

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

CHARLES R. COFFEY,

Claimant,

vs.

MID SEVEN TRANSPORTATION
COMPANY,

Employer,

and

GREAT WEST CASUALTY COMPANY,

Insurance Carrier,
Defendants.

File No. 1074160

AUG 11 2015

WORKERS' COMPENSATION

RULING ON CLAIMANT'S
AND DEFENDANTS' APPLICATIONS
FOR REHEARING ON APPEAL
DECISION ON REMAND

Head Note Nos.: 2403, 3400

The above-captioned case is a complicated matter which has wound its way through the court system since 2003. On February 25, 2014, a remand decision was filed pursuant to the Supreme Court's decision in Coffey v. Mid Seven Transportation Co., 831 N.W. 2d 81 (Iowa 2013). On April 23, 2014, claimant filed his notice of appeal of the remand decision. On May 1, 2014, defendants filed their notice of cross-appeal of the remand decision. The undersigned filed the appeal decision on remand on June 9, 2015. On June 26, 2015, defendants filed their application for rehearing on appeal decision on remand. On June 29, claimant filed his application for rehearing on appeal decision on remand.

The defendants assert in their application for rehearing that the appeal decision did not address three issues raised in their cross appeal. The first two issues relate to medical bills. The amount of the medicals owed was resolved in the prior litigation and was not subject to remand. The other issue was the timeliness of the claimant's notice of appeal from the remand decision.

The deputy filed an Issue Analysis and Order on January 3, 2014. Claimant filed a motion for rehearing on January 22, 2014. On February 5, 2014, this motion was denied. The remand decision was issued on February 25, 2014. The claimant filed a motion to reconsider on March 17, 2014. The notice of appeal of the remand decision was filed by claimant on April 23, 2014, within the time frame allotted by the rules.

Defendants argue that the second motion to reconsider was duplicative of the first and therefore should not serve as a method for extending the time for filing a notice

of appeal. In Boughton v. McAllister, 576 NW2d 94 (Iowa 1998), cited by the defendants in support of their argument, it notes that when a motion for reconsideration is filed to address an entirely new decision or order from the court, the motion is not repetitive. Even if some of the arguments advanced by the claimant were the same, the rehearing motion was to the remand decision and not the issue analysis. Therefore the two were not repetitive.

Claimant asserts in his application for re-hearing that the calculation in the appeal decision on remand failed to account for a "credit in the amount of \$70,904.33" paid to defendant employer. A review of the record reveals that on December 22, 1997, a check in the amount of \$46,820.23 was issued from the Patterson Law Firm Trust Account to Great West, defendant insurer. (Exhibit A) A letter dated December 15, 1997, indicates that as of that date, Great West had paid \$70,904.33, and Great West demanded reimbursement of that amount less "its share of the attorneys' fees and costs." (Ex. B)

The \$46,820.23 figure was arrived at by allocating \$70,904.33 as the defendants' gross share and then reducing the gross share by approximately 1/3 of the overall fees and costs associated with procuring the \$275,000.00 settlement. The actual amount of money paid to the defendants outright was \$46,820.23 rather than the \$70,904.33 articulated by the claimant.

In the February 21, 2014, response to employer and carrier's stipulation to claimant's calculations and claimant's calculations of amounts due and credit, claimant asserts that the total credit due to the defendants is \$244,095.67. (Ex. C)

The \$244,095.67 is the gross to Charles Coffey from the December 22, 1997, settlement plus the gross amount to Coffey from the November 30, 2001, settlement. ($\$204,095.67 + \$40,000.00 = \$244,095.67$)

Thus, the starting point of the remand decision was \$204,095.67. Both parties agreed to the above figure as the starting point of the amount due in credit beginning on December 22, 1997. In reviewing the case once again, the undersigned returns to the stipulation of the parties.

The parties' stipulation should be enforced unless a good cause is shown to the contrary. *Id.* A stipulation is properly disregarded if the matter stipulated is erroneous as a matter of law. See Mycogen Seeds v. Sands, 686 N.W.2d 457, 467 (Iowa 2004) (commissioner correctly disregarded stipulation concerning date permanent partial disability commenced because stipulated date conflicted with date prescribed by statute).

