

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT CLARK,

Claimant,

vs.

BEN SHINN TRUCKING, INC.,

Employer,

and

BERKSHIRE HATHAWAY
HOMESTATE CO.,

Insurance Carrier,
Defendants.

File No. 5065327

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 2970; 3001;
3002; 5-9999

Defendants Ben Shinn Trucking, Inc., employer, and its insurer, Berkshire Hathaway Homestate Company, appeal from an arbitration decision filed on April 10, 2019. Claimant Robert Clark cross-appeals. The case was heard on December 4, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 19, 2019.

The deputy commissioner found claimant sustained 80 percent industrial disability as a result of the stipulated work-related injury which occurred on August 10, 2015, which entitles claimant to receive 400 weeks of permanent partial disability benefits commencing on July 28, 2018. The deputy commissioner found claimant failed to carry his burden of proof to establish he is permanently and totally disabled as a result of the work injury. The deputy commissioner found claimant's correct gross average weekly wage for the injury is \$643.71, and the deputy commissioner found claimant's correct weekly benefit rate for the injury is \$398.34. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D., on July 5, 2018. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$2,096.47, which includes \$1,990.00 for the cost of Dr. Bansal's IME report.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 80 percent industrial disability as a result of the work injury. Defendants assert the award for industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in finding claimant is entitled to taxation of the cost of Dr. Bansal's IME report.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant sustained 80 percent industrial disability as a result of the work injury and in failing to find claimant is permanently and totally disabled from the injury. Claimant asserts the deputy commissioner erred in finding claimant's correct gross average weekly wage is \$643.71, and in finding claimant's correct weekly benefit rate is \$398.34. Claimant asserts it should be found on appeal that claimant's correct gross average weekly wage is \$710.23, and it should be found claimant's correct weekly benefit rate is \$436.70. Claimant asserts the deputy commissioner erred at the arbitration hearing by admitting into evidence defendants' Exhibits A, B, E, G, and pages 25 and 26 of Exhibit C, because those exhibits allegedly were late. Claimant asserts those exhibits should be stricken from the record.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and 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 April 16, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned 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 sustained 80 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to prove he is permanently and totally disabled as a result of the work injury. I affirm the deputy commissioner's finding that claimant's correct gross average weekly wage is \$643.71, and I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate is \$398.34. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$2,096.47, which includes \$1,990.00 for the cost of Dr. Bansal's IME report.

I affirm the deputy commissioner's determination to admit defendants' Exhibits A, B, E, G, and pages 25 and 26 of Exhibit C, into evidence because the deputy commissioner allowed claimant 45 days following the arbitration hearing to obtain and submit responsive evidence, which claimant chose not to do.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 10, 2019, is affirmed in its entirety.

Defendants shall pay claimant four hundred (400) weeks of permanent partial disability benefits, at the weekly benefit rate of three hundred ninety-eight and 34/100 dollars (\$398.34), beginning on the stipulated commencement date of July 28, 2018.

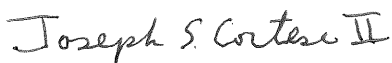
Defendants shall receive credit for all benefits paid to date. The parties stipulated that defendants are entitled to a credit of weekly benefits from July 28, 2018, through the time of the hearing.

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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of two thousand ninety-six and 47/100 dollars (\$2,096.47), 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 on this 12th day of May, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Channing L. Dutton Via WCES

Robert Gainer Via WCES