

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GLEN NAYLOR,

Claimant,

vs.

FAGEN, INC.,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

MAR 28 2017

WORKERS' COMPENSATION

File No. 5049149

A P P E A L

D E C I S I O N

Head Note No.: 3001

Defendants Fagen, Inc., employer, and its insurer, Zurich American Insurance Co., appeal from an arbitration decision filed on November 9, 2015. Claimant Glen Naylor cross-appeals. The case was heard on September 25, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 13, 2015.

In the arbitration decision, the deputy commissioner found claimant's gross weekly earnings to be \$2,245.30 for the purpose of determining claimant's weekly benefit rate for the stipulated work-related injury which occurred on August 12, 2014. Using gross weekly earnings of \$2,245.30, and considering claimant's classification of married with three exemptions, the deputy commissioner found claimant's correct weekly benefit rate for the work injury to be \$1,307.26. The deputy commissioner also found that pursuant to Internal Revenue Service (IRS) regulations, defendants correctly withheld payment of 28 percent of the charge for the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D. The deputy commissioner also found claimant is not entitled to penalty benefits for an unreasonable delay or denial of weekly benefits pursuant to Iowa Code section 86.13 as a result of paying an incorrect weekly rate of compensation.

Defendants assert on appeal that the deputy commissioner erred in failing to find claimant's gross weekly earnings for the work injury to be \$1,943.88 and in failing to find claimant's correct weekly benefit rate for the work injury to be \$1,161.30.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to find claimant's gross weekly earnings for the work injury to be \$2,608.88 and in failing to find claimant's correct weekly benefit rate for the work injury to be \$1,572.00. On cross-appeal claimant does not challenge the deputy commissioner's finding that pursuant to IRS regulations defendants correctly withheld payment of 28 percent of Dr. Bansal's IME charge. Claimant also does not challenge the deputy commissioner's finding that claimant is not entitled to penalty 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 November 9, 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's gross weekly earnings for the work injury are \$2,245.30 and that claimant's correct weekly benefit rate for the work injury is \$1,307.26. I affirm the deputy commissioner's findings, conclusions and analysis regarding that issue.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of November 9, 2015, is affirmed in its entirety.

Defendants shall pay claimant all past and future weekly benefits at the weekly rate of one thousand three-hundred seven and 26/100 dollars (\$1,307.26).

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

Defendants shall receive credit for all benefits paid to date.

Pursuant to rule 876 IAC 4.33, defendants are taxed with 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 28th day of March, 2017.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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