

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARY MAXWELL,

Claimant,

vs.

PRECISION PULLEY & IDLER,

Employer,

and

UNITED HEARTLAND,

Insurance Carrier,
Defendants.

File No. 5017423

APPEAL
DECISION

FILED

JUL 17 2009

WORKERS' COMPENSATION

Head Note No.: 1804

Upon written delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, I render this decision as a final agency decision on behalf of the Iowa workers' compensation commissioner.

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision of October 27, 2008 filed in this matter that relate to issues properly raised on intra-agency appeal and cross-appeal with the following additional analysis concerning credit for benefits paid prior to July 20, 2004 and penalties. I also have an addition to the Order portion of the decision.

The hearing report submitted at hearing indicates that clamant was seeking healing period benefits in this proceeding from July 20, 2004 through February 13, 2007 and the parties agreed that she was off work during this time. Also, the parties agreed in the hearing report that defendants were entitled to credit against any award consisting of 180.457 weeks of benefits paid to claimant prior to hearing at the rate of \$280.37. Hand written in this section was "see Exhibit A."

At hearing, defense counsel stated to the hearing deputy that he agreed that the work injury was a cause of two stipulated healing periods; namely July 20, 2004 - October 21, 2004 and August 10, 2006 - February 13, 2007. He went on to state he disputed entitlement to benefits for the intervening period of July 21, 2004 - August 9, 2006. Claimant did not respond to those statements. (Transcript, page 2)

In their post-hearing brief, defendants reiterated this position. Claimant also reiterated in her post-hearing brief that she was seeking healing period benefits for the intervening period, but also clearly stated that she was seeking penalties for the underpayment of rate for the entire 180.457 weeks of benefits previously paid.

Exhibit A is a record of the weekly benefits paid to claimant for this injury of July 1, 2003. Claimant first began receiving weekly benefits on October 7, 2003. Except for a few intervening weekly periods, these continued until July 2007 based upon a weekly rate of \$280.31. The stipulated weekly rate at the time of hearing was \$338.98. Consequently, claimant was paid weekly benefits for about 24 weeks prior to July 20, 2004, the date of the first claimed period of healing period entitlement.

Based upon claimant's testimony at hearing, the hearing deputy found that claimant was first off work following surgery on October 1, 2003, but did return to work in mid January 2004. (Tr., p.19) The deputy then provided a credit against weekly and penalty benefits awarded for an overpayment of weekly benefits from mid January 2004 to July 19, 2004, the time she worked before being off again on July 20, 2004. The deputy went on to award penalty benefits for underpayment of rate beginning on October 7, 2003 and for delay in paying permanency benefits.


Defendants assert on appeal that they are entitled to a credit for all of the weekly amounts paid prior to July 20, 2004 as claimant was not seeking any other healing periods pursuant to the parties' stipulations at hearing. This was the first time defendants claimed that there was some sort of stipulation that prevented claimant from seeking penalties for underpayments during periods of time other than the period from July 20, 2004 through February 13, 2007. This is clearly not correct as claimant's post hearing brief clearly indicates otherwise. The statements made at hearing to the hearing deputy certainly do not demonstrate any such stipulation. Also, claimant was obviously not claiming entitlement to healing periods benefits prior to July 20, 2004 as she was already paid those benefits in excess of her entitlement.

I fully agree with the penalty calculations and assessments made by the hearing deputy which were fully explained in the arbitration decision.

My only problem is that the deputy did not specifically order the payment of claimant's entitlement to healing period benefits as set forth in the Conclusions of Law section. Consequently, in addition to the Orders contained in the arbitration decision, I order that defendants pay to claimant healing period benefits from July 20, 2004 through February 13, 2007 at the stipulated rate of \$338.98. The remaining Orders are unchanged.

Costs of this appeal are assessed to defendants.

Signed and filed this 17th day of July, 2009.


LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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