

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GREGORY STRONG,

Claimant,

vs.

WESTERN IOWA TECH COMMUNITY
COLLEGE,

Employer,

IMPACC,

Insurance Carrier,
Defendants.

File Nos. 5040800, 5056575

A P P E A L

D E C I S I O N

Head Note Nos: 1108; 1803; 2502; 2907;
5-9999

Defendants Western Iowa Tech Community College, employer, and its insurer, IMPACC, appeal from an arbitration decision filed on June 18, 2018. Claimant Gregory Strong responds to the appeal. The case was heard on June 6, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 14, 2017.

The deputy commissioner found claimant sustained one distinct work-related injury, which occurred on November 13, 2009. The deputy commissioner found the injury which claimant sustained on February 12, 2012, was a sequela of the November 13, 2009, injury and not a separate, distinct work injury. The deputy commissioner found claimant sustained 60 percent industrial disability as a result of the November 13, 2009, work injury, which entitles claimant to receive 300 weeks of permanent partial disability (PPD) benefits. The deputy commissioner found the correct commencement date for PPD benefits is December 6, 2010. The deputy commissioner did not address defendants' contention that they are entitled to receive a credit in the amount of \$3,841.45 for overpayments of certain weeks of healing period benefits and PPD benefits. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$4,575.32 for the cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D., on April 24, 2017, and for claimant's mileage expense incurred in attending Dr. Bansal's IME. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$3,179.89, which includes \$2,600.00 for the cost of the IME report from Kunal K. Patra, M.D., \$100.00 for

the filing fee, \$227.89 for medical records and \$252.00 for the cost of the transcript of claimant's deposition.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 60 percent industrial disability as result of the work injury. Defendants assert the award for industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in finding the correct commencement date for PPD benefits is December 6, 2010. Defendants assert it should be found that the correct commencement date for PPD benefits is April 25, 2016. Defendants assert the deputy commissioner erred in failing to find defendants are entitled to receive a credit in the amount of \$3,841.45 for overpayment of certain weeks of healing period benefits and PPD benefits. Defendants assert the deputy commissioner erred in taxing defendants with the \$2,600.00 cost from Dr. Patra for his IME report and the \$252.00 cost for the transcript of claimant's deposition.

Claimant asserts on appeal that 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 June 18, 2018, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 sustained one distinct work-related injury, which occurred on November 13, 2009, and I affirm the deputy commissioner's finding that the injury which claimant sustained on February 12, 2012, was a sequela of the November 13, 2009, injury and not a separate, distinct injury. I affirm the deputy commissioner's finding that claimant sustained 60 percent industrial disability as a result of the November 13, 2009, work injury. I affirm the deputy commissioner's finding that the correct commencement date for PPD benefits is December 6, 2010. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that defendants are taxed with the \$2,600.00 cost from Dr. Patra for his IME report and the \$252.00 cost for the transcript of claimant's deposition.

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

With regard to defendants' assertion that they are entitled to receive a credit in the amount of \$3,841.45 for overpayments of certain weeks of healing period benefits and PPD benefits, which assertion the deputy commissioner did not address, I find defendants are entitled to no such credit. The Iowa Supreme Court has held: "The plain language of Section 85.34(5) directs that the overpayment of any weekly benefits be credited to payments for subsequent injuries." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137 (Iowa 2010)

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on June 18, 2018, is affirmed in its entirety.

Defendants shall pay claimant three hundred (300) weeks of permanent partial disability benefits at the rate of seven-hundred eighty-five and 86/100 (\$785.86) per week commencing December 6, 2010.

Defendants shall receive a permanency credit for 139.429 weeks at the weekly rate of \$785.86 for PPD benefits previously paid.

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. April 24, 2018).

Defendants shall reimburse claimant for Dr. Bansal's IME in the amount of four thousand four hundred ninety and no/100 dollars (\$4,490.00) as set forth in Claimant's Exhibit 11, page 85, plus medical mileage incurred by claimant for the IME in the amount of eighty-five and 32/100 dollars (\$85.32).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$3,179.89, 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 6th day of December, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Dennis M. McElwain Via WCES

Nicholas J. Pellegrin Via WCES