It is the goal and obligation of the agency to provide adjudication within the parameters of the code, guided by interpretation of the Appellate Courts of the State of

Iowa. The undersigned has evaluated numerous scenarios in attempting to execute this duty.

Using the figures of Claimant's Exhibit 1A to the Claimant's Brief filed November 25, 2013, stipulated to by the parties, the credit would be \$71,936.24. (See table A)

Defendants assert that the calculations are incorrect and that the Deputy's original remand decision contained the most accurate calculations. The calculations should be guided by Ewing v. Allied Constr. Servs, 592 N.W.2d 689, 691 (Iowa 1999). Ewing's holding is that for future benefits, an insurer and defendant should pay 1/3 of the amount it would have owed in benefit payment in lieu of the actual benefit payment. That 1/3 amount represents the attorneys' fees and costs associated in obtaining that settlement.

At the time of the hearing in Ewing, the defendants' obligation was ongoing, unlike in this case where the defendants' obligation for payment ceased on October 28, 2001. Ewing's holding would have applied if the claimant was still entitled to benefits when the arbitration decision was issued on May 20, 2003, or the claimant was found permanently and totally disabled and continued to be entitled to benefits well after May 20, 2003.

However, pursuant to the arbitration decision, claimant's entitlement to benefits ended October 28, 2001, and that would eliminate defendants' obligation to pay attorneys' fees in lieu of a benefit payment.

Ewing provides some, but not total, guidance as to how the credit should be applied. Nonetheless, under the deputy's calculations on remand, the defendants have an outstanding lien credit of \$59,136.86. (Table B)

In the February 21, 2014, response to employer and carrier's stipulations to claimant's calculations and claimant's calculations of amounts due and credit, claimant argues that the defendants are entitled to a credit of \$244,095.67 based on the civil third party settlements.

The amount owed by the Defendants is \$261,838.40 broken out as follows:

\$43,492.23 – interest due Claimant as of 1/30/2006
\$41,172.60 – interest at \$98.03 a week for 420 weeks
\$18,522.42 – unpaid medical expenses
\$3,931.69 – unpaid mileage
\$154,719.46 – weekly benefits due Claimant as of 1/30/2006

\$261,838.40

However, the interest calculation presumes that claimant is entitled to interest after December 22, 1997, and the first third-party settlement amount. The Deputy wrote in her remand decision that "a reasonable person acting in his own best interests would have timely paid himself the full amount he was owed for underpayment and added interest as calculated under the United States rule as of that date. Therefore, defendants have no liability for interest on underpaid benefits and interest beyond December 22, 1997."

I believe this to be accurate. Claimant cannot receive a settlement that exhausts the amount owed to the defendants and then maintain because payments were not made that claimant is entitled to interest. That would defeat the purpose of the subrogation.

Therefore, based solely on claimant's calculations, the defendants have a credit as of October 28, 2001, when the final PPD payment was due. (Table C)

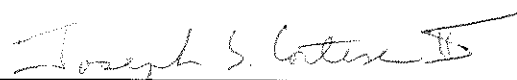
Using either the claimant's calculations or the stipulations of the parties, defendants would be entitled to a credit prior to the issuance of the arbitration decision on May 20, 2003.

The point of section 85.22(1) is one of fairness. Essentially, the claimant should be made whole only once. This is a challenging case but the statute says that the defendants shall be indemnified out of the recovery of damages reduced only by the attorneys' fees incurred in obtaining the third party settlement. The remand decision and the calculations contained therein are most aligned with the parties' stipulation.

ORDER

The appeal decision on remand filed in this matter on June 9, 2015, is hereby vacated and the remand decision filed on February 25, 2014 is hereby reinstated, adopted and affirmed in all respects.

