

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SAM SCOTT,

Claimant,

vs.

CITY OF WEST DES MOINES,

Self-Insured,  
Employer,  
Defendant.

File No. 5059103

A P P E A L

D E C I S I O N

Head Note Nos: 1803, 2501, 2502

Defendant City of West Des Moines, self-insured employer, appeals from an arbitration decision filed on January 9, 2019. Claimant Sam Scott responds to the appeal. The case was heard on October 9, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 14, 2018.

The deputy commissioner found claimant carried his burden of proof to establish he sustained permanent disability as a result of the stipulated injury which arose out of and in the course of his employment with defendant on March 4, 2015. The deputy commissioner found claimant sustained 30 percent industrial disability as a result of the work injury, which entitles him to receive 150 weeks of permanent partial disability (PPD) benefits. The deputy commissioner found the correct commencement date for PPD benefits is November 22, 2017. The deputy commissioner found claimant did not refuse to attend an independent medical evaluation (IME) scheduled by defendant and the deputy commissioner therefore found claimant's weekly benefits should not be suspended pursuant to Iowa Code section 85.39 for the alleged refusal to attend the IME. The deputy commissioner found claimant is entitled to payment by defendant for the requested past medical expenses itemized in the attachment to the hearing report. The deputy commissioner found that pursuant to Iowa Code Section 85.39, claimant is entitled to reimbursement from defendant for the cost of the IME of claimant performed by Robin Sassman, M.D. on January 3, 2018. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant carried his burden of proof to establish he sustained permanent disability as a result of the work injury. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive any industrial disability benefits for the work injury. Defendant asserts the deputy commissioner erred in finding claimant did not refuse to attend the IME scheduled by defendant and in finding claimant's weekly benefits should not be suspended pursuant to Iowa Code section 85.39 for the alleged refusal to attend the IME. Defendant asserts the deputy commissioner erred in finding claimant is

entitled to payment by defendant for the requested past medical expenses. Defendant asserts the deputy commissioner erred in finding claimant is entitled to reimbursement from defendant for the cost of Dr. Sassman's IME. Defendant asserts the deputy commissioner erred in ordering defendant to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant sustained 30 percent industrial disability as a result of the work injury. Claimant asserts the award for industrial disability should be increased substantially or, in the alternative, claimant should be awarded permanent total disability.

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 January 9, 2019, 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 to establish he sustained permanent disability as a result of the March 4, 2015, work injury. I affirm the deputy commissioner's finding that claimant sustained 30 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant did not refuse to attend the IME scheduled by defendants and I affirm the deputy commissioner's finding that claimant's weekly benefits should not be suspended pursuant to Iowa Code section 85.39 for the alleged refusal to attend the IME. I affirm the deputy commissioner's finding that claimant is entitled to payment by defendant for the requested past medical expenses. I affirm the deputy commissioner's finding that pursuant to Iowa Code Section 85.39, claimant is entitled to reimbursement from defendant for the cost of Dr. Sassman's IME. 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 January 9, 2019, is affirmed in its entirety.

Defendant shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the weekly rate of seven hundred eighteen and 45/100 dollars (\$718.45), commencing on November 22, 2017.

Defendant shall be entitled to a credit for all benefits paid to date.

Defendant 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).

Defendant shall pay the medical expenses itemized in the attachment to the hearing report.

Defendant shall reimburse claimant for the cost of Dr. Sassman's IME and all related expenses.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding, and the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 14<sup>th</sup> day of February, 2020.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Matthew M. Sahag      Via WCES

Andrew T. Tice        Via WCES