

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SAIDE BOTELLO-DESILVA,

Claimant,

vs.

IAC IOWA CITY LLC,

Employer,

and

AMERICAN ZURICH INS. CO.,

Insurance Carrier,  
Defendants.

**FILED**

**JUL 27 2017**

File No. 5047339

**WORKERS' COMPENSATION**

**A P P E A L**

**D E C I S I O N**

Head Note Nos: 1402.40; 1803.1  
2501; 2907; 3001; 5-9998

Claimant Saide Botello-Desilva appeals from an arbitration decision filed on December 18, 2015. Defendants IAC Iowa City LLC, employer, and its insurer, American Zurich Insurance Company, respond to the appeal. The case was heard on September 24, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 16, 2015.

The parties stipulated that claimant sustained an injury on February 14, 2011, which arose out of and in the course of claimant's employment with defendant-employer. The deputy commissioner found claimant failed to carry her burden of proof that the permanent disability resulting from the work injury extended beyond claimant's right lower extremity into claimant's body as a whole. The deputy commissioner awarded claimant scheduled member permanent functional disability of two percent of the right lower extremity, which entitles claimant to 4.4 weeks of permanent partial disability (PPD) benefits commencing on October 9, 2014. The deputy commissioner found claimant reached maximum medical improvement (MMI) for the work injury on October 9, 2014. The deputy commissioner found claimant's gross average weekly earnings for the work injury are \$737.03 and claimant's weekly benefit rate, classification married with three exemptions, is \$496.56. Pursuant to Iowa Code section 86.13, the deputy commissioner found claimant is entitled to penalty benefits in the amount of \$2,500.00 for unreasonable delays by defendants in the payment of weekly benefits. The deputy commissioner found claimant is entitled to payment by defendants of the requested past medical expenses which are set out in the highlighted portions of Exhibit 30. The deputy commissioner ordered defendants to pay certain costs requested by claimant in the arbitration proceeding totaling \$231.91.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that the disability resulting from the work injury extended beyond claimant's right lower extremity into claimant's body as a whole.

Specifically, claimant asserts the deputy commissioner erred in failing to find claimant's permanent disability resulting from the work injury extends beyond claimant's right knee into claimant's right hip, back and neck. Claimant asserts the deputy commissioner erred in failing to award claimant odd-lot permanent total disability, or in the alternative, in failing to award claimant substantial industrial disability in the range of 50 percent to 75 percent.

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, 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 18, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis 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 failed to carry her burden of proof that the permanent disability resulting from the work injury extended beyond claimant's right lower extremity into claimant's body as a whole. I affirm the deputy commissioner's finding that claimant is entitled to scheduled member permanent functional disability of two percent of the right lower extremity, which entitles claimant to 4.4 weeks of PPD benefits commencing on October 9, 2014. I affirm the deputy commissioner's finding that claimant is not entitled to either industrial disability benefits or to odd-lot permanent total disability benefits. I affirm the deputy commissioner's finding that claimant reached MMI for the work injury on October 9, 2014. I affirm the deputy commissioner's finding that claimant's gross average weekly earnings for the work injury are \$737.03 and claimant's weekly benefit rate, classification married with three exemptions, is \$496.56. I affirm the deputy commissioner's finding that claimant is entitled to penalty benefits in the amount of \$2,500.00 for unreasonable delays by defendants in the payment of weekly benefits. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants of the requested past medical expenses which are set out in the highlighted portions of Exhibit 30. I also affirm the deputy commissioner's order that defendants pay certain costs requested by claimant in the arbitration proceeding totaling \$231.91. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are

impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 18, 2015, is affirmed in its entirety.

All weekly benefits shall be paid at the rate of four hundred ninety-six and 56/100 dollars (\$496.56).

Defendants shall pay claimant four point four (4.4) weeks of permanent partial disability benefits commencing on October 9, 2014.

Defendants shall be entitled to a credit for all weekly benefits paid to date.

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

Defendants shall pay penalty benefits in the amount of two thousand five hundred and no/100 dollars (\$2,500.00).

Pursuant to Iowa Code section 85.27, defendants shall pay the past medical benefits set out in the highlighted portions of Exhibit 30.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding totaling two hundred thirty-one and 91/100 dollars (\$231.91), 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 this 27<sup>th</sup> day of July, 2017.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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