

In the arbitration decision, the deputy commissioner found claimant met his burden of proof to establish his ongoing low back symptoms, mental health issues, and erectile dysfunction are causally related to the work injury of July 30, 2012. The deputy commissioner further determined claimant carried his burden of proof to establish he is permanently and totally disabled as a result of the work injury. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits.

On appeal, defendants assert the deputy commissioner erred in excluding Exhibits O, P, and Q from the evidentiary record. Defendants assert the deputy commissioner erred in finding claimant's mental health issues, ongoing low back symptoms, and erectile dysfunction are causally related to the work injury. Defendants assert the deputy commissioner erred in finding defendants are responsible for past medical expenses, and in finding claimant is entitled to alternate medical care. Defendants assert the deputy commissioner erred in finding claimant met his burden of proof to establish permanent total disability. Defendants also assert an alternative commencement date for permanent disability benefits.

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.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision without additional comment those portions of the proposed arbitration decision filed in this matter on January 16, 2019, which relate to the following issues:

I affirm the deputy commissioner's decision to exclude Exhibit O from the evidentiary record. I affirm the deputy commissioner's finding that claimant's mental health, low back, and erectile dysfunction conditions are causally related to the work injury. I affirm the deputy commissioner's finding that defendants are responsible for all causally related past medical expenses. I affirm the deputy commissioner's finding that claimant is entitled to ongoing medical treatment for all causally related conditions. I affirm the deputy commissioner's finding that claimant is permanently and totally disabled as a result of the work injury. I affirm the deputy commissioner's finding that the correct commencement date for permanent total disability benefits is July 30, 2012. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits.

With the additional analysis set forth below, I respectfully disagree with the deputy commissioner's decision to sua sponte exclude Exhibits P and Q from the evidentiary record and I reverse that decision:

At the start of the hearing, defendants offered Exhibits P and Q into evidence. Exhibit P is a transcript of claimant's July 14, 2014, deposition. Exhibit Q is a transcript of claimant's June 6, 2017, deposition. Unprompted by any objection, the deputy commissioner excluded Exhibits P and Q, reasoning claimant's prior deposition testimony amounted to cumulative evidence. The deputy commissioner further reasoned that review of that cumulative evidence would not be a good use of the agency's time and resources. Lastly, the deputy commissioner briefly reasoned that defendants had exceeded the page limitations previously discussed at the pre-hearing conference.

Following the deputy commissioner's decision to exclude Exhibits P and Q, defendants requested the ability to resubmit their exhibits to include only those portions of the deposition transcripts that were implicated by the facts in dispute. Defendants' request was rejected by the deputy commissioner.

Claimant did not object to the admission of Exhibits P and Q. In light of that fact, I respectfully disagree with the deputy commissioner's decision to exclude Exhibits P and Q and I hereby admit those exhibits into evidence.

The deputy commissioner's decision to exclude Exhibits P and Q constitutes nothing more than harmless error, which does not change the outcome of this case. I have reviewed Exhibits P and Q and I affirm the deputy commissioner's findings regarding causation and permanent total disability.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 16, 2019, is affirmed in part and reversed in part.

Defendants' Exhibits P and Q are admitted into evidence.

Defendants shall pay claimant permanent total disability benefits commencing on July 30, 2012, and continuing weekly so long as claimant remains totally disabled except for the period from June 2017 through December 2017 when claimant should instead receive TPD benefits.

Defendants shall receive credit for all benefits paid to date.

Defendants 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 be responsible for the medical expenses, including mileage, as set forth in the arbitration decision.

Claimant shall remain entitled to payment by defendants of causally related medical expenses pursuant to Iowa Code section 85.27.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding as set forth in the arbitration decision, and defendants 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 on this 16th day of March, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Mark J. Sullivan Via WCES

Stephen W. Spencer Via WCES