

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICHOLAS CHRISTENSEN,

Claimant,

vs.

POTTAWATTAMIE COUNTY,

Employer,

and

IMWCA,

Insurance Carrier,
Defendants.

File No. 5051440

A P P E A L

D E C I S I O N

FILED
AUG 24 2018
WORKERS' COMPENSATION

Head Note Nos: 1108.20; 1403.30; 2204;
2401; 2402; 5-9998

Claimant Nicholas Christensen appeals from an arbitration decision filed on March 23, 2017. Defendants, Pottawattamie County, employer, and its insurer, IMWCA, respond to the appeal. The case was heard on October 11, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 22, 2016.

The deputy commissioner found claimant carried both his medical burden of proof and his legal burden of proof to establish that he sustained a mental-mental injury on August 19, 2012, which arose out of and in the course of his employment with defendant-employer. The deputy commissioner found that under the discovery rule, the manifestation date for claimant's work-related mental-mental injury was November 5, 2012. The deputy commissioner found defendants failed to prove their 90-day notice defense under Iowa Code section 85.23. The deputy commissioner found the two-year statute of limitations contained in Iowa Code section 85.26(1) applies in this matter because no weekly workers' compensation benefits were ever paid to claimant by defendants. The deputy commissioner found defendants proved their two-year statute of limitations defense because claimant was required to file his Petition on or before November 5, 2014, two years from the manifestation date for the work injury, but claimant failed to file his petition until December 1, 2014. The deputy commissioner found that because defendants proved their two-year statute of limitations defense, claimant is therefore time-barred from receiving anything in this matter. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding the two-year statute of limitations applies in this matter to time-bar claimant from receiving

any recovery in this matter because claimant asserts the deputy commissioner failed to recognize that defendant-employer paid claimant his regular salary or wages in lieu of weekly workers' compensation benefits from the date of injury through April 4, 2013, with the result that the three-year statute of limitations applies in this matter and the statute of limitations deadline is actually April 4, 2016. Claimant asserts that because his petition was filed on December 1, 2014, his claim is not time barred under the three-year statute of limitations.

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.

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 March 23, 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 carried both his medical burden of proof and his legal burden of proof to establish that he sustained a work-related mental-mental injury on August 19, 2012, as alleged. I affirm the deputy commissioner's finding that under the discovery rule, the manifestation date for claimant's work-related mental-mental injury was November 5, 2012. I affirm the deputy commissioner's finding that defendants failed to prove their 90-day notice defense under Iowa Code section 85.23. I affirm the deputy commissioner's finding that the two-year statute of limitations contained in Iowa Code section 85.26(1) applies in this matter because no weekly workers' compensation benefits were ever paid to claimant by defendants. I affirm the deputy commissioner's finding that defendants proved their two-year statute of limitations defense because claimant was required to file his Petition on or before November 5, 2014, two years from the manifestation date for the work injury, but claimant failed to file his petition until December 1, 2014. I affirm the deputy commissioner's finding that because defendants proved their two-year statute of limitations defense, claimant is therefore time-barred from receiving anything in this matter. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of those issues.

With regard to claimant's contention that the deputy commissioner erred in finding that the two-year statute of limitations applies in this matter to time-bar claimant

from receiving any recovery in this matter because claimant asserts the deputy commissioner erred in failing to recognize that defendant-employer paid claimant his regular salary or wages in lieu of weekly workers' compensation benefits from the date of injury through April 4, 2013, I provide the following analysis:

There is no documentary proof whatsoever in the record in this matter that defendant-employer actually paid claimant his regular salary or wages from the August 19, 2012, date of injury through April 4, 2013. Claimant's assertion in this regard appears to be entirely baseless. The letter which claimant points to as documentation that he was paid his regular salary or wages from August 19, 2012, through April 4, 2013, (Exhibit 7E) is somewhat confusing in its wording, but the only reasonable interpretation of that letter in light of the full record in this case is that defendant-employer informed claimant he would receive one final check paying him his last remaining accrued vacation benefits, his last accrued holiday pay, his last accrued sick leave benefits, and his last accrued compensatory time, all of which were accrued before claimant went off of work on August 19, 2012. I find the letter cannot possibly be construed to mean that defendant-employer paid claimant any wages or salary between August 19, 2012, and April 4, 2013.

The record does establish that from August 19, 2012, through April 4, 2013, claimant was paid accrued sick time benefits, accrued holiday pay, accrued compensatory time and accrued vacation benefits. (Hearing Transcript, pages 66, 72, 75) Claimant appears to assert that the accrued benefits paid to him from August 19, 2012, through April 4, 2013, should be held to constitute salary in lieu of benefits, or otherwise should cause the three-year statute of limitations to apply. It has been held by this agency that payments of accrued sick time benefits or payments of accrued vacation benefits are not considered salary in lieu of benefits and do not toll the applicable statute of limitations. Dan Copeland, Claimant, No. 1059319, 2002 WL 32125308, at *3 (June 17, 2002) I find the same reasoning and result applies to accrued holiday pay and accrued compensatory time.

Therefore, I find claimant's contention that he received salary in lieu of benefits from August 19, 2012, through April 4, 2013, or that he received any other payments during that time period which would cause the three-year statute of limitations to apply, is entirely without merit. I therefore affirm the deputy commissioner's finding that the two-year statute of limitations applies in this matter. I affirm the deputy commissioner's finding that the two-year statute of limitations deadline for claimant to file his petition in this matter was November 5, 2014. I affirm the deputy commissioner's finding that claimant is time-barred from receiving anything in this matter as defendants proved their two-year statute of limitations defense because claimant did not file his petition until December 1, 2014.

As it was stated by the deputy commissioner in the arbitration decision, I, too, am sympathetic to claimant's plight, but because defendants have proven their two-year statute of limitations defense, claimant's petition must be dismissed without an award of benefits.

ORDER

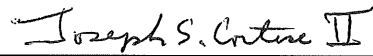
IT IS THEREFORE ORDERED that the arbitration decision filed on March 23, 2017, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay 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 24th day of August, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Robert Laubenthal
Laura L. Pattermann
Thomp J. Pattermann
Attorneys at Law
PO Box 1588
Council Bluffs, IA 51502
rlaubenthal@sgallnerlaw.com
lpattermann@sgallnerlaw.com
tpattermann@sgallnerlaw.com

Ryan M. Clark
Attorney at Law
505 – 5th Ave., Ste. 729
Des Moines, IA 50309-2390
rclark@pattersonfirm.com