

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEAN ERIC RUZINDANA,

Claimant,

vs.

INNOVATIVE TRANSPORT  
ENTERPRISE, LLC,Employer,  
Defendant.

File No. 5068332

ARBITRATION

DECISION

Head Notes: 1801, 2501, 2701

Claimant Jean Eric Ruzindana filed a Petition in Arbitration on April 30, 2019, alleging he sustained injuries to his head, brain, left clavicle, pelvis, back, and body as a whole while working for the defendant, Innovative Transport Enterprise, LLC ("Innovative") on November 27, 2018. Innovative did not file an answer or other responsive pleading. On September 26, 2019, an Order to Show Cause was issued, ordering Ruzindana to file a proof of service within twenty-one days of the date of the Order. Ruzindana filed a Proof of Service on October 3, 2019, showing Innovative had been served by certified mail on May 10, 2019.

Ruzindana filed a Notice of Intent to File Written Application for Default Judgment on October 3, 2019, and served a copy on Innovative, notifying Innovative it was in default by failing to take action in the case. Innovative did not file an answer or responsive pleading.

On November 1, 2019, Ruzindana filed an Application for Default Judgment against Innovative and served a copy on Innovative. Innovative did not file an answer or a responsive pleading. On November 15, 2019, a Ruling on Application for Default Judgment was entered, granting the Application for Default Judgment, and scheduling a hearing for consideration and award of such relief as may be warranted by the evidence against Innovative. The Ruling provided because default had been entered against Innovative, the issues of whether there was an employer-employee relationship, whether Ruzindana sustained an injury that arose out of and in the course of employment, and whether there was a causal connection between the injury and the alleged disability would not be discussed at hearing. The Ruling was served on Innovative by certified and regular mail.

On December 3, 2019, a telephone hearing was held for consideration and award of appropriate relief. Attorney Jenna Green represented Ruzindana. Ruzindana appeared and testified. Exhibits 1 through 3 were admitted into the record. The record

was held open through December 4, 2019, for the receipt of Exhibit 4 and the Hearing Report. Exhibit 4 was received and admitted into the record. The Hearing Report was also received into the record. No communication was received from Innovative prior to or at the time of the hearing.

The hearing was recorded through digital means pursuant to rule 876 Iowa Administrative Code 4.49. A transcript of the hearing will not be prepared by this agency. If any party wishes to appeal this decision, that party is charged with requesting a copy of the digital audio recording and obtaining a transcript to be prepared and filed by a certified shorthand report.

### **STIPULATIONS**

1. An employer-employee relationship existed between Innovative and Ruzindana at the time of the alleged injury.
2. Ruzindana sustained an injury on November 27, 2018, which arose out of and in the course of his employment with Innovative.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. The matter of permanent disability is not ripe for adjudication at this time.
5. Ruzindana was off work from November 27, 2018 through October 25, 2019.
6. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
7. At the time of the alleged injury Ruzindana's gross earnings were \$750.00 per week, he was married and entitled to six exemptions, and the weekly rate is \$525.26.

### **ISSUES**

1. Is Ruzindana entitled to temporary benefits from November 27, 2018 through November 2019?
2. Is Ruzindana entitled to recover medical expenses?
3. Is Ruzindana entitled to alternate medical care?
4. Should costs be assessed against Innovative?

### FINDINGS OF FACT

Ruzindana lives in Iowa City. (Ruzindana Testimony) Ruzindana is married and he has four children under the age of eighteen. (Ruzindana Testimony) At the time of the hearing Ruzindana was thirty-nine. (Ruzindana Testimony) Ruzindana speaks English, Swahili, and French. (Exhibit 1, page 10)

Ruzindana worked for Innovative in 2018. (Ruzindana Testimony) Innovative hired Ruzindana to provide transportation to customers to and from the hospital. (Ruzindana Testimony) Innovative supplied Ruzindana with a vehicle to drive the customers and directed Ruzindana where to pick up and transport customers, and the times he was to provide the transportation. (Ruzindana Testimony)

On November 27, 2018, Innovative assigned Ruzindana to transport a customer to a hospital in Davenport. (Ruzindana Testimony) Ruzindana used a vehicle supplied to Innovative and left Iowa City to drive to Davenport. (Ruzindana Testimony) The vehicle was registered to Christopher Westpfahl. (Ruzindana Testimony) Ruzindana was involved in a car accident at 9:06 a.m. in Scott County, Iowa. (Ex. 2, pp. 24-25)

