

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VICTOR GRANDSTAFF,

Claimant,

vs.

DIRECT TV HOME SERVICES, INC.,

Employer,

and

LIBERTY MUTUAL INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

JAN 10 2018

WORKERS' COMPENSATION

File No. 5051420, 5051421

APPEAL DECISION

Head Notes: 1803, 1703, 2907

Defendants Direct TV Home Services, Inc., employer, and its insurer, Liberty Mutual Insurance Company, insurance carrier, appeal from an arbitration decision filed on March 15, 2016. Claimant, did not cross-appeal. The case was heard on November 19, 2015, in front of the deputy workers' compensation commissioner and considered fully submitted on December 17, 2015. On September 1, 2017, Joseph S. Cortese II, Workers' Compensation Commissioner issued an order of delegation of authority delegating the authority to issue the final agency decision to the undersigned. The detailed arguments of the parties have been considered and the record of evidence has been reviewed de novo.

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

Defendants appeal from the presiding deputy commissioner's finding that claimant was credible and met his burden of proof to show entitlement to permanency benefits. I note that some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. Following review of the parties' arguments, as well as the record of the case, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner on these issues. The decision of the presiding deputy on the issue of claimant's credibility and entitlement to permanency is affirmed without further analysis.

Defendants also appeal the issue of credit. On appeal defendants seek clarification of their entitlement to credit for payment of permanent partial disability (PPD) benefits. Prior to hearing, defendants paid thirty-five (35) weeks of PPD to claimant for the August 16, 2012 date of injury. In the arbitration decision, the deputy found that claimant was entitled to 25 weeks of PPD benefits for that date of injury. Thus, the defendants paid 10 more weeks of PPD than claimant was awarded for the August 16, 2012 injury. Those 10 weeks were paid at the rate of \$736.10. In Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129 (Iowa 2010), the Iowa Supreme Court held that an employer is entitled to claim a credit for permanent partial disability against a future claim of weekly benefits based upon a subsequent injury. Therefore, the defendants are entitled to a credit of seven thousand three hundred sixty-one and no/100 dollars (\$7,361.00) against a subsequent claim for benefits. In the present case, claimant did have a subsequent injury which is also part of this case; the December 20, 2013 injury. Thus, defendants are entitled to a credit towards the December 20, 2013 injury in the amount of seven thousand three hundred sixty-one and no/100 dollars (\$7,361.00).

Clarification is also sought with regard to the classification of the weekly benefits paid prior to hearing for the December 20, 2013 date of injury. Regarding the December 20, 2013 date of injury, the issue of credit was marked as a dispute on the hearing report. On the hearing report defendants assert that prior to the hearing they paid 43 weeks of PPD. However, the arbitration decision held that the conversion date from healing period (HP) benefits to PPD benefits was April 28, 2015. The payment records are in evidence. (Exhibit N, pages 3-4) Defendants are only able to classify the weekly benefits paid from the conversion date of April 28, 2015 as PPD benefits. Thus, only 31 weeks, not 43 weeks, of the previously paid PPD benefits may be classified as PPD benefits for the December 20, 2013 injury. Therefore, defendants may assert a credit towards permanency owed for the December 20, 2013 injury of 31 weeks, plus the additional 10 weeks that were overpaid for the August 16, 2012 date of injury, a total of 41 weeks.

Additionally, defendants appeal the deputy's assessment of costs against the defendants for all costs associated with the claimant's vocational expert's opinion. Specifically, defendants contend that reimbursement for the cost associated with the opinion of claimant's vocational expert should be limited to the costs of the production of his report and should not include the time related to meeting with the claimant, travel time, review of case law, etc. These costs were assessed pursuant to 876 IAC 4.33(6). This agency has previously determined that reports from vocational counselors and physical therapists are considered practitioner reports as defined in our rule 876 IAC 4.33. The Iowa Supreme Court has provided guidance on this issue. The Court has stated that deposition testimony and witness fees could be taxed as hearing costs. The Court also stated that a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony. However, the Court stated that the "underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." (DART v. Young, 867 N.W.2d 839, 846 (Iowa 2015)). Thus, defendants are correct, reimbursement for the cost associated with the opinion of

claimant's vocational expert should be limited to the costs of the production of his report. In the present case, the invoice states that the actual time spent preparing the report was 3.5 hours at the rate of \$180.00 per hour. Thus, defendants are assessed costs associated with Mr. Vierling's vocational report in the amount of \$630.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of March 15, 2016, is affirmed in part and modified in part.

For File No. **5051420** (Date of injury August 16, 2012):

That defendants shall pay claimant twenty-five (25) weeks of permanent partial disability benefits at the rate of seven hundred thirty-six and 10/100 dollars (\$736.10) per week commencing on October 2, 2012.

That defendants shall pay accrued weekly benefits in lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall receive a credit for benefits previously paid.

For File No. **5051421** (Date of injury December 20, 2013):

That defendants shall pay claimant two hundred (200) weeks of permanent partial disability benefits at the rate of six hundred sixty-one and 52/100 dollars (\$661.52) per week commencing on April 28, 2015.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall reimburse claimant for the costs associated with Dr. Stoken's IME.

That defendants shall pay costs, including the above stated costs associated with Mr. Vierling's vocational report.

Regarding both File Nos. 5051420 and 5051421:

That defendants shall file subsequent reports of injury as required by this Agency under rule 876 IAC 3.1(2).

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

Signed and filed this 10th day of January, 2018.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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