

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALFREDO RODRIGUEZ,

Claimant,

vs.

TITAN TIRE CORPORATION,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

SEP - 6 2017

WORKERS' COMPENSATION

File No. 5052006

A P P E A L

D E C I S I O N

Head Note Nos: 1402.30, 1701, 1801,
1803, 2501, 2907,
3102; 4000.2; 5-9998

Claimant Alfredo Rodriguez appeals from an arbitration decision filed on March 18, 2016. Defendants Titan Tire Corporation, employer, and its insurer, Zurich American Insurance Company, respond to the appeal. The case was heard November 30, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on December 23, 2015.

The deputy commissioner found claimant carried his burden of proof that he sustained permanent disability to his body as a whole for a hernia injury and for a right ankle injury caused by the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on December 12, 2013. The deputy commissioner found claimant failed to carry his burden of proof that he sustained temporary disability and/or permanent disability of his back or of his left knee as a result of the work injury. The deputy commissioner found claimant is entitled to 20 percent industrial disability for the work injury, which entitles claimant to 100 weeks of permanent partial disability (PPD) benefits commencing on July 25, 2014. The deputy commissioner found claimant reached maximum medical improvement (MMI) for the work injury on July 24, 2014. The deputy commissioner found claimant is entitled to temporary total disability (TTD) benefits from December 13, 2013, through July 24, 2014. The deputy commissioner found defendants are not entitled to a credit under Iowa Code section 85.38(2) for payments made by a group plan. The deputy commissioner found claimant is not entitled to penalty benefits pursuant to Iowa Code section 86.13 for alleged unreasonable denial of weekly benefits. The deputy commissioner found claimant is not entitled to payment by defendants for requested

past medical charges for any treatment for claimant's back condition, or for unauthorized treatment for claimant's hernia, or for unauthorized treatment for claimant's right lower extremity or for unauthorized treatment for claimant's left lower extremity. The deputy commissioner found claimant is entitled to reimbursement by defendants for the cost of the independent medical evaluation (IME) of Sunil Bansal, M.D., performed on October 31, 2014. Pursuant to Iowa Code section 85.70, the deputy commissioner found claimant is entitled to receive up to 13 weeks of vocational rehabilitation benefits for every week claimant participated in a vocational rehabilitation program. Pursuant to 876 IAC 4.33, the deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding, including the charge for the vocational assessment report of Lana Sellner, MS, CRC.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained temporary disability and/or permanent disability of his back and his left lower extremity as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to award running healing period benefits or, in the alternative, in failing to award significantly greater industrial disability than 20 percent or, in the alternative, in failing to award odd-lot permanent total disability benefits, for the work injury. Claimant asserts the deputy commissioner erred in finding claimant reached MMI for the work injury on July 24, 2014. Claimant asserts the deputy commissioner erred in failing to find claimant is not entitled to payment by defendants for requested past medical charges for treatment for claimant's back condition, for unauthorized treatment for claimant's hernia, for unauthorized treatment for claimant's right lower extremity and for unauthorized treatment for claimant's left lower extremity.

Defendants assert 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.

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 March 18, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained permanent disability to his body as a whole for a hernia injury and for a right ankle injury caused by the December 12, 2013, work injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained temporary disability of his back and/or permanent disability of

his back or of his left knee as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to 20 percent industrial disability for the work injury, which entitles claimant to 100 weeks of PPD benefits commencing on July 25, 2014. I affirm the deputy commissioner's finding that claimant is not entitled to running healing period benefits, or to any greater industrial disability than 20 percent, or to odd-lot permanent total disability benefits, for the work injury. I affirm the deputy commissioner's finding that claimant reached MMI for the work injury on July 24, 2014. I affirm the deputy commissioner's finding that claimant is entitled to TTD benefits from December 13, 2013, through July 24, 2014. I affirm the deputy commissioner's finding that defendants are not entitled to a credit under Iowa Code section 85.38(2) for payments made by a group plan. I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits pursuant to Iowa Code section 86.13 for alleged unreasonable denial of weekly benefits. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for requested past medical charges for any treatment for claimant's back condition, or for unauthorized treatment for claimant's hernia, for unauthorized treatment for claimant's right lower extremity, or for unauthorized treatment for claimant's left lower extremity. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement by defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.70, claimant is entitled to receive up to 13 weeks of vocational rehabilitation benefits for every week claimant participated in a vocational rehabilitation program. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding, including the charge for Ms. Sellner's vocational assessment report. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 18, 2016, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits from December 13, 2013, through July 24, 2014, at the rate of seven hundred fifty-seven and 14/100 dollars (\$757.14) per week.

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the rate of seven hundred fifty-seven and 14/100 dollars (\$757.14) per week commencing on July 25, 2014.

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

Defendants shall receive a credit for benefits previously paid.

Pursuant to Iowa Code section 85.70, defendants shall pay claimant up to 13 weeks of vocational rehabilitation benefits for every week claimant participated in a vocational rehabilitation program.

Defendants shall reimburse claimant for the cost of Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, including the charge for Lana Sellner's vocational assessment report, and claimant 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 6th day of September, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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