

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSHUA ISAAC VAN SANT,

Claimant,

vs.

EC SIDING AND ROOFING,

Uninsured Employer,
Defendant.

File No. 5049129

A P P E A L

D E C I S I O N

FILED

NOV 7 2016

WORKERS' COMPENSATION

Head Note Nos: 1801, 1803, 2500, 2910

Defendant EC Siding and Roofing, uninsured employer, appeals from an arbitration decision filed on March 27, 2015. Claimant Joshua Isaac Van Sant responds to the appeal.

Claimant sustained an injury to his right hand arising out and in the course of his employment with defendant on May 30, 2014. Defendant did not pay weekly benefits or provide claimant with medical treatment or otherwise accept responsibility in any way for claimant's injury.

Claimant filed a petition for arbitration on September 29, 2014. Defendant failed to file an answer to the petition or otherwise appear. Claimant filed an application for default on November 17, 2014, which was served on defendant. Defendant failed to appear or otherwise respond to the application for default.

On December 16, 2014, the deputy commissioner filed an entry of default and order setting hearing, which was served on both claimant and defendant. The entry of default and order setting hearing stated the following, in pertinent part:

Default is entered against the defendant. This case shall come on before the undersigned for telephone hearing at a later date, to be ordered in January, 2015.

In lieu of a telephone hearing and testimony, claimant may waive a telephone hearing and submit a sworn affidavit of his testimony, including biographical information such as age, work experience, education, etc., and accompanying exhibits and a decision will be issued on the written record submitted.

(Entry of Default and Order Setting Hearing, p. 1)

On December 18, 2014, the deputy commissioner presided over a hearing where defendant's owner appeared in person to respond to an order to show cause why a \$1,000.00 assessment should not be imposed on defendant for failure to file a first report of injury in this matter. During that hearing, defendant's owner indicated his company was not insured for workers' compensation liability. In the assessment order Iowa Code section 86.12, in which the \$1,000.00 assessment was imposed, the deputy commissioner noted the following in pertinent part:

Mr. King [defendant's owner] fails to understand his obligations as an employer in the state of Iowa, not only his obligation to carry workers' compensation insurance, but also his obligation as an employer with an employee who has suffered a work injury to report that injury. He feels he is entitled to decide for himself whether a work injury is serious enough to report, or whether the claimant is really disabled or not, regardless of the law. He is not. Mr. King was advised by the undersigned it might be in his best interests to consult a workers' compensation attorney as to his obligations and responsibilities as an employer.

(Assessment Order Iowa Code Section 86.12, p. 2)

As of March 24, 2015, which was more than three months after the filing of the entry of default and order setting hearing, and more than three months after the Iowa Code section 86.12 assessment hearing, defendant still had not responded to the entry of default and order setting hearing. On March 24, 2015, claimant waived a telephone hearing by filing his three-page sworn affidavit which was marked exhibit 1, along with a one-page listing of his claimed medical expenses which was marked as exhibit 2. Thus the record in this case consists of exhibits 1 and 2.

In the arbitration decision filed on March 27, 2015, the deputy commissioner found claimant was an employee of defendant when claimant's injury occurred on May 30, 2014. The deputy commissioner found claimant's injury arose out and in the course of his employment with defendant. The deputy commissioner found claimant's average weekly wage at the time of the injury was \$440.00, and claimant's weekly benefit rate for the injury, classification single with one exemption, is \$281.10. The deputy commissioner awarded claimant 19 4/7 weeks of healing period benefits for the period beginning May 30, 2014, and ending October 20, 2014, minus one week during that time when claimant indicated he worked. The deputy commissioner awarded claimant 15 weeks of permanent partial disability (PPD) benefits for fifty percent scheduled member impairment of claimant's right second finger. The deputy commissioner awarded claimant medical expenses pursuant to Iowa Code section 85.27 totaling \$31,856.84 as listed in exhibit 2.

Defendant asserts on appeal that the deputy commissioner erred in not holding an evidentiary hearing on the issue of damages. Defendant asserts the deputy commissioner erred in finding claimant's average weekly wage at the time of the injury is \$440.00, and in finding claimant's weekly benefit rate for the injury is \$281.10.

Defendant asserts the deputy commissioner erred in awarding healing period benefits, PPD benefits, and medical benefits because there were no additional exhibits corroborating the information contained in exhibits 1 and 2.

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.

