

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAYA BAJGAI,
Claimant,

FILED

JAN 03 2017

vs.

WORKERS COMPENSATION

File No. 5051657

MARZETTI FROZEN PASTA, INC.,
Employer,

RULING ON REHEARING/
RECONSIDERATION

and

TRAVELERS INDEMNITY COMPANY
and ACE AMERICAN INSURANCE
COMPANY

Insurance Carriers,
Defendants.

Defendants, Marzetti Frozen Pasta, Inc., insured by Travelers Indemnity Co. of Ct., move for rehearing/reconsideration of the Arbitration Decision of December 19, 2016. They assert that I improperly found the concluding date for the healing period benefits following the second injury to be April 3, 2015 in that claimant's primary care physician (not an authorized physician), Dr. Gore, had released claimant to full duty work earlier on February 1, 2015. They assert that Dr. Gore's release date is the proper date to end Daya's healing period. (Exhibit 31a)

Defendants are correct in stating that I failed to discuss why I rejected that release as the end of the healing period in my analysis and accepted the date of Dr. McGuire's full duty release as the correct date. My decision to do so was based on Dr. Gore's notations in his office notes of the same date as the release document, January 8, 2015. The doctor stated as follows:

Reviewed in detailed [sic] notes from Dr. McGuire. Reviewed restrictions for lifting, twisting, bending until 1 February, 2015. Initially patient wished to have these restrictions removed and I advised him that he would need to contact the specialist in order to do that.

(Ex. 4-28)

Dr. Gore apparently issued a release form (Ex. 4-31a) that he felt was consistent with the views of the specialist, Dr. McGuire, at the time.

However, Daya returned to Dr. McGuire on January 23, 2015 asking for a full release to return to work, but the doctor rejected this stating such a full release would not be in Daya's best interest. (Ex. 5-65, Ex. 12-131) Dr. McGuire then extended the restrictions until April 2015.

Clearly, Dr. Gore was deferring to the views of Dr. McGuire as to the time when Daya should return to full duty. A reliance on the February 1, 2015 release date is unreasonable given the clear language of Dr. Gore.

However, upon my review of the record in ruling on defendants' motion I found that I did make an error in awarding healing period benefits after the sequelae injury. I had found that Dr. McGuire released claimant to full duty on April 3, 2015. While that date was the time Dr. McGuire signed the release to work document, the effective date was not until April 13, 2015. (Ex. 5-70, Ex. 12-131) April 13, 2015 was also the date when Daya started working for Walmart. Consequently, the correct last day of the healing period is April 12, 2015, not April 3, 2015. This also slightly increases the penalty. The Order portion of the decision shall be amended accordingly.

ORDER

The arbitration decision of December 19, 2016 is modified by striking paragraphs 2 and 3 and inserting the following in lieu thereof:

2. Defendants Marzetti Frozen Pasta, Inc., Travelers Indemnity Company and Ace American Insurance Company shall jointly and severally pay to claimant healing period benefits from August 19, 2014 through April 12, 2015, at the stipulated rate of four hundred twenty-two and 44/100 dollars (\$422.44) per week. Defendants shall have a credit against this award for the disability benefits paid in the amount of five thousand three hundred eighty-eight and 37/100 dollars (\$5,388.37) less any income taxes paid or owed on these benefits.

3. Defendants Marzetti Frozen Pasta, Inc., Travelers Indemnity Company and Ace American Insurance Company shall jointly and severally pay to claimant the sum of seven thousand one hundred fifty-one and 31/100 dollars (\$7,151.31) as a penalty for their unreasonable denial of healing period benefits.

The orders in the remaining paragraphs are unchanged.

Signed and filed this 3rd day of January, 2017.



LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

James B. Neal
Attorney at Law
6611 University Ave., Ste. 200
Des Moines, IA 50324
jneal@smalaw.net

James W. Bryan
Attorney at Law
1089 Jordan Creek Pkwy., Ste. 360
West Des Moines, IA 50266
jbryan@travelers.com

Michael J. Miller
Attorney at Law
505 – 5th Ave., Ste. 729
Des Moines, IA 50309-2837
mmiller@pattersonfirm.com

LPW/srs