

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 ROGER PETERS,

Claimant,

vs.

RYDER INTEGRATED LOGISTICS, INC.,

Employer,

and

OLD REPUBLIC INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 5067874

A P P E A L

D E C I S I O N

 Head Notes: 1402.40, 1402.60, 1802,
1803, 2206, 2502, 2701
2907, 4000

Defendants Ryder Integrated Logistics, Inc., employer, and its insurer, Old Republic Insurance Company, appeal from an arbitration decision filed on May 14, 2021, and from a ruling on application for rehearing filed on June 23, 2021. Claimant Roger Peters cross-appeals. The case was heard on March 10, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 24, 2020. The case was then delegated to a different deputy commissioner on March 8, 2021, pursuant to an order from the Iowa Workers' Compensation Commissioner.

In the arbitration decision, the deputy commissioner found claimant's February 22, 2019, work injury caused left carpal tunnel syndrome and left ulnar neuropathy that ultimately required surgery. However, the deputy commissioner found claimant failed to prove he sustained permanent disability of his neck, back, and left shoulder as a result of the February 22, 2019, incident.

With respect to claimant's left arm, the deputy commissioner found claimant reached maximum medical improvement (MMI) on April 23, 2020. The deputy commissioner found claimant sustained 30 percent permanent disability of his left arm, entitling him to receive 75 weeks of permanent partial disability (PPD) benefits. The deputy commissioner ordered defendants to reimburse claimant for medical expenses relating to claimant's left arm, and the deputy commissioner also ordered defendants to authorize future medical treatment for claimant with Joseph Buckwalter, M.D.

The deputy commissioner found claimant is entitled to receive healing period benefits from February 25, 2019, through February 27, 2019, but the deputy commissioner found claimant did not establish his entitlement beyond those dates. As a result, the deputy commissioner found claimant is not entitled to penalty benefits.

The deputy commissioner found claimant's entitlement to reimbursement for his independent medical examination (IME) under Iowa Code section 85.39 was not triggered. However, the deputy commissioner awarded the expense of the IME report as a cost. The deputy commissioner also awarded the expenses of claimant's filing fee, service charges, and deposition transcripts as costs.

In the ruling on defendants' application for rehearing, the deputy commissioner denied defendants' request to reconsider claimant's MMI date and entitlement to PPD benefits.

On appeal, defendants assert the deputy commissioner erred when he found claimant sustained a work-related injury to his left arm. In the alternative, defendants assert claimant was not at MMI for his left arm at the time of the hearing and defendants assert it was inappropriate for the deputy commissioner to place claimant at MMI on a date that occurred after the date of the hearing.

On cross-appeal, claimant asserts the deputy commissioner erred when he determined claimant failed to prove he sustained permanent disability to his left shoulder, neck, and back as a result of the February 22, 2019, work injury. Claimant likewise asserts he is entitled to additional healing period benefits, penalty benefits for defendants' failure to pay additional healing period benefits, and reimbursement for the entirety of his IME, including his examination.

Those portions of the proposed arbitration decision and the ruling on application for rehearing 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 86.24 and 17A.15, the arbitration decision and the ruling on application for rehearing are affirmed in part and reversed in part.

I affirm the deputy commissioner's finding that claimant failed to prove he sustained permanent disability of his neck, back, and left shoulder as a result of the February 22, 2019, work injury. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues in their entirety.

With respect to claimant's left arm, the deputy commissioner found Dr. Buckwalter's causation opinion to be most convincing. I affirm this finding. As a result, I affirm the deputy commissioner's finding that claimant's left carpal tunnel syndrome and left ulnar neuropathy, and subsequent surgery, were the result of claimant's February 22, 2019, work injury.

The deputy commissioner adopted an "approximate" MMI date of April 23, 2020. The deputy commissioner chose that date based on Dr. Buckwalter's statement in a February 20, 2020, letter to defense counsel, in which D. Buckwalter stated he

anticipated claimant would reach MMI “in 3 to 4 months from surgical date.” (Defendants’ Exhibit E, p. 24) Claimant’s surgery occurred on December 23, 2019.

