BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DARRYL ELSWICK, Claimant, vs. CITY OF DES MOINES, Employer, Self-Insured, Defendant.	:	File Nos. 5047436, 5047437, 5047438, 5047847 APPEAL DECISION Head Note Nos.: 1100, 1803, 1808

FILED
SEP 13 2017
WORKERS' COMPENSATION

Defendant City of Des Moines, self-insured employer, appeals from an arbitration decision filed on March 10, 2016. Claimant Darryl Elswick cross-appeals. The case was heard on April 21, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 8, 2015.

In File No. 5047437, alleged injury date of June 8, 2012, the deputy commissioner found claimant carried his burden of proof that he sustained a cumulative injury to his left knee, with a manifestation date of June 8, 2012, which arose out of and in the course of his employment with defendant. The deputy commissioner awarded claimant healing period benefits from August 30, 2012, through September 25, 2012, for this injury. The deputy commissioner found claimant failed to carry his burden of proof that the June 8, 2012, injury caused permanent disability. The deputy commissioner found claimant is entitled to payment by defendant for requested past medical expenses for this injury itemized in Exhibit D.

In File No. 5047847, alleged injury date of August 6, 2012, the deputy commissioner found claimant did not sustain a work-related injury on this date and is entitled to receive nothing for this alleged injury. The deputy commissioner found August 6, 2012, is an alleged alternative manifestation date for the same cumulative left knee injury which was found to have manifested on June 8, 2012, in File No. 5047437. Because the deputy commissioner found June 8, 2012, is the correct manifestation date for the injury in question, the deputy commissioner found all issues presented in File No. 5047847 for the alleged August 6, 2012, injury date are moot.

In File No. 5047438, stipulated injury date of October 1, 2012, the deputy commissioner found the injury in question was limited to claimant's left knee and did not include a sequela injury of claimant's right knee. The deputy commissioner found claimant sustained scheduled member permanent disability of seven percent of the left lower extremity as a result of the October 1, 2012, injury, which entitles claimant to 15.4

weeks of permanent partial disability (PPD) benefits commencing on the stipulated date of March 8, 2013.

In File No. 5047436, stipulated injury date of February 6, 2014, the deputy commissioner found claimant sustained permanent injuries of both lower extremities as a result of this injury. The deputy commissioner found the February 6, 2014, injury caused an increase of two percent permanent disability of claimant's left lower extremity for total scheduled member permanent disability of nine percent of claimant's left lower extremity, as rated by Joshua Kimelman, D.O. The deputy commissioner found the February 6, 2014, injury also caused claimant to sustain scheduled member permanent disability of seven percent of the right lower extremity, as rated by Sunil Bansal, M.D. Because the deputy commissioner found claimant sustained scheduled member functional injuries of both lower extremities as a result of the February 6, 2014, work injury, the deputy commissioner found the correct method to compute claimant's compensation for this injury is by using Iowa Code 85.34(2)(s), to determine a percentage of 500 weeks. Pursuant to Iowa Code section 85.34(2)(s), the nine percent left lower extremity rating converts to a four percent whole person impairment. The seven percent right lower extremity rating converts to a three percent whole person impairment. The deputy commissioner found these ratings are combined for a seven percent whole person equivalent rating. Accordingly, the deputy commissioner found claimant is entitled to 35 weeks of PPD benefits commencing on the stipulated date of April 28, 2014, for the February 6, 2014, injury. The deputy commissioner also found defendant is entitled to a credit against this award for the 15.4 weeks of PPD benefits paid to claimant for the seven percent left lower extremity permanent disability in File No. 5047438.

In all four files, the deputy commissioner ordered defendant to pay claimant's requested costs of the arbitration proceeding, which consist of filing fees and service fees for each of the four files.

In File No. 5047436, injury date of February 6, 2014, defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained permanent disability of his right lower extremity for this injury. Defendant asserts the deputy commissioner should have awarded claimant nothing for his right lower extremity in File No. 5047436.

In File No. 5047437, injury date of June 8, 2012, claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that the June 8, 2012, injury caused permanent disability of claimant's left lower extremity. Claimant asserts the deputy commissioner should have awarded claimant some amount of permanent disability of his left lower extremity for the June 8, 2012, injury.

In File No. 5047436, injury date February 6, 2014, claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant's total permanent disability of his left lower extremity is nine percent as rated by Dr. Kimelman for the

February 6, 2014, injury. Claimant asserts the deputy commissioner erred in failing to give greater weight to the 21 percent scheduled member impairment rating for the left lower extremity given by Dr. Bansal for the February 6, 2014, 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 March 10, 2016, 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.

