

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEN ROBERTSON,  
Claimant,

vs.

FAIRFIELD CASTINGS, LLC,  
Employer,

and

RIVERPORT INSURANCE COMPANY,  
Insurance Carrier,  
Defendants.

File No. 5056541

A P P E A L

D E C I S I O N

Head Notes: 1108.50; 1402.40; 1803.1;  
1804; 2501; 3001; 4000.2;  
4100

**FILED**

**FEB 15 2019**

WORKERS' COMPENSATION

Defendants Fairfield Castings, LLC, employer, and its insurer, Riverport Insurance Company, appeal from an arbitration decision filed on November 8, 2017. Claimant Ken Robertson responds to the appeal. The case was heard on May 9, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 6, 2017.

The deputy commissioner found claimant carried his burden of proof that the stipulated injury which arose out of and in the course of his employment with defendant-employer on August 5, 2014, caused claimant to sustain permanent injuries to his left lower extremity and his lumbar spine. The deputy commissioner found claimant sustained permanent total disability from the work injury under both the traditional industrial disability analysis and under the odd-loss analysis. The deputy commissioner found the proper commencement date for permanent total disability benefits is April 6, 2016. The deputy commissioner found claimant's gross average weekly earnings for the work injury were \$847.32, and the correct weekly benefit rate for the injury is \$526.46. The deputy commissioner found claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 6. The deputy commissioner found claimant is entitled to receive \$150.00 in penalty benefits for an unreasonable underpayment of weekly benefits by defendants.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried his burden of proof that the work injury caused claimant to sustain

permanent injuries to his lumbar spine. Defendants assert it should be found on appeal that claimant's permanent disability caused by the work injury is confined to claimant's left lower extremity and defendants assert it should be found claimant is entitled to receive only scheduled member functional disability benefits for his left lower extremity injury. Defendants assert the deputy commissioner erred in finding claimant sustained permanent total disability from the work injury under either the traditional industrial disability analysis or under the odd-loss analysis. Defendants assert that if it is found on appeal that the work injury did cause claimant to sustain permanent disability to his body as a whole, the award for industrial disability should be reduced substantially.

Claimant asserts 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 November 8, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 carried his burden of proof that the August 5, 2014, work injury caused claimant to sustain permanent injuries to both his left lower extremity and his lumbar spine. I affirm the deputy commissioner's finding that claimant sustained permanent total disability from the work injury under both the traditional industrial disability analysis and under the odd-loss analysis. I affirm the deputy commissioner's finding that the proper commencement date for permanent total disability benefits is April 6, 2016. I affirm the deputy commissioner's finding that claimant's gross average weekly earnings for the work injury were \$847.32, and the correct weekly benefit rate for the injury is \$526.46. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibit 6. I affirm the deputy commissioner's finding that claimant is entitled to receive \$150.00 in penalty benefits for an unreasonable underpayment of weekly benefits by defendants. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 8, 2017, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits at the weekly rate of five hundred twenty-six and 46/100 dollars (\$526.46), commencing on April 6, 2016, and continuing through the date of the arbitration hearing and into the future so long as claimant shall remain totally disabled.

Defendants shall receive a credit for all benefits paid to date.

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 be responsible for the requested past medical expenses itemized in Exhibit 6.

Defendants shall pay claimant a penalty in the amount of one hundred fifty and no/100 dollars (\$150.00).

Pursuant to rule 876 IAC 4.33, defendants 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 15<sup>th</sup> day of February, 2019.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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