

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID MARSHALL,

Claimant,

vs.

QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Insurance Carrier,
Defendants.

File No. 5049370

A P P E A L

D E C I S I O N

: Head Note Nos: 1402.30; 1402.40; 2501;
: 2701; 2907; 3001; 4000.2;
: 5-9998

FILED
FEB 28 2019
WORKERS' COMPENSATION

Defendants Quaker Oats Company, employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on November 8, 2017. Claimant David Marshall responds to the appeal. The case was heard on April 18, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 19, 2017.

The deputy commissioner found claimant carried his burden of proof that he sustained sequela injuries to his right knee and his left knee as a result of the stipulated right hip injury which arose out of and in the course of claimant's employment with defendant-employer on September 27, 2013. The deputy commissioner found it was premature at the time of the arbitration hearing to determine the extent of claimant's permanent disability resulting from the work injury because claimant was not at maximum medical improvement (MMI) for his left knee condition. The deputy commissioner found claimant is entitled to receive a running award of healing period benefits from March 2, 2017, through the date of the arbitration hearing and continuing, until the earliest date when one of the factors of Iowa Code section 85.34(1) is achieved. The deputy commissioner found claimant's gross average weekly wage for the work injury is \$1,576.47 and the deputy commissioner found claimant's weekly benefit rate for the work injury, classification married with two exemptions, is \$956.13. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$200.00 for an unreasonable underpayment of 19 weeks of benefits voluntarily paid by defendants. The deputy commissioner found claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibits 6

and 7. The deputy commissioner found claimant is entitled to receive alternate medical care, specifically for ongoing treatment of his left knee by Cassandra Lange, M.D., orthopedic surgeon. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$262.28.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried his burden of proof that he sustained sequela injuries to his right knee and his left knee as a result of the September 27, 2013, work injury. Defendants assert the deputy commissioner erred in failing to find claimant's disability resulting from the work injury is confined to claimant's right hip and in failing to award permanent disability benefits based solely on claimant's right hip condition. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive a running award of healing period benefits from March 2, 2017, through the date of the arbitration hearing and continuing. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibits 6 and 7.

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 have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on November 8, 2017, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 his burden of proof that he sustained sequela injuries to his right knee and his left knee as a result of the September 27, 2013, work injury. I affirm the deputy commissioner's finding that it was premature at the time of the arbitration hearing to determine the extent of claimant's permanent disability resulting from the work injury because claimant was not at MMI for his left knee condition. I affirm the deputy commissioner's finding that claimant is entitled to receive a running award of healing period benefits from March 2, 2017, through the date of the arbitration hearing and continuing. I affirm the deputy commissioner's finding that claimant's gross average weekly wage for the work injury is \$1,576.47, and I affirm the deputy commissioner finding that claimant's weekly benefit rate for the work injury is \$956.13. I affirm the deputy commissioner's finding that

claimant is entitled to receive penalty benefits in the amount of \$200.00 for an unreasonable underpayment of 19 weeks of benefits voluntarily paid by defendants. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendants for the requested past medical expenses itemized in Exhibits 6 and 7. I affirm the deputy commissioner's finding that claimant is entitled to receive alternate medical care, specifically for ongoing treatment of his left knee by Dr. Lange. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$262.28. I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 8, 2017, is affirmed in its entirety.

All weekly benefits shall be paid at the weekly rate of nine hundred fifty-six and 13/100 dollars (\$956.13).

Defendants shall pay claimant healing period benefits from March 2, 2017, through the date of the arbitration hearing and ongoing until the first factor identified in Iowa Code section 85.34(1) is achieved.

Defendants shall rectify their underpayment of the weekly rate for all weekly benefits voluntarily paid to date, if they have not already done so.

Any claim for permanent disability is not ripe for determination at this time and is bifurcated for hearing upon the filing of a review-reopening petition by any party.

Defendants are entitled to a credit for all weekly benefits paid to date.

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 pay claimant two hundred and 00/100 dollars (\$200.00) in penalty benefits pursuant to Iowa Code section 86.13.

Defendants shall pay any outstanding medical charges directly to the medical providers, reimburse claimant for any charges already paid directly by claimant, reimburse claimant for all medical mileage, or otherwise satisfy and hold claimant harmless for all past medical expenses and medical mileage, as itemized in Exhibits 6 and 7.

Defendants shall provide claimant future medical treatment, as necessary, for his right hip, right knee, and left knee, including, but not limited to, ongoing treatment for his left knee with Dr. Lange.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$262.28, 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 28th day of February, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Robert R. Rush
Attorney at Law
PO Box 637
Cedar Rapids, IA 52406-0637
bob@rushnicholson.com

Timothy W. Wegman
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266
tim@peddicord.law