

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH MAYES,

Claimant,

vs.

JHCI HOLDINGS, INC., a/k/a
JACOBSON COMPANIES, a/k/a
JACOBSON WAREHOUSE CO. INC.
a/k/a NORBERT DENTRESSANGLE,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

DEC 18 2018

WORKERS' COMPENSATION

File No. 5052416

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 1801; 1801.1;
1803; 1804; 2501; 2502; 2907;
3001; 3002; 4000.2; 4100; 5-9998

Claimant Joseph Mayes appeals from an arbitration decision filed on April 3, 2017, from a ruling on claimant's motion to reconsider filed on May 2, 2017, and from a ruling on petition for reimbursement for an independent medical exam filed on June 1, 2017. Defendants JHCI Holdings, Inc. (a/k/a Jacobson Companies, a/k/a Jacobson Warehouse Co. Inc., a/k/a Norbert Dentressangle), employer, and its insurer, Zurich American Insurance Company, cross-appeal. The case was heard on September 16, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 4, 2016.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof that the stipulated injury which arose out of and in the course of his employment with defendant-employer on October 15, 2014, caused claimant to sustain injuries to his pelvis, his right upper extremity, his right shoulder, his left shoulder and his jaw. The deputy commissioner found claimant failed to carry his burden of proof that the work injury caused him to sustain injuries to his neck and back. The deputy commissioner found claimant sustained 50 percent industrial disability as a result of the work injury, which entitles claimant to receive 250 weeks of permanent partial disability (PPD) benefits. The deputy commissioner found claimant failed to carry his burden of proof that he is permanently and totally disabled under either the traditional industrial

disability analysis or under the odd-lot analysis. The deputy commissioner found claimant is entitled to receive temporary total disability (TTD) benefits from October 15, 2014, through February 20, 2015, and from March 22, 2015, through July 18, 2016. The deputy commissioner found claimant is entitled to receive temporary partial disability (TPD) benefits from February 21, 2015, through March 21, 2015. The deputy commissioner found the correct commencement date for PPD benefits is February 21, 2015. The deputy commissioner found claimant's correct gross average weekly wage for the work injury is \$1,122.66, making claimant's correct weekly benefit rate, classification single with one exemption, is \$649.40. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$3,900.00 for an unreasonable underpayment of weekly benefits. The deputy commissioner found claimant is entitled to receive alternate medical care in the form of dental treatment recommended by Todd Nielsen, DDS, the authorized treating oral surgeon. The deputy commissioner found claimant is entitled to payment by defendants for the past medical expenses for the work injury itemized in Exhibit 44. The deputy commissioner found claimant is not entitled to payment by defendants for the past medical expenses itemized in Exhibit 43. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

In the arbitration decision, in the ruling on claimant's motion to reconsider, and in the ruling on petition for reimbursement for an independent medical exam (IME), the deputy commissioner found that because claimant did not list request for reimbursement of an IME pursuant to Iowa Code section 85.39 as an issue in the hearing report, claimant cannot receive reimbursement for the cost of the IME of claimant performed by Jacqueline Stoken, D.O., on November 16, 2015.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that the work injury caused him to sustain injuries to his neck and back. Claimant asserts the deputy commissioner erred in finding claimant sustained 50 percent industrial disability as a result of the work injury, and in failing to find claimant failed to carry his burden of proof that he is permanently and totally disabled under either the traditional industrial disability analysis or under the odd-lot analysis. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for the past medical expenses itemized in Exhibit 43. Claimant asserts the deputy commissioner erred in finding claimant cannot receive reimbursement for the cost of Dr. Stoken's IME.

Defendants assert on cross-appeal that the deputy commissioner erred in finding the work injury caused claimant to sustain an injury to his left shoulder. Defendants assert the deputy commissioner erred in finding claimant sustained 50 percent industrial disability as a result of the work injury. Defendants assert the award for industrial disability is excessive and should be reduced substantially on appeal.

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 3, 2017, those portions of the ruling on claimant's motion to reconsider filed on May 2, 2017, and those portions of the ruling on petition for reimbursement for an independent medical exam filed on June 1, 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 carried his burden of proof that the October 15, 2014, work injury caused claimant to sustain injuries to his pelvis, his right upper extremity, his right shoulder, his left shoulder and his jaw. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that the work injury caused claimant to sustain injuries to his neck and back. I affirm the deputy commissioner's finding that claimant sustained 50 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he is permanently and totally disabled as a result of the work injury under either the traditional industrial disability analysis or under the odd-lot analysis. I affirm the deputy commissioner's finding that claimant is entitled to receive TTD benefits from October 15, 2014, through February 20, 2015, and from March 22, 2015, through July 18, 2016. I affirm the deputy commissioner's finding that claimant is entitled to receive TPD benefits from February 21, 2015, through March 21, 2015. I affirm the deputy commissioner's finding that the correct commencement date for PPD benefits is February 21, 2015. I affirm the deputy commissioner's finding that claimant's correct gross average weekly wage for the work injury is \$1,122.66, and claimant's correct weekly benefit rate for the work injury is \$649.40. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$3,900.00 for an unreasonable underpayment of weekly benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care in the form of dental treatment recommended by Dr. Nielsen. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the past medical expenses for the work injury itemized in Exhibit 44. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for the past medical expenses itemized in Exhibit 43. I affirm the deputy commissioner's findings that because claimant did not list request for reimbursement of an IME pursuant to Iowa Code section 85.39 as an issue in the hearing report, claimant cannot receive reimbursement for the cost of Dr. Stoken's November 16, 2015, IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

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 3, 2017, the ruling on claimant's motion to reconsider filed on May 2, 2017, and the ruling on claimant's petition for reimbursement for an independent medical exam filed on June 1, 2017, are affirmed in their entirety.

All weekly benefits shall be paid at the weekly rate of six hundred forty-nine and 40/100 dollars (\$649.40).

Defendants shall pay claimant healing period benefits from October 15, 2014, through February 20, 2015, and, from March 22, 2015, through July 18, 2016.

Defendants shall pay claimant temporary partial disability benefits from February 21, 2015, through March 21, 2015.

Defendants shall pay two hundred fifty (250) weeks of permanent partial disability commencing on February 21, 2015, until paid in full.

Defendants shall receive a credit for all benefits paid to date, pursuant to the stipulation contained in the hearing report.

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 pay claimant penalty benefits of three thousand nine hundred and 00/100 dollars (\$3,900.00).


Defendants shall pay the medical expenses itemized in Exhibit 44 as directed in the arbitration decision.

Defendants shall promptly authorize all treatment recommended by Dr. Nielsen.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and the parties shall split 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 18th day of December, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Larry D. Krpan
Attorney at Law
2700 Westown Pkwy., Ste. 300
West Des Moines, IA 50266-1411
larry@krpanlawoffice.com

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