

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KARI ETHERINGTON,

Claimant,

vs.

SPENCER MUNICIPAL HOSPITAL,

Employer,

and

FARM BUREAU PROPERTY &
CASUALTY INSURANCE COMPANY,Insurance Carrier,
Defendants.

File No. 5047488

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1801.1; 1803; 2502;
2907; 4000.2; 5-9998

Defendants Spencer Municipal Hospital, employer, and its insurer, Farm Bureau Property & Casualty Company, appeal from an arbitration decision filed on May 18, 2020. Claimant Kari Etherington responds to the appeal. The case was heard on August 1, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 6, 2018.

The deputy commissioner found claimant sustained 60 percent industrial disability as a result of the stipulated March 23, 2009, work injury, which entitles claimant to receive 300 weeks of permanent partial disability (PPD) benefits, commencing on November 27, 2009, at the weekly benefit rate of \$933.55. The deputy commissioner found defendants are entitled to receive a credit of 214.86 weeks of PPD benefits against the award for industrial disability.

The deputy commissioner found claimant is entitled to receive additional healing period benefits from June 15, 2014, through September 2, 2014, at the weekly benefit rate of \$933.55.

The deputy commissioner found claimant is entitled to receive additional temporary partial disability benefits as follows:

- a. From May 15, 2013, through December 14, 2013, at the rate of \$20.03 per week.
- b. From December 29, 2013, through March 22, 2014, at the rate of \$25.36 per week.

- c. From March 23, 2014, through June 14, 2014, at the rate of \$271.43 per week.
- d. From September 21, 2016, through October 19, 2016, at the rate of \$516.33 per week.

The deputy commissioner found claimant is entitled to receive penalty benefits from defendants in the amount of \$500.00 for unreasonable delays in the payment of weekly benefits from May 23, 2016, through July 28, 2016. The deputy commissioner found claimant is entitled to receive additional penalty benefits from defendants in the amount \$2,000.00 for unreasonably denying benefits from June 18, 2014, through September 2, 2014, and from September 21, 2016, through October 19, 2016.

The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount \$5,182.50 for the cost of the independent medical evaluation (IME) of claimant performed by John D. Kuhnlein, D.O., on May 30, 2018.

The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 60 percent industrial disability as a result of the work injury. Defendants assert the award for industrial disability should be reduced to defendants' credit of 214.86 weeks, which is 42.972 percent industrial disability.

Defendants assert the deputy commissioner erred in finding claimant is entitled to receive temporary partial disability benefits from May 15, 2013, through April 1, 2014, from April 2, 2014, through August 4, 2014, and from September 20, 2016, through October 20, 2016.

Defendants assert the deputy commissioner erred in finding claimant is entitled to receive any penalty benefits.

Claimant asserts on appeal that the 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.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on May 18, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 sustained 60 percent industrial disability as a result of the March 23, 2009, work injury. I affirm the deputy commissioner's finding that defendants are entitled to receive a credit of 214.86 weeks of PPD benefits against the award for industrial disability.

I affirm the deputy commissioner's finding that claimant is entitled to receive additional healing period benefits from June 15, 2014, through September 2, 2014, at the weekly benefit rate of \$933.55.

I affirm the deputy commissioner's finding that claimant is entitled to receive additional temporary partial disability benefits as follows:

- a. From May 15, 2013, through December 14, 2013, at the rate of \$20.03 per week.
- b. From December 29, 2013, through March 22, 2014, at the rate of \$25.36 per week.
- c. From March 23, 2014, through June 14, 2014, at the rate of \$271.43 per week.
- d. From September 21, 2016, through October 19, 2016, at the rate of \$516.33 per week.

I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits from defendants in the amount of \$500.00 for unreasonable delays in the payment of weekly benefits from May 23, 2016, through July 28, 2016, and I affirm the deputy commissioner's finding that claimant is entitled to receive additional penalty benefits from defendants in the amount \$2,000.00 for unreasonably denying benefits from June 18, 2014, through September 2, 2014, and from September 21, 2016, through October 19, 2016.

I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39 claimant is entitled to receive reimbursement from defendants for the cost of Dr. Kuhnlein's IME.

I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 18, 2020, is affirmed in its entirety.

Defendants shall pay to claimant three hundred (300) weeks of PPD benefits at the weekly rate of nine hundred thirty-three and 55/100 dollars (\$933.55) commencing on November 27, 2009.

Defendants shall receive a credit of 214.86 weeks of PPD benefits against the award for industrial disability.

Defendants shall pay claimant additional healing period benefits from June 15, 2014, through September 2, 2014, at the weekly rate of nine hundred thirty-three and 55/100 dollars (\$933.55) per week.

Defendants shall pay claimant additional temporary partial disability benefits as follows:

- a. From May 15, 2013, through December 14, 2013, at the rate of twenty and 03/100 dollars (\$20.03) per week.
- b. From December 29, 2013, through March 22, 2014, at the rate of twenty-five and 36/100 dollars (\$25.36) per week.
- c. From March 23, 2014, through June 14, 2014, at the rate of two hundred seventy-one and 43/100 dollars (\$271.43) per week.
- d. From September 21, 2016, through October 19, 2016, at the rate of five hundred sixteen and 33/100 (\$516.33) per week.

Defendants shall pay claimant penalty benefits in the total amount of two thousand five hundred and 00/100 dollars (\$2,500.00).

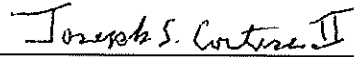
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall reimburse claimant in the amount of five thousand one hundred eighty-two and 50/100 dollars (\$5,182.50) for the cost of Dr. Kuhnlein's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00), 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.

Signed and filed on this 30th day of December, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Nick Platt (via WCES)

James Russell (via WCES)