

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK J. HEITMAN,

Claimant,

vs.

SEATON CORP. d/b/a STAFFING
HOLDINGS, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

File No. 5060002

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

Head Note Nos: 1402.30, 1801, 2501
2502, 2907, 3001

FILED

AUG - 4 2017

WORKERS' COMPENSATION

Defendants Seaton Corp., d/b/a Staffing Holdings, Inc., employer, and its insurer, New Hampshire Insurance Company, appeal from an arbitration decision filed on January 20, 2016. Claimant Mark J. Heitman responds to the appeal. The case was heard on July 15, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 4, 2015.

At the hearing, defendants moved to bifurcate claimant's Iowa Code section 86.13 penalty claim. In an oral ruling made at the time of the hearing, the deputy commissioner bifurcated the penalty claim for hearing at a later date. Therefore the penalty issue was preserved, but not discussed or resolved in the arbitration decision. Claimant is permitted to raise the penalty issue via a new original notice and petition for review-reopening.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on March 30, 2013, caused claimant to sustain injuries to both his right shoulder and his right brachial plexus area. The deputy commissioner found claimant was not at maximum medical improvement (MMI) for the work injury as of the date of the arbitration hearing. The deputy commissioner awarded claimant healing period benefits from May 18, 2015, through May 24, 2015, and the

deputy commissioner also awarded claimant running healing period benefits from June 18, 2015, through the date of the arbitration hearing and continuing until claimant reaches MMI. The deputy commissioner found defendants are not entitled to suspend weekly benefit payments after the date claimant was initially scheduled to be evaluated by Michael Cullen, M.D., at defendants' request, and the deputy commissioner found defendants are not entitled to be reimbursed by claimant for Dr. Cullen's missed appointment charge for that evaluation. The deputy commissioner found claimant's gross average weekly wages immediately prior to the work injury were \$575.43, which results in a weekly benefit rate for the work injury, classification married with three exemptions, of \$401.55. The deputy commissioner found claimant is entitled to payment by defendants of requested past medical expenses itemized in Exhibit 14 for treatment of the work injury. The deputy commissioner found claimant is entitled to payment by defendants of requested past parking expenses itemized in Exhibit 13 for treatment of the work injury. The deputy commissioner found claimant is entitled to alternate medical care for treatment of the brachial plexus injury recommended by Chandan Reddy, M.D. The deputy commissioner found claimant is not entitled to payment by defendants pursuant to Iowa Code section 85.39 for an independent medical evaluation (IME) performed by Farid Manshadi, M.D., on June 4, 2015. The deputy commissioner found claimant is not entitled to sanctions against defendants for defendants' response to claimant's request for admissions, which responses were served on October 23, 2014. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$206.98.

Defendants assert on appeal that the deputy commissioner erred in finding the work injury caused claimant to sustain injuries to his right brachial plexus area in addition to injuries sustained by claimant to his right shoulder. Defendants assert the deputy commissioner erred in finding claimant had not reached MMI for the work injury as of the date of the arbitration hearing. Defendants assert the deputy commissioner erred in awarding claimant healing period benefits from May 18, 2015, through May 24, 2015, and in awarding claimant running healing period benefits from June 18, 2015, through the date of the arbitration hearing and continuing until claimant reaches MMI. Defendants assert the deputy commissioner erred in finding defendants are not entitled to suspend weekly benefit payments after the date claimant was initially scheduled to be evaluated by Dr. Cullen at defendants' request, and in finding defendants are not entitled to be reimbursed by claimant for Dr. Cullen's missed appointment charge for that evaluation. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants of requested past medical expenses itemized in Exhibit 14. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants of requested past parking expenses itemized in Exhibit 13. Defendants assert the deputy commissioner erred in finding claimant is entitled to alternate medical care for treatment recommended by Dr. Reddy for the brachial plexus injury.

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, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

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 January 20, 2016, which relate to 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 ruling which bifurcated claimant's penalty claim and preserved that claim for later hearing. I affirm the deputy commissioner's finding that the March 30, 2013, work injury caused claimant to sustain injuries to both his right shoulder and his right brachial plexus area. I affirm the deputy commissioner's finding that claimant was not at MMI for the work injury as of the date of the arbitration hearing. I affirm the deputy commissioner's award of healing period benefits from May 18, 2015, through May 24, 2015, and I affirm the deputy commissioner's award of running healing period benefits from June 18, 2015, through the date of the arbitration hearing and continuing until claimant reaches MMI. I affirm the deputy commissioner's finding that defendants are not entitled to suspend weekly benefit payments after the date claimant was initially scheduled to be evaluated by Dr. Cullen, and I affirm the deputy commissioner's finding that defendants are not entitled to be reimbursed by claimant for Dr. Cullen's missed appointment charge for that evaluation. I affirm the deputy commissioner's finding that claimant's gross average weekly wages immediately prior to the work injury were \$575.43, which results in a weekly benefit rate for the work injury, classification married with three exemptions, of \$401.55. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants of requested past medical expenses itemized in Exhibit 14. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants of requested past parking expenses itemized in Exhibit 13. I affirm the deputy commissioner's finding that claimant is entitled to alternate medical care for treatment recommended by Dr. Reddy for the brachial plexus injury. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants pursuant to Iowa Code section 85.39 for Dr. Manshadi's IME. I affirm the deputy commissioner's finding that claimant is not entitled to sanctions against defendants for their October 23, 2014, response to claimant's request for admissions. I also affirm the deputy commissioner's order taxing defendants with claimant's costs of the arbitration proceeding in the amount of \$206.98. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 20, 2016, is affirmed in its entirety.

Defendants shall pay claimant temporary total disability benefits, or healing period benefits, from May 18, 2015, through May 24, 2015, and from June 18, 2015, through the date of the arbitration hearing and continuing into the future until the first qualifying event in Iowa Code section 85.34(1) occurs to terminate weekly benefits.

All weekly benefits shall be paid at the rate of four hundred one and 55/100 dollars (\$401.55) per week.

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

Defendants shall be entitled to a credit for all weekly benefits paid to date.

Defendants shall pay, reimburse, or otherwise satisfy all medical expenses and medical transportation expenses identified in claimant's exhibits 13 and 14.

Defendants shall authorize and pay for future medical treatment of claimants' brachial plexus injury through Dr. Reddy at the University of Iowa Hospitals and Clinics.

Claimant's asserted penalty benefit claim is bifurcated and shall be heard upon a new petition in conjunction with any review-reopening claim to assess and determine claimants' permanent disability, if any.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$206.98, 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 4th day of August, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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