

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LANA KRAMER,

Claimant,

vs.

KRAFT FOODS GROUP, INC.,

Employer,

and

INDEMNITY INSURANCE CO., N.A.,

Insurance Carrier,
Defendants.

File No. 5052150

A P P E A L

D E C I S I O N

Head Note Nos: 1100; 1402.30; 1801.1;
1803; 4000.2; 5-9998

FILED

MAR 16 2018

WORKERS' COMPENSATION

Defendants Kraft Foods Group, Inc., employer, and its insurer, Indemnity Insurance Co., N.A., appeal from an arbitration decision filed on September 30, 2016. Claimant Lana Kramer cross-appeals. The case was heard on June 6, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 8, 2016.

The deputy commissioner found claimant carried her burden of proof that she sustained an injury which arose out of and in the course of her employment with defendant-employer on April 14, 2013. The deputy commissioner found claimant is entitled to receive \$5,524.44 in temporary partial disability (TPD) benefits from May 3, 2013, through December 20, 2013. The deputy commissioner found claimant is entitled to receive \$4,622.53 in TPD benefits from November 7, 2014, through February 27, 2015. The deputy commissioner found claimant is entitled to receive \$7,575.19 in TPD benefits from March 13, 2015, through November 6, 2015. The deputy commissioner found defendants are entitled to receive a credit in the amount of \$11,366.46 for TPD benefits paid prior to the arbitration hearing. The deputy commissioner found claimant sustained 25 percent industrial disability as a result of the work injury, which entitles claimant to receive 125 weeks of permanent partial disability (PPD) benefits commencing on November 21, 2015. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$4,000.00 for unreasonable delays and unreasonable underpayments in paying both TPD and PPD benefits.

Defendants assert the deputy commissioner erred in finding claimant carried her burden of proof that she sustained a work-related injury on April 14, 2013. Defendants assert the deputy commissioner improperly shifted the burden of proof to require defendants to disprove causation and compensability. Defendants assert the deputy commissioner erred in finding claimant sustained 25 percent industrial disability as a result of the alleged injury. Defendants assert the deputy commissioner erred in finding

claimant is entitled to receive penalty benefits for unreasonable delays and unreasonable underpayments by defendants in paying both TPD and PPD benefits.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to award claimant substantially more than 25 percent industrial disability for 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 September 30, 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 carried her burden of proof that she sustained a work-related injury on April 14, 2013. I find the deputy commissioner did not improperly shift the burden of proof regarding causation and compensability as alleged by defendants but, instead, I find the deputy commissioner relied upon competent evidence in the record, which included the opinions of Sherman Jew, D.O. (Exhibit 1, pp. 1-2), Thomas Spragg, M.D. (Ex. 1, pp. 6-7), Stephen Holmes, M.D. (Ex. 1, pp. 12-13), Steven Drake, M.D. (Ex. 1, pp. 20-21), Eric Potthoff, M.D. (Ex. 2, pp 24-29), Darron Jones, M.D. (Ex. 2, pp. 29-34, 41-44; Ex. D. pp.19-20), John D. Kuhnlein, D.O. (Ex. 3, p. 58), and Mark Taylor, M.D. (Ex. 6, p. 75), along with the credible testimony of claimant. (Hearing Transcript, pp. 27-28; Ex. C, p. 8) I affirm the deputy commissioner's finding that claimant is entitled to receive TPD benefits as follows: \$5,524.44 for May 3, 2013, through December 20, 2013, \$4,622.53 for November 7, 2014, through February 27, 2015, and \$7,575.19 for March 13, 2015, through November 6, 2015. I affirm the deputy commissioner's finding that defendants are entitled to receive a credit in the amount \$11,366.46 for TPD benefits paid prior to the arbitration hearing. I affirm the deputy commissioner's finding that claimant sustained 25 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 \$4,000.00 for unreasonable delays and unreasonable underpayments by defendants in paying both TPD and PPD benefits. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. The deputy commissioner found claimant to be credible. Defendants assert claimant was not credible. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding

claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 30, 2016, is affirmed in its entirety.

Defendants shall pay claimant seventeen thousand seven hundred twenty-two and 13/100 dollars (\$17,722.13) in temporary partial disability payments, as analyzed in the arbitration decision and as set out above.

Defendants shall receive a credit in the amount eleven thousand three hundred sixty-six and 46/100 dollars (\$11,366.46) for temporary partial disability benefits previously paid.

Defendants shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits, commencing on November 21, 2015, at the weekly rate of seven hundred seventy-five and 10/100 dollars (\$775.10).

Defendants shall receive a credit for all permanent disability benefits previously paid.

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

Defendants shall pay the claimant a penalty of four thousand and 00/100 dollars (\$4,000.00).

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 16th day of March, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Corey Walker
Attorneys at Law
208 N. 2nd Ave. W
Newton, IA 50208
corey@walklaw.com

Peter J. Thill
Attorney at Law
1900 E. 54th St.
Davenport, IA 52807
pjt@bettylawfirm.com