BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ELLEN LORRAINE HOFER,

File Nos. 5023271, 5023272, 5023274

Claimant,

APPEAL

VS.

DECISION

SNAP-ON TOOLS MANUFACTURING.

Employer. Self-Insured,

Defendant.

Head Note No.: 1803

Pursuant to Iowa Code sections 86.24 and 17A.15 I affirm and adopt as final agency action those portions of the proposed decision in this matter that relate to issues properly raised on intra-agency appeal with the following additional analysis:

On appeal, defendants challenge the deputy's determination claimant did not reach maximum medical improvement until February 28, 2006, when she was told she had a permanent restriction against working overtime. Based on that determination, claimant was awarded temporary partial disability benefits through that date, and also was awarded penalty benefits for a failure to pay those temporary partial disability benefits.

Defendants point to Ex. A, p. 16, where on May 31, 2005, Physician's Associate Mark Davis marked a box indicating "has reached MMI". Defendants contend claimant reached maximum medical improvement on that date and no temporary partial disability benefits, or penalty benefits for failure to pay them, should be awarded after that date.

However, Ex. A, p. 16, shows that P.A. Davis specifically wrote a note after the box indicating "has reached MMI", stating "for this flare-up". This indicates claimant had reached maximum medical improvement for the flare-up only, not for the underlying condition. In addition, P.A. Davis also hand wrote a note "recheck week week (sic) of 8-29-05". Earlier in the report he has written "no overtime x 3 mos, to September 1st". This is clearly imposition of a temporary restriction to see how claimant would progress. It is not a determination of maximum medical improvement for her underlying condition. P.A. Davis contemplated claimant was still in a healing period and her underlying condition had not yet stabilized.

Ex. F, p. 36 is a note dated August 22, 2005, from Physician's Associate Davis following that three month period. He notes "As soon as she tries to do overtime or push the situation she gets increasing symptoms of pain." Later, he states "She will continue her conservative treatment and recheck in six months. "

HOFER V. SNAP-ON TOOLS MANUFACTURING Page 2

This confirms claimant was not at maximum medical improvement in May 2005. The deputy's determination that claimant did not reach maximum medical improvement until February 28, 2006, when a permanent restriction against working overtime was imposed, is affirmed. The award of temporary partial disability benefits between May 31, 2005 and February 28, 2006, is also affirmed.

In addition, the award of penalty benefits for failing to pay those temporary partial disability benefits is also affirmed. The May 31, 2005, note by P.A. Davis was not ambiguous or subject to interpretation. He clearly limited the finding of maximum medical improvement to the temporary flare-up, not the underlying condition, and also clearly intended to keep following claimant's medical progress. A penalty for ignoring the plain meaning of that record is appropriate.

All other aspects of the arbitration decision and rehearing decision are affirmed.

Defendants shall pay the costs of the appeal, including the preparation of the hearing transcript.

Pursuant to a standing order of delegation of authority by the workers' compensation commissioner pursuant to Iowa Code section 86.3, the undersigned enters this ruling for the workers' compensation commissioner. There is no right of appeal of this ruling to the workers' compensation commissioner.

Signed and filed this 2nd day of July, 2009.

JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Mark S. Soldat Attorney at Law 3737 Woodland Avenue, Suite 130 West Des Moines, IA 50266-1937

Joseph A. Quinn Attorney at Law 700 Walnut Street, Suite 1600 Des Moines, IA 50309-3899

JEH/blr