

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DALE A. HAYES,

Claimant,

vs.

EAGLE WINDOW & DOOR,
MANUFACTURING, INC.

Employer,

and

OLD REPUBLIC INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5038676

A P P E A L

D E C I S I O N

Head Note Nos: 1803, 2500, 2700; 2905;
2907; 5-9998

FILED
DEC 14 2018
WORKERS' COMPENSATION

Defendants Eagle Window & Door Manufacturing, Inc., employer, and Old Republic Insurance Company, insurance carrier, appeal from a review-reopening decision filed on May 17, 2017. Claimant Dale Hayes responds to the appeal. The case was heard on September 19, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 14, 2016.

The deputy commissioner found claimant is entitled to review-reopening because claimant carried his burden of proof that he sustained a physical change of condition following an arbitration decision which was filed on July 23, 2013, for a work-related injury which occurred on July 20, 2010. In the review-reopening decision filed on May 17, 2017, claimant was awarded 60 percent industrial disability, which entitles claimant to receive 300 weeks of permanent partial disability (PPD) benefits, commencing January 20, 2015. In the review-reopening decision, the deputy commissioner found defendants are entitled to a credit for 15 weeks of PPD benefits paid by defendants pursuant to the arbitration decision. The deputy commissioner found claimant is entitled to payment by defendants for the requested past medical expenses itemized in the attachment to the hearing report. The deputy commissioner found claimant is entitled to receive ongoing medical care for his cervical condition. The deputy commissioner ordered defendants to pay claimant's costs of the review-reopening proceeding in the amount of \$1,165.50.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to review-reopening for the July 20, 2010, injury. Defendants assert

the deputy commissioner erred in finding claimant sustained a physical change of condition which entitles claimant to review-reopening. Defendants assert the deputy commissioner erred in awarding claimant 60 percent industrial disability, with a credit for the PPD benefits paid pursuant to the July 23, 2013, arbitration decision. In the alternative, defendants assert if it is found on appeal that claimant is entitled to review-reopening, the award for industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for the requested past medical expenses. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive ongoing medical care for his cervical condition.

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 May 17, 2017, 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 claimant is entitled to review-reopening for the July 20, 2010, work injury. I affirm the deputy commissioner's finding claimant sustained a physical change of condition which entitles claimant to additional PPD benefits. I affirm the deputy commissioner's award of 60 percent industrial disability, with a credit for the 15 weeks of PPD benefits paid pursuant to the July 23, 2013, arbitration decision. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses itemized in the attachment to the hearing report. I affirm the deputy commissioner's finding that claimant is entitled to receive ongoing medical care for his cervical condition. I affirm the deputy commissioner's order that defendants pay claimant's costs of the review-reopening proceeding in the amount of \$1,165.50. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on May 17, 2017, is affirmed in its entirety.

Defendants shall pay claimant three hundred (300) weeks of permanent partial disability benefits at the stipulated weekly rate of four hundred seventy-three and 85/100 dollars (\$473.85) commencing on January 20, 2015.

Defendants shall receive a credit against the award for the fifteen (15) weeks of permanent partial disability benefits paid pursuant to the July 23, 2013, arbitration decision.

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).

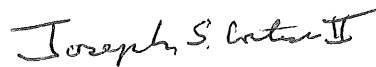
Defendants shall reimburse claimant for his out-of-pocket medical expenses itemized in the Medical Treatment Summary attached to the Hearing Report and defendants shall pay, reimburse, and/or otherwise satisfy all remaining medical expenses itemized in the Medical Treatment Summary.

Defendants shall promptly authorize pain management treatment for claimant for his cervical condition at the Finley Pain Clinic as soon as practicable and defendants shall alert claimant of the date and time of the authorized appointment.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the review-reopening proceeding in the amount of one thousand one hundred sixty-five and 50/100 dollars (\$1,165.50), 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 14th day of December, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Mark J. Sullivan
Attorney at Law
P.O. Box 239
Dubuque, IA 52004-0239
sullivan@rkenline.com

Timothy W. Wegman
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266-2504
tim.wegman@peddicord-law.com