

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL BIGLEY,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5061014
DONALDSON COMPANY, INC.,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
STANDARD FIRE INSURANCE	:	
COMPANY,	:	
	:	
Insurance Carrier,	:	Head Notes: 1402.40; 1802; 1803; 2501;
Defendants.	:	2502; 2907; 4000.2; 5-9999

Defendants Donaldson Company, Inc., employer, and its insurer, Standard Fire Insurance Company, appeal from an arbitration decision filed on January 15, 2019. Claimant Michael Bigley cross-appeals. The case was heard on February 8, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 9, 2018.

In the arbitration decision, the deputy commissioner found claimant's stipulated work-related injury which occurred on November 13, 2013, caused claimant to sustain permanent functional disability of his right wrist/forearm and in his right shoulder. The deputy commissioner found claimant sustained 45 percent industrial disability as a result of the work injury, which entitles him to receive 225 weeks of permanent partial disability (PPD) benefits commencing on January 19, 2014. The deputy commissioner also found claimant is entitled to receive healing period benefits for his right shoulder condition from June 27, 2017, through January 19, 2018. The deputy commissioner found claimant is entitled to payment by defendants for past requested medical expenses and medical mileage itemized in Exhibits 14 and 16. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$7,500.00 based on defendants' failure to timely investigate claimant's right shoulder claim or pay PPD benefits for claimant's right arm.

On appeal, defendants assert the deputy commissioner erred in finding claimant's right shoulder condition to be a work-related injury. Defendants alternatively assert claimant has not reached maximum medical improvement (MMI) for his right

shoulder condition and defendants assert the award for industrial disability should be reduced substantially. Lastly, defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

On cross-appeal, claimant asserts the award for industrial disability should be increased substantially. Claimant asserts the award for penalty benefits should also be increased substantially.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, those portions of the proposed arbitration decision filed on January 15, 2019, that relate to the issues properly raised on intra-agency appeal are affirmed in their entirety with the additional analysis set forth below:

I affirm the deputy commissioner's finding that claimant sustained permanent disability of his right wrist/forearm and right shoulder as a result of the November 13, 2013, work injury. I affirm the deputy commissioner's finding that claimant sustained 45 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from June 27, 2017, through January 19, 2018, for his right shoulder injury. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the past requested medical expenses and the medical mileage itemized in Exhibits 14 and 16. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

With the additional analysis set forth below, I affirm the deputy commissioner's implied finding that claimant has reached MMI. I also affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$7,500.00.

Defendants argue claimant has not yet reached MMI following his right shoulder surgery, but David Segal, M.D. opined claimant's right shoulder reached MMI as of December 27, 2017. (Exhibit 2, p. 22) This is consistent with the notes from Baseem Elhassan, M.D., claimant's surgeon, who released claimant from care on January 19, 2018. (Joint Ex. 8, p. 9) I therefore specifically find claimant had reached MMI as of the date of the arbitration hearing.

Turning to claimant's entitlement to penalty benefits, I agree with the deputy commissioner that there was an unreasonable delay between when claimant was placed at MMI by Jon DT Kammerer, M.D. (JE 2, p. 7) and when defendants requested an impairment rating (JE 2, p. 9). This delay occurred from May 2, 2014, through August 11, 2014, or roughly 14 weeks.

With respect to defendants' investigation of claimant's right shoulder condition, the deputy commissioner correctly noted that claimant obtained a report from Arnold Delbridge, M.D. on January 4, 2016 (Ex. 1) in which Dr. Delbridge opined claimant had work-related permanent impairment of his right shoulder. Defendants, however, did not obtain a responsive causation opinion until June 23, 2016 (Ex. A, p. 4), or roughly 24 weeks later. I therefore affirm the deputy commissioner's finding that defendants failed to reasonably and contemporaneously investigate claimant's right shoulder condition.

The deputy commissioner based his penalty award on Dr. Delbridge's 11 percent impairment rating for claimant's right upper extremity. At claimant's rate of \$491.19, Dr. Delbridge's rating amounted to \$17,191.65 in benefits that were unreasonably delayed. The deputy commissioner then awarded \$7,500.00 in penalty benefits, which amounts to just more than 40 percent of the benefits unreasonably delayed.

In exercising its discretion, the agency must consider factors such as the length of the delays, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996).

In this case, defendants failed to provide a reasonable excuse for the delay in obtaining an impairment rating for claimant's right wrist/forearm condition after he was placed at MMI. Defendants similarly failed to provide a reasonable excuse for the delay in investigating claimant's right shoulder condition after he obtained a favorable causation opinion. While claimant offered no evidence of defendants' past history of penalties, defendants unreasonably denied claimant more than 30 weeks of benefits. Considering the relevant factors and the purposes of the penalty statute, I affirm the deputy commissioner's determination that a penalty in the amount of \$7,500.00 is appropriate in this case. Such an amount, which is roughly 40 percent of the benefits unreasonably delayed, is appropriate to punish defendants for their unreasonable delays and to serve as a deterrent against such conduct in the future.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 15, 2019, is affirmed in its entirety with the additional analysis set forth above.

Defendants shall pay claimant healing period benefits from June 27, 2017, through January 19, 2018, at the stipulated weekly rate of four hundred ninety-one and 19/100 dollars (\$491.19).

Defendants shall pay claimant two hundred twenty-five (225) weeks of permanent partial disability benefits at the stipulated weekly rate of four hundred ninety-one and 19/100 dollars (\$491.19) commencing on January 19, 2014.

Defendants shall be given credit for the ten (10) weeks of benefits previously paid.

Defendants shall pay accrued weekly benefits, if any, 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, if any, 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 itemized in Exhibits 14 and 16.

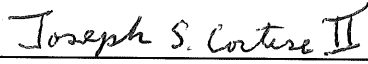
Defendants shall reimburse claimant for the IME expenses itemized in Claimant's Exhibit 15.

Defendants shall pay claimant penalty benefits in the amount of seven thousand, five hundred and no/100 dollars (\$7,500.00).

Pursuant to rule 876 IAC 4.33, defendants shall pay the costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00), 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 25th day of February, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Charles W. Showalter Via WCES

Timothy W. Wegman Via WCES