

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RUKHSANA DRAHOZAL,

Claimant,

vs.

AMERICAN AIRLINES, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5056606

REMAND DECISION

Head Note No: 4000.2

STATEMENT OF THE CASE

This matter is before the workers' compensation commissioner on remand from the Iowa Court of Appeals.

This matter was initially heard on August 14, 2017. An arbitration decision was filed on December 21, 2017. The arbitration decision found, in part, claimant sustained 80 percent industrial disability, or a loss of earning capacity, as a result of the January 4, 2015, work injury. The decision also found defendants are liable for penalty benefits for delayed payments of claimant's weekly benefits. The arbitration decision found claimant is entitled to receive an award of \$3,611.00 in penalty benefits. (Arbitration Decision, p. 20)

In a September 12, 2018, decision, the undersigned affirmed and adopted the arbitration decision in its entirety.

Claimant filed a petition for judicial review. Defendants, American Airlines, employer, and New Hampshire Insurance Company, insurer, filed a cross-appeal. In a December 9, 2019, ruling on the petition for judicial review, the District Court found substantial evidence supported the Commissioner's decision and affirmed on all issues. Claimant appealed and defendants cross-appealed.

In an April 28, 2021, decision, the Iowa Court of Appeals found claimant failed to carry her burden of proof that five weekly benefit checks were issued untimely. Based

on that finding, the Court of Appeals found that penalty benefits were not appropriate on the five payments. The case was remanded to the District Court with orders to remand the case to the Agency to amend the penalty award consistent with the Court of Appeals opinion.

ISSUE

What is the correct penalty that should be assessed against defendants?

FINDINGS OF FACT

Claimant sought penalties for weekly payments allegedly issued late on February 6, 2015, March 2, 2015, April 27, 2015, June 22, 2015, February 2, 2016, February 17, 2016, February 22, 2016, March 15, 2016, and a lump sum payment on March 31, 2016. (Ex. 8) In the arbitration decision the deputy commissioner assessed a penalty for late payments. The late payments totaled \$7,223.48. (Ex. 8) The arbitration decision awarded a 50 percent penalty for the alleged delayed payments. The total penalty assessed was \$3,611.00. (Arbitration Decision, p. 20)

CONCLUSION OF LAW

The only issue to be determined in this remand decision is the proper penalty amount to be assessed based on the Iowa Court of Appeals' opinion.

The Iowa Court of Appeals found claimant failed to carry her burden of proof that five of the alleged late payments, issued on March 2, 2015, March 15, 2015, April 27, 2015, June 22, 2015, and February 22, 2016, were paid untimely. Drahozal v. Envoy Air d/b/a American Airlines Group and New Hampshire Insurance Company, file number 20-0027, slip op. at 15, filed on April 28, 2021 (Iowa Court of Appeals)

The court reduced the penalty award by \$820.85, and affirmed a penalty of \$2,790.15. Drahozol, slip op. at 17.

ORDER

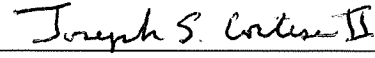
THEREFORE IT IS ORDERED:

Defendants shall pay claimant a penalty of two thousand seven hundred ninety and 15/100 dollars (\$2,790.15).

Defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

The appeal decision remains the same in all other respects.

Signed and filed on this 22nd day of September, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

Laura Schultes (via WCES)

Jean Zetta Dickson (via WCES)