

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ARLYN WOOD,	:	File No. 5066830
	:	
Claimant,	:	A P P E A L
	:	
vs.	:	D E C I S I O N
	:	
WINNEBAGO INDUSTRIES, INC.,	:	
	:	
Employer,	:	
Self-Insured,	:	Head Notes: 1801; 1801.1; 1802; 1803;
Defendant.	:	2501; 2507; 4000.2

Defendant Winnebago Industries, Inc., self-insured employer, appeals from an arbitration decision filed on May 15, 2020. Claimant Arlyn Wood responds to the appeal. The case was heard on February 11, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 13, 2020.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish entitlement to several periods of temporary benefits. First, the deputy commissioner found claimant is entitled to receive temporary total disability (TTD) benefits for the time period running from September 14, 2016, to October 24, 2016. Second, the deputy commissioner found claimant is entitled to receive TTD benefits for the time period running from June 18, 2017, to July 5, 2017. Third, the deputy commissioner found claimant is entitled to receive temporary partial disability (TPD) benefits for the time period running from October 25, 2016, to June 17, 2017. Finally, the deputy commissioner found claimant is entitled to receive a running award of TTD benefits starting April 27, 2019. In addition to the issues surrounding temporary disability benefits, the deputy commissioner assessed a \$10,000.00 penalty against defendant for failing to adequately investigate claimant's claims.

Defendant's appeal brief is not particularly clear as to the specific issues on appeal. For instance, defendant initially requests that the arbitration decision be reversed with regard to the award of running TTD benefits dating back to April 27, 2019, and the imposition of a \$10,000.00 penalty. (Defendant Appeal Brief, page 1) However, in the "Statement of Issues on Appeal" section, defendant lists all adverse findings from the arbitration decision before ultimately stating defendant only disputes claimant's entitlement to benefits from June 29, 2017, to July 5, 2017, and the running award of TTD benefits beginning on April 27, 2019. To avoid any confusion, this appeal decision will address all issues listed in the "Statement of Issues on Appeal" section of defendant's brief.

On appeal, defendant asserts the deputy commissioner erred in finding claimant is entitled to receive intermittent temporary benefits between January 21, 2017, and June 17, 2017. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive TTD benefits from June 18, 2017, to July 5, 2017. Defendant asserts the deputy commissioner erred in finding claimant's termination from defendant was involuntary. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive a running award of TTD benefits starting April 27, 2019. Lastly, defendant asserts the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety. Claimant suggests, but makes no specific arguments for, an increase in the penalty award.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on May 15, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 to establish entitlement to intermittent temporary benefits between January 21, 2017, and June 17, 2017. I affirm the deputy commissioner's finding that claimant is entitled to receive TTD benefits from June 18, 2017, to July 5, 2017. I affirm the deputy commissioner's finding that claimant's termination from defendant was involuntary. I affirm the deputy commissioner's finding that claimant carried his burden of proof to establish entitlement to a running award of TTD benefits beginning on April 27, 2019.

I similarly affirm the deputy commissioner's assessment of penalty benefits. The deputy commissioner found defendant did not conduct an adequate investigation into claimant's claims. The deputy commissioner further found compensability was not fairly debatable. As such, the presiding deputy commissioner awarded penalty benefits in an amount equivalent to thirty-four percent (34%) of the thirty-eight (38) weeks of benefits that accrued between April 28, 2019, and January 20, 2020.

I find no error in the presiding deputy commissioner's penalty benefit analysis. I reach the same result that penalty benefits are owed pursuant to Iowa Code section 86.13. The presiding deputy commissioner weighed the appropriate penalty factors and

purposes to reach the penalty award. I concur with her analysis, findings, and ultimate penalty benefit award.

The evidentiary record is devoid of any evidence that defendant conducted an investigation into claimant's claim. If an investigation occurred, there is no evidence in this record as to the results of the investigation.

On February 9, 2019, claimant's authorized treating physician, Mark Haganman, D.O., opined, "At this point in time, I do not believe he is able or willing to go back to driving truck." (Joint Exhibit 1, p. 9) On April 27, 2019, claimant reported to Dr. Haganman that he did not feel safe behind the wheel of his semi-truck. (JE1, p. 10) Claimant provided at least one example of the judgment errors he had been making while driving for J-Bird Trucking. (See JE1, p. 10) In response to those concerns, Dr. Haganman recommended claimant find a non-driving position with his then-current employer, and for claimant to turn in his commercial driver's license. Id.

