

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS EATON,

Claimant,

vs.

HUSSMANN CORPORATION,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

FILED

JAN 26 2016

WORKERS' COMPENSATION

File No. 5049027

A P P E A L

D E C I S I O N

Head Note No.: 1108

Defendants Hussmann Corporation, employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on December 30, 2014. The case was heard on November 12, 2014, and it was considered fully submitted on that same date in front of the deputy workers' compensation commissioner.

The deputy commissioner found that claimant carried his burden of proof that he sustained an injury to his cervical spine arising out of and in the course of his employment on May 28, 2013. The deputy commissioner awarded claimant running healing period benefits from June 9, 2014. The deputy commissioner also awarded medical expenses identified in Exhibits 5 and 6 associated with claimant's cervical spine injury. The deputy commissioner also found that claimant did not carry his burden of proof that he is entitled to penalty benefits under Iowa Code section 86.13.

Defendants assert on appeal that the deputy commissioner erred in finding that claimant carried his burden of proof that he sustained an injury to his cervical spine arising out of and in the course of his employment on May 28, 2013. Defendants also assert that the deputy commissioner erred in awarding running healing period benefits from June 9, 2014. Defendants also assert that the deputy commissioner erred in awarding medical costs identified in Exhibits 5 and 6 associated with claimant's cervical spine injury.

Claimant asserts on appeal that the running award of healing period benefits and the award of medical expenses should be affirmed. Claimant also asserts in his appeal brief that the deputy commissioner erred in failing to award penalty benefits. However, because claimant did not file a cross-appeal in this matter, he failed to preserve the issue of penalty benefits for this appeal.

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 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on December 30, 2014, which relate to issues properly raised on intra-agency appeal with the following analysis:

The deputy commissioner provided sufficient analysis of all issues raised in the arbitration proceeding. I concur with the deputy commissioner's findings of fact and conclusions of law pertaining to all of these issues. I concur with the deputy commissioner's finding that claimant carried his burden of proof that he sustained an injury to his cervical spine arising out of and in the course of his employment on May 28, 2013. I also concur with the deputy commissioner's award of running healing period benefits from June 9, 2014. I also concur with the deputy commissioner's award of the medical costs identified in Exhibits 5 and 6 associated with claimant's cervical spine injury. I also concur with the deputy commissioner's finding that claimant is not entitled to penalty benefits. Therefore, I adopt the deputy commissioner's findings, conclusions and analysis regarding all of these issues.

Some of the findings by the presiding deputy were based on the deputy's finding that claimant's testimony at hearing was credible. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing.

As stated above, claimant waived the issue of entitlement to penalty benefits because he did not file a cross-appeal in this matter. However, notwithstanding that, I concur with the deputy commissioner's finding that claimant is not entitled to penalty benefits in this matter.

Defendants denied liability for claimant's injury of May 28, 2013, and paid no weekly benefits for this injury as of the date of the arbitration hearing. If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award additional weekly benefits in an amount not to exceed 50 percent of the amount of benefits that were unreasonably delayed or denied. Iowa Code section 86.13(4)(a). A reasonable or probable cause or excuse must satisfy the following requirements:

- 1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee;
- 2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits;
- 3) The employer or insurance carrier contemporaneously conveyed the basis of the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay or termination of benefits.

(Iowa Code section 86.13(4)(c))

Defendants have the burden to show compliance with this statutory provision in order to avoid the mandatory assessment of a penalty. In this case, by the time of hearing, defendant did establish that compensability of claimant's condition was fairly debatable given the medical opinions obtained from Dr. Neff. Lynette Rasch, a risk manager for the defendant-employer, undertook an investigation shortly after claimant reported the injury (Exhibit A, page 4) and defendants' denial of this claim in July 2013, and again in September 2014, was made based on Dr. Neff's opinions. (Tr. p 6; Ex. A, pp. 14-15)

The opinions of Dr. Neff did not change until August 6, 2014, (Ex. A, p. 11) and then those opinions changed again shortly thereafter in September 2014. (Ex. A, pp. 12-15) When Dr. Neff's opinions changed the first time in August 2014, he was in possession of all relevant material evidence and this fact did not change when Dr. Neff changed his opinions again shortly thereafter when he decided to go back to his original position that claimant's cervical spine condition was not caused by, nor was it materially aggravated by, claimant's employment. (See, e.g., Exs. 1 and A) Therefore, even though I concur with the deputy commissioner's finding that Dr. Hatfield's causation opinion is more convincing, I also concur with the deputy's finding that the denial of compensability was fairly debatable and claimant is not entitled to an award of penalty benefits.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of December 30, 2014, is AFFIRMED in its entirety:

Defendants shall pay claimant healing period benefits at the rate of eight hundred thirty-nine and 59/100 dollars (\$839.59) per week from June 9, 2014, and continuing until such time as claimant meets one of the elements in Iowa Code section 85.34(1).

Defendants shall pay the medical costs associated with claimant's cervical spine

injury including those medical costs identified in Exhibits 5 and 6.

Defendants shall pay accrued weekly benefits in a lump sum.

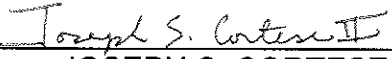
Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants are to be given credit for benefits previously paid.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs of this appeal, including the cost of the hearing transcript, are assessed to defendants.

Signed and filed this 26th day of January, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

John P. Dougherty
Attorney at Law
4090 Westown Parkway, Ste. E
West Des Moines, IA 50266
Johndougherty3@me.com

Timothy W. Wegman
Attorney at Law
6800 Lake Drive, Suite 125
West Des Moines, IA 50266
tim.wegman@peddicord-law.com