

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GERALD ANDERSON,

Claimant,

vs.

MARTING MFG OF IOWA, INC.,

Employer,

and

TWIN CITY FIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

Head Note Nos: 1100; 1108; 1802; 2401

FILED

MAY 24 2018

File No. 5051117 **WORKERS' COMPENSATION**

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

Defendants Marting Mfg of Iowa, Inc., employer, and its insurer, Twin City Fire Insurance Co., appeal from an arbitration decision filed on December 16, 2016. Claimant Gerald Anderson responds to the appeal. The case was heard on August 28, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 28, 2015.

The deputy commissioner found claimant carried his burden of proof that he sustained a cumulative injury which arose out of and in the course of his employment with defendant-employer. The deputy commissioner found the manifestation date for the work injury was November 22, 2013. The deputy commissioner found defendants failed to prove their Iowa Code section 85.23 90-day notice defense because the deputy commissioner found claimant gave defendants notice of the work injury on February 19, 2014. The deputy commissioner found claimant is entitled to receive healing period benefits from December 9, 2013, through January 21, 2014, from January 29, 2014, through September 2, 2014, and from the scheduled surgery date of August 31, 2015, until the healing period for that surgery ends. The deputy commissioner found defendants are responsible for payment of the medical expenses itemized in Exhibits 16 and 23. The deputy commissioner found claimant is entitled to reimbursement from defendants pursuant to Iowa Code section 85.39 for the cost of the independent medical evaluation (IME) performed by John Kuhnlein, D.O., on June 29, 2015. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried his burden of proof that he sustained a work-related cumulative injury. Defendants assert the deputy commissioner erred in finding the manifestation date for

the work injury was November 22, 2013. Defendants assert the deputy commissioner erred in finding defendants failed to prove their Iowa Code section 85.23 90-day notice defense. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits. Defendants assert the deputy commissioner erred in finding defendants are responsible for payment of the medical expenses itemized in Exhibits 16 and 23.

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.

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 16, 2016, which relate to the issues properly raised on intra-agency appeal.

I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained a work-related cumulative injury. I affirm the deputy commissioner's finding that the manifestation date for the work injury was November 22, 2013. I affirm the deputy commissioner's finding that defendants failed to prove their Iowa Code section 85.23 90-day notice defense because the deputy commissioner found claimant gave defendants notice of the work injury on February 19, 2014. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from December 9, 2013, through January 21, 2014, from January 29, 2014, through September 2, 2014, and from the scheduled surgery date of August 31, 2015, until the healing period for that surgery ends. I affirm the deputy commissioner's finding that defendants are responsible for payment of the medical expenses itemized in Exhibits 16 and 23. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants pursuant to Iowa Code section 85.39 for the cost of Dr. Kuhnlein's IME. 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 those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 16, 2016, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits at the stipulated weekly rate of three hundred eighty-six and 86/100 dollars (\$386.86) per week commencing on December 9, 2013, through January 21, 2014, and from January 29, 2014, to September 2, 2014.

Claimant was scheduled for surgery on August 31, 2015. If claimant had surgery as planned, defendants are liable for healing period benefits from the date of surgery until the healing period for that surgery ends.

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 are responsible for the medical expenses itemized in Exhibits 16 and 23.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant for the cost of Dr. Kuhnlein's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding and 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 24th day of May, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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