

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONALD LEWIS,  
 Claimant,

vs.

HILLTOP TIRE SERVICE,  
 Employer,

and

PEKIN INSURANCE,  
 Insurance Carrier,  
 Defendants.

File No. 5058112

A P P E A L

D E C I S I O N

Head Note Nos: 1108.50; 1402.30, 1803;  
 2907; 3001; 3002; 3800;  
 5-9998

Defendants Hilltop Tire Service, employer, and its insurer, Pekin Insurance, appeal from an arbitration decision filed on November 16, 2018. Claimant Donald Lewis cross-appeals. The case was heard on February 6, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 28, 2018.

The deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability as a result of the stipulated injury which occurred on November 3, 2015, which arose out of and in the course of claimant's employment with defendant-employer. The deputy commissioner found claimant sustained 30 percent industrial disability as a result of the work injury, which entitles claimant to receive 150 weeks of permanent partial disability benefits commencing on June 2, 2016. The deputy commissioner found claimant's correct gross average weekly wage for the work injury is \$864.65, with the result that claimant's correct weekly benefit rate for the injury, classification married with three exemptions, is \$566.54. The deputy commissioner found claimant is entitled to payment by defendants for the past requested medical expenses, medical mileage and claimant's out-of-pocket expenses itemized in Exhibit 11. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$952.92.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried his burden of proof to establish he sustained permanent disability as a result of the work injury. Defendants assert the deputy commissioner erred in awarding claimant any industrial disability. Defendants assert the deputy commissioner erred in finding claimant's correct gross average weekly wage for the work injury is \$864.65, and in finding claimant's correct weekly benefit rate for the work injury is \$566.54.

Defendants assert it should be found on appeal that claimant's correct gross average weekly wage for the work injury is \$858.00, and it should be found claimant's correct weekly benefit rate for the work injury is \$562.53.

Claimant asserts on cross-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 November 16, 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 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 claimant carried his burden of proof to establish he sustained permanent disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant sustained 30 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant's correct gross average weekly wage for the work injury is \$864.65, with the result that claimant's correct weekly benefit rate for the injury is \$566.54. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the past requested medical expenses, medical mileage and claimant's out-of-pocket expenses itemized in Exhibit 11. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$952.92.

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

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 16, 2018, is affirmed in its entirety.

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the weekly benefit rate of five hundred sixty-six and 54/100 dollars (\$566.54), commencing on June 2, 2016.

Defendants shall receive credit for all benefits previously paid in this matter.


Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. 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 pay the past requested medical expenses, medical mileage and claimant's out-of-pocket expenses itemized in Exhibit 11.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of nine hundred fifty-two and 92/100 dollars (\$952.92), 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 4<sup>th</sup> day of February, 2020.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

James Neal                      Via WCES

Steven T. Durick                Via WCES

Kathryn Johnson                Via WCES