In File No 5047437, I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained a work-related cumulative injury to his left knee, with a manifestation date of June 8, 2012. I affirm the deputy commissioner's finding that claimant is entitled to healing period benefits from August 30, 2012, through September 25, 2012, for this injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that the June 8, 2012, injury caused permanent disability. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendant for requested past medical expenses for this injury itemized in Exhibit D.

In File No. 5047847, alleged injury date of August 6, 2012, I affirm the deputy commissioner's finding that claimant did not sustain a work-related injury on this date and is entitled to receive nothing for this alleged injury. I affirm the deputy commissioner's finding that August 6, 2012, is an alleged alternative manifestation date for the same cumulative left knee injury which was found to have manifested on June 8, 2012, in File No. 5047437. I affirm the deputy commissioner's finding that because June 8, 2012, was the correct manifestation date for the injury in question, all issues presented in File No. 5047847 for the alleged August 6, 2012, injury date are moot.

In File No. 5047438, injury date of October 1, 2012, I affirm the deputy commissioner's finding that this injury was limited to claimant's left knee and did not include a sequela injury of claimant's right knee. I affirm the deputy commissioner's finding that claimant sustained scheduled member permanent disability of seven percent of the left lower extremity as a result of this injury, which entitles claimant to 15.4 weeks of PPD benefits commencing on the stipulated date of March 8, 2013.

In File No. 5047436, injury date of February 6, 2014, I affirm the deputy commissioner's finding that claimant sustained permanent injuries of both lower extremities as a result of this injury. I affirm the deputy commissioner's finding that this injury caused an increase of two percent permanent disability of claimant's left lower extremity for total scheduled member permanent disability of nine percent of claimant's left lower extremity, pursuant to the impairment rating issued by Dr. Kimelman. I affirm the deputy commissioner's finding that the February 6, 2014, injury also caused claimant to sustain scheduled member permanent disability of seven percent of the right lower extremity as rated by Dr. Bansal. I affirm the deputy commissioner's finding that because claimant sustained scheduled member functional injuries of both lower extremities as a result of the February 6, 2014, work injury, the correct method to compute claimant's compensation for this injury is by using Iowa Code 85.34(2)(s), to determine a percentage of 500 weeks. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(2)(s), the nine percent left lower extremity rating converts to a four percent whole person impairment and the seven percent right lower extremity rating converts to a three percent whole person impairment for a combined seven percent whole person equivalent rating, which entitles claimant to 35 weeks of PPD benefits commencing on the stipulated date of April 28, 2014, for the February 6, 2014, injury. I also affirm the deputy commissioner's finding that defendant is entitled to a credit against this award for the 15.4 weeks of PPD benefits paid to claimant for the seven percent left lower extremity permanent disability in File No. 5047438.

In all four files, I affirm the deputy commissioner's order that defendant pay claimant's requested costs of the arbitration proceeding, which consist of filing fees and service fees for each of the four files.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of March 10, 2012, is affirmed in its entirety.

Regarding File No. 5047437, injury date of June 8, 2012, involving claimant's left lower extremity:

Defendant shall pay claimant temporary total disability benefits at the weekly rate of six hundred thirty-five and 05/100 dollars ($635.05) for the period of August 30, 2012, through September 25, 2012.

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

Defendant shall receive a credit for benefits previously paid.

Defendant shall pay claimant's prior medical expenses for this injury as itemized in Exhibit D.

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

Regarding File No. 5047847, alleged injury date of August 6, 2012:

Claimant shall take nothing from these proceedings.

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

Regarding File No. 5047438, injury date of October 1, 2012, involving claimant's left lower extremity:

Defendant shall pay claimant fifteen point four (15.4) weeks of permanent partial disability benefits commencing March 8, 2013, at the weekly rate of six hundred thirty-six and 76/100 dollars ($636.76).

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

Defendant shall receive a credit for benefits previously paid.

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

Regarding File No. 5047436, injury date of February 6, 2014, involving claimant's bilateral lower extremities:

Defendant shall pay claimant thirty five (35) weeks of permanent partial disability benefits commencing April 28, 2014, at the weekly rate of six hundred thirty-nine and 20/100 dollars ($639.20).

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

Defendant shall receive a credit for benefits previously paid.

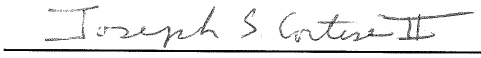
Defendant shall receive a credit for fifteen point four (15.4) weeks of permanent partial disability benefits paid in File No. 5047438.

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

Regarding all four files:

Defendant shall pay claimant's costs of the arbitration proceeding consisting of filing fees and service fees for each of the four files and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 13th day of September, 2017.



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