

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WAYNE BURRETT,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5061046
WINDRIDGE IMPLEMENTS, LLC,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
TECHNOLOGY INSURANCE	:	
COMPANY,	:	
	:	
Insurance Carrier,	:	Head Note Nos: 1402.40; 1804; 2502;
Defendants.	:	3002; 4000.2; 5-9999

Defendants Windridge Implements, L.L.C., employer, and Technology Insurance Company, its insurance carrier, appeal from an arbitration decision filed on November 30, 2018, and an order nunc pro tunc filed on January 14, 2019. Claimant Wayne Burrett responds to the appeal. The case was heard on August 30, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 28, 2018.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he is permanently and totally disabled as a result of the stipulated January 27, 2016, work-related injury. The deputy commissioner found claimant's correct weekly benefit rate is \$542.51. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of the independent medical examination (IME) of claimant performed by Farid Manshadi, M.D., on June 8, 2018. The deputy commissioner determined claimant carried his burden to prove his entitlement to penalty benefits in the amount of \$2,040.93 based on defendants' underpayment and late payment of benefits. Lastly, the deputy commissioner ordered defendants to pay a portion of claimant's costs of the arbitration proceeding.

In the order nunc pro tunc, the deputy commissioner corrected his rate calculation to reflect the appropriate number of weeks considered in calculating claimant's average weekly wage. The rate was corrected to \$509.98 per week. The deputy commissioner adjusted penalty benefits accordingly to \$1,886.27.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained permanent total disability as a result of the work injury. Defendants assert that instead of permanent total disability, it should be found claimant is entitled to receive industrial disability benefits in the range of 23 to 80 percent. Defendants assert it should be found on appeal that claimant's correct gross average weekly wage for the work injury is \$819.94, with the result that claimant's correct weekly benefit rate, classification single with one exemption, is \$499.68. Defendants assert the award for penalty benefits should be reduced from \$1,886.27 to \$1,529.94 or less.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

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 November 30, 2018, as corrected by the order nunc pro tunc filed on January 14, 2019, 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 carried his burden of proof to establish he is permanently and totally disabled as a result of the stipulated January 27, 2016, work-related injury. In doing so, I affirm the deputy commissioner's finding that Dr. Manshadi's opinions regarding claimant's permanent impairment and restrictions are more convincing than those of Steven Klein, M.D. I also affirm the deputy commissioner's finding that the vocational report of Barbara Laughlin, MA, is more convincing than that of Ronald Schmidt, MS, CRC.

I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the work injury is \$509.98 per week. In doing so, I affirm the deputy commissioner's finding that claimant's annual \$500.00 bonus should be included in the rate calculation, and I affirm the deputy commissioner's finding that the pay period of January 31, 2016, should be excluded from claimant's rate calculation.

I affirm the deputy commissioner's finding that defendants must reimburse claimant for Dr. Manshadi's IME. I affirm the deputy commissioner's finding that claimant satisfied his burden to prove his entitlement to penalty benefits in the amount of \$1,886.27 for defendants' underpayment and late payment of benefits. Lastly, I affirm the deputy commissioner's assessment of claimant's costs.

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 30, 2018, as corrected by the January 14, 2019, order nunc pro tunc, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits at the weekly rate of five hundred nine and 98/100 dollars (\$509.98) commencing on December 22, 2017, and continuing for as long as claimant remains permanently and totally disabled.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. 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).

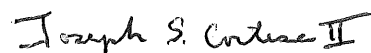
Defendants shall receive a credit for benefits previously paid.

Defendants shall pay claimant a penalty of one thousand eight hundred eighty-six and 27/100 dollars (\$1,886.27) as detailed above.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding as detailed in the arbitration decision, and defendants shall pay 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 as required by this agency.

Signed and filed on this 3rd day of February, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

William G. Nicholson Via WCES

Andrew T. Tice Via WCES