

## WORKERS' COMPENSATION

Claimant did not appeal the arbitration decision and claimant also did not file an appeal brief.

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 October 31, 2014, that relate to issues properly raised on intra-agency appeal with the following additional analysis regarding the determination that claimant's weekly benefit rate is \$476.70.

In the hearing report, claimant indicated her position was that her correct average gross weekly earnings are \$815.20, which makes the correct weekly benefit rate, classification married with two exemptions, \$539.09. In the hearing report defendant indicated its position was that claimant's correct average gross weekly earnings are \$706.19, which makes the correct weekly benefit rate \$474.94. The difference between the parties' positions was whether the disputed bonuses should be included in the rate calculation.

In claimant's post-hearing brief, she states:

It is Olsen's [sic] contention that these bonuses were in fact regular and should therefore be included for purposes for determining her gross earnings. She prays that all benefits in this case be awarded at the rate of \$476.70 per week.

...

Obviously, the hearing deputy is not constrained by the impairment rating from Dr. Bansal. Based on all of the factors that go into an award of permanent partial disability the undersigned prays that Erin Olson be awarded a 15% permanent partial disability to her right leg, that all benefits be ordered paid at the rate of \$476.70 per week, that Pella Corporation be ordered to reimburse Peters Law Firm for the cost of Dr. Bansal's IME report in the amount of \$895.00 and that Pella be ordered to pay Claimant's costs as set forth in Exhibit 9.

(Claimant's post-hearing brief, pp. 4-5)

While claimant makes convincing arguments in her post-hearing brief as to why the disputed bonuses should be considered regular bonuses and should therefore be included in the calculation of her average gross weekly earnings, nowhere in her post-hearing brief does claimant state she believes the correct weekly benefit rate is \$539.09, and nowhere does she state why she requests that PPD benefits be paid at the weekly rate of \$476.70. If this was an error on claimant's part, at no time did

claimant take any steps to try to correct the error. When the deputy commissioner wrote the arbitration decision, she simply followed claimant's request contained in her post-hearing brief to order that the PPD benefits be paid at the weekly rate of \$476.70.

In its appeal brief, defendant states:

It would appear these references to a weekly rate in the amount of \$476.70, at those places in the Arbitration Decision, were not what was intended to be written. Therefore, a new decision on weekly rate is required, rather than simple affirmance of the Arbitration Decision. For the reasons previously stated, Pella urges that the correct rate should not include bonus payments in its calculation, and should be \$474.94

(Defendant's appeal brief, p. 32)

While I affirm the deputy commissioner's determination that the disputed bonuses are regular bonuses which should be included in the calculation of claimant's average gross weekly earnings, I also affirm the deputy commissioner's determination that the correct weekly benefit rate is \$476.70 per week because if claimant's request for this amount was an error, at no time did claimant take steps to correct that error before or after the issuance of the arbitration decision, and because by failing to file an appeal brief claimant waived this point on appeal.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision of October 31, 2014, is affirmed in its entirety.

Defendant shall pay claimant eleven (11) weeks of permanent partial disability benefits at the rate of four hundred seventy-six and 70/100 dollars (\$476.70) per week from June 18, 2013.

Defendant shall pay the entirety of Dr. Bansal's IME fee as well as the itemized costs, which include Dr. Bergmann's report fee.

Defendant shall pay accrued weekly benefits in a lump sum.

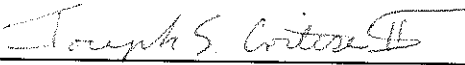
Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant is to be given credit for benefits previously paid.

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

Defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

Signed and filed this 4<sup>th</sup> day of December, 2015.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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