

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HAROLD CRITCHLOW,

Claimant,

vs.

MENARD, INC.,

Employer,

and

XL INSURANCE AMERICA, INC.,

Insurance Carrier,  
Defendants.File Nos: 1660829.01  
21700895.01

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1402.60; 1403.10;  
1803; 1803.1; 2501; 2907;  
5-9998

Defendants Menard, Inc., employer, and its insurer, XL Insurance America, Inc. appeal from an arbitration decision filed on February 13, 2023. Claimant Harold Critchlow responds to the appeal. The case was heard on July 28, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 6, 2022.

In File No. 1660829.01, stipulated injury date of December 29, 2018, the deputy commissioner found claimant met his burden of proof to establish he sustained permanent injuries to his cervical spine and his thoracic spine as a result of the work injury. The deputy commissioner found claimant is entitled to receive industrial disability benefits for the December 29, 2018, work injury, and the deputy commissioner found claimant sustained 15 percent industrial disability as a result of the December 29, 2018, work injury, which entitles claimant to receive 75 weeks of permanent partial disability (PPD) benefits. The deputy commissioner found the correct commencement date for PPD benefits in File No. 1660829.01 is July 16, 2020.

In File No. 21700895.01, stipulated injury date of October 9, 2020, the deputy commissioner found claimant met his burden of proof to establish he sustained permanent injuries to his lumbar spine as a result of the work injury. The deputy commissioner found claimant is entitled to receive industrial disability benefits for the October 9, 2020, work injury, and the deputy commissioner found claimant sustained five percent industrial disability as a result of the October 9, 2020, work injury, which

entitles claimant to receive 25 weeks of PPD benefits. The deputy commissioner found the correct commencement date for PPD benefits in File No. 21700895.01 is January 20, 2022.

For both files, the deputy commissioner ordered defendants to reimburse claimant in the amount of \$17,031.21 for claimant's out-of-pocket medical expenses for the two injuries. The deputy commissioner ordered defendants to hold claimant harmless for any medical expenses paid by claimant's personal health insurance company, and the deputy commissioner ordered defendants to reimburse any lien as required by the health insurance company. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$2,702.66.

On appeal in File No. 1660829.01, defendants assert that the deputy commissioner erred in finding claimant proved he sustained permanent injuries to his cervical spine and his thoracic spine as a result of the December 29, 2018, work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive industrial disability benefits for the December 29, 2018, work injury, and defendants assert the deputy commissioner erred in finding claimant sustained 15 percent industrial disability as a result of the December 29, 2018, work injury. Defendants assert the deputy commissioner erred in finding the correct commencement date for PPD benefits in File No. 1660829.01 is July 16, 2020.

In File No. 21700895.01, defendants assert on appeal that the deputy commissioner erred in finding claimant proved he sustained permanent injuries to his lumbar spine as a result of the October 9, 2020, work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive industrial disability benefits for the October 9, 2020, work injury, and defendants assert the deputy commissioner erred in finding claimant sustained five percent industrial disability as a result of the October 9, 2020, work injury. Defendants assert the deputy commissioner erred in finding the correct commencement date for PPD benefits in File No. 21700895.01 is January 20, 2022.

For both files, defendants assert on appeal that the deputy commissioner erred in ordering defendants to reimburse claimant in the amount of \$17,031.21 for claimant's out-of-pocket medical expenses for the two injuries. Defendants assert the deputy commissioner erred in ordering defendants to hold claimant harmless for any medical expenses paid by claimant's personal health insurance company, and defendants assert the deputy commissioner erred in ordering defendants to reimburse any lien as required by the health insurance company. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

Clamant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as 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 arbitration decision filed on February 13, 2023, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

In File No. 1660829.01, I affirm the deputy commissioner's finding that claimant proved he sustained permanent injuries to his cervical spine and his thoracic spine as a result of the December 29, 2018, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive industrial disability benefits for the December 29, 2018, work injury, and I affirm the deputy commissioner's finding that claimant sustained 15 percent industrial disability as a result of the December 29, 2018, work injury. I affirm the deputy commissioner's finding that the correct commencement date for PPD benefits in File No. 1660829.01 is July 16, 2020.

In File No. 21700895.01, I affirm the deputy commissioner's finding that claimant proved he sustained permanent injuries to his lumbar spine as a result of the October 9, 2020, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive industrial disability benefits for the October 9, 2020, work injury, and I affirm the deputy commissioner's finding that claimant sustained five percent industrial disability as a result of the October 9, 2020, work injury. I affirm the deputy commissioner's finding that the correct commencement date for PPD benefits in File No. 21700895.01 January 20, 2022.

For both files, I affirm the deputy commissioner's order that defendants reimburse claimant in the amount of \$17,031.21 for claimant's out-of-pocket medical expenses for the two injuries. I affirm the deputy commissioner's order that defendants hold claimant harmless for any medical expenses paid by claimant's personal health insurance company, and I affirm the deputy commissioner's order that defendants reimburse any lien as required by the health insurance company. 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 the above-stated issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 13, 2023, is affirmed in its entirety.

**For File No. 1660829.01 - Date of Injury December 29, 2018:**

Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits, commencing on July 16, 2020, at the stipulated weekly rate of five hundred fifty-four and 36/100 dollars (\$554.36).

Defendants shall receive credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

**For File No. 21700895.01 - Date of Injury October 9, 2020:**

Defendants shall pay claimant twenty-five (25) weeks of permanent partial disability benefits, commencing on January 20, 2022, at the stipulated rate of five hundred eighty and 02/100 dollars (\$580.02).

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

**For both files:**

For both files, defendants shall reimburse claimant in the amount of \$17,031.21 for claimant's out-of-pocket medical expenses for the two injuries. Defendants shall hold claimant harmless for any medical expenses paid by claimant's personal health insurance company, and defendants shall reimburse any lien as required by the health insurance company.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the total amount of two thousand seven hundred two and 66/100 dollars (\$2,702.66), 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 18<sup>th</sup> day of July, 2023.

A handwritten signature in black ink that reads "Joseph S. Cortese II". The signature is written in a cursive style with a horizontal line under the name.

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Robert Legislador (via WCES)

Kent Smith (via WCES)