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 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on March 27, 2015, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a competent and thoughtful analysis of all issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I find the deputy commissioner did not err by not holding an evidentiary hearing on the issue of damages. I affirm the deputy commissioner's finding that claimant was an employee of defendant when claimant's injury occurred on May 30, 2014. I affirm the deputy commissioner's finding that claimant's injury arose out and in the course of his employment with defendant. I affirm the deputy commissioner's finding that claimant's average weekly wage at the time of the injury was \$440.00, and claimant's weekly benefit rate for the injury is \$281.10. I affirm the deputy commissioner's finding that claimant is entitled to 19 4/7 weeks of healing period benefits. I affirm the deputy commissioner's finding that claimant sustained fifty percent scheduled member impairment of his right second finger, which entitles claimant to 15 weeks of PPD benefits. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.27, claimant is entitled to payment of the medical expenses totaling \$31,856.84 as listed in exhibit 2. I find the deputy commissioner did not err in any regard despite the fact there were no additional exhibits corroborating the information contained in exhibits 1 and 2. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues with the following additional analysis:

The legal authority cited by defendant in its appeal brief does not support defendant's contention that after a default is entered there is an absolute right to an evidentiary hearing on the issue of damages and there also is an absolute right to notice of such a hearing. In Hansman v. Gute, 215 N.W.2d 339, the Iowa Supreme Court stated the following, in pertinent part:

"The rule is stated thus in 25A C.J.S. Damages Section 172, page 133;
'On the hearing of an assessment of damages after default, defendant

may make no defense to the action, but he has a right to be heard on the matter of damages, and he may contest the amount.”

Briefly stated, this “right to be heard” pronouncement presupposes an appearance by a defaulting defendant before or at the time damage related evidence is presented. By no means can it be said to dictate the giving of a damage hearing notice to a nonappearing party over whom the court has requisite jurisdiction.

Touching on that subject in Claeys v. Moldenshardt, 260 Iowa 36, 43-44, 148 N.W.2d 479, 484 (1967), we said: “No Iowa rule or decision is cited and none has been found by us requiring notice of hearing be given anyone prior to entry of default judgment where there has been personal service of original notice.”

To the same effect is this statement in 25A C.J.S. Damages Section 170:

“In the absence of statute or rule of court, a defendant who is in default for lack of appearance generally is not entitled to notice assessment of damages, or notice of the time when a writ of inquiry as to damages will be executed. The practice rests on the theory that a defendant who has not entered an appearance must himself keep watch and make it his business to appear on the assessment of damages, if he would contest the amount thereof.” (citations omitted)

(215 N.W.2d at p. 343)

In this case, defendant ignored the original notice and petition and refused to file an answer or otherwise appear. At the Iowa Code section 86.12 assessment hearing on December 18, 2014, defendant's owner exhibited a clearly obstinate refusal to accept his responsibilities to claimant under the Iowa workers' compensation act, and defendant's owner continued in that obstinate refusal even after it was suggested to him at that hearing by the deputy commissioner that he should consult with an attorney. After the exchange with the deputy commissioner at the assessment hearing, defendant completely ignored the entry of default and order setting hearing which was filed on December 16, 2014. It was not until after the arbitration decision, which awarded claimant benefits was filed on March 27, 2015, that defendant decided to become involved in this matter and defendant now challenges the award. Defendant's conduct in this matter has been nothing short of egregious.

Pursuant to Hansman quoted above, if defendant had chosen to appear at any time before claimant's evidence was submitted to the deputy commissioner on March 24, 2015, defendant should have been provided with the opportunity to be heard on the issue of damages. However, in light of defendant's egregious conduct, by ignoring this matter until after the arbitration decision was filed, defendant clearly waived its right to a hearing on the issue of damages prior to the filing of the arbitration decision.

As a further basis to challenge the arbitration decision, defendant asserts the deputy commissioner erred in basing any award on exhibits 1 and 2 because there were no additional exhibits corroborating the information contained in exhibits 1 and 2. However, defendant cites no legal authority to support this assertion and this assertion is disregarded. Furthermore, the deputy commissioner acted well within his discretion in deciding how much weight to give claimant's evidence, particularly in light of defendant's egregious conduct throughout this matter.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of March 27, 2015, is affirmed in its entirety.

Defendant shall pay claimant healing period benefits from May 30, 2014, to October 20, 2014, minus one week, at the rate of two hundred eighty one and 10/100 dollars (\$281.10) per week.

Defendant shall pay claimant fifteen (15) weeks of permanent partial disability benefits at the rate of two hundred eighty-one and 10/100 dollars (\$281.10) per week from October 21, 2014.

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

Defendant shall pay claimant's prior medical expenses listed in exhibit 2 which total \$31,856.84.

Defendant shall pay all future medical expenses of claimant necessitated by the work injury.

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

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 7th day of November, 2016.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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