

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTINA WHITE,

Claimant,

vs.

DONALDSON COMPANY,

Employer,

and

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Insurance Carrier,
Defendants.

File No. 5041853

APPEAL
DECISION

Headnote Nos. 1803, 2402, 4000

FILED
FEB 24 2015
WORKERS' COMPENSATION

This was an arbitration case that was heard on January 16, 2014. The case was not deemed fully submitted until January 27, 2014. The presiding deputy workers' compensation commissioner issued the arbitration decision on February 24, 2014. The deputy ordered the following:

1. Defendants shall pay to claimant temporary total disability benefits from April 5, 2012 through May 25, 2012; April 3, 2013 through May 18, 2013; and from June 20, 2013 through July 4, 2013 at the rate of five hundred fifty-three and 82/100 dollars (\$553.82) per week. Defendants shall pay accrued weekly benefits in a lump sum shall take a credit against this award in the amount of three thousand two hundred twenty and 00/100 dollars (\$3,220.00) as stipulated by the parties.
2. Defendants shall pay the medical expenses listed in the hearing report. Defendants shall reimburse claimant for her out-of-pocket medical expenses and shall hold claimant harmless from the remainder of those expenses.
3. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

4. Defendants shall immediately provide to claimant all medical treatment, treatment modalities and referrals to specialists as recommended by providers for the April 6, 2012 work injury at the Gundersen Lutheran Clinic in either Decorah, Iowa or LaCrosse, Wisconsin.
5. In the event of any further absences or partial absences from work as a result of treatment for the April 6, 2012 work injury, defendants shall pay to claimant temporary total or temporary partial disability benefits accordingly.
6. Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33 as set forth in the hearing report, including reimbursement for the fees of Dr. Manshadi to issue his disability report.
7. Defendants shall pay to claimant the sum of four thousand four hundred and 00/100 dollars (\$4,400.00) as a penalty for their unreasonable denial of weekly benefits in this case.
8. Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

On March 12, 2014, defendants filed a notice of appeal. They filed the appeal brief on May 1, 2014. Claimant filed her appeal brief on May 21, 2014. Defendants filed their reply brief on June 30, 2014.

The undersigned reviewed the record de novo. On appeal, the appellant dictates all issues to be determined on appeal. Iowa Code section 17A.15; 876 IAC 4.28(4). The party who would suffer a loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule App. P. 6.14(6).

This delegated deputy workers' compensation commissioner affirms and adopts the proposed arbitration decision with the exception of Section V, the matter dealing with penalty benefits pursuant to Iowa Code section 86.13. In Section V of the arbitration decision, the deputy wrote:

V. Claimant seeks additional weekly benefits under Iowa Code section 86.13(4). This provision states that if a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award extra weekly benefits in an amount not to exceed 50 percent of the amount of benefits that were unreasonably delayed or denied if the employee

demonstrates a denial or delay in payment or termination of benefits and the employer has failed to prove a reasonable or probable cause or excuse for the denial, delay or termination of benefits. (Iowa Code section 86.13(4)(c) A reasonable or probable cause or excuse must satisfy the following requirements:

- (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
- (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or termination of benefits.

Iowa Code section 86.13(4).

The employer has the burden to show a reasonable and probable cause or excuse. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable." Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996); Robbenolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

In this case, claimant has demonstrated that defendants' denial of her claim was unreasonable. First, there were no reasonable grounds to deny this claim. No doctor supported such a denial. The statute of limitations defense had no basis in fact or law. There was no showing that a reasonable investigation was ever performed. Even if there was somehow a basis to deny this claim, the denial was not accompanied by a contemporaneous notice providing the reasons for the denial.] [sic]

The December 2012 letter from defense counsel does not cure this notice defect. The letter was issued months after the claim of injury was made and offered no reasonable grounds for delay. Claimant had provided all releases to the employer. It was up to the employer, not claimant, to obtain the medical records to investigate the claim and defendants had ample opportunity to do so. While the office note of Dr. Swanson that this was a workers' compensation matter could have been more explained by the doctor, the defendants had ample opportunity to obtain more information from Dr. Swanson and did not do so. More importantly, defendants did not have any opposing view from any medical practitioner. The fact that claimant had a prior similar condition is not a reasonable excuse for not paying a claim due to the long existing law on aggravation of a prior injury.

Also, the maximum penalty will be imposed given this insurance carrier's terrible record in complying with Iowa's workers' compensation laws as pointed out in claimant's post-hearing brief.