The problem with the deputy commissioner’s adoption of this date is that the hearing occurred on March 10, 2020 - more than a month before the date of MMI chosen by the deputy commissioner - and the snapshot of claimant’s condition that is to be considered and assessed by the deputy commissioner is the snapshot taken on the day of the hearing. See, e.g., Hilliard v. ABF Freight System, Inc., File No. 5052136 (Rev.-Reop. March 11, 2020) (explaining a snapshot of claimant’s condition is taken at the time of a claimant’s arbitration hearing); Meester v. Central Iowa Power Coop., File No. 5043346 (Arb. Oct. 29, 2019) (“A snapshot of the claimant’s condition was taken in an arbitration hearing dated February 8, 2014.”)

Per Dr. Buckwalter’s opinion from February 20, 2020, claimant had not yet reached MMI on the date of the hearing. While Farid Manshadi, M.D., performed an IME and indicated claimant was at MMI as of January 15, 2020, I do not find this opinion credible. (See Cl. Ex. 1, p. 7) First, as of January 15, 2020, claimant was less than a month out from surgery. Furthermore, claimant was evaluated by his surgeon, Dr. Buckwalter, on February 6, 2020, and had claimant reached MMI by that appointment, Dr. Buckwalter would have stated as such in his notes. (JE 12, pp. 121-122) Instead, as noted above, Dr. Buckwalter indicated he did not anticipate claimant would reach MMI until late March, at the earliest. Therefore, I find claimant had not yet reached MMI at the time of the hearing.

Pursuant to Iowa Code section 85.34, a claimant’s entitlement to PPD benefits is not payable until “it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of the guides to the evaluation of permanent impairment.” Iowa Code § 85.34(2) (post-July 1, 2017) (emphasis added). Thus, having found claimant was not at MMI at the time of the hearing, I find the extent of claimant’s permanent disability was not ripe for the deputy commissioner to decide. The deputy commissioner’s assessment of claimant’s permanent disability is therefore respectfully reversed and reserved for future determination.

I understand this is a frustrating result for claimant, particularly in light of the fact that defendants acknowledged in their response to claimant’s resistance to application for rehearing that they “do not dispute the Deputy’s determination that Claimant reached maximum medical improvement on April 23, 2020.” I likewise appreciate that the deputy commissioner wanted to resolve the case in its entirety for the sake of judicial economy. However, the evidentiary record in this case was closed at the conclusion of the hearing on March 10, 2020, meaning the parties did not have an opportunity to obtain an impairment rating from Dr. Buckwalter.

Importantly, claimant is not without a remedy. Claimant has the opportunity to file for review-reopening to seek PPD benefits upon a showing that he has reached MMI. See Iowa Code §§ 85.26(2); 86.14.

I affirm the deputy commissioner's finding that claimant is entitled to healing period benefits from February 25, 2019, through February 27, 2019. I affirm the deputy commissioner's finding that claimant is not entitled to healing period benefits for the additional claimed periods from March 7, 2019, to April 11, 2019, and from June 9, 2019, through September 13, 2019. I likewise affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits. Lastly, I affirm the deputy commissioner's finding that claimant is not entitled to receive reimbursement for his IME under Iowa Code section 85.39. However, I affirm the deputy commissioner's award of the expense of the IME report as a cost. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues in their entirety.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 14, 2021, and the ruling on defendants' application for rehearing filed on June 23, 2021, are affirmed in in part and reversed in part.

Defendants shall pay healing period benefits from February 25, 2019, through February 27, 2019, at the weekly rate of six hundred ninety-five and 01/100 dollars (\$695.01).

Defendants 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, as required by Iowa Code section 85.30.

Defendants shall provide and pay for all causally-related future medical care, if any, for claimant's left upper extremity injury, and defendants shall authorize Dr. Buckwalter as a treating physician for that injury.

Defendants shall pay the prior causally-related medical expenses itemized in Exhibits 8 and 9.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand eight-hundred four and 80/100 dollars (\$1,804.80), and the parties shall split the cost 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 18th day of November, 2021.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)

Casey Steadman (via WCES)

Rachael Neff (via WCES)

Kent Smith (via WCES)