

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

YUSUF SHARIFF,

Claimant,

vs.

KRAFT FOODS, INC.,

Employer,

and

INDEMNITY INSURANCE CO.
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

FILED

APR 25 2018

WORKERS' COMPENSATION

File No. 5037146

A P P E A L

D E C I S I O N

Head Note Nos: 4000.2; 5-9998

Defendants Kraft Foods, Inc., employer, and its insurer, Indemnity Insurance Co. of North America, appeal from an arbitration decision filed on November 7, 2016. Claimant Yusuf Shariff responds to the appeal. The case was heard on June 23, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on July 29, 2016.

This case involves a stipulated work injury which occurred on February 23, 2011. The first arbitration decision was filed in this matter on July 31, 2013. In that decision, the deputy commissioner found for defendants and awarded claimant nothing. (Defendant's Appeal Brief, page 1)

The first arbitration decision was appealed to the workers' compensation commissioner. In the appeal decision issued on April 30, 2014, the commissioner reversed the deputy commissioner's decision and awarded claimant a running award of healing period benefits. (Exhibit 8)

Defendants appealed to the Iowa District Court. On January 20, 2015, the district court issued its ruling on defendants' petition for judicial review and affirmed the commissioner's running award of healing period benefits. (Ex. D)

On February 17, 2015, defendants filed their notice of appeal of the ruling on judicial review. (Ex. E)

On February 26, 2015, defendants filed a supersedeas bond with the Polk County District Court. (Ex. F)

On April 2, 2015, claimant filed his post-hearing penalty petition.

On April 13, 2015, defendants filed a motion to dismiss the petition for post-hearing penalty benefits. On April 21, 2015, a deputy commissioner issued a ruling denying defendants' motion to dismiss claimant's post-hearing penalty petition.

On April 28, 2015, the Polk County District Court issued a Notice of Stay of Execution of Judgment. (Ex. G)

The appeal was heard by the Iowa Court of Appeals, which issued a decision on February 24, 2016, affirming the judicial review decision and the commissioner's running award of healing period benefits. (Ex. H)

The deadline to file for further review with the Iowa Supreme Court was March 15, 2016. Defendants did not file for further review. (Def. App. Brief, p. 2)

On March 15, 2016, defendants mailed payment of healing period benefits in the amount of \$155,883.60 to claimant's counsel. (Ex. B, p. 1) Defendants' exhibit shows the service date for this payment to be March 9, 2016, presumably the date through which payment was made. This understanding is bolstered by the fact that the next temporary benefit payment paid by defendants began with the period commencing March 10, 2016. (Ex. 7)

On April 4, 2016 and again on April 12, 2016, claimant's counsel sent letters to defense counsel inquiring as to the status of the ongoing healing period benefits ordered by the commissioner, which were no longer subject to appeal, but which had not yet been paid, i.e. the weekly benefits accruing after March 9, 2016. (Exs. 3 and 6)

On May 4, 2016, defendants issued payment for temporary total disability benefits for the period of March 10, 2016 through May 4, 2016. (Ex. 7)

Defendants do not argue that any portion of the temporary total disability award as ordered by the commissioner was paid prior to March 15, 2016.

In the arbitration decision in this post-hearing penalty proceeding, the deputy commissioner found that pursuant to Iowa Code section 86.13(4), claimant is entitled to receive post-hearing penalty benefits from defendants for defendants' unreasonable delay in the commencement of weekly healing period benefits for the periods of April 30, 2014, through April 27, 2015, and from March 24, 2016, through May 4, 2016. The deputy commissioner found claimant carried his burden of proof that defendants failed to satisfy the requirements of section 86.13(4) by failing to prove a reasonable or probable cause or excuse for the delay in payment of the benefits in question, in failing to prove the excuse was preceded by a reasonable investigation and evaluation by defendants as to whether benefits were owed to claimant, in failing to prove that the

results of the reasonable investigation and evaluation were the actual basis upon which defendants contemporaneously relied to delay the payment of the benefits, and in failing to contemporaneously convey the basis for the delay in paying the benefits to claimant. The deputy commissioner found a total of \$29,169.76 in weekly benefits was unreasonably delayed. The deputy commissioner found claimant is entitled to receive \$11,500.00 in penalty benefits from defendants, which is approximately 40 percent of the total amount of weekly benefits unreasonably delayed.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to receive penalty benefits in this matter.

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, 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 November 8, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis 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 pursuant to Iowa Code section 86.13(4), claimant is entitled to receive post-hearing penalty benefits from defendants for defendants' unreasonable delays in the commencement of weekly healing period benefits for the periods of April 30, 2014, through April 27, 2015, and from March 24, 2016, through May 4, 2016. I affirm the deputy commissioner's finding that claimant carried his burden of proof that defendants failed to satisfy the requirements of section 86.13(4) by failing to prove a reasonable or probable cause or excuse for the delay in payment of the benefits in question, in failing to prove the excuse was preceded by a reasonable investigation and evaluation by defendants as to whether benefits were owed to claimant, in failing to prove that the results of the reasonable investigation and evaluation were the actual basis upon which defendants contemporaneously relied to delay the payment of the benefits, and in failing to contemporaneously convey the basis for the delay in paying the benefits to claimant. I affirm the deputy commissioner's finding that a total of \$29,169.76 in weekly benefits was unreasonably delayed. I affirm the deputy commissioner's finding that claimant is entitled to receive \$11,500.00 in penalty benefits from defendants, which is approximately 40 percent of the total amount of weekly benefits unreasonably delayed. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 7, 2016, is affirmed in its entirety.

Defendants shall pay claimant the sum of eleven thousand five hundred and no/100 dollars (\$11,500.00) as a penalty for defendants' unreasonable delay in the payment of weekly healing period benefits for the periods of April 30, 2014, through April 27, 2015, and from March 24, 2016, through May 4, 2016. The amount awarded represents a penalty in the range of forty (40) percent.

Defendants shall pay interest on this award from the date of this appeal decision 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.

Pursuant to rule 876 IAC 4.33, defendants shall pay the costs of the appeal.

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 25th day of April, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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