

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID CRABTREE,

Claimant,

vs.

TRI-CITY ELECTRIC COMPANY,

Employer,

and

OLD REPUBLIC INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5059572

A P P E A L

D E C I S I O N

Head Notes: 1402.40, 1802, 1803,
2501, 2701, 2907

Defendants Tri-City Electric Company, employer, and Old Republic Insurance Company, insurer, appeal from an arbitration decision filed on January 18, 2019. Claimant David Crabtree cross-appeals. The case was heard on September 11, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 29, 2018.

In the arbitration decision, the deputy commissioner found claimant sustained permanent physical and mental injuries that arose out of and in the course of his employment with defendant-employer on December 23, 2015. The deputy commissioner found claimant did not satisfy his burden of proof to establish he was permanently and totally disabled or an odd-lot employee. Instead, the deputy commissioner found claimant sustained 80 percent industrial disability as a result of the work injury. The deputy commissioner determined claimant's permanent partial disability (PPD) benefits should commence on December 24, 2015, when claimant returned to work the day after the injury. The deputy commissioner found claimant was entitled to receive healing period benefits from October 13, 2016, through July 23, 2017, and again from August 4, 2017, through August 10, 2018. The deputy commissioner found claimant was entitled to receive reimbursement for the medical expenses and the medical mileage itemized in Claimant's Exhibit 15, with the exception of charges from Elite Fitness. The deputy commissioner found claimant is entitled to receive future medical care for all causally-related medical conditions. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$113.54.

On appeal, defendants argue claimant's ongoing symptoms and mental conditions are not related to the stipulated December 23, 2015 work injury. Defendants alternatively argue that claimant did not sustain any industrial disability, but if he did, he is not an odd-lot employee. Defendants assert claimant is not entitled to any additional temporary benefits and that the proper commencement date for any PPD benefits is May 23, 2016. Lastly, defendants argue claimant has not established his entitlement to alternate medical care or reimbursement of medical expenses.

Claimant seeks affirmance of the deputy commissioner's decision but for the extent of industrial disability and the commencement date for PPD benefits. Claimant asserts it should be found on appeal he sustained permanent total disability and he asserts it should be found the proper commencement date for PPD benefits is August 10, 2018.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, those portions of the proposed arbitration decision filed on January 18, 2019, that relate to the issues properly raised on intra-agency appeal are affirmed in part and modified in part.

I affirm the deputy commissioner's finding that claimant sustained both physical and mental injuries as a result of the work injury. I affirm the deputy commissioner's finding that claimant did not satisfy his burden of proof to establish he is permanently and totally disabled or an odd-lot employee as a result of the work injury. I affirm the deputy commissioner's finding that claimant sustained 80 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant reached maximum medical improvement (MMI) for his mental injuries on August 10, 2018 and his physical injuries on April 23, 2018. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from October 13, 2016, through July 23, 2017, and again from August 4, 2017, through August 10, 2018. I affirm the deputy commissioner's finding that claimant is entitled to receive reimbursement for the medical expenses and the medical mileage set forth in Claimant's Exhibit 15, with the exception of the charges from Elite Fitness. I affirm the deputy commissioner's finding that claimant is entitled to receive future medical care for all causally-related medical conditions. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$113.54. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

For the reasons that follow, however, the deputy commissioner's commencement date for claimant's PPD benefits is modified to July 24, 2017.

The Iowa Supreme Court has specifically held that healing period benefits end and PPD benefits commence whenever the first factor of Iowa Code section 85.34(1) is met. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360, 372 (Iowa 2016). In other words, the commencement date for PPD benefits is the earliest date on which claimant achieves one of the factors outlined in Iowa Code section 85.34(1).

The three factors of Iowa Code section 85.34(1) are whether (1) “the employee has returned to work,” (2) “it is medically indicated that significant improvement from the injury is not anticipated” (MMI), or (3) “the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.” Iowa Code section 85.34(1).

