

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KIRBY KAHLER,

Claimant,

vs.

MENARD, INC., a/k/a MIDWEST
MANUFACTURING,

Employer,

and

XL INSURANCE,

Insurance Carrier,
Defendants.

File No. 1629501.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.40; 1403.10;
1801; 1803; 2207; 2501;
2907

Defendants Menard, Inc., a/k/a Midwest Manufacturing, employer, and its insurer, XL Insurance, appeal from an arbitration decision filed on October 12, 2021. Claimant Kirby Kahler responds to the appeal. The case was heard on January 21, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 15, 2021.

In the arbitration decision, the deputy commissioner found that as a result of the stipulated work injury which occurred on February 17, 2017, claimant sustained 30 percent industrial disability, which entitles claimant to receive 150 weeks of permanent partial disability (PPD) benefits commencing on February 26, 2018. The deputy commissioner found claimant is not entitled to receive healing period benefits from December 7, 2020, through December 11, 2020. The deputy commissioner found claimant's average gross weekly earnings for the work injury were \$467.01, with the result that claimant's weekly benefit rate for the injury is \$325.32. The deputy commissioner found defendants are responsible for the requested past medical expenses itemized in claimant's Exhibits 11 and 12, excluding any mileage for chiropractic care. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$500.00 for an unreasonable underpayment of the weekly benefit rate. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$426.40.

Defendants assert on appeal that the deputy commissioner erred in finding claimant's current low back condition is causally related to the work injury. Defendants assert that the deputy commissioner erred in finding claimant sustained 30 percent industrial disability as a result of the work injury. Defendant asserts the award for industrial disability should be reduced to 15 percent or less. Defendants assert the

deputy commissioner erred in finding defendants are responsible for any of the requested past medical expenses itemized in Exhibits 11 and 12.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety, with the exception that claimant concedes he is not entitled to reimbursement for mileage expense for medical treatment received on March 25, 2019, and on April 23, 2019.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on October 12, 2021, is affirmed in part and it is modified in part as follows:

I affirm the deputy commissioner's finding that claimant's current low back condition is causally related to the 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 is not entitled to receive healing period benefits from December 7, 2020, through December 11, 2020. I affirm the deputy commissioner's finding that claimant's average gross weekly earnings for the work injury were \$467.01, with the result that claimant's weekly benefit rate for the injury is \$325.32. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits in the amount of \$500.00 for an unreasonable underpayment of the weekly benefit rate. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$426.40.

I modify the deputy commissioner's finding that defendants are responsible for the requested past medical expenses itemized in claimant's Exhibits 11 and 12, excluding any mileage for chiropractic care, to also exclude mileage expense for medical treatment received by claimant on March 25, 2019, and on April 23, 2019.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 12, 2021, is affirmed in part and it is modified in part as stated above.

Defendants shall pay claimant one hundred and fifty (150) weeks of permanent partial disability benefits at the weekly rate of three hundred and twenty-five and 32/100 dollars (\$325.32) commencing on February 26, 2018.

Defendants shall be given credit for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

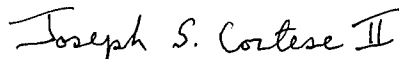
Defendants are responsible for the requested past medical expenses itemized in claimant's Exhibits 11 and 12, excluding any mileage for chiropractic care, and also excluding mileage expense for medical treatment received by claimant on March 25, 2019, and on April 23, 2019.

Defendants shall pay claimant penalty benefits in the amount of five hundred dollars (\$500.00).

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of four hundred twenty-six and 40/100 dollars (\$426.40), 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 17th day of March, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Joshua Moon (via WCES)

Charles Blades (via WCES)