

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES JONES, JR,

Claimant,

vs.

MENARDS,

Employer,

and

ZURICH AMERICAN INSURANCE,

Insurance Carrier,
Defendants.

FILED

JAN 27 2015

WORKERS' COMPENSATION

File No. 5028718

R E M A N D

D E C I S I O N

Head Note Nos.: 3000, 3001, 3002

This case returns to the Iowa Division of Workers' Compensation via a remand from the Iowa Court of Appeals. For ease of understanding, this acting workers' compensation commissioner will trace the procedural history of the case.

The arbitration case was heard in Des Moines, Iowa by a deputy workers' compensation commissioner on February 11, 2010. The presiding deputy issued the arbitration decision on May 24, 2010. In the arbitration decision, the deputy ruled, among other matters, that defendants should pay claimant a running award from September 25, 2008 at the rate of four hundred fifty-one and 68/100 dollars (\$451.68) per week.

Defendants filed a notice of appeal on June 10, 2010. On May 31, 2011, the former workers' compensation commissioner affirmed and adopted the arbitration decision in its entirety.

A petition for judicial review was filed by defendants in the Iowa District Court in and for Polk County on June 29, 2011. On December 12, 2012, the Honorable Donna L. Paulsen, District Judge of the Fifth Judicial District of Iowa issued her Amended Ruling on Petition for Judicial Review. Judge Paulsen, in her order, wrote:

IT IS THE ORDER OF THE COURT that the decision of the Worker's [sic] Compensation Commissioner be **AFFIRMED IN PART** and

REVERSED AND REMANDED IN PART. The Decision of the Commissioner is **AFFIRMED** as to the issues of maximum medical improvement, permanent partial disability and the equitable argument. The Decision is **REVERSED** on the issue of calculation of compensation and **REMANDED** for a determination consistent with this ruling.

(Ruling, page 13)

Claimant appealed the case to the Iowa Court of Appeals. Defendants filed a cross-appeal. The Iowa Court of Appeals affirmed the district court's decision, which affirmed the agency in part, reversed the agency in part, and remanded the issue of recalculation of the rate pursuant to Iowa Code section 85.36(7). (Unpublished opinion, Docket Number 12-0027, Filed on September 6, 2012). Further review to the Iowa Supreme Court was requested. On October 29, 2012, Chief Justice Mark S. Cady, on behalf of the Court, denied further review of the case.

In the decision by the Iowa Court of Appeals, Judge Vaitheswaran wrote that claimant's wages were to be calculated according to Iowa Code section 85.36(7). The section provides:

7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, the employee's weekly earnings shall be computed under subsection 6, taking the earnings, including shift differential pay but not including overtime or premium pay, for such purpose to be the amount the employee would have earned had the employee been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation. If the earnings of other employees cannot be determined, the employee's weekly earnings shall be the average computed for the number of weeks the employee has been in the employ of the employer.

In the present case, claimant commenced employment with defendant-employer on August 27, 2008. He was hired to work Monday through Friday from 5:00 a.m. to 9:00 a.m. at the hourly wage of \$8.30 per hour. In essence, claimant was hired to work 20 hours per week. He was married and entitled to two exemptions. Claimant was injured on September 25, 2008. He worked a total of 4.286 weeks. Claimant's gross earnings from Menard's in 2008 totaled \$617.19.

It is the determination of the undersigned; claimant's gross wages were calculated as: 20 hours per week X \$8.30 per hour totaling \$166.00 per week in gross wages. Claimant was married and entitled to 2 exemptions at the time of his injury. His correct weekly benefit rate for his running award of temporary/healing period benefits is one hundred fifty-three dollars and 30/100 dollars (\$153.30) per week. This corrected

weekly benefit rate accurately reflects the weekly benefits due to claimant given his gross weekly wages.

ORDER

IT IS THEREFORE ORDERED that the September 6, 2012 Remand Decision from the Iowa Court of Appeals is as follows:

Defendants shall pay unto claimant running temporary/healing period benefits from September 25, 2008 at the rate of one hundred fifty-three and 30/100 dollars (\$153.30) per week.

Defendants shall pay the costs of the remand, if any.

Signed and filed this 27th day of January, 2015.



MICHELLE A. McGOVERN
ACTING WORKERS' COMPENSATION
COMMISSIONER

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