

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUSTIN LOEW,	:	
	:	
Claimant,	:	File No. 5057482
	:	
vs.	:	A P P E A L
	:	
MENARD, INC.,	:	D E C I S I O N
	:	
Employer,	:	
	:	
and	:	
	:	
PRAETORIAN INSURANCE COMPANY,	:	Head Note Nos: 1108.50; 1402.40; 1802;
	:	1803; 2501; 2502; 2907;
Insurance Carrier,	:	3002; 5-9998
Defendants.	:	

Defendants Menard, Inc., employer, and its insurer, Praetorian Insurance Company, appeal from an arbitration decision filed on October 30, 2018. Claimant Justin Loew cross-appeals. The case was heard on January 29, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 19, 2018.

The deputy commissioner found claimant carried his burden of proof to establish that the first surgery he underwent on April 20, 2016, at the L5-S1 level of his low back on the left, and the second surgery he underwent on February 1, 2017, at the L4-5 level of his low back on the right, were both necessitated by the stipulated injury which occurred on March 19, 2015, which arose out of and in the course of claimant's employment with defendant-employer. The deputy commissioner found claimant sustained 30 percent industrial disability as a result of the work injury, which entitles claimant to receive 150 weeks of permanent partial disability (PPD) benefits, commencing on May 17, 2017. The deputy commissioner found defendants are entitled to receive a total credit in the amount of \$6,262.82 against the award for PPD benefits.

The deputy commissioner found claimant is entitled to receive additional healing period benefits from April 20, 2016, through August 31, 2016, and from September 28, 2016, through May 16, 2017.

The deputy commissioner found that the instant profit sharing (IPS) bonus received by claimant in February 2015 cannot properly be included in the calculation of claimant's gross average weekly wage for the work injury. The deputy commissioner

found claimant's correct gross average weekly wage for the injury is \$445.71, with the result that claimant's correct weekly benefit rate for the injury is \$284.90.

The deputy commissioner found claimant is entitled to payment by defendants for the past medical treatment and related expenses itemized in Joint Exhibits 12 and 13 for claimant's L4-5 lumbar spine condition.

The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$532.00 for the cost of the independent medical evaluation (IME) of claimant performed by Sunil Bansal, M.D., on September 26, 2017. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$300.00.

Defendants asserts on appeal that the deputy commissioner erred in finding claimant carried his burden of proof to establish that the second surgery he underwent on February 1, 2017, at the L4-5 level of his low back on the right, was necessitated by the work injury. Defendants assert the deputy commissioner erred in finding claimant sustained 30 percent industrial disability as a result of the work injury. Defendants assert the award for industrial disability should be reduced significantly.

Defendants assert the deputy commissioner erred in finding claimant is entitled to receive additional healing period benefits from April 20, 2016, through August 31, 2016, and from September 28, 2016, through May 16, 2017. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for the past medical treatment and related expenses itemized in Joint Exhibits 12 and 13 for claimant's L4-5 lumbar spine condition.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant's IPS bonus cannot properly be included in the calculation of claimant's gross average weekly wage for the work injury. Claimant asserts the deputy commissioner erred in finding claimant's correct gross average weekly wage for the injury is \$445.71, and in finding claimant's correct weekly benefit rate for the injury is \$284.90. Claimant asserts it should be found on appeal that claimant's correct weekly benefit rate for the injury is \$434.09.

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 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 October 30, 2018, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant carried his burden of proof to establish that the second surgery he underwent on February 1, 2017, at the L4-5 level of his low back on the right, was necessitated by the work injury. I affirm the deputy commissioner's finding that claimant sustained 30 percent industrial disability as a result of the work injury.

I affirm the deputy commissioner's finding that claimant is entitled to receive additional healing period benefits from April 20, 2016, through August 31, 2016, and from September 28, 2016, through May 16, 2017.

I affirm the deputy commissioner's finding that claimant's IPS bonus cannot properly be included in the calculation of claimant's gross average weekly wage for the work injury. I affirm the deputy commissioner's finding that claimant's correct gross average weekly wage for the injury is \$445.71, and I affirm the finding that claimant's correct weekly benefit rate for the injury is \$284.90. I affirm the deputy commissioner's finding that defendants are entitled to receive a total credit in the amount of \$6,262.82 against the award for PPD benefits.

I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the past medical treatment and related expenses itemized in Joint Exhibits 12 and 13 for claimant's L4-5 lumbar spine condition. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$300.00.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 30, 2018, is affirmed in its entirety.

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the weekly benefit rate of two hundred eighty-four and 90/100 dollars (\$284.90), commencing on May 17, 2017.

Defendants shall receive a total credit in the amount of six thousand two hundred sixty-two and 82/100 dollars (\$6,262.82) against the award for PPD benefits.

Defendants shall pay claimant additional healing period benefits from April 20, 2016, through August 31, 2016, and from September 28, 2016, through May 16, 2017.

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).

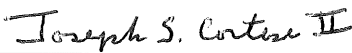
Defendants shall pay/reimburse/hold harmless claimant for the past medical treatment and related expenses itemized in Joint Exhibits 12 and 13 for claimant's L4-5 lumbar spine condition.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of five hundred thirty-two and no/100 dollars (\$532.00) for the cost of Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of three hundred and no/100 dollars (\$300.00), and the parties shall split 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 31st day of January, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Paul Thune Via WCES

Charles A. Blades Via WCES