

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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NADEZDA BANASHAK,	:	<b>FILED</b>
Claimant,	:	<b>MAR 24 2016</b>
vs.	:	<b>WORKERS' COMPENSATION</b>
ST. LUKE'S HOMES & SERVICES,	:	File No. 5049022
Employer,	:	<b>A P P E A L</b>
and	:	<b>D E C I S I O N</b>
WEST BEND MUTUAL INSURANCE,	:	
Insurance Carrier,	:	Head Note Nos.: 1100; 1803; 2502;
Defendants.	:	2907; 4000

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Defendants St. Luke's Homes & Services, employer, and its insurer, West Bend Mutual Insurance, appeal from an arbitration decision filed on December 8, 2014. Claimant Nadezda Banashek responds to the appeal. The case was heard on October 7, 2014, and it was considered fully submitted on November 4, 2014, in front of the deputy workers' compensation commissioner.

The deputy commissioner found claimant carried her burden of proof that she sustained an injury on or about August 7, 2013, which arose out of and in the course of her employment with defendant-employer. The deputy commissioner awarded claimant 40 percent industrial disability, 200 weeks of PPD benefits. The deputy commissioner awarded the medical expenses itemized in Exhibit 12 as well as any future medical expenses related to claimant's work injury. The deputy commissioner found claimant is entitled to penalty benefits from August 9, 2013, through July 25, 2014. The deputy commissioner also awarded reimbursement of Dr. Hines' independent medical evaluation (IME) fee pursuant to the parties' agreement that defendants would reimburse that fee to claimant if this claim was found to be compensable.

Defendants assert on appeal that the deputy commissioner's award of industrial disability is excessive and should be reduced. Defendants also assert the deputy commissioner erred in awarding penalty benefits.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on December 8, 2014, which relate to issues properly raised on intra-agency appeal with the following analysis:

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 carried her burden of proof that she sustained an injury on or about August 7, 2013, which arose out of and in the course of her employment. I affirm the deputy commissioner's award of 40 percent industrial disability. I affirm the deputy commissioner's award of penalty benefits from August 9, 2013, through July 25, 2014. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision of December 8, 2014, is AFFIRMED in its entirety.

Defendants shall pay claimant two hundred (200) weeks of permanent partial disability benefits at the rate of two hundred seventy-six and 34/100 dollars (\$276.34) beginning August 9, 2013.

Defendants shall pay the medical expenses itemized in Exhibit 12 as well as any future medical expenses related to claimant's work-related injury.

Defendants shall reimburse claimant for Dr. Hines' IME fee pursuant to the parties' agreement that defendants would reimburse that fee to claimant if this claim was found to be compensable.

Defendants shall pay penalty benefits from August 9, 2013, through July 25, 2014, at fifty (50) percent of the amount of permanent partial disability benefits owing to claimant during that period of time.

Defendants shall pay accrued weekly benefits in a lump sum.

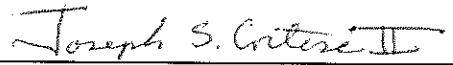
Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants are to be given credit for benefits previously paid.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Defendants shall pay the costs of the arbitration proceeding and defendants shall also pay the costs of this appeal, including the cost of the hearing transcript, pursuant to rule 876 IAC 4.33

Signed and filed this 24<sup>th</sup> day of March, 2016.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies to:

E.W. Wilcke  
Attorney at Law  
PO Box 455  
Spirit Lake, IA 51360-0455  
[ewwilcke@qwestoffice.net](mailto:ewwilcke@qwestoffice.net)

Harry W. Dahl  
974-73<sup>rd</sup> Street, Suite 16  
Des Moines, IA 50324-1026  
[HARRYWDAHL@msn.com](mailto:HARRYWDAHL@msn.com)

Paul F. Prentiss  
Attorney at Law  
8712 W. Dodge Rd., Ste. 401  
Omaha, NE 68114-3419  
[pfprentiss@tqplaw.com](mailto:pfprentiss@tqplaw.com)