

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHAD SIMONS,

Claimant,

vs.

MASTERBRAND CABINETS, INC.
d/b/a OMEGA CABINETRY,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 5061998

A P P E A L

D E C I S I O N

Head Notes: 1704, 1803.1, 3003, 4000.2

Defendants Masterbrand Cabinets, Inc., employer, and its insurer Ace American Insurance Co., appeal from an arbitration decision filed on April 8, 2019. Claimant Chad Simons cross-appeals. The case was heard on February 19, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 13, 2019.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof to establish he sustained an injury to his right hip on November 10, 2015, that arose out of and in the course of his employment with defendant-employer. The deputy commissioner found claimant carried his burden of proof to establish he sustained permanent impairment of his right hip and right knee. The deputy commissioner found claimant sustained ten percent industrial disability as a result of the work injury, which entitles claimant to receive 50 weeks of permanent partial disability (PPD) benefits at the weekly rate of \$646.33, commencing on March 20, 2016. The deputy commissioner also found claimant is entitled to receive penalty benefits from defendants in the amount of \$6,463.30.

Defendants assert on appeal that the deputy commissioner's order regarding the correct weekly rate of compensation for temporary benefits violated defendants' due process rights when the parties did not submit temporary disability benefits as a disputed issue on the Hearing Report. Defendants further assert the deputy commissioner erred in finding claimant sustained an unscheduled injury to the right hip as a result of the November 10, 2015, work injury.

On cross-appeal, claimant asserts the deputy commissioner erred in only awarding ten percent industrial disability. Claimant further asserts the commissioner's award of penalty benefits should be increased.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, those portions of the proposed arbitration decision filed on April 8, 2019, relating to issues properly raised on intra-agency appeal are affirmed with additional comment.

I find the deputy commissioner provided a well-reasoned analysis of all 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 he sustained an injury to his right hip and right knee as a result of the work injury. I affirm the deputy commissioner's finding that claimant sustained ten percent industrial disability as a result of the work injury. I affirm the deputy commissioner's award of penalty benefits totaling \$6,463.30.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues. I provide the following additional analysis for my decision:

The first issue to be addressed on appeal is whether defendants' due process rights were violated.

Defendants assert the deputy commissioner violated their procedural due process rights by ruling on the issue of temporary disability/healing period benefits. One glaring issue with defendants' assertion is that the deputy commissioner did not rule on the issue of temporary disability/healing period benefits in the arbitration decision. (See Arbitration Decision, Conclusions of Law, pp. 5-12)

It appears as though defendants are asserting their due process rights were violated when the deputy commissioner ordered, "... defendants shall pay claimant all temporary benefits at the rate of six hundred forty-six and 33/100 dollars (\$646.33) per week." (Arb. Dec., page 12)

Defendants assert temporary benefits were not at issue in this matter and the "award of temporary disability/healing period benefits" by the deputy commissioner violated their due process rights. Defendants imply they were deprived of the opportunity to present testimony, evidence, and argument regarding temporary disability benefits. (Def. App. Brief, p. 9)

Essentially, the issue at hand is whether the deputy commissioner's findings regarding the proper workers' compensation rate amounts to a determination or award of temporary disability benefits. I find it does not.

In this case, the parties stipulated claimant's injury was a cause of temporary disability during a period of recovery. (Hearing Report, p. 1) The "TTD/HP Entitlement" section then states: "If no longer in dispute check here ()." The parties "checked" the space provided, indicating claimant's entitlement to temporary benefits was not in dispute. Consistent with the parties' stipulation, the deputy commissioner did not make any findings or conclusions regarding claimant's entitlement to temporary benefits.

The parties did, however, dispute claimant's workers' compensation rate. Prior to the evidentiary hearing, defendants paid claimant's benefits at a rate of \$641.74. (See Exhibit. E, p. 1) After analyzing the evidentiary record, the deputy commissioner determined the correct weekly benefit rate for this claim is \$646.33. (Arb. Dec., p. 9) In the Order section of the arbitration decision, the deputy commissioner ordered defendants to pay both temporary and permanent disability benefits at the rate of \$646.33. (Arb. Dec., p. 12)

The deputy commissioner made no findings or conclusions regarding claimant's entitlement to temporary benefits. Rather, the deputy commissioner determined the correct weekly workers' compensation rate for both temporary and permanent disability benefits. The deputy commissioner's determination of claimant's workers' compensation rate directly impacts the amount of both temporary and permanent disability benefits. Such a finding does not amount to a determination or award of temporary disability benefits. The weeks of entitlement were not in dispute, the proper rate at which claimant is to be paid during those weeks was in dispute. By stipulating that his entitlement to temporary benefits was not in dispute, claimant did not waive the possibility the amount of temporary benefits would increase or decrease depending on the weekly benefit rate determined by the deputy commissioner.

