

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEFFREY MCDONALD,

Claimant,

vs.

SEDONA STAFFING,

Employer,

And

ACE AMERICAN INSURANCE CO.,

Defendants.

File No. 5041080

FILED

FEB -2 2018

WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note Nos: 1801.1, 1803,
5-9999

STATEMENT OF THE CASE

On December 15, 2017, Joseph S. Cortese II, Iowa Workers' Compensation Commissioner, delegated the authority to the undersigned to issue the final agency decision on the intra-agency appeal currently pending before this agency. The decision in this matter shall be the final agency action.

The arbitration hearing was held on May 22, 2015 in Des Moines, Iowa. The parties filed post-hearing briefs. The case was deemed fully submitted on June 19, 2015. The deputy issued the arbitration decision on April 7, 2016.

The deputy commissioner determined claimant was entitled to: (1) Two hundred (200) weeks of permanent partial disability benefits at the weekly benefit rate of four hundred sixty-nine and 99/100 dollars (\$469.99) and commencing on December 18, 2012; (2) An additional one thousand eight hundred fifty-four and 12/100 dollars (\$1,854.12) of temporary partial disability benefits accrued during the period of June 4, 2012 through October 21, 2012; (3) Defendants were entitled to take credit for benefits previously paid; (4) Defendants were ordered to pay accrued weekly benefits in a lump sum with interest on unpaid weekly benefits; and, (5) Defendants were ordered to pay the costs as set forth in the decision.

On April 13, 2016, defendants filed their notice of appeal. In the appeal brief, defendants listed the issues as:

1. The deputy erred in finding Claimant's current low back condition is causally related to the work injury and that the work injury resulted in a 40% industrial disability/loss of earning capacity because a greater weight of the evidence established that Claimant sustained further injury to his low back from a significant motor vehicle collision on 2/17/13 that contributed to Claimant's disability. Furthermore, Defendants contend the subsequent injury cuts off Defendants' liability for future medical benefits and Claimant's loss of earning capacity as a result of the 3/23/12 work injury is minimal at best.
2. The Deputy erred in awarding Claimant temporary partial disability benefits as claimed in Claimant's Exhibit 16 because such calculations included dates where Claimant was not at work for personal reasons rather than due to a work-related disability and the record does not support Claimant's alleged calculations.

Claimant filed his brief on August 17, 2016. Claimant stated in his brief:

1. The arbitration decision did not err in awarding 40% industrial disability and claimant continues to suffer the effects of his injury. Defendants['] assertion that they have the right to cut-off medical care should be rejected.
2. The arbitration decision did not err in awarding temporary partial disability benefits.

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

The record in this case was reviewed de novo. Both sides dictated the issues to be determined on appeal. See: Iowa Code section 17A.15; and Rule 876 IAC 4.28(7). 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 R. App. P. 6.14(6).

Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on April 7, 2016 which relate to the issues properly raised on intra-agency appeal.

I find the deputy workers' compensation commissioner provided a detailed analysis of the issues raised during the arbitration proceedings. I affirm the deputy's findings of fact, rationale, and conclusions of law pertaining to those issues.

The hearing deputy provided a comprehensive and exhaustive explanation why she awarded a 40 percent permanent partial disability. It was especially noteworthy when she wrote:

After Dr. Abernathy released claimant from care in December 2012, defendant-employer did not place claimant in any work assignments. Defendant-employer is a staffing agency, doubtless with numerous job placements across the spectrum of physical demand levels. Defendant-employer's failure to return claimant to work in any placement is indicative of either defendant-employer's inability or unwillingness to attempt to place claimant.

(Arbitration Decision at page 17)

With respect to the issue of temporary partial disability benefits, the deputy explained she did not issue payment for days when claimant was off work due to personal matters. Those days were already excluded from Exhibit 16, page 1. In short, the deputy accurately assessed temporary partial disability benefits.

ORDER

THEREFORE, IT IS ORDERED: The arbitration decision filed on April 7, 2016 is AFFIRMED in its entirety.

IT IS FURTHER ORDERED: Defendants shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 2nd day of February, 2018.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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