

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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CAROLYN BOEDING,

**FILED**

Claimant,

NOV 15 2017

vs.

WORKERS COMPENSATION

HARVEST WILLOW GARDENS  
RETIREMENT RESIDENCE, LLC,

File No. 5062181

Employer,

RULING ON

and

DEFENDANTS' APPLICATION FOR

LIBERTY MUTUAL FIRE  
INSURANCE CO.,

REHEARING AND

CLAIMANT'S RESISTANCE HERETO

Insurance Carrier,  
Defendants.

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An arbitration decision was issued in this matter on October 25, 2017. Defendants filed an application for rehearing on November 1, 2017. Defendants desire the issue of credit to be addressed.

In the application for rehearing, defendants argued:

1. The Deputy issued an arbitration decision on October 25, 2017.
2. In the Decision, the Deputy states an issue for determination is whether Defendants are entitled to a credit for **permanent partial disability benefits** (PPD) paid from March 27, 2016 through April 17, 2016." (Decision, p. 2) Defendants paid benefits during those dates at the rate of \$632.63. (Ex. C)
3. However, the benefits paid during the above time frame were not PPD benefits. The parties stipulated that the commencement date for PPD benefits is December 8, 2016, and that Defendants had paid 21.4 weeks of PPD benefits between the commencement date and hearing.
4. The benefits paid by Defendants from March 27, 2016 to April 17, 2016 were healing period benefits. These payments were excessive, since Claimant had already returned to work by then. The issue at hearing was whether the overpayment of such benefits should be a credit

against the award of PPD benefits. The Deputy's decision does not address this issue.

5. Defendants are entitled to a credit for such payments pursuant to Iowa Code section 85.34(4), which expressly allows a credit for excess payment of healing period benefits "against the liability of the employer for permanent partial disability under section 85.34(2)." Unlike subsection (5), which deals with overpayment of weekly benefits due under Chapter 85, the credit under subsection (4) does *not* apply to a future injury, but instead applies to "the liability of the employer for permanent partial disability." See *Mollett v. W.N. Morehouse Truck Line*, File No. 5048745 (April 13, 2016) (Deputy McGovern ruling Defendants entitled to a credit against PPD benefits for overpayment of healing period benefits under section 85.34(4) (citing *McBride v. Casey's Marketing Co.*, File No. 5037617 (Remand Dec. 2/9/15) (stating "to hold otherwise would render section 85.34(4) utterly meaningless").

Wherefore, Defendants respectfully request the Deputy enter an Order granting Defendants' Application for Rehearing, and concluding that Defendants are entitled to a credit against PPD benefits for healing period benefits paid from March 27, 2016 through April 16, 2016.

On November 8, 2017, claimant filed her resistance. She stated:

1. Defendants rely on the express language of Iowa Code §85.34(4). However that section is not automatic. It allows for credit "provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated."

2. Contrary to Defendants' motion, the credit sought cannot be established by the parties' stipulations.

3. Defendants simply offered no evidence to establish the elements necessary for credit under §85.34(4). There was no evidence from which it could be determined that the employer or the employer's representative had acted in good faith or that they had notified Claimant when the temporary disability benefits were terminated. The party who would suffer a loss if an issue were not established has the burden of proving that issue by a preponderance of evidence. Iowa R. App. P. 6.14(6)(e). Here there is simply insufficient evidence on the record to determine whether Defendants are entitled to the credit they seek in this motion.

Wherefore, Claimant asks that the Application for Rehearing be denied.

It is true credit was listed as an issue on the hearing report. Defendants requested credit for weekly benefits paid from March 27, 2016 through April 17, 2016.

This is a period of three (3) weeks of benefits. The weekly benefits were paid at the rate of \$632.63 per week. The benefits were paid while claimant was working. They should be applied to claimant's due and owing permanent partial disability benefits pursuant to Iowa Code section 85.34(4).

All other portions of the October 25, 2017 Arbitration Decision shall remain the same.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall take credit against due and owing permanent partial disability benefits for weekly benefits paid from March 27, 2016 through April 17, 2016.

All other portions of the October 25, 2017 arbitration decision shall remain the same.

Signed and filed this 15<sup>th</sup> day of November, 2017.



MICHELLE A. MCGOVERN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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