Claimant resigned from J-Bird Trucking on April 27, 2019, when J-Bird Trucking did not have any alternative jobs he could perform. (Hearing Transcript, p. 63) Claimant relayed that information to defendant on April 29, 2019. Claimant requested that defendant commence TTD or PPD benefits in light of that information. (Ex. 1, p. 10) Later that same day, defense counsel notified claimant he would be looking into the matter and speaking with his client. Id. Claimant followed up with defendant on May 1, 2019, May 2, 2019, and May 9, 2019. (Ex. 1, pp. 12, 15)

On May 10, 2019, defendant declined to commence TTD benefits because, "there is no restriction indicating he is unable to work due to his subjective complaints and alleged work condition." (Ex. 1, p. 15) On May 13, 2019, defense counsel agreed to follow up with his client on the payment of TTD benefits, but further reasoned that TTD benefits were unlikely to be an option because claimant voluntarily quit and is no longer an employee of the defendant. (Ex. 1, p. 16)

After additional requests were made by claimant's attorney on May 28, 2019, and June 3, 2019, defense counsel again provided he would follow up with his client to see if it had changed its position. (Ex. 1, pp. 19, 21) Claimant requested an explanation for defendant's continued denial. Id.

In a June 7, 2019, letter, defendant provided its first formal response to claimant's request for TTD benefits. (See Ex. C, p. 1) Defendant took the position that claimant remained at maximum medical improvement, and no authorized treating physician had taken him off work or indicated he was no longer at MMI. Therefore, defendant states claimant was not entitled to TTD benefits. (Ex. C, p. 1) Defendant further asserted that claimant voluntarily removed himself from over-the-road truck driving, and his then-current work status note did not prohibit or restrict him from driving in general. Id.

Claimant continued to treat with Dr. Haganman and Debra Georgia, L.M.F.T., following the June 7, 2019, letter. As medical records became available, claimant's attorney continued to request that defendant revisit its denial. (See Ex. I, p. 23) Defense counsel continued to promise additional investigation of the claim, but there is no evidence in the record to establish when or if an investigation actually occurred.

I find that the denial issued via the letter of June 7, 2019, was not reasonable given the evidence generated and available at that time. Contrary to defendant's assertion, there is no evidence in the record indicating any physician had placed claimant at MMI for his work-related conditions. Moreover, even if claimant had previously been placed at MMI, claimant's authorized treating physician effectively removed claimant from the workforce by restricting his ability to drive vehicles requiring a commercial driver's license to operate in April, 2019. Such evidence would prompt a reasonable defendant to reconsider claimant's medical status and conduct additional investigation into claimant's claim for benefits. There is no evidence such an investigation occurred. Defendant had the ability to consult with, or seek clarification from, Dr. Haganman or Ms. Georgia on claimant's condition but chose not to. While it appears defense counsel may have discussed claimant's case with Dr. Haganman, there is no evidence this discussion occurred prior to defendant's denial of claimant's claim for TTD benefits. (See JE1, p. 17) Moreover, there is no evidence defendant relied upon this conversation to later bolster its denial. While further investigation may have been warranted, as suggested by counsel, no further investigation is documented in this record. It was not reasonable for the investigation to continue from April 28, 2019, through January 20, 2020. As such, I affirm the deputy commissioner's assessment of penalty benefits for failure to conduct an adequate investigation into claimant's claims.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 15, 2020, is affirmed in its entirety.

Defendant shall pay claimant temporary total disability benefits from September 14, 2016, through October 24, 2016, at the stipulated weekly rate of seven hundred sixty-seven and 91/100 dollars (\$767.91).

Defendant shall pay claimant intermittent temporary partial disability benefits from October 25, 2016, through June 17, 2017, totaling five thousand seven hundred twelve and 41/100 dollars (\$5,712.41).

Defendant shall pay claimant temporary total disability benefits from June 18, 2017 through July 5, 2017, at the stipulated weekly rate of seven hundred sixty-seven and 91/100 dollars (\$767.91).

Defendant shall pay claimant a running award of temporary total disability benefits from April 27, 2019, at the stipulated weekly rate of seven hundred sixty-seven

and 91/100 dollars (\$767.91) until one of the requirements in Iowa Code sections 85.33(1) and 85.34(1) have been satisfied.

Defendant shall receive credit for all weekly benefits paid to date.

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).

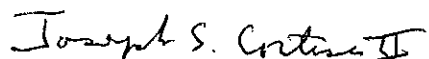
Defendant shall pay claimant ten thousand and 00/100 dollars (\$10,000.00) in penalty benefits.

Defendant shall reimburse claimant four hundred twenty and 00/100 dollars (\$420.00) for the December 20, 2019, medical bill.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendant 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 24th day of March, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mark S. Soldat (via WCES)

Jason Wiltfang (via WCES)