

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY SCHMIDT,

Claimant,

vs.

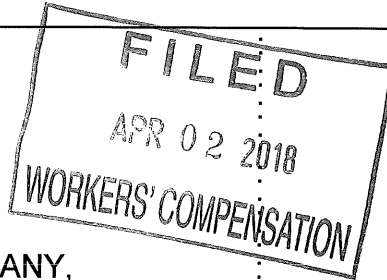
QUAKER OATS COMPANY,

Employer,

and

IDEMNITY INSURANCE CO. OF
NORTH AMERICA,

Insurance Carrier,
Defendants.



File No. 5057561

RULING ON DEFENDANTS'
APPLICATION FOR REHEARING

On March 22, 2018, defendants filed a motion for rehearing taking exception with the order regarding penalty benefits. In the March 2, 2018, Arbitration Decision, the undersigned ordered defendants to pay 25 weeks of permanent partial disability benefits commencing on October 14, 2013, for the July 19, 2012, aggravation of a previous work injury. The Arbitration Decision also ordered a payment of 25 percent of those 25 weeks of permanent partial disability benefits because of late payment. The Arbitration Decision specifically concluded that payment benefits were paid six months late.

Defendants argue that no permanent partial disability benefits were owed or that the payment was made within a reasonable time. Dr. Pilcher, claimant's authorized treating physician, released claimant from his care on October 8, 2013. The defendants requested an impairment rating from the claimant on October 14, 2013. The impairment rating did not come until April 22, 2014. Benefits were paid in November 2013 and then again in May 2014.

Defendants argue that they should not be held responsible for any late impairment rating. The penalty was imposed for the late payment, not the late procurement of an impairment rating. The medical report of Dr. Pilcher noted that his rating would not change from the original rating, yet, the defendants delayed payment even after the rating was issued. This is not a reasonable excuse and the penalty award was properly issued.

The defendants also argue that since they paid a 25 percent industrial disability on a June 10, 2016, left shoulder injury, that this should be considered as payment for the past industrial disability. A late payment is not suddenly timely because a credit can

be applied. Further, the 25 percent industrial payment was paid after the late payments were due, not prior.


Finally, defendants argue that the payment of all disability benefits was not untimely. Claimant was entitled to 40 weeks of permanent partial disability benefits. Defendants argue that Exhibit C shows that they paid 7 weeks of benefits on November 20, 2013. (Ex. C-15) This was nearly six weeks after claimant's release from Dr. Pilcher. These voluntary benefits were also paid late. Defendants then paid 25 weeks of benefits on May 22, 2014, which represented all the accrued benefits to date. These benefits were also late. There was no testimony or evidence as to why the benefits were late (Iowa Code section 86.13(4)(c)).

Only the payments after May 22, 2014, until July 15, 2014, would be considered timely.

THEREFORE, defendants' application for rehearing is granted in part and denied in part. The Arbitration Decision will be revised as follows:

For late payment of permanent benefits, claimant is entitled to twenty-five (25) percent of all the permanent benefits owed up to May 22, 2014, including the late paid benefits issued on November 20, 2013.

Signed and filed this 2nd day of April, 2018.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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