

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARY M. BUCHANAN,

Claimant,

vs.

PRESBYTERIAN HOMES &
SERVICES, INC., d/b/a MILL POND,

Employer,

and

ZURICH NORTH AMERICA
INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

APR - 2 2018

WORKERS' COMPENSATION

File No. 5054053

A P P E A L

D E C I S I O N

Head Note Nos: 1100; 1802; 1803; 2500;
4000.2; 5-9998

Defendants Presbyterian Homes & Services, Inc., d/b/a Mill Pond, employer, and its insurer, Zurich North America Insurance Co., appeal from an arbitration decision filed on August 22, 2016. Claimant Mary M. Buchanan cross-appeals. The case was heard on July 13, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 27, 2016.

The deputy commissioner found claimant carried her burden of proof that she sustained an injury which arose out of and in the course of her employment with defendant-employer on February 2, 2014. The deputy commissioner found the work injury caused claimant to sustain permanent injuries to her left foot and left ankle, with a permanent sequela injury to her low back. The deputy commissioner found claimant is entitled to receive healing period benefits from October 30, 2014, through October 1, 2015. The deputy commissioner found claimant sustained 65 percent industrial disability as a result of the work injury, which entitles claimant to receive 325 weeks of permanent partial disability (PPD) benefits commencing on October 2, 2015. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$5,428.97 for an unreasonable delay in paying weekly benefits. The deputy commissioner found claimant is entitled to payment by defendants of the past medical expenses itemized in Exhibit 21. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert the deputy commissioner erred in finding claimant carried her burden of proof that she sustained a work-related injury on February 2, 2014. Defendants assert the deputy commissioner erred in finding claimant sustained permanent injuries to her left foot and left ankle, with a permanent sequela injury to her low back. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits from October 30, 2014, through October 1, 2015. Defendants assert the deputy commissioner erred in finding claimant sustained 65 percent industrial disability as a result of the alleged injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits for an unreasonable delay in paying weekly benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants of the past medical expenses itemized in Exhibit 21.

Claimant asserts on cross-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 August 22, 2016, 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 finding that claimant sustained a work-related injury on February 2, 2014. I affirm the deputy commissioner's finding that claimant sustained permanent injuries to her left foot and left ankle, with a permanent sequela injury to her low back. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from October 30, 2014, through October 1, 2015. I affirm the deputy commissioner's finding that claimant sustained 65 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$5,428.97 for an unreasonable delay in paying weekly benefits. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants of the past medical expenses itemized in Exhibit 21. I 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. The deputy commissioner found claimant to be credible. Defendants assert claimant was not credible. I find the deputy commissioner correctly assessed 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. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 22, 2016, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits from October 30, 2014, through October 1, 2015, at the weekly rate of two hundred fifty-two and 51/100 dollars (\$252.51) per week.

Defendants shall pay claimant three hundred twenty-five (325) weeks of permanent partial disability benefits at the weekly rate of two hundred fifty-two and 51/100 dollars (\$252.51) per week commencing October 2, 2015.

Defendants shall receive a credit for all benefits previously paid.

Defendants shall pay claimant a penalty of five thousand four hundred twenty-eight and 97/100 dollars (\$5,428.97) for their unreasonable denial of benefits for this work injury.


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

Defendants shall pay the medical expenses listed in Exhibit 21. Defendants shall reimburse claimant for her out-of-pocket medical expenses and defendants shall hold claimant harmless from the remainder of those expenses.

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 on this 2nd day of April, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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