Therefore, the initial denial was unreasonably late and had no factual or legal basis. There was apparently no attempt to re-evaluate the claim after their [sic] own IME doctor supported the claim. You cannot rely on the results of an initial investigation to deny a claim and thereafter ignore new medical evidence.

The late minute raising of the lack of timeliness of the filing of the petition does nothing to avoid penalty. First, such a defense is not viable. Even if I were to accept that the proper manifestation date for this cumulative trauma injury occurred in 2009 or early 2010 as asserted by defendants, there was absolutely no evidence in this record to show that claimant had knowledge at that time that her hand problems would have a permanent adverse impact on her job at Donaldson or her employment generally, thereby rendering the filing of a petition in November 2012 untimely under the Herrera holding. She returned to full duty and continued full duty status until April 6, 2012.

Secondly, there is no evidence that defendants notified claimant in a timely manner that a lack of timeliness of her claim was a reason for defendants' denial as required by statute.

As of the date of hearing, claimant had been unreasonably denied a total of 15.857 weeks according to the times off work stipulated in the hearing report. At the stipulated weekly rate of \$553.82, a total of \$8,781.92 was unreasonably withheld, not including interest. Therefore, a penalty of \$4,400.00 will be assessed at this time. A continued denial of benefits after hearing likely will result in additional penalty.

In assessing penalty, I did not give [sic] include the amounts paid under the non-occupational insurance program. While I must give a credit against permanency award, I am not so obligated in assessing a penalty. There was no reasonable rational for using the non-occupational insurance program in this case. Use of any device as an attempt to relieve the employer from liability under workers' compensation law is prohibited by Iowa Code section 85.18.

(Arbitration decision, pages 10-12)

In Brief Point I of defendants' appeal brief, they argued:

THE DEPUTY ERRED IN REFUSING TO APPLY CREDIT FOR PAYMENTS MADE UNDER A NON-OCCUPATIONAL INSURANCE PROGRAM IN THE PENALTY ANALYSIS.

It is the determination of the undersigned, the presiding deputy erred in not applying the credit for the non-occupational benefits paid. Under Iowa Code section 86.13(4), a penalty is awarded if there is a denial, delay or termination of benefits without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits. The penalty may be up to 50 percent of the amount of the benefits denied, delayed, or terminated.

Under Iowa Code section 85.38(2)(a) where the employee has received "any benefits" under a qualified non-occupational plan, the amounts so paid to the employee "shall be credited to or against" any compensation payments made or to be made under the Iowa Workers' Compensation Act. In short, the credit for non-occupational disability benefits applies to any workers' compensation benefits that may be deemed payable. After applying the credit, only the remaining workers' compensation benefits awarded are payable.

In the case before the undersigned, the presiding deputy found there was a denial of 15.857 weeks of workers' compensation benefits. However, the deputy did not take into consideration the Iowa Code section 85.38(2) credit of \$3,220.00. Those non-occupational disability benefits were paid in a timely manner. That fact is undisputed. No penalty should attach for the non-occupational disability benefits to claimant. The presiding deputy cited no legal authority for assessing penalty benefits against weekly benefits when 85.38(2) benefits had been paid in a timely fashion. Penalty benefits should not be assessed against the entire 15.857 weeks of workers' compensation benefits. The presiding deputy assessed four thousand four hundred dollars in 86.13 penalty benefits.

It is the determination of the undersigned; defendants are entitled to the stipulated credit against the temporary benefits awarded. Where there is a credit under Iowa Code section 85.38(2), there is no delay of benefits. It is thus determined defendants owe unto claimant penalty benefits pursuant to Iowa Code section 86.13(4) in the amount of one thousand-five hundred dollars (\$1,500.00).

Defendants shall pay interest on the penalty benefits from the date of this appeal decision. Schadendorf v. Snap-on Tools Corp., 757 N.W.2d 330, 339 (Iowa 2008).

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm in part and modify in part as the final agency decision the proposed arbitration decision filed on February 24, 2014.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of February 24, 2014 is AFFIRMED in part and MODIFIED in part.

Defendants shall pay unto claimant one thousand five hundred dollars (\$1,500.00) in penalty benefits pursuant to Iowa Code section 86.13(4).

Defendants shall pay interest on the penalty benefits from the date of this appeal decision.

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

Signed and filed this 04th day of February, 2015.



MICHELLE A. McGOVERN
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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