

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ISAAC MILLANES ORTIZ,

Claimant,

vs.

LOYD ROLING CONSTRUCTION,

Employer,

and

GRINNELL MUTUAL REINSURANCE,

Insurance Carrier,
Defendants.

File No. 5041675

FILED

SEP - 1 2017

WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note Nos: 1402.40; 1801; 1801.1;
1802; 4000; 5-9998

Claimant Isaac Millanes Ortiz appeals from an arbitration decision filed on January 13, 2016. Defendants Loyd Roling Construction, employer, and its insurer, Grinnell Mutual Reinsurance, respond to the appeal. The case was heard on November 21, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 4, 2015.

The deputy commissioner found claimant was not a credible witness. The deputy Commissioner found claimant failed to carry his burden of proof that he sustained any permanent disability to his left arm, his left shoulder, chest, trapezius/neck, head, or mental state as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on September 28, 2012. The deputy commissioner found claimant is entitled to temporary total disability (TTD) benefits for January 24, 2014, and from January 30, 2014, through March 10, 2014. The deputy commissioner found claimant is not entitled to TTD benefits from January 20, 2014, through January 23, 2014, and from January 27, 2014, through January 29, 2014, because claimant did not make himself available for suitable light duty work offered by defendants for those dates. The deputy commissioner found claimant is entitled to \$500.00 in penalty benefits pursuant to Iowa Code section 86.13 for an unreasonable delay in the payment of TTD benefits from September 29, 2012, through October 25, 2012. The deputy commissioner found claimant is not entitled to penalty benefits for late payment of benefits from December 1, 2012, through December 7, 2012, and from December 15, 2012, through January 4, 2013. The deputy commissioner found claimant is not entitled to payment by defendants of medical charges for medical treatment received on July 6, 2013, on October 27, 2014, and for

counseling sessions from August 14, 2013, through October 15, 2014. The deputy commissioner found claimant is not entitled to alternate medical care for requested treatment by James Nepola, M.D., by Douglas Sedlacek, M.D., and by Seashore Psychology Clinic. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$961.07.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained any permanent disability to his left arm, his left shoulder, chest, neck, head, or mental state as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to award industrial, or in the alternative, scheduled member functional disability for the work injury. Claimant asserts the deputy commissioner erred in failing to award alternate medical care with Dr. Nepola and Dr. Sedlacek

Defendants assert on 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.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 13, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis 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 was not a credible witness for all of the reasons stated by the deputy commissioner in the arbitration decision. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained any permanent disability to his left arm, his left shoulder, chest, trapezius/neck, head, or mental state as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to temporary total disability (TTD) benefits for January 24, 2014, and from January 30, 2014, through March 10, 2014. I affirm the deputy commissioner's finding that claimant is not entitled to TTD benefits from January 20, 2014, through January 23, 2014, and from January 27, 2014, through January 29, 2014, because claimant did not make himself available for suitable light duty work offered by defendants for those dates. I affirm the deputy commissioner's finding that claimant is entitled to \$500.00 in penalty benefits pursuant to Iowa Code section 86.13 for an unreasonable delay in the payment of TTD benefits from September 29, 2012, through October 25, 2012. I affirm the deputy commissioner's finding that claimant is not entitled to penalty benefits for late payment of benefits from December 1, 2012 through December 7, 2012, and from

December 15, 2012, through January 4, 2013. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants of medical charges for medical treatment received on July 6, 2013, on October 27, 2014, and for counseling sessions from August 14, 2013, through October 15, 2014. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care for requested treatment by James Nepola, M.D., by Douglas Sedlacek, M.D., and by Seashore Psychology clinic. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$961.07. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 13, 2016, is affirmed in its entirety.

Defendants shall pay claimant temporary total disability benefits at the weekly rate of three hundred twenty-three and 12/100 dollars (\$323.12) for the date of January 24, 2014 and from January 30, 2014 through March 10, 2014.

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

Defendants shall pay interest on the penalty benefits from the date of this decision. See *Schadendorf v. Snap On Tools*, 757 N.W.2d 330, 339 (Iowa 2008).

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall receive credit for all weekly benefits previously paid.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$961.07, and claimant 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 this 1st day of September, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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