Signed and filed this 11th day of August, 2015.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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TABLE A – Appeal Calculations

Date	Event	Amount Owed	Amount Paid	Balance Due
2/8/94	Date of Injury			
8/15/94	End of temporary benefits. In this case, claimant reached MMI. 26 6/7 weeks of healing period	\$12,682.75	<u>\$10,536.86</u>	<u>\$2,145.89</u>
8/15/94	Interest due on HP underpayment	\$290.84		<u>\$2,436.73</u>
10/25/95	Defendants' medical and mileage owed and paid as of this date.	\$35,753.57	\$35,753.57	<u>\$2,436.73</u>
10/25/95	Defendants voluntary PPD payments end. 62 3/7 weeks	\$29,478.20	\$24,492.76	<u>\$7,422.17</u>

Date	Event	Amount Owed	Amount Paid	Balance Due
12/22/97	Settlement with Third Party A. Amount: 275,000.00 less Attys Fees + Costs: \$93,394.82 is \$181,605.18 as a credit		\$181,605.18	- \$174,183.01
12/22/97	Amount of PPD owed between 10/25/1995 and 12/22/1997 is 112 5/7 at \$472.18	\$53,221.43		- \$120,961.58
12/22/97	Interest owed on HP underpayment	\$1,075.69		- \$119,885.89
12/22/97	Interest owed on PPD underpayment	\$5,644.34		- \$114,241.55

Date	Event	Amount Owed	Amount Paid	Balance Due
10/28/01	Last date of PPD ordered by the decision (75%) 375 weeks less the 175 1/7 weeks already paid or 199 6/7 weeks	<u>\$94,368.55</u>		-\$19,873.00
11/30/01	Settlement with Third Party B. Amount: \$40,000 less 4Attys Fees + Costs \$15,365.86		\$24,634.14	-\$44,507.14
5/20/03	Arbitration Decision			
1/11/06	Supreme Court			
1/11/06	Unpaid mileage and medical bills	\$22,454.11		-\$22,053.03
1/30/06	Payment by Great West for attorneys fees		\$51,573.09	-\$73,626.12

Date	Event	Amount Owed	Amount Paid	Balance Due
8/31/09	Medical bills and mileage: medical bills \$808 + \$609 and Mileage of \$174.60 + \$98.28	\$1,689.88		-\$71,936.24

TABLE B – Remand Decision Calculations

Date	Amount	Description
12/22/97	\$204,095.00	Starting credit
	(\$773.71)	Interest owed on unpaid HP benefits due 2/8/94-8/15/94
	(\$2,144.53)	Underpayment of HP benefits
	(\$1,366.53)	Underpayment of PPD Interest
	(\$4984.95)	Underpayment of PPD
	(\$56,019.20)	PPD Due
	(\$5,644.34)	Interest on PPD Due
12/23/1997	\$136,161.74	Amount of credit as of 12/23/1997
	(\$94,570.77)	PPD due between 12/23/97 – 10/28/01
10/28/2001	\$41,590.97	Amount of credit as of 10/28/2001 after deduction of outstanding PPD.
	(\$18,522.42)	Medical owed
	(\$3,931.69)	Mileage owed
10/28/2001	\$19,136.86	Amount of credit as of 10/28/2001 after deduction of medical and mileage
11/30/2001	\$40,000.00	Settlement
11/30/2001	\$59,136.86	Amount of credit after addition of 11/30/01 settlement

TABLE C – Claimant’s Calculations

In the February 21, 2014, Response to Employer and Carrier’s Stipulations to Claimant’s Calculations and Claimant’s Calculations of Amounts Due and Credit, claimant argues that the Defendants are entitled to a credit of \$244,095.67 based on the civil third-party settlements.

The amount owed by the Defendants is \$261,838.40 broken out as follows:

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\$261,838.40

Total credit to Defendants: \$244,095.67

Disallowable interest:

- \$29,310.97 (Ex. A, p. 2, subpart I.C)
- \$577.74 (Ex. A, p. 2, subpart II.A.2)
- \$1,345.26 (Ex. A, p. 3, subpart II.B.1.b)
- \$14,329.84 (Ex. A, p. 3, subpart II.B.2.b)
- \$19,454.81 (Ex. A, p. 3, subpart II.B.3.b)

Total amount owed by Defendants after the disallowed interest: \$196,819.78

Credit exceeds amount owed by: \$47,275.89