

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 PHILLIP AHRENS,

Claimant,

vs.

EARWOOD FAMILY PROPERTIES, LLC,

Employer,

and

UNINSURED,

Insurance Carrier,
Defendants.

File No. 5066611

A P P E A L

D E C I S I O N

Head Notes: 4000.2; 5-9999

Defendant Earwood Family Properties appeals from an arbitration decision involving penalty only filed on December 27, 2021. Claimant Phillip Ahrens responds to the appeal. The case was heard on August 10, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the hearing.

In the arbitration decision, the deputy commissioner found defendant did not have a reasonable basis for refusing to pay claimant weekly workers' compensation benefits and ordered defendant to pay claimant 50 percent of the unpaid temporary and permanent benefits owed to claimant.

Defendant asserts on appeal that the deputy commissioner erred in finding defendant did not have a reasonable basis for refusing to pay claimant weekly workers' compensation benefits. Defendant asserts the deputy commissioner erred in awarding claimant penalty benefits.

Claimant asserts on appeal the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration 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 December 27, 2021, which relate to the issues properly raised on intra-agency appeal.

Those portions of the proposed arbitration 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. Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm the arbitration decision filed on December 27, 2021, with the following additional analysis.

This case involves a penalty only arbitration decision following an earlier arbitration decision filed on February 25, 2021. In the February 25, 2021, decision and in the March 17, 2021, ruling on motion for rehearing, the deputy commissioner found claimant was an employee of defendant and not an independent contractor. The deputy commissioner found claimant sustained an injury arising out of and in the course of his employment with defendant. The deputy commissioner found claimant was entitled to receive temporary or healing period benefits from October 31, 2018, through December 6, 2018, at the stipulated weekly rate of \$368.35. The deputy commissioner found claimant sustained permanent impairment as a result of the work injury and awarded claimant 19 weeks of permanent partial disability (PPD) benefits commencing on December 7, 2018, at the stipulated weekly rate of \$368.35. The deputy commissioner ordered defendant to pay claimant's medical expenses set forth in Exhibit 2 and to pay claimant's costs. The deputy commissioner granted claimant's motion to amend to add a penalty claim that was bifurcated for a later hearing, which is the subject of this appeal.

Defendant appealed the February 25, 2021, arbitration decision and the March 17, 2021, ruling on motion for rehearing, to the workers' compensation commissioner. The commissioner issued an appeal decision on August 31, 2021, affirming in part, and modifying, in part, the decision. The commissioner affirmed the deputy commissioner's finding claimant was an employee of defendant and not an independent contractor. The commissioner affirmed the deputy commissioner's finding that claimant was entitled to temporary benefits from October 31, 2018, through December 6, 2018, at the stipulated weekly rate of \$368.35. The Commissioner affirmed the deputy commissioner's finding that claimant sustained permanent disability as result of the work injury, but modified the award of PPD benefits, finding claimant was entitled to 16 weeks of PPD benefits from December 7, 2018, at the stipulated weekly rate of \$368.35. The commissioner affirmed the deputy commissioner's finding that defendant should pay claimant's medical expenses set forth in Exhibit 2 and pay claimant's costs. The commissioner affirmed the deputy commissioner's decision to grant claimant's motion to amend to add a penalty claim. The appeal decision became final agency action.

In the December 27, 2021, arbitration decision, the deputy commissioner found defendant did not have a reasonable basis for refusing to pay claimant weekly workers' compensation benefits. The deputy commissioner ordered defendant to pay claimant

50 percent of the unpaid temporary and permanent benefits. The decision does not state the specific amount of the penalty award.

In the August 31, 2021, appeal decision, the commissioner found claimant was entitled to temporary benefits from October 31, 2018, through December 6, 2018, at the stipulated weekly rate of \$368.35, which totals \$2,210.10. In the appeal decision the commissioner awarded claimant 16 weeks of permanent partial disability benefits from December 7, 2018, at the stipulated weekly rate of \$368.35, which totals \$5,893.60. I affirm the deputy commissioner's finding that defendant did not have a reasonable basis for refusing to pay claimant weekly workers' compensation benefits. I affirm the deputy commissioner's order for defendant to pay claimant 50 percent of the unpaid temporary and permanent benefits owed to claimant. I find the unpaid benefits total \$8,103.70. Therefore, defendant shall pay claimant \$4,051.85 in penalty benefits.

ORDER

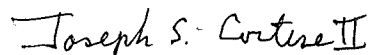
IT IS THEREFORE ORDERED that the arbitration decision filed on December 27, 2021, is affirmed with the above-stated additional analysis.

Defendant shall pay claimant four thousand fifty-one and 85/100 dollars (\$4,051.85) in penalty benefits.

Pursuant to rule 876 IAC 4.33, defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 14th day of June, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Michelle Schneiderheinze (via WCES)

Michael Galvin (via WCES)

Paul Powers (via WCES)

Lori Scardina Utsinger (via WCES)