

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID MENTER,

Claimant,

vs.

LENNOX INDUSTRIES, INC.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,Insurance Carrier,
Defendants.

File No. 20003192.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.30; 1402.40;
1803; 2208; 2501; 2502; 2701;
2907; 5-9998

Defendants Lennox Industries, Inc., employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on August 15, 2022. Claimant David Menter responds to the appeal. The case was heard on February 10, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 4, 2022.

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish he sustained 53.8 percent age-corrected binaural hearing loss as a result of his employment with defendant-employer, which entitles claimant to receive 94.15 weeks of permanent partial disability (PPD) benefits from defendants. The deputy commissioner found claimant failed to prove his tinnitus arose out of and in the course of his employment. The deputy commissioner found claimant is entitled to alternate care under Iowa Code section 85.27. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of the April 26, 2021, independent medical examination (IME) of claimant performed by Timothy Simplot, M.D. Pursuant to rule 876 IAC 4.33, the deputy commissioner ordered defendants to reimburse claimant for the cost of the filing fee, for the cost of the service fees, and for the \$750.00 charge for Dr. Simplot's November 23, 2021, supplemental report.

On appeal, defendants assert the deputy commissioner erred in finding claimant proved his hearing loss was caused by his employment. Defendants assert the deputy commissioner erred in finding defendants should reimburse claimant for the cost of Dr.

Simplot's IME under Iowa Code section 85.39. Defendants assert the deputy commissioner erred in ordering defendants to reimburse claimant for the cost of the filing fee, for the cost of the service fees, and for the cost of Dr. Simplot's supplemental report.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as 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 August 15, 2022, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 proved he sustained 53.8 percent age-corrected binaural hearing loss as a result of his employment, which entitles claimant to receive 94.15 weeks of PPD benefits from defendants. I affirm the deputy commissioner's finding that claimant failed to prove his tinnitus arose out of and in the course of his employment. I affirm the deputy commissioner's finding that claimant is entitled to alternate care under Iowa Code section 85.27. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of Dr. Simplot's IME. I affirm the deputy commissioner's order that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants for the cost of the filing fee, for the cost of the service fees, and for the \$750.00 charge for Dr. Simplot's November 23, 2021, supplemental report.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above-stated issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 15, 2022, is affirmed in its entirety.

Defendants shall pay claimant 94.15 weeks of permanent partial disability benefits, at the stipulated weekly rate of seven hundred seventy-six and 30/100 dollars (\$776.30), commencing on January 2, 2020.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

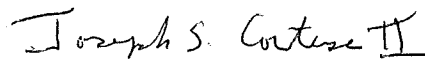
Defendants shall promptly select and authorize a medical provider to provide claimant with additional treatment for his occupational hearing loss, including bilateral hearing aids.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of one thousand six hundred and 00/100 dollars (\$1,600.00), for the cost of Dr. Simplot's IME.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant for the cost of the filing fee, for the cost of the service fees, and for the \$750.00 charge for Dr. Simplot's November 23, 2021, supplemental report, 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 15th day of December, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Ballard (via WCES)

Robert Gainer (via WCES)