

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAUREL LOBENSTEIN,

Claimant,

vs.

MCI COMMUNICATIONS
SERVICES, INC.,

Employer,

NEW HAMPSHIRE INS. CO.

Insurance Carrier,
Defendants.

File No. 5043363

A P P E A L
D E C I S I O N

Head Note Nos: 1803, 3002

FILED

DEC 29 2016

WORKERS' COMPENSATION

Defendants MCI Communications Services, Inc., employer, and its insurer, New Hampshire Ins. Co., appeal from an arbitration decision filed on July 22, 2015. Claimant Laurel Lobenstein responds to the appeal. The case was heard on April 15, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 8, 2015.

The deputy commissioner awarded claimant 35 percent industrial disability, which entitles claimant to 175 weeks of permanent partial disability (PPD) benefits, commencing on February 18, 2013, for claimant's stipulated right shoulder injury, which arose out of and in the course of claimant's employment on February 7, 2013. The deputy commissioner determined a \$1,500.00 bonus claimed by claimant was a regular bonus and should be included when calculating claimant's gross average weekly earnings and in calculating claimant's weekly workers' compensation benefit rate. The deputy commissioner determined claimant's correct weekly workers' compensation benefit rate is \$479.06. The deputy commissioner ordered defendants to pay the cost of a functional capacity evaluation obtained by claimant. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in awarding claimant 35 percent industrial disability. Defendants assert the deputy commissioner erred by including claimant's claimed bonus in calculating claimant's gross average weekly earnings and in calculating claimant's weekly workers' compensation benefit rate. Defendants assert the deputy commissioner erred in arriving at a weekly benefit

rate of \$479.06. Defendants assert claimant's correct weekly workers' compensation benefit rate is \$461.98.

Claimant asserts 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 July 22, 2015, 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 award of 35 percent industrial disability, which entitles claimant to 175 weeks of PPD benefits, commencing on February 18, 2013. I affirm the deputy commissioner's finding that the bonus claimed by claimant was a regular bonus and should be included when calculating claimant's gross average weekly earnings and in calculating claimant's weekly workers' compensation benefit rate. I affirm the deputy commissioner's finding that claimant's correct weekly workers' compensation benefit rate is \$479.06. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on July 22, 2015, is affirmed in its entirety.

Defendants shall pay claimant 175 weeks of permanent partial disability benefits at the rate of four hundred seventy nine and 06/100 dollars (\$479.06) per week commencing on February 18, 2013.

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

Defendants shall be given credit for benefits previously paid.

Defendants shall pay claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay claimant's future medical expenses necessitated by the work injury.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 this 29th day of December, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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