

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 TYLER DUNGAN,

Claimant,

vs.

DEN HARTOG INDUSTRIES

Employer,

and

WEST BEND MUTUAL INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 21700246.01

A P P E A L

D E C I S I O N

: Head Notes: 1402.20; 1402.40; 1803; 1803.1;
: 2501; 2502; 2907; 5-9998

Defendants Den Hartog Industries, employer and its insurer, West Bend Mutual Insurance Company, appeal from an arbitration decision filed on September 30, 2022. Claimant Tyler Dungan responds to the appeal. The case was heard on March 10, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 18, 2022.

In the arbitration decision, the deputy commissioner found claimant sustained permanent disability of his low back with radiculopathy caused by the stipulated July 24, 2019, work injury. The deputy commissioner found that because claimant's employment terminated with defendant-employer, claimant is entitled to industrial disability benefits, as opposed to functional disability benefits. The deputy commissioner found claimant sustained 15 percent industrial disability as a result of the work injury, which entitles claimant to receive 75 weeks of permanent partial disability benefits commencing on February 8, 2021. The deputy commissioner found that pursuant to Iowa Code section 85.27, defendants must provide claimant with ongoing medical care for the work injury with Hendrik Klopper, M.D. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants in the amount of \$2,977.00 for the cost of the independent medical examination (IME) of claimant performed by Sunil Bansal, M.D. The deputy commissioner found that pursuant to 876 Iowa Administrative Code 4.33, claimant is entitled to reimbursement from defendants in the amount of \$103.00 for the filing fee and \$13.90 for service fees.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to receive industrial disability benefits for the work injury, and defendants assert claimant is entitled to recover only for his functional impairment caused by the work injury. Alternatively, defendants assert if it is found on appeal that claimant is entitled to recover industrial disability benefits, the award for industrial disability should be reduced substantially.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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

I 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.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on September 30, 2022, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 sustained permanent disability of his low back with radiculopathy as a result of the work injury. I affirm the deputy commissioner's finding that because claimant's employment terminated with defendant-employer, claimant is entitled to receive industrial disability benefits, as opposed to functional disability benefits. I affirm the deputy commissioner's finding that claimant sustained 15 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.27, defendants must provide claimant with ongoing medical care for the work injury with Dr. Klopper. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants in the amount of \$2,977.00 for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's finding that pursuant to 876 Iowa Administrative Code 4.33, claimant is entitled to reimbursement from defendants in the amount of \$103.00 for the filing fee and \$13.90 for service fees.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding the above-stated issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on September 30, 2022, is affirmed in its entirety.

Defendants shall pay claimant 75 weeks of permanent partial disability benefits at the weekly rate of four hundred thirty-nine and 89/100 dollars (\$439.89), commencing on February 8, 2021.

Defendants shall receive 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.

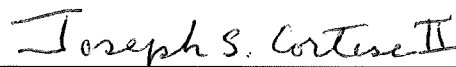
Defendants shall provide claimant with future medical care with Dr. Kloppe for all treatment causally related to the work injury.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of two thousand nine hundred seventy-seven and 00/100 dollars (\$2,977.00) for the cost of Dr. Bansal's IME.

Pursuant to 876 IAC 4.33, defendants shall reimburse claimant one hundred three and 00/100 dollars (\$103.00) for the filing fee and thirteen and 90/100 dollars (\$13.90) for service fees, 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 13th day of January, 2023.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Janece M. Valentine (via WCES)

Lee P. Hook (via WCES)

Christopher Spencer (via WCES)