

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

APRIL HALVERSON,

Claimant,

vs.

DYERSVILLE FOOD BANK, INC.,

Employer,

and

DONEGAL MUTUAL INS. CO., d/b/a
LeMARS INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5048905

A P P E A L

D E C I S I O N

Head Note Nos: 2905; 2907; 3303.20;
5-9998

Defendants Dyersville Food Bank, Inc., employer, and its insurer, Donegal Mutual Ins. Co., d/b/a LeMars Insurance Company, appeal from a combined review-reopening and partial commutation decision filed on September 25, 2018. Claimant April Halverson responds to the appeal. The case was heard on May 3, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 11, 2018.

The deputy commissioner found defendants are not entitled to review-reopening in this matter because the deputy commissioner found defendants failed to carry their burden of proof to establish claimant sustained either a physical change of condition or an economic change of condition following an arbitration decision filed in this matter on December 1, 2015, for an injury which occurred on June 1, 2013, which arose out of and in the course of claimant's employment with defendant-employer. In the arbitration decision, which was affirmed by the workers' compensation commissioner, claimant was awarded permanent total disability, which entitled claimant to receive permanent total disability benefits, commencing on the June 1, 2013, date of injury.

In the combined review-reopening and partial commutation decision the deputy commissioner found it was unreasonable for defendants to suspend claimant's weekly permanent total disability benefits as of January 9, 2017, for claimant's refusal to accept offered medical treatment for the work injury, and the deputy commissioner also found it was unreasonable for defendants to suspend claimant's permanent total disability benefits as of January 9, 2017, for claimant's refusal to attend an independent medical evaluation (IME). The deputy commissioner found it was reasonable for claimant to refuse to accept the offered medical treatment and to refuse to attend the IME.

In the combined review-reopening and partial commutation decision, the deputy commissioner found it was in claimant's best interest to order a partial commutation of claimant's future weekly benefits, except for the final week of permanent total disability benefits, awarded in the December 1, 2015, arbitration decision, as modified in the June 29, 2017, appeal decision, as set forth in claimant's petition for partial commutation, discounted to the present value based on the number of weeks to be commuted and the interest rate for determining the discount.

In the combined review-reopening and partial commutation decision, the deputy commissioner ordered defendants to pay claimant's costs of the combined review-reopening and partial commutation proceeding in the amount of \$1,474.06.

Defendants assert on appeal that the deputy commissioner erred in finding defendants are not entitled to review-reopening in this matter because defendants assert the deputy commissioner erred in finding it was unreasonable for defendants to suspend claimant's weekly permanent total disability benefits. Defendants assert the deputy commissioner erred in finding it was reasonable for claimant to refuse the offered medical treatment and defendants assert the deputy commissioner erred in finding it was reasonable for claimant to refuse to attend the IME. Defendants also assert the deputy commissioner erred in finding it is in claimant's best interest to approve claimant's petition for partial commutation.

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.

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 combined review-reopening and partial commutation decision filed on September 25, 2018, 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 combined review-reopening and partial commutation 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 defendants are not entitled to review-reopening in this matter because I affirm the deputy commissioner's finding that defendants failed to carry their burden of proof to establish claimant sustained either a physical change of condition or an economic change of condition following the

arbitration decision filed in this matter on December 1, 2015. I affirm the deputy commissioner's finding that it was unreasonable for defendants to suspend claimant's weekly permanent total disability benefits as of January 9, 2017, for claimant's refusal to accept offered medical treatment for the work injury, and I affirm the deputy commissioner finding that it was unreasonable for defendants to suspend claimant's permanent total disability benefits as of January 9, 2017, for claimant's refusal to attend the IME. I affirm the deputy commissioner's finding that it is in claimant's best interest to order a partial commutation of claimant's future weekly permanent total disability benefits.

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

ORDER

IT IS THEREFORE ORDERED that the combined review-reopening and partial commutation decision filed on September 25, 2018, is affirmed in its entirety.

Defendants' review-reopening petition is denied.

Claimant's petition for partial commutation is granted.

Defendants shall pay claimant a lump sum payment of future weekly benefits, except for the final week of permanent total disability benefits awarded in the December 1, 2015, arbitration decision, as modified in the June 29, 2017, appeal decision, as set forth in the claimant's petition for commutation, discounted to the present value based on the number of weeks to be commuted and the interest rate for determining the discount as of the date of this decision.

Defendants shall receive a credit for all benefits paid from the date of the filing of the petition for partial commutation until the date the partial commutation is paid.

Claimant's right to medical benefits under Iowa Code section 85.27 shall remain unaffected by this decision.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the combined review-reopening and partial commutation proceeding in the amount of one thousand four hundred seventy-four and 06/100 dollars (\$1,474.06), 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 13th day of January, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Daniel Anderson Via WCES

Thomas B. Read Via WCES