

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONALD J. MENADUE,

Claimant,

vs.

FLYNN COMPANY, INC.,

Employer,

and

UNITED HEARTLAND,

Insurance Carrier,
Defendants.

File No.: 5048837

APPEAL
DECISION

FILED

APR 3 2017

WORKERS' COMPENSATION

Head Notes: 1801, 1803, 4000.2

Defendants Flynn Company, Inc., employer, and its insurer, United Heartland, appeal from an arbitration decision filed on September 2, 2015. Claimant, Donald J. Menadue, cross-appeals. The case was heard on May 6, 2015, and was considered fully submitted in front of the deputy workers' compensation commissioner on June 8, 2015. On February 10, 2017, Joseph S. Cortese II, Workers' Compensation Commissioner, issued an order of delegation of authority delegating the authority to issue the final agency decision to the undersigned.

In the arbitration decision, the deputy commissioner found claimant carried his burden of proof that the stipulated work injury which arose out of and in the course of claimant's employment with defendant-employer on July 17, 2012, caused claimant to sustain injury to his cervical spine. The deputy commissioner found claimant failed to carry his burden of proof to show he is entitled to permanent total disability benefits as a result of the work injury. The deputy commissioner found claimant sustained 70 percent industrial disability resulting from the work injury. The award entitles claimant to 350 weeks of permanent partial disability (PPD) benefits. The deputy commissioner also found that claimant's healing period ended on February 4, 2013, when Dr. Abernathy determined claimant had an excellent healing of his fusion graft and claimant could return to his usual activities. The deputy commissioner also ordered the defendants to pay penalty benefits pursuant to Iowa Code section 86.13. Additionally, the deputy commissioner also taxed defendants with claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained a significant permanent impairment as a result of his work injury.

Defendants further assert the deputy commissioner erred in assessing penalty benefits against the defendants.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding that the claimant was not permanently and totally disabled. Claimant also asserts on appeal that the deputy commissioner erred in finding that healing period ended February 4, 2013.

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 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on September 2, 2015, which relate to the 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 findings of fact, rationale, and conclusions of law pertaining to those issues. I affirm the deputy commissioner's award of 70 percent industrial disability for the work injury, which entitles claimant to 350 weeks of PPD benefits. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof to show he is entitled to permanent total disability benefits. I affirm the deputy commissioner's decision that claimant's healing period benefits ended on February 4, 2013. I affirm the deputy commissioner's finding that penalty benefits against the defendants are appropriate. I also affirm the deputy commissioner's order taxing defendants with claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions, and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of September 2, 2015, is affirmed in its entirety.

Defendants shall pay unto claimant, three hundred-fifty (350) weeks of permanency benefits at the stipulated weekly benefit rate of seven hundred ninety-eight dollars and 25/100 (\$798.25) per week and commencing from February 4, 2013.

Accrued benefits shall be paid in a lump sum with interest as provided by law.

Defendants shall take credit for all benefits previously paid.

Defendants shall pay unto claimant four thousand dollars and no/100 (\$4,000.00) in penalty benefits pursuant to Iowa Code section 86.13 and interest on unpaid penalty benefits shall commence from the date of the filing of this decision.

Pursuant to rule 876 IAC 4.33, defendants are taxed with 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 this 3rd day of April, 2017.



ERIN Q. PALS
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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