

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

JUN 6 2018

WORKERS' COMPENSATION

JUAN OCEGUEDA,

Claimant,

vs.

HY-VEE, INC. d/b/a HY-VEE
DISTRIBUTION,

Employer,

and

EMC PROPERTY AND CASUALTY
COMPANY,

Insurance Carrier,
Defendants.

File Nos. 5052846, 5052847

A P P E A L

D E C I S I O N

Head Note Nos: 1100; 1803; 2502

Claimant Juan Ocegueda appeals from an arbitration decision filed on February 6, 2017. Defendants Hy-Vee, Inc., d/b/a Hy-Vee Distribution, employer, and its insurer, EMC Property and Casualty Company, respond to the appeal. The case was heard on November 7, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 28, 2016.

In File No. 5052846, the deputy commissioner found claimant failed to carry his burden of proof that he sustained permanent disability as a result of a stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on April 24, 2013. The deputy commissioner awarded claimant nothing in File No. 5052846. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5052847, the deputy commissioner found claimant sustained 20 percent industrial disability as a result of a stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on April 3, 2015, which entitles claimant to 100 weeks of permanent partial disability (PPD) benefits commencing on September 21, 2015. The deputy commissioner ordered defendants to reimburse claimant in the amount of \$1,833.33 for the cost of an independent medical evaluation (IME) performed by Sunil Bansal, M.D. on June 24, 2016. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

In File No. 5052846, claimant makes no argument on appeal.

In File No. 5052847, claimant asserts on appeal that the deputy commissioner erred in awarding 20 percent industrial disability. Claimant asserts the award of industrial disability should be increased substantially.

Defendants assert 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.

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 February 6, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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.

In File No. 5052846, I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained permanent disability as a result of the April 24, 2013, work injury. I affirm the deputy commissioner's finding that claimant is entitled to take nothing in File No. 5052846. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding in File No. 5052846.

In File No. 5052847, I affirm the deputy commissioner's finding that claimant sustained 20 percent industrial disability as a result of the April 3, 2015, work injury, which entitles claimant to receive 100 weeks of PPD benefits from defendants. I affirm the deputy commissioner's order that defendants reimburse claimant in the amount of \$1,833.33 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 File No. 5052847.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 6, 2017, is affirmed in its entirety.

Regarding File No. 5052846, injury date of April 24, 2013:

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Regarding File No. 5052847, injury date of April 3, 2015:

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the weekly rate of six hundred seventy-four and 92/100 dollars (\$674.92) per week commencing on September 21, 2015.

Defendants shall receive credit for all benefits previously paid.


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 reimburse claimant in the amount of one thousand eight hundred thirty-three and 33/100 dollars (\$1,833.33) for Dr. Bansal's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and claimant 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 6th day of June, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Willis J. Hamilton
Attorney at Law
PO Box 188
Storm Lake, IA 50588-0188
willis@hamiltonlawfirm.com

Dennis R. Riekenberg
Attorney at Law
9290 W. Dodge Rd., Ste. 302
Omaha, NE 68114
driekenberg@ctagd.com