The two fundamental principles of due process are (1) notice and (2) the opportunity to defend. In determining whether an agency proceeding comported with due process, the benchmark is fundamental fairness. Aluminum Co. of America v. Musal, 622 N.W.2d 476, 478 (Iowa 2001)

I find the hearing report, discussions with the deputy commissioner, and the law in general, put defendants on notice that the amount owed to claimant for temporary disability was subject to increase or decrease depending upon the deputy commissioner's findings regarding the proper workers' compensation rate. Moreover, defendants' claim of prejudice fails as there was no temporary disability issue to brief. The weeks of entitlement were not in dispute, and defendants fully briefed the rate issue. I find defendants failed to establish the necessary showing to prevail on a due process claim.

The next issue to be addressed on appeal is penalty. In the arbitration decision, the deputy commissioner awarded penalty benefits for a delay in permanent partial disability benefits from August 22, 2016, to January 11, 2017. On cross-appeal, claimant asserts penalty is owed on all 44.286 weeks of PPD benefits that accrued from March 20, 2016, claimant's return to work date, to January 24, 2017, the date defendants paid out the impairment rating of Dr. Stanford.

Claimant underwent surgery with Dr. Stanford on February 5, 2016. (Joint Exhibit 7, pp. 22-23) Following his surgery, claimant participated in physical therapy from February 25, 2016, to August 18, 2016. (See JE8, pp. 24-38) Nevertheless, claimant returned to work on March 20, 2016. (Hearing Transcript, p. 41) Dr. Stanford placed claimant at maximum medical improvement (MMI) on August 22, 2016. (JE6, p. 19) Defendants did not request a permanent impairment rating from Dr. Stanford until January 11, 2017. (See Ex. G, p. 1)

The deputy commissioner correctly found that claimant's entitlement to permanent partial disability benefits commenced on March 20, 2016. Iowa Code section 85.34; Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (2016).

Claimant's healing period terminated upon claimant's return to work on March 20, 2016, at which point claimant's entitlement to PPD benefits was triggered. See Iowa Code section 85.34(1), (2) However, the termination of claimant's entitlement to healing period benefits under Iowa Code section 85.34(1) does not necessarily equate to a termination of claimant's period of recovery. Evenson, 881 N.W.2d at 372-74 (2016) Whether permanency will result from a work injury is not always apparent at the termination of the healing period. This is especially true in this case, where claimant was presenting to physical therapy and operating under temporary restrictions when he returned to work. (See JE6, p. 16)

Claimant continued to recover with conservative treatment, including physical therapy, between March and August 2016. (See JE6, pp. 15-19; JE8, pp. 25-37) At his initial, post-surgery physical therapy appointment, claimant's physical therapist noted claimant's condition should "progress quite well with physical therapy." (See JE8, p. 24) Claimant's long-term goals included increased range of motion, the ability to be full weight bearing, and exhibiting 5/5 strength in the knee. (Id.) Given this information, it cannot be said that permanent impairment was a foregone conclusion between March 20, 2016, and August 22, 2016. Claimant acknowledged that in his post-hearing brief. (Claimant's Post-Hearing Brief, p. 6) ("... it may have been reasonable for defendants to have held off on paying permanency benefits ... based on the facts")

Therefore, based on then existing information concerning claimant's condition, defendants delay in paying permanent disability benefits between March 20, 2016, and August 22, 2016, was not unreasonable. It was not until defendants neglected their duty to inquire as to claimant's resulting permanent impairment, subsequent to Dr. Stanford placing claimant at MMI, that defendants' denial or delay became unreasonable. (JE6, p. 19)

The issue of permanent functional impairment is a medical question that cannot reasonably be assessed by an employer, human resources director, insurance adjuster, or other non-medical expert. The duty to investigate an injured worker's claim requires making inquiry when facts are uncertain. Alvarez v. Wal-Mart Stores, Inc., File No. 5004554 (App. Sept. 27, 2005)

In this case, defendants ignored the requirement to pay permanent partial disability pursuant to Iowa Code section 85.34(2), with no medical basis for doing so, for approximately 20 weeks. Defendants' failure to inquire as to permanent impairment created a delay in claimant receiving benefits and is unreasonable. See Stroud v. Square D, File No. 5013498 (App. Dec. June 21, 2006)

I find defendants did not reasonably investigate claimant's claim from August 22, 2016, through January 11, 2017. I conclude defendants cannot attribute their delay during this period of time to a reasonable investigation. See Iowa Code section 86.13(4). I therefore affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$6,463.30 for defendants' unreasonable delay in paying claimant weekly benefits from August 22, 2016, through January 11, 2017.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 8, 2019, is affirmed in its entirety.

Defendants shall pay fifty (50) weeks of permanent partial disability benefits at the weekly rate of six hundred forty-six and 33/100 dollars (\$646.33) per week commencing on March 20, 2016.

Defendants shall pay claimant all temporary benefits at the rate of six hundred forty-six and 33/100 dollars (\$646.33) per week.

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 receive a credit for all benefits previously paid.

Defendants shall pay claimant penalty benefits in the amount of six thousand four hundred sixty-three and 30/100 dollars (\$6,463.30).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 7th day of April, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Charles W. Showalter Via WCES

Patrick O'Connell Via WCES

Benjamin Roberson Via WCES