

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT NELSON,

Claimant,

vs.

CITY OF SIOUX CITY,

Employer,
Self-Insured,
Defendant.

File No. 5041068

A P P E A L

D E C I S I O N

Head Note No.: 1803

FILED

JUN 15 2016

WORKERS' COMPENSATION

The City of Sioux City, self-insured defendant, appeals from an arbitration decision filed on December 22, 2014. Claimant Robert Nelson cross-appeals. The case was heard on November 4, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 17, 2014.

The deputy commissioner found claimant carried his burden of proof that he sustained permanent disability as a result of the stipulated work-related injury which occurred on February 17, 2011. The deputy commissioner found defendant failed to prove claimant violated a safety rule as alleged, and the deputy commissioner also found defendant failed to prove that if claimant had violated the safety rule as alleged, that the alleged violation of the safety rule would have rendered claimant's injury not compensable. The deputy commissioner awarded healing period benefits from May 16, 2012, through March 28, 2014, at the stipulated weekly benefit rate of \$541.34. The deputy commissioner awarded claimant 60 percent industrial disability, which entitles claimant to 300 weeks of permanent partial disability benefits at the weekly rate of \$541.34, commencing on March 29, 2014. The deputy commissioner awarded the medical expenses requested by claimant listed in Exhibit 12. The deputy commissioner also awarded claimant's costs. The deputy commissioner found claimant failed to prove entitlement to penalty benefits for unreasonable delay or denial of weekly benefits pursuant to Iowa Code section 86.13. The deputy commissioner also found defendant failed to prove entitlement to a credit against benefits due for the injury in this proceeding for overpayment of benefits in prior workers' compensation cases involving these parties.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant carried his burden of proof that he sustained permanent disability as a result of the stipulated work-related injury of February 17, 2011. Defendant asserts the deputy

commissioner erred in finding defendant failed to prove claimant violated a safety rule as alleged, and defendant also asserts the deputy commissioner erred in finding defendant failed to prove that if claimant had violated the safety rule as alleged, that the alleged violation of the safety rule would have rendered claimant's injury not compensable. Defendant asserts the deputy commissioner erred in awarding healing period benefits from May 16, 2012, through March 28, 2014. Defendant asserts the deputy commissioner erred in awarding 60 percent industrial disability. Defendant asserts the deputy commissioner erred in awarding the medical expenses requested by claimant listed in Exhibit 12. Defendant also asserts the deputy commissioner erred in finding defendant failed to prove entitlement to a credit against benefits due for the injury in this proceeding for overpayment of benefits in prior workers' compensation cases involving these parties.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he is permanently and totally disabled as a result of the work-related injury of February 17, 2011.

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 December 22, 2014, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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. I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained permanent disability as a result of the stipulated work-related injury which occurred on February 17, 2011. I affirm the deputy commissioner's finding that defendant failed to prove claimant violated a safety rule as alleged, and I affirm the deputy commissioner's finding defendant failed to prove that if claimant had violated the safety rule as alleged, that the alleged violation of the safety rule would have rendered claimant's injury not compensable. I affirm the deputy commissioner's award of healing period benefits from May 16, 2012, through March 28, 2014. I affirm the deputy commissioner's award of 60 percent industrial disability, which entitles claimant to 300 weeks of permanent partial disability benefits commencing on March 29, 2014. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he is permanently and totally disabled as a result of the work-related injury of February 17, 2011. I affirm the deputy commissioner's award of the medical expenses requested by claimant listed in Exhibit 12. I affirm the deputy commissioner's finding that defendant failed to prove entitlement

to a credit against benefits due for the injury in this proceeding for overpayment of benefits in prior workers' compensation cases involving these parties. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the presiding deputy were based on the deputy's conclusion that claimant was a credible witness. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of December 22, 2014, is affirmed in its entirety.

Defendant shall pay claimant healing period benefits from May 16, 2012, through March 28, 2014, at the stipulated rate of five-hundred forty-one and 34/100 dollars (\$541.34) per week.

Defendant shall pay to claimant three hundred (300) weeks of permanent partial disability benefits at the stipulated rate of five-hundred forty-one and 34/100 dollars (\$541.34) per week from March 29, 2014.

Defendant shall pay the medical expenses listed in Exhibit 12. Defendant shall reimburse claimant for his out-of-pocket medical expenses in the amount of \$1,507.00 and defendant shall hold claimant harmless from the remainder of those expenses.

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid and accrued weekly benefits awarded herein pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendant shall pay the costs of the arbitration proceeding and the costs of the appeal, including the cost of the hearing transcript.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2), and 876 IAC 11.7.

Signed and filed this 15th day of June, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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