

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS MAY,
Claimant,

vs.

MENARDS, INC.,
Employer,

and

PRAETORIAN INSURANCE CO.,
Insurance Carrier,
Defendants.

File No. 5041559

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

FILED

DEC 20 2016

WORKERS' COMPENSATION

Head Note Nos: 1100, 1400, 1802

Defendants, Menards, Inc. and Praetorian Insurance Company, appeal from an arbitration decision filed on June 2, 2015. Claimant, Dennis May, does not cross-appeal. The case was heard on March 12, 2015, and was considered fully submitted on April 3, 2015, in front of the deputy workers' compensation commissioner. The deputy commissioner found that claimant sustained bilateral shoulder injuries and awarded claimant a running award of healing period benefits. Additionally, the deputy ordered reimbursement for a section 85.39 examination. Claimant asserts on appeal that the deputy commissioner erred in finding that the claimant sustained a compensable injury to his bilateral shoulders, that said injury was the cause of permanent impairment, the injury necessitated the medical expenses, and in finding that claimant was entitled to a running award. On October 17, 2016, Joseph S. Cortese II, Workers' Compensation Commissioner issued an order of delegation of authority delegating the authority to issue the final agency decision to the undersigned.

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.

I find 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. The award in this case was based in part on claimant's credible testimony. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings,

expressly or impliedly, made by the deputy who presided at the hearing. The hearing deputy had the best opportunity to evaluate the demeanor of the persons who testified at the hearing. The presiding deputy has the ability to include the demeanor of a witness when weighing credibility to find the true facts of the case. My ability to find the true facts that are affected by witness demeanor and credibility cannot be expected to be superior to that of the deputy who presided at the hearing. If anything, my ability when reviewing a transcript is likely inferior because I do not have the tool of witness demeanor to use in my evaluation.

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 June 2, 2015, that relate to the issues properly raised on intra-agency appeal without additional comment.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of June 2, 2015, is AFFIRMED.

Defendants shall pay claimant healing period benefits from March 2, 2012, to the present and continuing into the future until the first factor set forth in Iowa Code section 85.34(1) is met.

All weekly benefits shall be paid at the rate of three hundred three and 74/100 dollars (\$303.74).

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

Defendants shall be entitled to credit for any weekly benefits paid to date.

Defendants shall reimburse claimant for any out of pocket payments made for medical expenses documented in exhibit 14 and shall otherwise satisfy and hold claimant harmless for the remainder of the medical expenses contained in exhibit 14.

Defendants shall reimburse claimant for Dr. Bansal's independent medical evaluation fee totaling two thousand nine hundred seventy-five and no/100 dollars (\$2,975.00) pursuant to Iowa Code section 85.39.

Defendants shall reimburse claimant's filing fee totaling one hundred and no/100 dollars (\$100.00) as a cost of this action.

Defendants shall pay the costs of the appeal, including the preparation of the hearing transcript.

Signed and filed this 20th day of December, 2016.



ERIN Q. PALS
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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