

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN J. BELL, JR.,

Claimant,

vs.

3E a/k/a ELECTRICAL &  
ENGINEERING CO.,

Employer,

and

TRAVELERS INDEMNITY,

Insurance Carrier,  
Defendants.

**FILED**

**APR 10 2018**

WORKERS' COMPENSATION

File No. 5034021

A P P E A L

D E C I S I O N

Head Note Nos: 2403; 2502; 2701; 4000;  
5-9998

Claimant Steven J. Bell, Jr., appeals from a review-reopening decision filed on September 14, 2016. Defendants 3E, a/k/a Electrical & Engineering Co., employer, and its insurer, Travelers Indemnity, respond to the appeal. The case was heard on April 6, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 16, 2016.

The deputy commissioner found claimant is not entitled to review-reopening in this matter because claimant failed to carry his burden of proof that he sustained a physical change of condition or an economic change of condition following an arbitration decision which was filed in this matter on July 21, 2011, for an injury which occurred on March 19, 2010, which arose out of and in the course of claimant's employment with defendant-employer. In the arbitration decision, which was affirmed by the workers' compensation commissioner, by the Iowa district court, and by the Iowa court of appeals, claimant was awarded five percent industrial disability, which entitled claimant to 25 weeks of permanent partial disability (PPD) benefits, commencing May 24, 2010. Based on the finding of no change of physical or economic condition in the review-reopening decision, the deputy commissioner awarded claimant no additional PPD benefits. The deputy commissioner found claimant is entitled to receive \$76.29 from defendants for unpaid healing period benefits for January 12-30, 2012. The deputy commissioner found claimant is not entitled to an award of penalty benefits. The deputy commissioner found claimant is not entitled to alternate medical care. The deputy commissioner found claimant is entitled to receive \$45.01 from defendants for unpaid medical expenses. The deputy commissioner found that pursuant to Iowa Code section

85.39, claimant is entitled to receive reimbursement from defendants in the amount \$2,525.00 for the cost of the independent medical evaluation (IME) performed by John D. Kuhnlein, D.O. on December 3, 2013. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of the second IME performed by Dr. Kuhnlein on February 16, 2015. The deputy commissioner also ordered defendants to pay claimant's costs of the review-reopening proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant is not entitled to review-reopening in this matter because claimant asserts the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained a physical change of condition and/or an economic change of condition following the July 21, 2011, arbitration decision. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive any additional PPD benefits. Claimant asserts the deputy commissioner erred in failing to award statutory interest on the amount of \$76.29 owed by defendants to claimant for unpaid healing period benefits for January 12-30, 2012. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to an award of penalty benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to alternate medical care. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive reimbursement from defendants for the cost of the second IME performed by Dr. Kuhnlein on February 16, 2015.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on September 14, 2016, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant is not entitled to review-reopening in this matter because I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained either a physical change of condition or an economic change of condition following the July 21, 2011, arbitration decision. I affirm the deputy commissioner's finding that claimant is not entitled to receive any additional PPD benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive \$76.29 from defendants for unpaid healing period benefits for January 12-30, 2012. I affirm the deputy commissioner's finding that claimant is not entitled to an award of penalty benefits. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care. I affirm the deputy commissioner's finding that claimant is entitled to receive \$45.01 from defendants for unpaid medical expenses. I affirm the deputy commissioner's finding that claimant is entitled to receive

reimbursement from defendants in the amount \$2,525.00 for the cost Dr. Kuhnlein's first IME performed on December 3, 2013. I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement from defendants for the cost of the second IME performed by Dr. Kuhnlein on February 16, 2015. I also affirm the deputy commissioner's order that defendants pay claimant's costs of the review-reopening proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I modify the review-reopening decision slightly by finding that claimant is entitled to receive statutory interest on the amount of \$76.29 owed by defendants to claimant for unpaid healing period benefits for January 12-30, 2012.

### ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on September 14, 2015, is modified slightly as follows:

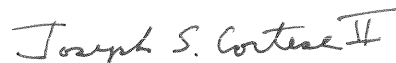
Defendants shall reimburse claimant in the amount of two thousand five hundred twenty-five and no/100 dollars (\$2,525.00) for the cost of the first IME performed by Dr. Kuhnlein on December 3, 2013.

Defendants shall pay seventy-six and 29/100 dollars (\$76.29) in unpaid healing period benefits for January 12-30, 2012. Defendants shall also pay interest on this amount pursuant to Iowa Code section 85.30.

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 10<sup>th</sup> day of April, 2018.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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