

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED

JAN - 4 2018

RAMIZ DAUTOVIC,

Claimant,

vs.

CONCORD HOSPITALITY,

Employer,

and

PMA INSURANCE GROUP and
ZURICH AMERICAN INSURANCE,

Insurance Carrier,
Defendants.

File Nos. 5028332 and 5051676

A P P E A L

D E C I S I O N

Head Note Nos: 1100; 1108; 1801;
1803; 2600; 5-9998

In File Nos. 5028332 and 5051676, Claimant Ramiz Dautovic appeals from a review-reopening/arbitration decision filed on May 17, 2016. In File No. 5028332, defendants Concord Hospitality, employer, and its insurer, PMA Insurance Group, cross-appeal. In File No. 5051676, defendants Concord Hospitality, employer, and its insurer, Zurich American Insurance, respond to the appeal. The case was heard on February 15, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 14, 2016.

In File No. 5028332, the deputy commissioner found claimant is entitled to review-reopening because claimant carried his burden of proof that he sustained a physical change of condition following an agreement for settlement which was filed on October 13, 2009, for a work-related injury which occurred on February 15, 2006. In the review-reopening/arbitration decision filed on May 17, 2016, claimant was awarded 90 percent industrial disability, which entitles claimant to 450 weeks of permanent partial disability benefits, commencing January 3, 2014. In the decision, the deputy commissioner found defendants employer and insurer are entitled to a credit for 100 weeks of permanent partial disability benefits paid by those defendants pursuant to the agreement for settlement. The deputy commissioner found claimant failed to carry his burden of proof he is permanently and totally disabled under an odd-lot disability analysis. The deputy commissioner found claimant is entitled to receive payment by defendants in the amount of \$2,614.27 for temporary partial disability benefits. The deputy commissioner found claimant is entitled to payment by defendants for requested past medical expenses as well as claimant is entitled to receive ongoing medical care for his back condition. The deputy commissioner found pursuant to Iowa Code section

85.39 that claimant is entitled to payment by defendants for the charge for the independent medical examination (IME) of Thomas Carlstrom, M.D., performed on August 28, 2014. The deputy commissioner also ordered defendants to pay claimant's costs of this matter which include court reporter fees, interpreter fees, transcription fees, filing fee and service fee.

In File No. 5051676, alleged injury date of February 5, 2013, the deputy commissioner found claimant failed to carry his burden of proof that he sustained a new and discrete injury to his back which arose out of and in the course of his employment with defendant-employer. The deputy commissioner found the condition for which claimant underwent surgery on July 5, 2013, is a continuation of the February 15, 2006, injury. The deputy commissioner awarded claimant nothing in File No. 5051676. The deputy commissioner also found pursuant to Iowa Code section 85.21 defendant-insurer PMA Insurance Group is not entitled to reimbursement from defendant-insurer Zurich American Insurance Company for weekly workers' compensation benefits and for medical benefits paid after February 5, 2013.

In File No. 5028332, claimant asserts on appeal that the deputy commissioner erred in failing to find claimant sustained a new and discrete injury to his back with a new injury date of February 5, 2013. Claimant asserts the deputy commissioner erred in failing to find claimant is permanently and totally disabled under an odd-lot disability analysis. Claimant also asserts the deputy commissioner erred in finding claimant is not entitled to reimbursement from defendants employer and insurer for the cost of the vocational report from claimant's vocational expert Phil Davis, M.S.

In File No. 5028332, defendants employer and insurer assert on cross-appeal that the deputy commissioner erred in finding claimant is entitled to review-reopening for the February 15, 2006, injury. Defendants assert the deputy commissioner erred in finding claimant sustained a physical change of condition which entitles claimant to review-reopening. Defendants assert the deputy commissioner erred in awarding claimant 90 percent industrial disability, with a credit for the PPD benefits paid pursuant to the October 13, 2009, agreement for settlement. Defendants assert the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained a new and discrete work-related injury on February 5, 2013, and in failing to find that claimant's current condition is the result of that new injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive payment by defendants in the amount of \$2,614.27 for temporary partial disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for requested past medical expenses as well as finding claimant is entitled to receive ongoing medical care for his back condition. Defendants also assert the deputy commissioner erred in ordering defendants to pay claimant's costs of this matter.

