

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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CHE GOMEZ,

Claimant,

vs.

LAWSON ENTERPRISES, INC.,

Employer,

and

MARKEL INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File No. 5065813

A P P E A L

D E C I S I O N

Head Notes: 1108.50; 1402.20; 1402.40;  
1801; 1803; 2907, 3002;  
5-9998

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Defendants Lawson Enterprises, Inc., employer, and its insurer, Markel Insurance Company, appeal from an arbitration decision filed on September 24, 2020. Claimant Che Gomez cross-appeals. The case was heard on June 26, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 20, 2020.

In the arbitration decision, the deputy commissioner found claimant's stipulated work injury, which occurred on September 29, 2016, materially aggravated, accelerated or lit up claimant's underlying left hip condition. The deputy commissioner found claimant had not yet reached maximum medical improvement (MMI) for his stipulated back injury, meaning the issue of permanent disability was not ripe for determination. The deputy commissioner found claimant is entitled to receive temporary disability benefits from October 4, 2016, through January 9, 2017, and from January 30, 2017, through March 22, 2017. The deputy commissioner calculated claimant's weekly benefit rate to be \$585.46. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$1,015.57.

On appeal, defendants assert the deputy commissioner erred in finding claimant sustained a work-related left hip injury. Defendants also assert the deputy commissioner erred in finding claimant has not yet reached MMI for his back condition. As such, defendants assert the extent of claimant's permanent disability is ripe for determination and defendants assert claimant sustained only minimal industrial disability as a result of the work injury.

On cross-appeal, claimant asserts he is entitled to receive additional temporary disability benefits.

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 September 24, 2020, which relate to the issues properly raised on intra-agency appeal.

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

I affirm the deputy commissioner's finding that claimant sustained a left hip injury as a result of the September 28, 2016, work injury. I affirm the deputy commissioner's finding that claimant has not yet reached MMI for his back condition, meaning bifurcation of the issue of permanent disability is appropriate. I affirm the deputy commissioner's finding that claimant is entitled to receive temporary disability benefits from October 4, 2016, through January 9, 2017, and from January 30, 2017, through March 22, 2017. I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the work injury is \$585.46. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$1,015.57.

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 September 24, 2020, is affirmed in its entirety.

The issue of permanent disability is bifurcated to a later date.

Defendants shall pay temporary total/healing period benefits from October 4, 2016, through January 9, 2017, and from January 30, 2017, through March 22, 2017.

All weekly benefits shall be paid at the weekly benefit rate of five hundred eighty-five and 46/100 dollars (\$585.46).

Defendants shall receive credit for all benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation

benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand fifteen and 57/100 dollars (\$1,015.57), and the parties shall split 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 (SROI) as required by this agency.

Signed and filed on this 3<sup>rd</sup> day of March, 2021.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

David Scieszinski (via WCES)  
Rachael Neff (via WCES)  
Kent Smith (via WCES)