

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JERRY HIATT,
Claimant,

vs.

CB RICHARD ELLIS, INC.,
Employer,

and

ZURICH NORTH AMERICAN INS. CO.,
Insurance Carrier,
Defendants.

File No. 5056187

A P P E A L
D E C I S I O N

Head Notes: 1100; 1802; 1803; 2907

FILED
JUN 13 2019
WORKERS' COMPENSATION

Defendants CB Richard Ellis, Inc., employer, and its insurer, Zurich North American Ins. Co., appeal from an arbitration decision filed on December 22, 2017. Claimant Jerry Hiatt cross-appeals. The case was heard on February 17, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 27, 2017.

The deputy commissioner found claimant carried his burden of proof that he sustained an injury that arose out of and in the course of his employment with defendant-employer on November 8, 2013. The deputy commissioner found claimant is entitled to receive healing period benefits for the work injury from October 30, 2014, through February 6, 2015. The deputy commissioner found claimant sustained 50 percent industrial disability as a result of the work injury, which entitles claimant to receive 250 weeks of permanent partial disability (PPD) benefits commencing on February 7, 2015. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$1,012.36. The deputy commissioner also found claimant waived any claim for penalty benefits in this matter because claimant did not list penalty benefits as an issue on the hearing report and because claimant's attorney did not indicate during discussions at the arbitration hearing that entitlement to penalty benefits was being asserted as an issue.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a work-related injury on November 8, 2013. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits and in finding claimant is entitled to receive industrial disability benefits. In the

alternative, defendants assert if it is found on appeal that claimant did sustain a work-related injury on November 8, 2013, the award of industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in taxing as costs to be paid by defendants the \$500.00 charge from J.B. Gill, M.D., for his report dated April 25, 2016, and \$286.67 of the charge for the functional capacity evaluation (FCE) performed by Neal Wachholtz, PT on February 26, 2016.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant waived his claim for penalty benefits.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the proposed arbitration decision filed on December 22, 2017, is affirmed in part and modified in part.

I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained a work-related injury on November 8, 2013. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits for the work injury from October 30, 2014, through February 6, 2015. I affirm the deputy commissioner's finding that claimant sustained 50 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant waived his claim for penalty benefits. I affirm the deputy commissioner's taxation of \$500.00 for Dr. Gill's April 25, 2016, report.

I reverse the deputy commissioner's taxation of \$286.67 for a portion of Mr. Wachholtz's FCE charge because the FCE was not requested by either a treating physician or by an evaluating physician.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 22, 2017, is affirmed in part and it is modified in part.

Defendants shall pay claimant healing period benefits from October 30, 2014, through February 6, 2015, at the weekly rate of six hundred eighty-two and 14/100 dollars (\$682.14).

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing February 7, 2015, at the weekly rate of six hundred eighty-two and 14/100 dollars (\$682.14).

Defendants shall receive a credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of seven hundred twenty-five and 69/100 dollars (\$725.69), 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 this 13th day of June, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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