

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

IZUDIN DUBINOVIC,	:	
Claimant,	:	
vs.	:	
DES MOINES PUBLIC SCHOOLS,	:	File Nos. 5042677, 5047783
Self-Insured Employer,	:	APPEAL
and	:	DECISION
SECOND INJURY FUND OF IOWA,	:	
Defendants.	:	Head Note Nos: 1108.20, 1802, 1803, 3202

FILED
MAY 25 2017
WORKERS' COMPENSATION

Claimant Izudin Dubinovic appeals from an arbitration decision filed on November 12, 2015, and from a ruling on motions for rehearing filed on December 7, 2015. Defendant Des Moines Public Schools, self-insured employer, and defendant Second Injury Fund of Iowa respond to the appeal. The case was heard on April 20, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 18, 2015.

In File No. 5042677, alleged injury date of November 11, 2011, the deputy commissioner found claimant failed to carry his burden of proof that he sustained a compensable mental-mental injury which arose out of and in the course of his employment with defendant-employer. The deputy commissioner awarded claimant nothing for this claim. The deputy commissioner ordered claimant to pay the costs of the arbitration proceeding in File No. 5042677.

In File No. 5047783, stipulated work-related injury date of December 20, 2012, the deputy commissioner found claimant carried his burden of proof that he is entitled to temporary disability benefits and permanent disability benefits for that injury. The deputy commissioner found claimant's gross average weekly earnings for this injury to be \$652.11, and claimant's weekly benefit rate for this injury, classification married with two exemptions, to be \$443.15. The deputy commissioner awarded claimant healing period benefits commencing December 21, 2012, through March 8, 2013. The deputy commissioner awarded claimant scheduled member functional permanent impairment of eight percent of the right upper extremity, which entitles claimant to 20 weeks of permanent partial disability (PPD) benefits, commencing on March 9, 2013. The deputy commissioner found claimant carried his burden of proof that he sustained a qualifying

first injury to his right lower extremity on April 15, 2011, which entitles claimant to Second Injury Fund (Fund) benefits for the combined effects of that injury and the work injury of December 20, 2012. The deputy commissioner found claimant sustained scheduled member permanent impairment of four percent of the right lower extremity, which is 8.8 weeks of permanent partial disability benefits, for the April 15, 2011, injury. The deputy commissioner found that the combined effect of the two injuries is ten percent industrial disability, which entitles claimant to be paid 20.8 weeks of PPD benefits by the Fund after applying the appropriate credits for the first injury of April 15, 2011, and the December 20, 2012, work injury. The deputy commissioner found claimant failed to carry his burden that he is entitled to receive penalty benefits from defendant-employer for unreasonable delays in the payment of healing period benefits and PPD benefits for the December 20, 2012, work injury. The deputy commissioner found claimant is entitled to payment by defendant-employer of past medical expenses necessitated by the December 20, 2012, injury which were submitted at the arbitration hearing. The deputy commissioner found defendant-employer shall pay the future medical expenses of claimant necessitated by the December 20, 2012, work injury. The deputy commissioner also ordered defendant-employer to pay claimant's costs of the arbitration proceeding in File No. 5047783.

In File No. 5042677, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained a compensable mental-mental injury which arose out of and in the course of his employment with defendant-employer. Claimant asserts the deputy commissioner erred in awarding claimant nothing for this claim. Claimant also asserts the deputy commissioner erred in ordering claimant to pay the costs of the arbitration proceeding in File No. 5042677.

In File No. 5047783, claimant asserts on appeal that the deputy commissioner erred in failing to award penalty benefits to claimant for unreasonable delays by defendant-employer in the payment of healing period benefits and PPD benefits.

Defendants assert on appeal that the arbitration 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 arbitration decision filed on November 12, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a thoughtful, detailed and well-reasoned analysis of all 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.

In File No 5042677, I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained a compensable mental-mental injury which arose out of and in the course of his employment with defendant-employer. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing for this claim. I affirm the deputy commissioner's order that claimant pay the costs of the arbitration proceeding in File No. 5042677.

In File No. 5047783, I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits for unreasonable delays by defendant-employer in the payment of healing period benefits and PPD benefits.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of November 12, 2015, is affirmed in its entirety.

Regarding File No. 5042677, alleged injury date of November 11, 2011, alleged mental-mental injury:

Claimant takes nothing from this file.

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

Regarding File No. 5047783, injury date of December 20, 2011, right upper extremity injury:

Defendant-employer shall pay claimant healing period benefits at the rate of four hundred forty-three and 15/100 dollars (\$443.15) per week from December 21, 2012, to March 8, 2013.

Defendant-employer shall pay claimant 20 weeks of permanent partial disability benefits at the rate of four hundred forty-three and 15/100 dollars (\$443.15) per week commencing March 9, 2013.

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

Defendant-employer shall be given credit for benefits previously paid.

Defendant-employer shall pay claimant's prior medical expenses submitted by claimant at the hearing.

Defendant employer shall pay the future medical expenses of claimant necessitated by the work injury.

Pursuant to rule 876 IAC 3.1(2), defendant-employer shall file subsequent reports of injury as required by this agency.


Pursuant to rule 876 IAC 4.33, defendant-employer shall pay the costs of the arbitration proceeding.

The Second Injury Fund of Iowa shall pay claimant 20.8 weeks of benefits, at the rate of four hundred forty-three and 15/100 (\$443.15) per week, commencing at the expiration of the obligation of defendant-employer to pay permanent partial disability benefits in this file.

Regarding both files:

Claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 25th day of May, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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