BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RHONDA TUCKER THOMAS,

Claimant,

vs.

MENARD, INC.,

Employer,

and

PRAETORIAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5039347

APPEAL

DECISION

Head Note No.: 1803

FILED
NOV 25 2013
WORKERS' COMPENSATION

Defendants, Menard, Inc. and Praetorian Insurance Company, appeal from an arbitration decision filed June 25, 2013, in which the presiding deputy commissioner found as a result of a stipulated work injury of December 5, 2011, claimant sustained a 40 percent loss of her earning capacity, claimant's weekly compensation rate is $375.42, and claimant's permanent partial disability benefits commenced on April 5, 2012. Defendants assert on appeal that the presiding deputy commissioner erred in the calculation of claimant's average weekly wage due to the inclusion of weeks into the benefit calculation which include both holiday and work hours. There was no appeal taken as to the extent of permanent disability or commencement date of benefits. Claimant, Rhonda Tucker Thomas, did not present appellate argument, but had asserted at hearing that the proper weekly compensation rate should be $380.82 as she had set forth in Exhibit 10. The arguments of the parties have been considered and the record of evidence has been reviewed de novo.

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 on June 25, 2013 that relate to issues properly raised on intra-agency appeal except for the rate of compensation which is modified as set forth by defendants in Exhibit N. Defendants' exhibit N is a clear and accurate summary of the actual wage records found in Exhibit M. Exhibit N accurately utilizes representative weeks of claimant's earnings for a period of 13 weeks prior to her work injury without including weeks in which claimant's

earnings were fully or partially comprised of holiday or vacation pay. The rate found by the presiding deputy utilized weeks which were clearly not representative.

It is therefore concluded that the arbitration decision is modified as to claimant's weekly compensation rate which is found to be $358.46, based upon an average weekly wage of $516.67 for a married worker with two exemptions.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of June 25, 2013 is AFFIRMED and MODIFIED as set forth herein.

Claimant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 25TH day of November, 2013.

CHRISTOPHER J. GODFREY
WORKERS' COMPENSATION
COMMISSIONER

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