Ruzindana was sent by LifeFlight to University of Iowa Hospitals and Clinics ("UIHC") for treatment. (Ruzindana Testimony; Ex. 1)

According to the admission paperwork at the UIHC on November 27, 2018, Ruzindana was a restrained driver involved in a motor vehicle accident, and his vehicle was pushed approximately 300 feet and ended up in a ditch. (Ex. 1, p. 1) The record noted Ruzindana required prolonged extrication, he was unresponsive at the scene, and he had a Glasgow Coma Score ("GCS") of three. (Ex. 1, p. 1) X-rays showed Ruzindana had a clavicle fracture and left pubic rami fractures. (Ex. 1, pp. 1-4) Ruzindana underwent brain magnetic resonance imaging. (Ex. 1, p. 5) The reviewing radiologist listed an impression, given the low GCS of a diffuse axonal injury, a traumatic brain injury. (Ex. 1, p. 5)

Ruzindana was admitted to the UIHC with a diffuse axonal injury, a traumatic brain injury, and was sedated. (Ex. 1, pp. 3, 6) He was initially placed on a ventilator and received tube feeding. (Ex. 1, p. 6) Ruzindana testified he was in a coma for two weeks and he stayed at the UIHC for another week until he was discharged on December 19, 2018, by ambulance to Covenant Clinic Wheaton Franciscan Healthcare in Waterloo, Iowa, for rehabilitation. (Ruzindana Testimony; Ex. 1, p. 9) The discharge paperwork noted Ruzindana had been admitted with a left intraparenchymal hemorrhage, diffuse axonal injury, left distal clavicle injury, left 2-4 rib fracture, left pneumothorax, and left superior pubic rami fractures. (Ex. 1, p. 9)

After his discharge from the UIHC, Ruzindana received occupational therapy through the UIHC from January 2019 through February 2019 to work on activities of daily living and cognitive tasks. (Ex. 1, pp. 10-17) Ruzindana was initially restricted from driving. (Ex. 1, pp. 10, 14)

Ruzindana underwent a brain computerized tomography scan on February 1, 2019, at the UIHC, which was compared with a computerized tomography scan from November 29, 2018. (Ex. 1, p. 18) The reviewing radiologist listed an impression of "[n]o acute intracranial findings." (Ex. 1, p. 19)

Ruzindana received treatment through the UIHC neurosurgery clinic. (Ex. 1, p. 20) During an appointment on February 1, 2019, Ruzindana complained of left shoulder pain and mobility problems with his left shoulder, noting he could not lift his arm above his head and he had difficulty with lifting weight with his right arm, he complained of mid back pain, and he reported while his short-term memory loss was better, he still needed to write down and confirm appointments with his wife. (Ex. 1, p. 20) Laura Langholdt, ARNP, examined Ruzindana, assessed him with a diffuse axonal injury, noting the scan conducted that day "reveals resolution of prior traumatic DAI as compared with prior studies dated 11/29/18." (Ex. 1, p. 23) Langholdt ordered Ruzindana to follow up with his primary care provider regarding his shoulder injury, noting he may have sustained a rotator cuff injury with the left clavicle fracture based on his limited mobility in his left arm, to continue occupational therapy for cognitive therapy, and to follow up with his primary care provider regarding a right thyroid nodule seen on magnetic resonance imaging of his cervical spine. (Ex. 1, p. 23)

Ruzindana testified he incurred \$141,807.08 in medical bills from the UIHC and additional bills from the rehabilitation facility totaling \$2,600.00. (Ruzindana Testimony)

Ruzindana testified he has continued to have problems with his back and left shoulder since the accident, and he experiences dizziness from his head injury every morning for three to five minutes. (Ruzindana Testimony) Ruzindana would like additional care for his back, shoulder, and head injuries. (Ruzindana Testimony)

Ruzindana reported he was off work from November 27, 2018 until two to three weeks before the hearing. (Ruzindana Testimony) Magna International in Williamsburg, Iowa, hired Ruzindana in October 2019. (Ruzindana Testimony) Ruzindana works in the factory forty hours per week and he is paid \$14.00 per hour. (Ruzindana Testimony)

### **CONCLUSIONS OF LAW**

This case involves several issues, including temporary benefits, recovery of medical bills, alternate medical care, interest and costs. Ruzindana's work injury occurred on November 27, 2018, therefore, the changes to Iowa Code chapter 85 that occurred in 2017 apply to this case. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3).

