

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MEVLUDIN TURKOVIC,

Claimant,

vs.

WAL-MART STORES, INC.,

Employer,

and

AMERICAN HOME ASSURANCE
CORPORATION/AIG,Insurance Carrier,
Defendants.

File No. 5037110

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 1804; 2905;
2907; 4000.2; 5-9998

Defendants Wal-Mart Stores, Inc, employer, and its insurer, American Home Assurance Corporation/AIG, appeal from a review-reopening decision filed on January 26, 2018. Claimant Mevludin Turkovic cross-appeals. The case was heard on April 11, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 22, 2017.

The deputy commissioner found claimant is entitled to review-reopening in this matter because the deputy commissioner found claimant carried his burden of proof that he sustained a physical change of condition following an arbitration decision filed in this matter on March 6, 2013, for an injury which occurred on January 26, 2010, which arose out of and in the course of claimant's employment with defendant-employer. In the arbitration decision, which was affirmed by the workers' compensation commissioner, claimant was awarded 50 percent industrial disability, which entitled claimant to receive 250 weeks of permanent partial disability (PPD) benefits, commencing September 30, 2010. Based on the finding of a change of physical condition in the review-reopening decision, the deputy commissioner awarded claimant permanent total disability benefits commencing on July 6, 2016. The deputy commissioner found claimant is not entitled to receive any additional healing period benefits. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$5,489.18 for an unreasonable failure by defendants to pay weekly benefits from July 25, 2016, through March 23, 2017. The deputy commissioner found claimant is not entitled to receive additional penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits after March 23, 2017. The deputy commissioner found claimant is not

entitled to receive reimbursement from defendants under Iowa Code section 85.39 for the cost of the independent medical evaluation (IME) of claimant performed by Robin Sassman, M.D., on January 4, 2017. The deputy commissioner ordered defendants to pay claimant's costs of the review-reopening proceeding in the amount of \$3,617.50.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to review-reopening in this matter because defendants assert the deputy commissioner erred in finding claimant carried his burden of proof that he sustained a physical change of condition following the March 6, 2013, arbitration decision. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive any additional permanent disability benefits beyond what was awarded in the March 6, 2013, arbitration decision. Defendants assert the deputy commissioner erred in awarding claimant permanent total disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits for an unreasonable failure by defendants to pay weekly benefits from July 25, 2016, through March 23, 2017.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant is not entitled to receive additional penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits after March 23, 2017.

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 review-reopening decision filed on January 26, 2018, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of the issues raised in the review-reopening 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 is entitled to review-reopening in this matter because I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained a physical change of condition following the March 6, 2013, arbitration decision. I affirm the deputy commissioner's finding that claimant is entitled to receive permanent total disability benefits commencing on July 6, 2016. I affirm the deputy commissioner's finding that claimant is not entitled to receive any additional healing period benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$5,489.18 for an unreasonable failure by defendants to pay weekly benefits from July

25, 2016, through March 23, 2017. I affirm the deputy commissioner's finding that claimant is not entitled to receive additional penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits after March 23, 2017. I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement from defendants under Iowa Code section 85.39 for the cost of Dr. Sassman's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the review-reopening proceeding in the amount of \$3,617.50.

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

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on January 26, 2018, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits at the weekly rate of three hundred ninety-six and 94/100 dollars (\$396.94) from July 6, 2016, through the present and into the future during the period of claimant's continued disability.

Defendants shall receive a credit for all benefits paid to date.

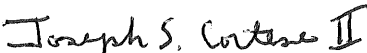
Defendants employer and insurer shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 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). However, interest shall only accrue from the date of this appeal decision.

Defendants shall pay claimant penalty benefits in the amount of five thousand four hundred eighty-nine and 18/100 dollars (\$5,489.18) for an unreasonable failure by defendants to pay weekly benefits from July 25, 2016, through March 23, 2017.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the review-reopening proceeding in the amount of three thousand six hundred seventeen and 50/100 dollars (\$3,617.50), 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 30th day of August, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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