low back pain. (Jt. Ex. G, pp. 34-35) Dr. Stevens also noted claimant may require lumbar decompression surgery if the injections failed to provide claimant relief. (Jt. Ex. G, p. 35) Thus, although claimant did not receive active medical treatment for his lumbar spine for a period of time after May of 2015, it was not due to an improvement or waning of symptoms as defendants suggest. To the contrary, I agree with the deputy commissioner's finding that claimant's low back complaints were persistent throughout his course of treatment and remained at the time of the hearing. I find Dr. Steven's focus simply shifted to claimant's neck for a period of time after May 2015. I further find claimant's low back symptoms never disappeared or returned to the level they were prior to his work-related injury. (See Hearing Transcript, pp. 53, 86) For those reasons, I reject defendants' argument and instead find that the aggravation or exacerbation of claimant's low back symptoms had not yet returned to baseline at the time of the hearing.

With respect to whether claimant has reached MMI, I affirm the deputy commissioner's finding that the opinions of Dr. Stevens and Robert Remondino, M.D., are more persuasive than the opinions of Charles Mooney, M.D. I affirm the deputy commissioner's finding that Dr. Mooney's opinion regarding MMI is not well explained in his report. I affirm the deputy commissioner's finding that neither Dr. Remondino nor Dr. Stevens have placed claimant at MMI for his low back condition. I affirm the deputy

commissioner's finding that claimant has not yet reached MMI concerning his low back injury in light of his ongoing need for treatment, including potential surgery.

I also affirm the deputy commissioner's finding that claimant had not yet returned to work and was not yet medically capable of returning to substantially similar employment at the time of the arbitration hearing.

For those reasons, I affirm the deputy commissioner's conclusion that claimant is entitled to a running award of healing period benefits. Having affirmed the deputy commissioner in that regard, I affirm the deputy commissioner's finding that the issue of permanency is not yet ripe for determination.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 30, 2017, is affirmed in its entirety with my additional analysis as set forth above.

All weekly benefits shall be paid at the stipulated rate of three hundred ninety-two and 56/100 dollars (\$392.56) per week.

Defendants shall continue to pay claimant running weekly healing period benefits into the future until the first factor set forth in Iowa Code section 85.34(1) is met.

Defendants shall be entitled to a credit for all 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 reimburse claimant for his out-of-pocket medical expenses, if any, set forth in Exhibit 12 and defendants shall pay, reimburse, and or otherwise satisfy all remaining medical expenses contained therein.

Defendants shall pay claimant ten thousand six hundred fifty and no/100 dollars (\$10,650.00) in penalty benefits.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$400.00, 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 24th day of April, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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