

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUSTIN DOTY,  
Claimant,

vs.

CLEARLY BUILDERS CORPORATION,  
Employer,

and

ZURICH NORTH AMERICAN  
INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

**SEP 27 2017**

WORKERS' COMPENSATION

File No. 5047129

**A P P E A L**

**D E C I S I O N**

Head Note Nos: 1801.1, 1803, 2701, 3001

Defendants Clearly Builders Corporation, employer, and its insurer, Zurich North American Insurance Company, appeal from an arbitration decision filed on March 4, 2016. Claimant Justin Doty cross-appeals. The case was heard on April 6, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 5, 2015.

The deputy commissioner found claimant carried his burden of proof that he sustained both a permanent physical injury to his back and a mental injury as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on January 15, 2010. The deputy commissioner found claimant's gross average weekly wage for the work injury is \$440.00 and claimant's correct weekly benefit rate for the work injury is \$298.03. The deputy commissioner found claimant is entitled to healing period benefits from January 16, 2010, through May 11, 2010. The deputy commissioner found claimant sustained 50 percent industrial disability as a result of the work injury, which entitles claimant to 250 weeks of permanent partial disability (PPD) benefits commencing on the stipulated date of December 13, 2013. The deputy commissioner found claimant is entitled to an award of alternate medical care for his mental injury and the deputy commissioner found that due to defendants' unreasonable delay in authorizing treatment for claimant's mental injury, claimant is entitled to select his own mental health treatment providers at defendants' cost. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on cross-appeal that it should be clarified that defendants must pay claimant for an underpayment of the 110 weeks of PPD benefits paid by defendants prior to the arbitration hearing. Claimant also asserts it should be clarified that the award of alternate medical care contained in the arbitration decision includes the cost of all related expenses of that treatment, including all medications.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

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.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on March 4, 2016, which relate to issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained both a permanent physical injury to his back and a mental injury as a result of the January 15, 2010, work injury. I affirm the deputy commissioner's finding that claimant's gross average weekly wage for the work injury is \$440.00 and claimant's correct weekly benefit rate for the work injury is \$298.03. I affirm the deputy commissioner's finding that claimant is entitled to healing period benefits from January 16, 2010, through May 11, 2010. I affirm the deputy commissioner's finding that claimant sustained 50 percent industrial disability as a result of the work injury, which entitles claimant to 250 weeks of PPD benefits commencing on the stipulated date of December 13, 2013. I affirm the deputy commissioner's finding that claimant is entitled to an award of alternate medical care for his mental injury, I affirm the deputy commissioner's finding that due to defendants' unreasonable delay in authorizing treatment for claimant's mental injury, claimant is entitled to select his own mental health treatment providers at defendants' cost and I clarify that the award of alternate medical care includes the cost of all related expenses of that treatment, including all medications. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 4, 2016, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits at the weekly rate of two hundred ninety-eight and 03/100 dollars (\$298.03) for the period of January 16, 2010, through May 11, 2010.

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits commencing on the stipulated date of December 13, 2013, at the weekly rate of two hundred ninety-eight and 03/100 dollars (\$298.03).

Defendants shall receive credit for all benefits paid to date and defendants shall make up all underpayments of benefits paid to date with interest.

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

Claimant's application for alternate medical care for his mental injury is granted, due to defendants' unreasonable delay in authorizing treatment for claimant's mental injury, claimant is entitled to select his own mental health treatment providers at defendants' cost, and the award of alternate medical care includes the cost of all related expenses of that treatment, including all medications.

Pursuant to their agreement at the arbitration hearing, defendants shall reimburse claimant for Dr. Manshadi's IME.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 27<sup>th</sup> day of September, 2017.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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