

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LOREN LEE PESICKA, JR.,

Claimant,

vs.

SNAP-ON LOGISTICS COMPANY,
a/k/a SNAP-ON TOOLS
MANUFACTURING COMPANY,

Employer,
Self-Insured,
Defendant.

FILED

FEB 22 2019

WORKERS' COMPENSATION

File No. 5018910

REHEARING DECISION

Claimant filed an application for rehearing (Application). Defendant has not yet responded. The application is considered.

Claimant raises several grounds for rehearing. First, claimant contends the apportionment of the costs of the independent medical evaluation (IME) performed by John Kuhnlein, D.O. should not be apportioned. Claimant argues this is improper, as Dr. Kuhnlein, allegedly, did not review medical records regarding the left lower extremity, did not examine claimant's left knee or rate the left knee for permanent impairment.

This is incorrect. Dr. Kuhnlein's April 19, 2016 report notes he examined claimant's left knee. (Claimant's Exhibit II, page 382) Dr. Kuhnlein diagnosed claimant as having an MCL strain of the left knee. (Claimant's Ex. II, p. 382) Dr. Kuhnlein opined claimant still had a five percent permanent impairment to the left knee. (Claimant's Ex. II, p. 385) Based on this record, claimant's application is denied as to this ground. Defendant is only liable for paying one-half of the cost of Dr. Kuhnlein's IME report.

Second, claimant argues that a warning to the parties for failure to follow an order of this agency should be "expunged". This argument is based on a mistaken understanding that the parties are somehow not bound by an order of the deputy workers' compensation commissioner in this case.

As noted in the appeal decision, the deputy commissioner, in this case, ordered the parties to reach an agreement as to the amount due for healing period benefits and interest, and the amount of the overpayment of PPD benefits. The deputy gave detailed criteria for the parties to use in calculating and reaching an agreement regarding the

underpayment of healing period benefits. The deputy also gave detailed criteria regarding the overpayment of PPD benefits. The rehearing decision ordered if the parties could not agree on the calculations they were to jointly retain a CPA to perform a calculation and file the CPA's report with this agency, using criteria consistent with those detailed in the rehearing decision.

There is no indication in the record or in the appeal briefs filed by the parties that the order was followed.

Rule 876 IAC 4.36 states:

If any party to a contested case or an attorney representing such party shall fail to comply with these rules or any order of a deputy commissioner or the workers' compensation commissioner, the deputy commissioner or workers' compensation commissioner may impose sanctions which may include dismissing the action without prejudice, excluding or limiting evidence, assessing costs or expenses, and closing the record in whole or in part to further activity by the party.

This matter is only remanded back to the deputy commissioner to calculate healing period benefits, interest, and the overpayment of permanent partial disability benefits, solely because the parties ignored the order of the deputy.

It is within the discretion of this agency to dismiss this appeal for the parties' failure to comply with an order. However, in this case, it is unfair to penalize the parties for the actions of counsel.

The application is denied as to this ground. This matter is remanded to the deputy commissioner to calculate healing period benefits, interest, and the overpayment of permanent partial disability benefits, using the methods detailed in the rehearing decision.

Both parties are, again, warned that future noncompliance with orders from this agency concerning future cases, and specifically this case, may result in sanctions, including dismissal of this action. See Lull-Gumbusky v. Great Plains Communication, 2015 WL 567320 (Iowa App. 2015); Podgorniak v. Asplundh Tree Expert, File No. 5005649, et al, (Order January 10, 2014); Hougham v. Ozark Automotive, File No. 5020207 (Arb Dec. September 28, 2007); Hoover v. Heyer Truck Line, File No. 5003704 (Ruling on Order to Show Cause January 13, 2004); Hennigar v. Hair on Federal, File No. 5003409 (Ruling on Order to Show Cause, January 6, 2004).

Finally, claimant argues that it is required the undersigned review in detail, in the appeal decision, issues raised in claimant's brief divisions I, II, IV, V, VI, VII and VIII. The review-reopening decision in this matter is 20 pages long. The rehearing decision for that decision is another 7 pages long. The deputy commissioner, in these decisions, provided very detailed and sufficient analysis of the issues raised in the review-

reopening proceeding. I see no reason to repeat the findings of fact and conclusions of law in detailed, well written and well analyzed decisions. For that reason, I again affirm the deputy commissioner's findings of fact and conclusions of law pertaining to all other issues in this case.

ORDER

Claimant's Application for Rehearing is denied.

Signed and filed this 22nd day of February, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Mark S. Soldat
Attorney at Law
3408 Woodland Ave., Ste. 302
West Des Moines, IA 50266
markspslaw@aol.com

Joseph A. Quinn
Attorney at Law
700 Walnut, Ste. 1600
Des Moines, IA 50309-3899
jquinn@nyemaster.com