

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICOLE M. ARNOLD,

Claimant,

vs.

DICK'S SPORTING GOODS,

Employer,

and

FEDERAL INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED
JAN 10 2019
WORKERS COMPENSATION

File No. 5059581

RULING ON CLAIMANT'S
MOTION FOR REHEARING

On December 18, 2018, claimant filed a motion for rehearing. There is no response or resistance from Defendants. Claimant asserts that the benefit rate finding in the arbitration is incorrect and that benefit rate should be based on finding claimant was a part-time worker under Iowa Code 85.36(9). The arbitration decision found that claimant worked full time and therefore the benefit rate should be calculated according to Iowa Code section 85.36(6).

Claimant is correct. The arbitration decision's finding that claimant was a full-time worker was inaccurate. Claimant's motion for rehearing is granted.

Iowa Code section 85.36(9) states:

9. If an employee earns either no wages or less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee has earned from all employment during the twelve calendar months immediately preceding the injury.

Iowa Code section 85.36(6) states:


6. In the case of an employee who is paid on a daily or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for

reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

The testimony of the claimant's earnings were sparse. Pursuant to Claimant's Exhibit 3, page 2 and Defendants' Exhibit A, claimant worked a variety of hours in the 13 weeks preceding the injury. For instance, in the two-week period between July 17, 2015, and July 31, 2015, claimant's hours were recorded as 34.08. (Ex. A:1) In the two-week period between July 31, 2015, and August 14, 2015, claimant worked 30.50 hours. (Ex. A:1) The most claimant worked in the 13 weeks preceding the injury was between September 25, 2015, and October 9, 2015, where her recorded hours were 63.35 for the two weeks. (Ex. A:1) According to Claimant's Exhibit 3:2, claimant worked 80 or more hours on only four occasions between April 25, 2014, and February 12, 2016. (Ex. E:2) The evidence supports a finding that claimant worked less than 40 hours per week for the 13 weeks preceding the injury. However, Iowa Code section 85.36(9), also requires a finding that the claimant was earning less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality. There was no testimony about what a regular full-time adult laborer in claimant's position or similar positions earned in the locality she was injured. Thus, Iowa Code section 85.36(6) remains the best calculation based on the evidence in the record.

THEREFORE, IT IS ORDERED, the findings of fact of the Arbitration Decision of November 28, 2018, are modified to reflect the above findings; however, there is no change in the ruling. Claimant's weekly benefit rate is calculated under Iowa Code section 85.36(6) and should be two hundred seven and 60/100 dollars (\$207.60) per week.

Signed and filed this 10th day of January, 2019.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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