

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JIMMY SMOTHERS,

Claimant,

vs.

ELITE PORK PARTNERSHIP LLP.,

Employer,

and

GRINNELL MUTUAL COMPANY,

Insurance Carrier,
Defendants.

FILED

MAY - 3 2017

WORKERS' COMPENSATION

File No. 5050672

A P P E A L

D E C I S I O N

Head Note Nos: 1801; 1803; 2500

Defendants Elite Pork Partnership LLP, employer, and its insurer, Grinnell Mutual Company, appeal from an arbitration decision filed on October 29, 2015. Claimant Jimmy Smothers responds to the appeal. The case was heard on August 26, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 16, 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 January 16, 2014, caused claimant to sustain temporary and permanent disability. The deputy commissioner awarded claimant healing period benefits from January 20, 2014, through February 3, 2015. The deputy commissioner found claimant sustained 50 percent industrial disability resulting from the work injury, which entitles claimant to 250 weeks of permanent partial disability (PPD) benefits commencing on February 3, 2015. The deputy commissioner found defendants are entitled to a credit for all benefits paid prior to the arbitration hearing. The deputy commissioner found claimant failed to carry his burden of proof he is entitled to alternate medical care. 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 caused temporary and permanent disability. Defendants assert the deputy commissioner erred in awarding claimant healing period benefits from January 20, 2014, through February 3, 2015. Defendants assert the deputy commissioner erred in awarding claimant 50 percent

industrial disability. Defendants also assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

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 October 29, 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 temporary and permanent disability. I affirm the deputy commissioner's award of healing period benefits from January 20, 2014, through February 3, 2015. I affirm the deputy commissioner's award of 50 percent industrial disability, which entitles claimant to 250 weeks of PPD benefits commencing on February 3, 2015. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof he is entitled to alternate medical care. 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.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of October 29, 2015, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits from January 20, 2014, to February 3, 2015.

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the rate of three hundred forty-three and 18/100 dollars (\$343.18) per week from February 3, 2015.

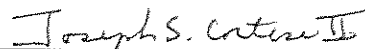
Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall receive a credit for all benefits previously paid.

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 this 3rd day of May, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

David Lawyer
Attorney at Law
4090 Westown Parkway, Ste. E
West Des Moines, IA 50266
dmlawyer@me.com

Kent M. Smith
Attorney at Law
1225 Jordan Creek Parkway, Ste. 108
West Des Moines, IA 50266
ksmith@scheldruplaw.com