

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVE KENKEL,

Claimant,

vs.

CITY OF HARLAN,

Employer,

and

EMCASCO,

Insurance Carrier,
Defendants.

File No. 5062153

A P P E A L

D E C I S I O N

Headnotes: 1402.30; 1402.40; 1402.60;
2208; 2209; 2401; 2402;
2501; 5-9998

FILED

JUL 18 2019

WORKERS' COMPENSATION

Defendants City of Harlan, employer, and EMCASCO, insurer, appeal from an arbitration decision filed on January 17, 2018. Claimant Steve Kenkel responds to the appeal. The case was heard on September 11, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 3, 2017.

In the arbitration decision, the deputy commissioner found the manifestation date for claimant's work-related hearing loss and tinnitus was August 19, 2014. Because claimant provided notice to defendants of his claim on October 29, 2014, slightly more than two months after the manifestation date of the work injury, the deputy commissioner found defendants failed to prove their Iowa Code section 85.23 90-day notice defense. Because claimant filed his petition on July 27, 2016, which was less than two years after the manifestation date for the work injury, the deputy commissioner found defendants failed to prove their Iowa Code section 85.26 two-year statute of limitations defense. The deputy commissioner found claimant sustained 15 percent industrial disability as a result of the work injury, which entitles claimant to receive 75 weeks of permanent partial disability benefits commencing on August 19, 2014. The deputy commissioner found claimant is entitled to payment by defendants for the requested past medical expenses totaling \$7,964.00 listed in claimant's itemization of medical expenses attached to the hearing report. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$569.69.

Defendants assert on appeal that the deputy commissioner erred in finding the manifestation date for claimant's work injury was August 19, 2014. Defendants assert the deputy commissioner erred in finding defendants failed to prove their 90-day notice defense. Defendants assert the deputy commissioner erred in finding defendants failed to prove their two-year statute of limitations defense. Defendants assert the deputy commissioner erred in finding claimant sustained 15 percent industrial disability as a result of the work injury. Defendants assert the award for industrial disability should either be reversed entirely or reduced substantially. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for the requested past medical expenses.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision and ruling 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 January 17, 2018 that relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration 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 the manifestation date for claimant's work-related hearing loss and tinnitus was August 19, 2014. I affirm the deputy commissioner's finding that defendants failed to prove their Iowa Code section 85.23 90-day notice defense. I affirm the deputy commissioner's finding that defendants failed to prove their Iowa Code section 85.26 two-year statute of limitations defense. I affirm the deputy commissioner's finding that claimant sustained 15 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses totaling \$7,964.00. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$569.69.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 17, 2018, is affirmed in its entirety.

Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits commencing August 19, 2014, at the weekly rate of seven hundred forty-one and 10/100 dollars (\$741.10).

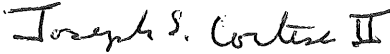
Defendants shall pay claimant's requested past medical expenses totaling seven thousand nine hundred sixty-four and no/100 dollars (\$7,964.00).

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).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of five hundred sixty-nine and 69/100 dollars (\$569.69), 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 18th day of July, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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