

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SCOTT EALY,
Claimant,

vs.

WEITZ INDUSTRIAL, LLC,
Employer,

and

ILLINOIS NATIONAL INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

JUL 30 2018

WORKERS' COMPENSATION

File No. 5054511

A P P E A L

D E C I S I O N

Head Note Nos: 1108; 1108.20; 1803; 4100
4000; 1701; 5-9998

Claimant Scott Ealy appeals from an arbitration decision filed on January 25, 2017. Defendants Weitz Industrial, LLC, employer, and its insurer, Illinois National Insurance Company, cross-appeal. The case was heard on September 15, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 13, 2016.

The deputy commissioner found claimant sustained permanent physical and mental injuries as a result of a stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on July 25, 2014. The deputy commissioner found claimant failed to carry his burden of proof that he sustained permanent total disability as alleged under either the traditional industrial disability analysis or under the odd-lot analysis as a result of the work injury. The deputy commissioner found claimant sustained 85 percent industrial disability as a result of the work injury, which entitles claimant to receive 425 weeks of permanent partial disability (PPD) benefits. The deputy commissioner found the correct commencement date for PPD benefits is September 1, 2015. The deputy commissioner found that defendants are entitled to receive a credit against the award for all sick pay/disability/weekly benefits previously paid by defendants after August 31, 2015. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$680.40 for an unreasonable underpayment of weekly benefits from September 29, 2014, through August 22, 2015. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$213.42 for an unreasonable interruption in the payment of weekly benefits from September 7, 2015, through October 20, 2015. The deputy commissioner found claimant is entitled to payment by defendants for

requested past medical, medication, mileage and therapy expenses for claimant's depression caused by the work injury, as itemized in Exhibits 5, 9 and 10. The deputy commissioner found claimant is entitled to receive ongoing care for his depression caused by the work injury. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained permanent total disability as alleged under either the traditional industrial disability analysis or under the odd-lot analysis as a result of the work injury.

Defendants assert on appeal that the deputy commissioner erred in finding that claimant's mental condition is causally related to 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.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and 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 January 25, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant sustained permanent physical and mental injuries as a result of the July 25, 2014, work injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained permanent total disability as alleged under either the traditional industrial disability analysis or under the odd-lot analysis as a result of the work injury. I affirm the deputy commissioner's finding that claimant sustained 85 percent industrial disability as a result of the work injury, which entitles claimant to receive 425 weeks of PPD benefits. I affirm the deputy commissioner's finding that the correct commencement date for PPD benefits is September 1, 2015. I affirm the deputy commissioner's finding that defendants are entitled to receive a credit against the award for all sick pay/disability/weekly benefits previously paid by defendants after August 31, 2015. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$680.40 for an unreasonable underpayment of weekly benefits from September 29, 2014, through August 22, 2015. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$213.42 for an unreasonable interruption in the payment of weekly benefits from September 7, 2015, through October 20, 2015. I affirm the deputy commissioner's finding that claimant is entitled to payment

by defendants for requested past medical, medication, mileage and therapy expenses for claimant's depression caused by the work injury, as itemized in Exhibits 5, 9 and 10. I affirm the deputy commissioner's finding that claimant is entitled to receive ongoing care for his depression caused by the work injury. 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 January 25, 2017, is affirmed in its entirety.

Defendants shall pay claimant four hundred twenty-five (425) weeks of permanent partial disability benefits at the stipulated weekly rate of eight hundred eighty-one and 14/100 dollars (\$881.14) commencing on September 1, 2015.

Defendants shall receive a credit against the award for all sick pay/disability/weekly benefits previously paid by defendants after August 31, 2015.

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 pay claimant penalty benefits in the amount of \$680.40 for an unreasonable underpayment of weekly benefits from September 29, 2014, through August 22, 2015.

Defendants shall pay claimant penalty benefits in the amount of \$213.42 for an unreasonable interruption in the payment of weekly benefits from September 7, 2015, through October 20, 2015.

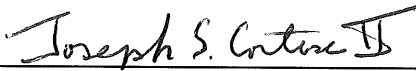
Defendants shall pay and/or reimburse claimant for requested past medical, medication, mileage and therapy expenses for claimant's depression caused by the work injury, as itemized in Exhibits 5, 9 and 10.

Claimant shall receive ongoing care for his depression caused by the work injury.

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 on this 30th day of July, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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