

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RICHARD HUBBARTT,

Claimant,

vs.

JOHN DEERE OTTUMWA WORKS,

Employer,
Self-Insured,
Defendant.

File Nos. 5048226, 5048227

APPEAL
DECISION

FILED
JUN 28 2016

WORKERS' COMPENSATION

Head Note Nos.: 1803, 4000.2, 2502

Defendant John Deere Ottumwa Works, self-insured employer, appeals from an arbitration decision filed on March 12, 2015. Claimant Richard Hubbartt responds to the appeal. The case was heard on February 11, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 27, 2015.

In File No. 5048227, alleged injury date of April 26, 2013, the deputy commissioner found claimant failed to carry his burden of proof that he sustained an injury to his low back arising out of and in the course of his employment with defendant-employer, and claimant was awarded no weekly benefits. The deputy commissioner did award claimant the unpaid balance of \$1,650.00 for that portion of the independent medical evaluation (IME) by Jacqueline Stoken, D.O., which took place on December 9, 2014, which addressed claimant's alleged low back injury.

In File No. 5048226, which involves claimant's stipulated work-related right shoulder injury of June 4, 2012, the deputy commissioner awarded claimant 40 percent industrial disability, which entitles claimant to 200 weeks of permanent partial disability benefits. The deputy commissioner also awarded claimant 20 weeks of penalty benefits pursuant to Iowa Code section 86.13(4) at the weekly benefit rate of \$602.87, for a total of \$12,057.40. The deputy commissioner also awarded claimant the costs of this action, including reimbursement to claimant for any filing fee paid in this matter.

In File No. 5048227, defendant asserts on appeal that the deputy commissioner erred in awarding claimant the unpaid balance of \$1,650.00 for that portion of Dr. Stoken's IME which addressed claimant's alleged low back injury.

In File No. 5048226, defendant asserts on appeal that the deputy commissioner erred in awarding claimant 40 percent industrial disability. Defendant also asserts that the deputy commissioner erred in awarding penalty benefits. Defendant also asserts the deputy commissioner erred in awarding claimant's costs.

Claimant asserts 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, 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 filed in this matter on March 12, 2015, which relate to the issues raised on appeal in File No. 5048226. I find the deputy commissioner provided sufficient analysis of all of the issues raised in the arbitration proceeding in File No. 5048226. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's award of 40 percent industrial disability, which entitles claimant to 200 weeks of PPD benefits. I affirm the deputy commissioner's award of 20 weeks of penalty benefits pursuant to Iowa Code section 86.13(4) at the weekly benefit rate of \$602.87, for a total of \$12,057.40. I affirm the deputy commissioner's award of claimant's costs of the arbitration action. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in File No. 5048226 were based on the deputy's conclusion that claimant was not a credible witness. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly, made by the deputy who presided at the hearing.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, in File No. 5048227, I reverse the deputy commissioner's award of the unpaid balance of \$1,650.00 for that portion of Dr. Stoken's IME which addressed claimant's alleged low back injury. I provide the following analysis with respect to that issue:

In DART v. Young, 867 N.W.2d 839 (Iowa 2015), the Iowa Supreme Court held it is an absolute requirement under Iowa Code section 85.39 that there must first be an evaluation of the extent of permanent disability by a physician retained by the employer before there is such an evaluation by a physician retained by the claimant for reimbursement to be made to the claimant under Iowa Code section 85.39. In this case, defendant never had claimant evaluated to address the alleged low back injury of

April 26, 2013. Therefore, claimant is not entitled to reimbursement under Iowa Code section 85.39 for that portion of Dr. Stoken's IME which took place on December 9, 2014, which addressed claimant's alleged low back injury. Therefore, the deputy commissioner's award of the unpaid balance of \$1,650.00 for that portion of Dr. Stoken's IME which addressed claimant's alleged low back injury is reversed.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of March 12, 2015, is MODIFIED as follows:

Defendant shall pay claimant two hundred (200) weeks of permanent partial disability benefits at the stipulated rate of six-hundred two and 87/100 dollars (\$602.87) per week from the stipulated date of June 5, 2012.

Defendant shall pay accrued weekly benefits in a lump sum and shall receive credit against this award for the weekly benefits previously paid.


Defendant shall pay claimant a penalty of \$12,057.40.

Defendant shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendant shall pay the costs of the arbitration proceeding, including reimbursement to claimant for any filing fee paid in this matter, and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 28th day of June, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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