

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBRA HOPPE,

Claimant,

vs.

MENARD, INC.,

Employer,

and

XL INSURANCE AMERICA, INC.,

Insurance Carrier,  
Defendants.

File No. 1634100.01

A P P E A L

D E C I S I O N

: Headnotes: 1402.40; 1801; 1803; 2907; 3001;  
: 3002; 4000.2; 5-9998

Claimant Debra Hoppe appeals from an arbitration decision filed on February 4, 2022. Defendants Menard, Inc., employer, and its insurer, XL Insurance America, Inc., respond to the appeal. The case was heard on September 3, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 12, 2021.

In the arbitration decision, the deputy commissioner found the commencement date for permanent partial disability (PPD) benefits following claimant's left knee partial meniscectomy surgery is September 5, 2017. The deputy commissioner found defendants owe claimant 4.4 weeks of PPD benefits commencing on September 5, 2017, for the partial meniscectomy surgery. The deputy commissioner found the commencement date for PPD benefits following claimant's left total knee replacement surgery is October 11, 2019. The deputy commissioner found defendants owe claimant 105.6 weeks of PPD benefits commencing on October 11, 2019, for the total knee replacement surgery. The deputy commissioner found the correct weekly benefit rate for claimant's temporary disability benefits is \$179.37. The deputy commissioner found claimant is entitled to receive penalty benefits from defendants in the total amount of \$2,477.84 for unreasonable delays in the payment of weekly benefits and for an unreasonable underpayment of weekly benefits. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding the commencement date for the PPD benefits related to claimant's left total knee replacement surgery is October 11, 2019. Claimant asserts it should be found on appeal that the PPD benefits for the knee replacement surgery began to accrue immediately upon completion of the accrual of the 4.4 weeks owed for the partial meniscectomy surgery, which means it should be found that the 105.6 weeks of PPD benefits owed for the total knee replacement surgery, which took place on October 12, 2018, began to accrue on October 5, 2017, more than a year before the knee replacement surgery actually took place. Claimant asserts it should be found that the deputy commissioner erred in finding claimant's weekly benefit rate for temporary disability benefits is \$179.37. Claimant asserts it should be found that the correct weekly benefit rate for claimant's temporary disability benefits is \$213.78. Claimant asserts it should be found that the deputy commissioner erred in finding claimant is entitled to receive a total of \$2,477.84 in penalty benefits. Claimant asserts the award for penalty benefits should be increased to \$13,701.29.

Defendants assert on appeal that 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 February 4, 2022, 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 the commencement date for PPD benefits following claimant's left total knee replacement surgery is October 11, 2019. I affirm the deputy commissioner's finding that defendants owe claimant 105.6 weeks of PPD benefits commencing on October 11, 2019, for the total knee replacement surgery. I affirm the deputy commissioner's finding that the correct weekly benefit rate for claimant's temporary disability benefits is \$179.37. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits from defendants in the total amount of \$2,477.84 for unreasonable delays in the payment of weekly benefits and for an unreasonable underpayment of weekly benefits. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues.

### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 4, 2022, is affirmed in its entirety

Claimant's weekly benefit rate in this matter for temporary disability benefits is one hundred seventy-nine and 37/100 dollars (\$179.37) per week.

Claimant's weekly benefit rate in this matter for permanent disability benefits is two hundred thirteen and 78/100 dollars (\$213.78).

Defendants shall pay claimant four point four (4.4) weeks of permanent partial disability benefits commencing on September 5, 2017, at the weekly benefit rate of two hundred thirteen and 78/100 dollars (\$213.78) for the left knee meniscectomy.

That defendants shall pay claimant one hundred five point six (105.6) weeks of permanent partial disability benefits commencing on October 11, 2019, at the weekly benefit rate of two hundred thirteen and 78/100 dollars (\$213.78) for the left total knee replacement.

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)

Defendants shall pay claimant the following amounts for penalty:

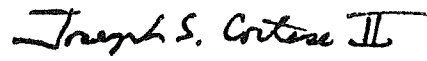
1. \$1550.30 for the delay in payment of temporary benefits;
2. \$355.14 for the delay in payment of temporary partial disability benefits;
3. \$534.45 for the delay in payment of permanent partial disability benefits;
4. \$37.95 for the underpayment of permanent partial disability benefits.

This results in a total penalty of \$2477.84 (\$1550.30 + \$355.14 + \$534.45 + \$37.95).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's 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 9<sup>th</sup> day of June, 2022.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Benjamin Roth (via WCES)

Kent Smith (via WCES)