

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CURTIS GRIFFEY by mother and
 Father and next friends SANDRA and
 VERNON GRIFFEY and DEVON
 MICHAEL GRIFFEY and MATTHEW
 TYLER GRIFFEY by mother and next
 friend KELSEY A. GRIFFEY and
 AUSTIN ALAN ADAMS by mother
 and next friend ROSANNE SMITH,

Claimant,

vs.

WESTERN EXPRESS, INC.,

Employer,

and

PA MANUFACTURERS
 ASSOCIATION INSURANCE COMPANY,

Insurance Carrier,
 Defendants.

File No. 5062272

A P P E A L

D E C I S I O N

Head Notes: 1201; 1204; 1901; 2907;
 5-9998

Defendants Western Express, Inc., employer, and its insurer, PA Manufacturers Insurance Company, appeal from an arbitration decision filed on April 30, 2020. Claimants all respond to the appeal. The case was heard on January 13, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 14, 2020.

Gary Griffey died tragically as a result of the stipulated work-related motor vehicle accident which occurred on May 22, 2015. The parties stipulated that claimants Curtis Griffey, Devon Griffey, Matthew Griffey and Austin Adams are the surviving children of Gary Griffey.

The deputy commissioner found claimant Curtis Griffey, born in 1995, is mentally disabled and is unable to maintain employment or live independently. The deputy commissioner found Curtis is dependent upon others to support him, including what was financial support from Gary. The deputy commissioner found Curtis carried his burden of proof to establish, pursuant to Iowa Code sections 85.31, 85.42 and 85.44, that he is mentally incapacitated from earning and is therefore entitled to receive workers'

compensation dependent benefits in this matter for as long as he remains disabled. The deputy commissioner ordered that a trustee be established to receive the dependent benefits on behalf of Curtis.

The deputy commissioner found claimant Devon Griffey, born in 2000, is mentally disabled and is unable to maintain employment or live independently. The deputy commissioner found Devon is dependent upon others to support him, including what was to be financial support from Gary. The deputy commissioner found Devon carried his burden of proof to establish, pursuant to Iowa Code sections 85.31, 85.42 and 85.44, that he is mentally incapacitated from earning and is entitled to receive workers' compensation dependent benefits in this matter for as long as he remains disabled. The deputy commissioner ordered that a trustee be established to receive the dependent benefits on behalf of Devon.

The deputy commissioner found claimant Matthew Griffey, born in 2000, is mentally disabled and is unable to maintain employment or live independently. The deputy commissioner found Matthew is dependent upon others to support him, including what was financial support from Gary. The deputy commissioner found Matthew carried his burden of proof to establish, pursuant to Iowa Code sections 85.31, 85.42 and 85.44, that he is mentally incapacitated from earning and is entitled to receive workers' compensation dependent benefits in this matter for as long as he remains disabled. The deputy commissioner ordered that a trustee be established to receive the dependent benefits on behalf of Matthew.

The deputy commissioner found that pursuant to Iowa Code sections 85.31, 85.42 and 85.44, claimant Austin Adams, born in 2004, is entitled to receive workers' compensation dependent benefits in this matter until he reaches the age of 18, or until the age of 25 if he is enrolled as a full-time student in any accredited educational institution. The deputy commissioner ordered that a trustee be established to receive the dependent benefits on behalf of Austin. No determination was made regarding Austin's capacity to earn.

The deputy commissioner found Gary Griffey was a trainee-employee of defendant-employer at the time of the accident. The deputy commissioner found that when Gary's training was over, his earnings were expected to increase. The deputy commissioner found the evidence in this matter establishes that full-time drivers employed by defendant-employer earn a minimum of \$35,000.00 per year. The deputy commissioner found that pursuant to Iowa Code section 85.36(9)(b), the appropriate basis for Gary's gross average weekly wage is an annual salary of \$35,000.00, which results in a gross average weekly wage of \$673.07, which results in a weekly benefit rate, classification single with five exemptions, of \$454.18, which is the weekly benefit rate defendants are to pay in this matter. The deputy commissioner ordered that the weekly benefit payments shall be divided equally among the four dependent children. The deputy commissioner ordered defendants to pay claimants' costs of the arbitration proceeding in the amount of \$722.20

On appeal, defendants assert the deputy commissioner erred in finding Devon Griffey and Matthew Griffey are incapacitated from earning and in finding they are entitled to receive dependent benefits. Defendants assert the deputy commissioner erred in finding the correct gross average weekly wage in this matter is \$673.07, and in finding the correct weekly benefit rate is \$454.18. Defendants assert it should be found on appeal that the correct gross average weekly wage in this matter is \$250.00 and it should be found the correct weekly benefit rate is \$201.57.

On appeal, claimants assert 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.

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 April 30, 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 Devon Griffey and Matthew Griffey are incapacitated from earning and I affirm the deputy commissioner's finding that Devon and Matthew are entitled to receive dependent benefits in this matter for as long as they remain incapacitated.

I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.36(9)(b), the correct gross average weekly wage in this matter is \$673.07, and I affirm the deputy commissioner's finding that the correct weekly benefit rate is \$454.18.

I affirm the deputy commissioner's order that defendants pay claimants' costs of the arbitration proceeding in the amount of \$722.20.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 30, 2020, is affirmed in its entirety.

Defendants shall pay weekly dependent benefits, commencing on May 22, 2015, to the trustees for claimants Curtis Griffey, Devon Griffey, Matthew Griffey and Austin Adams. The payments to claimants Curtis Griffey, Devon Griffey and Matthew Griffey shall continue for as long as they remain incapacitated from earning. The payments to Austin Adams shall continue until he reaches the age of 18, or until the age of 25 if he is enrolled as a full-time student in any accredited educational institution, or if he is determined in the future to be incapacitated from earning for as long as he remains incapacitated from earning.

All weekly benefits shall be paid at the weekly rate of four hundred fifty-four and 18/100 dollars (\$454.18). The weekly benefit payments shall be divided equally among Curtis Griffey, Devon Griffey, Matthew Griffey and Austin Adams.

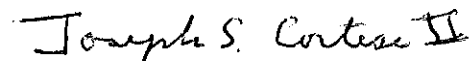
Defendants shall receive credit for all weekly benefits paid to date.

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 seven hundred twenty-two and 20/100 dollars (\$722.20), 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 5th day of November, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Bruce Stoltze (via WCES)

Jeff Carter (via WCES)

Gary Goudelock (via WCES)