

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DUANE PANSEGRAU,

Claimant,

vs.

TAMA PAPERBOARD, LLC,

Employer,

and

ACE AMERICAN INS. CO.,

Insurance Carrier,
Defendants.

File No. 19700372.03

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1803; 2501; 2502;
2701; 2907; 3001; 3002;
4000.2

Defendants Tama Paperboard, LLC, employer, and its insurer, Ace American Ins. Co., appeal from an arbitration decision filed on December 29, 2021. Claimant Duane Pansegrau responds to the appeal. The case was heard on July 29, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 20, 2021.

In the arbitration decision, the deputy commissioner adopted the opinions of claimant's expert, Farid Manshadi, M.D., and found claimant sustained permanent scheduled member functional impairment of 16 percent of the left lower extremity as a result of the stipulated work injury which occurred on June 22, 2019, which entitles claimant to receive 35.2 weeks of permanent partial disability (PPD) benefits commencing on January 14, 2020. The deputy commissioner found claimant's gross average weekly earnings for the injury were \$1,779.66, and the deputy commissioner found claimant's weekly benefit rate for the injury is \$1,101.11. The deputy commissioner found claimant is entitled to ongoing medical care selected by defendants for the work injury, but the deputy commissioner found claimant failed to carry his burden of proof to establish he is entitled to alternate medical care for the injury. The deputy commissioner found claimant failed to prove he is entitled to receive penalty benefits for an unreasonable underpayment of weekly benefits. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by Dr. Manshadi, and for the IME of claimant performed by Richard Tyler, Ph.D., in File No. 21008913.01. The deputy commissioner ordered

defendants to pay claimant's costs of the arbitration proceeding in the amount of \$231.30.

On appeal, defendants assert the deputy commissioner erred in adopting the permanent impairment rating of Dr. Manshadi, and in finding claimant sustained 16 percent impairment of the left lower extremity as a result of the work injury. Defendants assert the impairment rating of Thomas Gorcshe, M.D., should be adopted which would entitle claimant to receive ten percent impairment of the left lower extremity, which is 22 weeks of PPD benefits. Defendants assert the deputy commissioner erred in finding claimant's gross average weekly earnings for the injury were \$1,779.66, and in finding claimant's weekly benefit rate for the injury is \$1,101.11. Defendants assert it should be found claimant's gross average weekly earnings for the injury were \$1,685.89, and it should be found claimant's weekly benefit rate for the injury is \$1,046.63. Defendants assert it should be found they are not responsible for the cost of Dr. Tyler's IME because that IME actually pertains to File No. 21008913.01 and not to this file.

On appeal, Claimant concedes defendants in this case are not responsible for Dr. Tyler's IME charge because that IME pertains to File No. 21008913.01, and claimant concedes he has been reimbursed for Dr. Tyler's IME charge by the defendants in File No. 21008913.01. (Claimant's Appeal Brief, p 7) Claimant asserts the remainder of the arbitration decision should be affirmed in its entirety.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on December 29, 2021, is affirmed in part, and is reversed in part.

I affirm the deputy commissioner's adoption of Dr. Manshadi's opinions, and I affirm the deputy commissioner's finding that claimant sustained 16 percent permanent impairment of the left lower extremity as a result of the work injury. I affirm the deputy commissioner's finding that claimant's gross average weekly earnings for the injury were \$1,779.66, and I affirm the deputy commissioner's finding that claimant's weekly benefit rate for the injury is \$1,101.11. I affirm the deputy commissioner's finding that claimant is entitled to ongoing medical care selected by defendants for the work injury, and I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to alternate medical care for the injury. I affirm the deputy commissioner's finding that claimant failed to prove he is entitled to receive penalty benefits in this matter. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of Dr. Manshadi's IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$231.30.

With the following brief analysis, I reverse the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants in this matter for the cost of Dr. Tyler's IME. Claimant concedes Dr. Tyler's

IME actually pertains to File No. 21008913.01 and not to this file. Claimant concedes defendants in this file are not responsible for Dr. Tyler's IME charge, and claimant concedes he has been reimbursed for Dr. Tyler's IME charge by the defendants in File No. 21008913.01. (Claimant's Appeal Brief, p 7)

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 29, 2021, is affirmed in part, and is reversed in part, with the above-stated additional analysis.

Defendants shall pay claimant 35.2 weeks of permanent partial disability benefits at the weekly rate of one thousand one hundred one and 11/100 dollars (\$1,101.11) from January 14, 2020.

Defendants shall receive credit for all benefits previously paid.

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants shall provide reasonable medical care selected by defendants for claimant's left lower extremity injury.

Pursuant to Iowa Code Section 85.39, Defendants shall reimburse claimant for the cost of Dr. Manshadi's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of two hundred thirty-one and 30/100 dollars (\$231.30), and defendants 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 29th day of April, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Nate Willems (via WCES)

James Peters (via WCES)