

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIE AZBILL,	:	
	:	
Claimant,	:	
	:	
vs.	:	File Nos. 5060942, 5060943
	:	
LINN-MAR COMMUNITY SCHOOL	:	
DISTRICT,	:	A P P E A L
	:	
Employer,	:	D E C I S I O N
	:	
and	:	
	:	
UNITED WISCONSIN INSURANCE	:	
COMPANY,	:	
	:	Head Notes: 1108.50; 1402.40; 1801;
Insurance Carrier,	:	1803; 2501; 2502; 2907
Defendants.	:	4000.2; 5-9998

Defendants Linn-Marr Community School District, employer, and its insurer, United Wisconsin Insurance Company, appeal from an arbitration decision filed on February 14, 2019. Claimant Marie Azbill responds to the appeal. The case was heard on October 29, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 30, 2018.

In the arbitration decision, regarding File No. 5060942, the deputy commissioner found claimant sustained 20 percent impairment of her left upper extremity as a result of the stipulated work-related injury which occurred on July 5, 2016. The deputy commissioner found defendants unreasonably denied payment of permanent partial disability benefits for claimant's left upper extremity in the amount of \$23,526.00. As a result, the deputy commissioner found claimant is entitled to receive penalty benefits from defendants in the amount of \$6,600.00.

Regarding File No. 5060943, the deputy commissioner found claimant was not at maximum medical improvement (MMI) as of the date of the arbitration hearing for the stipulated November 10, 2017, work-related injury. The deputy commissioner found claimant is entitled to receive additional treatment as recommended by Stanley J.

Mathew, M.D. The deputy commissioner found claimant satisfied her burden of proof to establish she is entitled to receive temporary total disability benefits from February 15, 2018, through May 22, 2018. However, the deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for their refusal to pay temporary total disability benefits from February 15, 2018, through May 22, 2018. The deputy commissioner found claimant failed to establish entitlement to receive reimbursement from defendants for her independent medical examination (IME) with Farid Manshadi, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendants first assert on appeal that the deputy commissioner erred by admitting several exhibits offered by claimant's counsel.

With respect to File No. 5060942, defendants assert the deputy commissioner erred in finding claimant sustained any permanent disability of her left upper extremity. Defendants additionally argue the deputy commissioner erred in awarding penalty benefits for defendants' failure to pay permanency benefits.

With respect to File No. 5060943, defendants assert the deputy commissioner erred in finding claimant is entitled to receive temporary total disability benefits from February 15, 2018, through May 22, 2018. Defendants additionally assert the deputy commissioner erred in finding claimant has not yet reached MMI. Defendants assert it should be found on appeal that claimant is not only at MMI, but has sustained no permanent disability. Lastly, defendants assert the deputy commissioner erred in finding claimant is entitled to receive additional medical treatment.

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 February 14, 2019, 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 decision to admit claimant's exhibits over defendants' objections.

Regarding File No. 5060942, I affirm the deputy commissioner's finding that claimant sustained 20 percent impairment of her left upper extremity as a result of the July 5, 2016, work injury. I affirm the deputy commissioner's finding that defendants unreasonably denied payment of permanent partial disability benefits for claimant's left upper extremity in the amount of \$23,526.00. I affirm the deputy commissioner's award of penalty benefits in the amount of \$6,600.00.

Regarding File No. 5060943, I affirm the deputy commissioner's finding that claimant had not yet reached MMI at the time of the hearing for the November 10, 2017, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive additional treatment as recommended by Dr. Mathew. I affirm the deputy commissioner's finding that claimant satisfied her burden of proof to establish she is entitled to receive temporary total disability benefits from February 15, 2018, through May 22, 2018. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits for defendants' refusal to pay temporary total disability benefits from February 15, 2018, through May 22, 2018. I affirm the deputy commissioner's finding that claimant failed to establish entitlement to reimbursement from defendants for Dr. Manshadi's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 14, 2019, is affirmed in its entirety.

File No. 5060942 - Date of injury: July 5, 2016

All benefits shall be paid at the stipulated weekly rate of four hundred seventy and 52/100 dollars (\$470.52).

Defendants shall pay claimant fifty (50) weeks of permanent partial disability benefits commencing on the stipulated commencement date of July 5, 2016.

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).

Defendants shall pay claimant penalty benefits in the amount of six thousand six hundred and no/100 dollars (\$6,600.00).

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

File No. 5060943 - Date of injury: November 10, 2017

All benefits shall be paid at the stipulated weekly rate of five hundred thirty-one and 63/100 dollars (\$531.63).

The issue of permanency is not ripe for determination and it is hereby bifurcated.

Defendants shall pay temporary total disability benefits from February 15, 2018, through May 22, 2018.

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 Iowa Code section 85.27, defendants shall provide medical treatment for claimant as recommended by Dr. Mathew.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00), 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 March, 2020

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Nathan Willems Via WCES

Laura Ostrander Via WCES