In File No. 5051676, claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained a new and

discrete injury to his back on February 5, 2013, which arose out of and in the course of claimant's employment with defendant-employer. Claimant asserts the deputy commissioner erred in finding the condition for which claimant underwent surgery on July 5, 2013, is a continuation of the February 15, 2006, injury. Claimant asserts the deputy commissioner erred in awarding claimant nothing in File No. 5051676.

In File No. 5051676, defendant-insurer PMA Insurance Group asserts on cross-appeal that the deputy commissioner erred in finding pursuant to Iowa Code Section 85.21 that defendant-insurer PMA Insurance Group is not entitled to reimbursement from defendant-insurer Zurich American Insurance Company for weekly workers' compensation benefits and for medical benefits paid to claimant after February 5, 2013.

In File No. 5051676, defendants employer and insurer Zurich American Insurance Company assert on appeal that the review-reopening/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 review-reopening/arbitration decision filed on May 17, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of all of the issues raised in the review-reopening/arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

In File No 5028332, I affirm the deputy commissioner's finding claimant is entitled to review-reopening for the February 15, 2006, work injury. I affirm the deputy commissioner's finding claimant sustained a physical change of condition which entitles claimant to additional weekly benefits. I affirm the deputy commissioner's award of 90 percent industrial disability, with a credit for the PPD benefits paid pursuant to the October 13, 2009, agreement for settlement. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained a new and discrete work-related injury on February 5, 2013, and I affirm the deputy commissioner's finding that claimant failed to prove his current condition is the result of the alleged new injury. I affirm the deputy commissioner's finding claimant is entitled to receive payment from defendants in the amount of \$2,614.27 for temporary partial disability benefits. I affirm the deputy commissioner's finding claimant is entitled to payment by defendants for requested past medical expenses as well as I affirm the deputy commissioner's finding claimant is entitled to receive ongoing medical care for his back condition. I affirm the

deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to payment by defendants for Dr. Carlstrom's IME. I also affirm the deputy commissioner's order that defendants pay claimant's costs of this matter.

In File No. 5051676, I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he sustained a new and discrete injury to his back on February 5, 2013, which arose out of and in the course of claimant's employment with defendant-employer. I affirm the deputy commissioner's finding that the condition for which claimant underwent surgery on July 5, 2013, is a continuation of the February 15, 2006, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing in File No. 5051676.

In File No. 5051676, I also affirm the deputy commissioner's finding that pursuant to Iowa Code Section 85.21, defendant-insurer PMA Insurance Group is not entitled to reimbursement from defendant-insurer Zurich American Insurance Company for weekly workers' compensation benefits and for medical benefits paid to claimant after February 5, 2013.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the review-reopening/arbitration decision filed on May 17, 2016, is affirmed in its entirety.

Regarding File No. 5028332, injury date of February 15, 2006:

Defendants shall pay claimant four hundred fifty (450) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of three hundred forty-one and 26/100 dollars (\$341.26) commencing January 3, 2014.

Defendants shall pay claimant temporary partial disability benefits in the amount of two thousand six hundred fourteen and 27/100 dollars (\$2,614.27).

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

Defendant shall be given credit for all benefits previously paid.

Defendants shall pay requested past medical expenses as well as ongoing medical care for claimant's back condition for the February 15, 2006, work injury.

Defendants shall pay/reimburse claimant for the section 85.39 IME fee of Thomas Carlstrom, M.D.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the review-reopening/arbitration proceeding including court reporter fees, interpreter fees, transcription fees, filing fees, and service fee, 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.

Regarding File No. 5051676, alleged injury date of February 5, 2013:

Claimant shall take nothing.

Each party shall pay their own costs.

Signed and filed on this 4th day of January, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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