

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD W. BOOTS,

Claimant,

vs.

MENARD, INC.,

Employer,

and

PRAETORIAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

MAY - 2 2017

WORKERS' COMPENSATION

File No. 5047709

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 1803; 1804:
2501

Defendants Menard, Inc., employer, and its insurer, Praetorian Insurance Company, appeal from an arbitration decision filed on October 26, 2015. Claimant Richard W. Boots cross-appeals. The case was heard on August 4, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 4, 2015.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof that the stipulated work injury which arose out of and in the course of claimant's employment with defendant- employer on February 19, 2014, caused claimant to sustain a permanent aggravation of a pre-existing right shoulder condition. The deputy commissioner found claimant sustained 70 percent industrial disability resulting from the work injury. The award entitles claimant to 350 weeks of permanent partial disability (PPD) benefits commencing on April 28, 2015. The deputy commissioner found claimant failed to carry his burden of proof he is entitled to permanent total disability benefits. The deputy commissioner also found defendants are not entitled to an apportionment in this matter. The deputy commissioner ordered defendants to pay unpaid medical expenses itemized by claimant in Exhibit 6, along with unpaid medical mileage totaling \$1,511.50 itemized by claimant in Exhibit 7. 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 the work injury of February 19, 2014, caused a

permanent aggravation of claimant's pre-existing right shoulder condition. Defendants assert the deputy commissioner erred in awarding claimant 70 percent industrial disability. Defendants assert the deputy commissioner erred in ordering defendants to pay unpaid medical expenses itemized in Exhibit 6, and in ordering defendants to pay unpaid medical mileage itemized in Exhibit 7. Defendants also assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof he is entitled to permanent total disability benefits.

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 October 26, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis 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 work injury caused claimant to sustain a permanent aggravation of his pre-existing right shoulder condition. I affirm the deputy commissioner's award of 70 percent industrial disability for the work injury, which entitles claimant to 350 weeks of PPD benefits commencing on April 28, 2015. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof he is entitled to permanent total disability benefits. I affirm the deputy commissioner's finding that defendants are not entitled to an apportionment in this matter. I affirm the deputy commissioner's order that defendants shall pay unpaid medical expenses itemized in Exhibit 6, and defendants shall pay unpaid medical mileage itemized in Exhibit 7. I also 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 of October 26, 2015, is affirmed in its entirety.

Defendants shall pay claimant three hundred fifty (350) weeks of permanent partial disability benefits at the rate of two hundred thirty-four and 92/100 dollars (\$234.92) per week commencing on April 28, 2015.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.


Defendants shall receive a credit for benefits previously paid.

Defendants shall pay medical charges itemized in Exhibit 6, and defendants shall pay medical mileage itemized in Exhibit 7.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and the parties shall split 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 this 2nd day of May, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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