

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

**FILED**

APR 11 2018

WORKERS' COMPENSATION

JOSE ALFRED GARCIA,

Claimant,

vs.

VANDER WAAL FEEDLOT, INC.,

Employer,

and

GRINNELL MUTUAL,

Insurance Carrier,  
Defendants.

File No. 5034267

A P P E A L

D E C I S I O N

: Head Note Nos: 1108; 1803; 2905; 5-9998

Defendants Vander Waal Feedlot, Inc., employer, and its insurer, Grinnell Mutual, appeal from a review-reopening decision filed on November 1, 2016. Claimant Jose Alfred Garcia responds to the appeal. The case was heard on March 18, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 6, 2016.

The deputy commissioner found claimant is entitled to review-reopening in this matter because the deputy commissioner found claimant carried his burden of proof that he sustained a physical change of condition following an arbitration decision which was filed in this matter on February 28, 2012, for an injury which occurred on December 13, 2006, which arose out of and in the course of claimant's employment with defendant-employer. In the arbitration decision, which was not appealed, claimant was awarded scheduled member functional impairment of 7.5 percent of the right lower extremity, which entitled claimant to 16.5 weeks of permanent partial disability (PPD) benefits, commencing December 14, 2009. In the review-reopening decision, the deputy commissioner found claimant sustained a change of physical condition consisting of a sequela injury to his right hip and his low back caused by an altered gate resulting from the original work injury. The deputy commissioner found claimant sustained 15 percent industrial disability as a result of the sequela injury, which entitles claimant to receive 75 weeks of PPD benefits, with a credit for the 16.5 weeks of PPD benefits paid pursuant to the February 28, 2012, arbitration decision. The deputy commissioner ordered defendants to pay past requested medical expenses pursuant to the parties' stipulation reached after the review-reopening hearing. The deputy commissioner ordered defendants to pay claimant's mileage expense incurred in traveling to his Section 85.39 independent medical evaluation (IME) performed by C. Robert Adams, M.D., on

February 5, 2016. The deputy commissioner ordered defendants to pay claimant's costs of the review-reopening proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to review-reopening in this matter because defendants assert the deputy commissioner erred in finding claimant carried his burden of proof that he sustained a physical change of condition following the February 28, 2012, arbitration decision. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive any industrial disability benefits. Defendants assert that if it is found on appeal that claimant did sustain a physical change of condition, the industrial disability award should be reduced substantially.

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.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on November 1, 2016, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant is entitled to review-reopening in this matter because I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained a physical change of condition following the February 28, 2012, arbitration decision, consisting of a sequela injury to his right hip and his low back caused by an altered gate resulting from the original work injury. I affirm the deputy commissioner's finding that claimant sustained 15 percent industrial disability as a result of the sequela injury, which entitles claimant to receive 75 weeks of PPD benefits, with a credit for the 16.5 weeks of PPD benefits paid pursuant to the February 28, 2012, arbitration decision. I affirm the deputy commissioner's order that defendants pay past requested medical expenses pursuant to the parties' stipulation reached after the review-reopening hearing. I affirm the deputy commissioner's order that defendants pay claimant's mileage expense incurred in traveling to his IME with Dr. Adams on February 5, 2016. I also affirm the deputy commissioner's order that defendants pay claimant's costs of the review-reopening proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on November 1, 2016, is affirmed in its entirety.

Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits at the rate of three hundred seventy-three and 23/100 dollars (\$373.23) per week commencing from the date the review-reopening petition was filed.

Defendants shall be given credit for the 16.5 weeks of permanent partial disability benefits previously paid pursuant to the February 28, 2012, arbitration decision.

Defendants shall receive a credit for all other benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall pay past requested medical expenses pursuant to the parties' stipulation reached after the review-reopening hearing.

Defendants shall pay claimant's mileage expense incurred in traveling to his IME with Dr. Adams on February 5, 2016.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 11<sup>th</sup> day of April, 2018.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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