

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID MCDOWELL,

Claimant,

vs.

VILLA DEL SOL,

Employer,

and

IOWA LONG TERM CARE
MANAGEMENT ASSOCIATION,

Insurance Carrier,
Defendants.

File No. 5046009

A P P E A L
D E C I S I O N

Head Note No.: 1803

FILED

APR 15 2016

WORKERS' COMPENSATION

Defendants Villa Del Sol, employer, and its insurer, Iowa Long Term Care Management Association, appeal from an arbitration decision filed on February 9, 2015. Claimant David McDowell cross-appeals.

The case was heard on August 15, 2014, and it was considered fully submitted on September 8, 2014, in front of Deputy Workers' Compensation Commissioner Michelle McGovern. On November 12, 2014, this matter was delegated to Deputy Workers' Compensation Commissioner Larry P. Walshire. At the request of defendants, rehearing was held on February 3, 2015. Deputy Commissioner Walshire then issued the arbitration decision on February 9, 2015.

The deputy commissioner awarded claimant 60 percent industrial disability, 300 weeks of permanent partial disability benefits, from the stipulated commencement date of June 24, 2013. The deputy commissioner determined claimant's correct weekly benefit rate is \$317.95. The deputy commissioner also awarded claimant's costs to be paid by defendants, including the cost of the vocational assessment report prepared by Phil Davis, M.S.

Defendants assert on appeal that the deputy commissioner erred in awarding 60 percent industrial disability. Defendants assert claimant is not entitled to industrial disability any greater than the 11.6 percent, 58 weeks of PPD benefits, paid as of the

time of the hearing. Defendants also assert that the deputy commissioner erred in not finding claimant's correct weekly benefit rate to be \$291.74.

On cross-appeal, claimant asserts the deputy commissioner erred in not awarding substantially more than 60 percent industrial disability. Claimant also asserts that the finding that claimant's correct weekly benefit rate is \$317.95 should be affirmed.

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 February 9, 2015, which relate to the issue properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of all 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 work injury. I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate is \$317.95. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

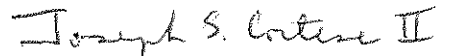
IT IS THEREFORE ORDERED that the arbitration decision of February 9, 2015, is AFFIRMED in its entirety.

1. Defendants shall pay claimant three hundred (300) weeks of permanent partial disability benefits at the rate of three hundred seventeen and 95/100 dollars (\$317.95) per week from the stipulated commencement date of June 24, 2013.
2. Defendants shall receive a credit against the award of weekly benefits for the weekly payments received prior to this decision.
3. Defendants shall pay claimant a lump sum amount equivalent to the difference between his correct weekly rate and the lower weekly benefit rate which was paid for healing period and permanency benefits. This payment shall be paid with interest.
4. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.
5. Pursuant to administrative rule 876 IAC 4.33, defendants shall pay the costs of the arbitration action including reimbursement to claimant of \$100.00 for the filing fee paid in this matter, and \$1,250.00 for the cost of the vocational

assessment report by Phil Davis, M.S. The parties shall bear their own costs of the appeal.

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

Signed and filed this 15th day of April, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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