

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEROY STAUB,	:	FILED
Claimant,	:	FEB -2 2018
vs.	:	WORKERS' COMPENSATION
THOMBERT, INC.,	:	File Nos. 5049959, 5049960
Employer,	:	APPEAL
and	:	DECISION
EMCASCO INSURANCE COMPANY,	:	
Insurance Carrier,	:	Head Note Nos: 1803; 3000; 3002
Defendants.	:	

Defendants Thombert, Inc., employer, and its insurer, EMCASCO Insurance Company, appeal from an arbitration decision filed on July 8, 2016. Claimant Leroy Staub cross-appeals. The case was heard on April 1, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 29, 2016.

In File No. 5049960, stipulated injury date of January 22, 2013, the deputy commissioner found claimant sustained no permanent disability and claimant was awarded nothing. The deputy commissioner also ordered the parties to bear their own costs of the arbitration proceeding.

In File No. 5049959, stipulated injury date of May 15, 2014, the deputy commissioner found claimant sustained 60 percent industrial disability, which entitles claimant to receive 300 weeks of permanent partial disability (PPD) benefits, commencing November 13, 2014. Pursuant to Iowa Code section 85.39, the deputy commissioner found claimant is entitled to receive reimbursement from defendants in the amount of \$886.37 for the independent medical evaluation (IME) performed by John Kuhnlein, D.O., on June 23, 2015. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 60 percent industrial disability as a result of the work injury. Defendants assert the award of industrial disability should be reduced by a substantial amount.

Claimant asserts on cross-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.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 July 8, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant sustained 60 percent industrial disability as a result of the May 15, 2014, work injury, which entitles claimant to receive 300 weeks of PPD benefits commencing November 13, 2014. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement from defendants in the amount of \$886.37 for Dr. Kuhnlein's IME. I also 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 July 8, 2016, is affirmed in its entirety.

Regarding File No. 5049960, injury date of January 22, 2013:

Claimant shall take nothing.

Each party shall bear their own costs of the arbitration Proceeding.

Regarding File No. 5049959, injury date of May 15, 2014:

Defendants shall pay claimant three hundred (300) weeks of permanent partial disability benefits at the weekly rate of five hundred nine and 51/100 dollars (\$509.51) commencing November 13, 2014.

Defendants shall be given credit for benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

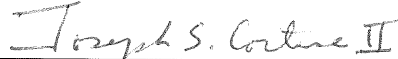
Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of eight hundred eighty-six and 37/100 dollars (\$886.37) for Dr. Kuhnlein's IME.

Claimant is entitled to receive ongoing medical care and treatment for his right shoulder injury.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 this 2nd day of February, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Siobhan M. Schneider
Attorney at Law
PO Box 157
Newton, IA 50208
Siobhan@walklaw.com

D. Brian Scieszinski
Attorney at Law
801 Grand Avenue, Ste. 3700
Des Moines IA 50309-2727
Scieszinski.brian@bradshawlaw.com