

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LESLIE SNYDER,

Claimant,

vs.

MICHELS CORP.,

Employer,

and

ARCH INSURANCE CO.,

Insurance Carrier,
Defendants.

File Nos. 5058185, 5058331

A P P E A L
D E C I S I O NHead Notes: 1402.30; 1402.40; 1403.30;
1802; 1803; 2501; 2502;
2701; 2907; 4000.2; 5-9998

Claimant Leslie Snyder appeals from an arbitration decision filed on February 14, 2020. Defendants Michels Corp., employer, and its insurer, Arch Insurance Company, cross-appeal. The case was heard on September 7, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 15, 2018.

In File No. 5058185, the deputy commissioner found claimant satisfied his burden of proof to establish he sustained an injury on November 10, 2016, which arose out of and in the course of his employment with defendant-employer. The deputy commissioner found defendants failed to prove this claim is barred by Iowa Code section 85.16(3). The deputy commissioner awarded claimant nothing in the way of weekly benefits because the deputy commissioner found claimant failed to prove he sustained either temporary disability or permanent disability as a result of the November 10, 2016, work injury. The deputy commissioner found that pursuant to Iowa Code Section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of his independent medical evaluation (IME) with David Segal, M.D.

In File No. 5058331, the deputy commissioner found claimant satisfied his burden of proof to establish he sustained an injury on December 4, 2016, which arose out of and in the course of his employment with defendant-employer. The deputy commissioner found defendants failed to prove this claim is barred by Iowa Code section 85.16(3). The deputy commissioner found claimant is not entitled to receive temporary disability benefits for the December 4, 2016, work injury. The deputy commissioner found claimant sustained permanent disability of his cervical spine as a result of the December 4, 2016, work injury. which entitles claimant to receive five percent industrial disability, 25 weeks of permanent partial disability benefits

commencing on March 27, 2017. The deputy commissioner found claimant is entitled to receive penalty benefits from defendants in the amount of \$14,226.00 for defendants' unreasonable failure to investigate the claim and pay weekly benefits. The deputy commissioner found claimant is not entitled to alternate medical care. The deputy commissioner ordered defendants to provide claimant with all reasonable ongoing medical care by providers of defendants' choosing needed for claimant's work-related cervical spine condition. The deputy commissioner found that pursuant to Iowa Code Section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Segal's IME.

In both files, the deputy commissioner found claimant is entitled to payment by defendants for all of the past requested medical expenses itemized in Exhibits 9 and 10 for treatment of the two work injuries. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$613.12, which includes \$500.00 for the cost of Dr. Segal's IME report.

Claimant asserts on appeal in File No. 5058331 that the deputy commissioner erred in finding claimant sustained five percent industrial disability as a result of the December 4, 2016, work injury. Claimant asserts the award for industrial disability should be increased to 40 percent.

Defendants assert on cross-appeal in File No. 5058331 that claimant's appeal brief should be stricken because it was not timely filed. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

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 February 14, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

In File No. 5058185, I affirm the deputy commissioner's finding that claimant proved he sustained a work-related injury on November 10, 2016. I affirm the deputy commissioner's finding that defendants failed to prove this claim is barred by Iowa Code section 85.16(3). I affirm the deputy commissioner's finding that claimant is entitled to receive nothing in the way of weekly benefits because I affirm the deputy commissioner's finding that claimant failed to prove he sustained either temporary disability or permanent disability as a result of the November 10, 2016, work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code Section 85.39,

claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Segal's IME.

In File No. 5058331, I decline to strike claimant's appeal brief because defendants made no showing they were prejudiced by the late filing of that brief. I affirm the deputy commissioner's finding that claimant proved he sustained a work-related injury on December 4, 2016. I affirm the deputy commissioner's finding that defendants failed to prove this claim is barred by Iowa Code section 85.16(3). I affirm the deputy commissioner's finding that claimant is not entitled to receive temporary disability benefits for the December 4, 2016, work injury. I affirm the deputy commissioner's finding that claimant sustained permanent disability of his cervical spine as a result of the December 4, 2016, work injury which entitles claimant to receive five percent industrial disability. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits from defendants in the amount of \$14,226.00 for defendants' unreasonable failure to investigate the claim and pay weekly benefits. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care. I affirm the deputy commissioner's order that defendants provide claimant with all reasonable ongoing medical care by providers of defendants' choosing needed for claimant's work-related cervical spine condition. I affirm the deputy commissioner's finding that pursuant to Iowa Code Section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Segal's IME.

In both files, I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for all of the past requested medical expenses itemized in Exhibits 9 and 10 for treatment of the two work injuries. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$613.12.

I affirm all of the deputy commissioner's findings, conclusions, analysis and orders in File Nos. 5058185 and 5058331.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 14, 2020, is affirmed in its entirety.

File No. 5058185 – injury date November 10, 2016:

Claimant shall take nothing in the way of temporary disability benefits or permanent partial disability benefits in this claim.

File No. 5058331 – injury date December 4, 2016:

Defendants shall pay claimant twenty-five (25) weeks of permanent partial disability benefits at the weekly rate of one thousand one hundred thirty-eight and 08/100 dollars (\$1,138.08), commencing on March 27, 2017.

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 claimant a penalty of fourteen thousand two hundred twenty-six and 00/100 dollars (\$14,226.00).

Defendants shall provide claimant with all reasonable ongoing medical care by providers of defendants' choosing needed for claimant's work-related cervical spine condition.

Both Files:

Defendants shall pay all of the past requested medical expenses itemized in Exhibits 9 and 10.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of six hundred thirteen and 12/100 dollars (\$613.12), 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 24th day of September, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Robert Rosenstiel (via WCES)

Garrett Lutovsky (via WCES)