In this case, the deputy commissioner chose the commencement date of December 24, 2015, because claimant returned to work the day after his injury, and the deputy commissioner interpreted this return to work to be the first of the three triggering factors in Iowa Code section 85.34(1) to have occurred.

In Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016), however, the claimant returned to work the day after his injury, yet the Iowa Supreme Court chose a later commencement date. More specifically, the Iowa Supreme Court identified claimant’s return to work after his initial healing period as the commencement date.

The claimant in Evenson went back to work the day after his injury and continued working until either September 3 or 7, 2010. Id. at 362-63. He was then off work until September 20, 2010. Id. at 372. The court held:

The commissioner found Evenson returned to work on September 20, 2010, after several days off. This ended the first healing period as a matter of law because it was the earliest of the section 85.34(1) alternatives and because PPD “shall begin at the termination of the healing period provided in subsection 1 [of section 85.34].” Iowa Code § 85.34(1)–(2). Because we conclude the first healing period ended on September 20, there is not substantial evidence in the record to support the commissioner's finding the healing period benefits terminated in November 2011. See Teel, 394 N.W.2d at 406–07 (concluding a claimant's entitlement to PPD benefits commenced when the claimant first returned to work after his 1974 injury - not after subsequent intermittent healing periods or after he finally “returned to work for good” in 1981 after a series of surgeries). The date of Evenson's first return to work established the end of the healing period and the commencement of PPD benefits because it was the earliest of the three triggering events prescribed in section 85.34(1). Iowa Code § 85.34(1).

Id. (emphasis added).

In this case, claimant went back to work the day after his injury and was not taken off of work until October 13, 2016. (Joint Exhibit 9, page 6) The parties stipulated that claimant remained off work through July 23, 2017. (Hearing Report) Claimant then returned to work on July 24, 2017 for a short period of time before he ended his employment. Thus, applying the rationale of the Iowa Supreme Court in Evenson, claimant’s “first return to work” in this case was not

the day after his injury on December 24, 2015, but July 24, 2017 - the day after he returned to work after his first healing period.

I further find claimant's "first return to work" on July 24, 2017, was the first of the three factors in Iowa Code section 85.34(1) to have occurred because as of July 24, 2017, claimant had not yet reached MMI. Thus, like in Evenson, claimant's return to work on July 24, 2017 "established the end of the healing period and the commencement of PPD benefits because it was the earliest of the three triggering events prescribed in section 85.34(1)." 881 N.W.2d at 372. The deputy commissioner's commencement date of December 24, 2015, is therefore modified.

I recognize this will result in a period of overlapping PPD and healing period benefits during claimant's second healing period. However, as noted in Evenson, "the various categories of workers' compensation benefits have distinct purposes" and "compensate for completely different categories of losses." Id. at 373. As a result, there is "no risk of duplication or overpayment of benefits." Id. at 374.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 18, 2019, is affirmed in part and modified in part.

All weekly benefits shall be paid at the stipulated weekly rate of five hundred ninety-one and 46/100 dollars (\$591.46).

Defendants shall pay healing period benefits from October 13, 2016, through July 23, 2017 and from August 4, 2017 through August 10, 2018.

Defendants shall pay claimant four hundred (400) weeks of permanent partial disability benefits commencing on July 24, 2017.

Defendants employer and insurance carrier 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 medical providers directly for any outstanding medical expenses, reimburse claimant for any out-of-pocket expenses paid, reimburse any third-party payors for past medical expenses and otherwise hold claimant harmless for all medical expenses listed in Claimant's Exhibit 15 with the exception of the Elite Fitness charges.

Defendants shall reimburse claimant for all medical mileage as itemized in Claimant's Exhibit 16.

Defendants shall provide reasonable and prompt future medical care for all conditions found to be related to claimant's December 23, 2015, work injury, including claimant's headaches, neck, left arm, PTSD, anxiety, sleep disorder (nightmares), and depression.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred thirteen and 54/100 dollars (\$113.54), 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 20th day of March, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Sara Riley	Via WCES
Timothy W. Wegman	Via WCES
Matthew Novak	Via WCES