## **I. Temporary Benefits**

Iowa Code section 85.33 (2018) governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). Ruzindana's attorney stipulated the issue of permanency was not ripe for hearing. Ruzindana seeks temporary total disability benefits from November 27, 2018 through October 25, 2019, for the period he was off work.

An employee has a temporary partial disability when because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability." Iowa Code § 85.33(2). Temporary partial disability benefits are payable, in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and "shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556.

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). "Stabilization of the employee's condition 'is the event that allows a physician to make the determination that a particular medical condition is permanent.'" Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57.

Iowa Code section 85.33(1) governs temporary total disability benefits as follows:

[e]xcept as provided in subsection 2 of this section, the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment

substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Under Iowa Code section 85.33(6), “‘employment substantially similar to the employment in which the employee was engaged at the time of the injury’ includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.”

Ruzindana was off work from November 27, 2018 through October 25, 2019, following his work injury. There was no evidence presented at hearing he was medically capable of returning to employment substantially similar to the employment he was engaged in at the time of the injury before Magna hired him. Ruzindana is entitled to temporary total disability benefits from November 27, 2018 through October 25, 2019, at the rate of \$525.26 per week.

## **II. Medical Bills and Alternate Care**

Ruzindana seeks to recover the outstanding medical bills from the UIHC totaling \$141,807.08, and requests Innovative also be responsible for the medical bills from his rehabilitation in Waterloo, Iowa. Innovative has provided no care in this case.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers’ compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. “The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee.” Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner “may, upon application and reasonable proofs of the necessity therefor, allow and order other care.” Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting “[t]he employer’s obligation under the statute turns on the question of reasonable necessity, not desirability”). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

While the employer retains the right to choose the employee’s medical care under the statute, the employee is not prohibited from seeking his or her own care when the employer denies compensability for the injury or the employee “abandons the protections of section 85.27 or otherwise obtains his or her own medical care independent of the statutory scheme.” Brewer Strong v. HNI Corp., 913 N.W.2d 235, 248 (Iowa 2018) (quoting Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d

193, 204 (Iowa 2010). In Brewer-Strong and Gwinn, the court held the employer's duty to furnish reasonable medical care includes unauthorized care if the employee is able to prove "by a preponderance of the evidence that such care was reasonable and beneficial" under the totality of the circumstances. Id. (quoting Gwinn, 779 N.W.2d at 206). The court further held "unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

The medical bills at issue are for medical care Ruzindana received as a result of the work injury. I find the care Ruzindana received for the work injury reasonable and beneficial. Innovative is responsible for all causally related medical bills and future care, including, but not limited to the medical bills from the UIHC and from Covenant Wheaton Franciscan.

### III. Costs

Ruzindana seeks to recover the \$100.00 filing fee, and other expenses set forth in Exhibit 4. Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for the recovery of the filing fee. The rule does not allow for the recovery of medical records. Exhibit 4 appears to contain charges for medical records. Innovative was served by certified mail in this action, so there is no service of process fee by a sheriff or process server and the cost of such service is not listed in Exhibit 4. Using my discretion, I find Innovative responsible for the \$100.00 filing fee.

A copy of this decision is being provided to the workers' compensation commissioner to determine whether further action should take place under Iowa Code section 87.19 for failure to have workers' compensation insurance.

**ORDER**

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant temporary total disability benefits from November 28, 2018 through October 25, 2019, at the weekly rate of five hundred twenty-five and 26/100 dollars (\$525.26).

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendant is responsible for all causally related medical bills and future medical care, including the one hundred forty-one thousand eight hundred seven and 08/100 dollars (\$141,807.08) in medical bills outstanding at the University of Iowa Hospitals and Clinics and for the claimant's rehabilitation in Waterloo.

Defendant shall reimburse the claimant one hundred and 00/100 dollars (\$100.00) for the filing fee.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 23rd day of December, 2019.



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HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER



The parties have been served, as follows:

Jenna Green (via WCES)

Innovative Transport ENT  
2239 – 24th St., Apt. 15C  
Rock Island, IL 61201  
(Certified and U.S. Mail)

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.