

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CONRADO GOMEZ VEGA,	:	
	:	
Claimant,	:	
	:	
vs.	:	
	:	File No. 5053969
ABSOLUTE CONSTRUCTION, INC.,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
PEKIN INSURANCE,	:	
	:	Head Note Nos: 1402.4; 1803; 2204;
Insurance Carrier,	:	2502; 2907; 4000.2;
Defendants.	:	5-9998

Defendants Absolute Construction, Inc., employer, and its insurer, Pekin Insurance, appeal from an arbitration decision filed on February 26, 2018. Claimant Conrado Gomez Vega cross-appeals. The case was heard on May 19, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 23, 2017.

The deputy commissioner found claimant sustained 20 percent industrial disability, which entitles claimant to receive 100 weeks of permanent partial disability (PPD) benefits commencing on the stipulated date of January 14, 2015, as a result of the stipulated injury that arose out of and in the course of claimant's employment with defendant-employer on July 25, 2012. The deputy commissioner found claimant failed to carry his burden of proof that he has permanent disability from an alleged low back condition and from an alleged psychological condition allegedly resulting from the work injury. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$2,705.81 for the independent medical evaluation (IME) performed by Marc Hines, M.D., on February 17, 2017, and for the mileage expense incurred by claimant for the IME. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$1,171.30.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 20 percent industrial disability as a result of the work. Defendants

assert the award for industrial disability should be limited to the eight percent whole-body functional impairment rating issued by Douglas Martin, M.D., on June 28, 2016.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant sustained 20 percent industrial disability. Claimant asserts the award for industrial disability should be increased substantially. Claimant asserts the deputy commissioner erred in finding claimant failed to prove he has permanent disability from an alleged low back condition and from an alleged psychological condition allegedly resulting from the work injury, and in failing to award industrial disability benefits for those alleged conditions. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits from defendants.

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

I have 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.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on February 26, 2018, 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 20 percent industrial disability as a result of the July 25, 2012, work injury. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that he has permanent disability from an alleged low back condition or from an alleged psychological condition allegedly resulting from the work injury. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants for an alleged unreasonable failure to pay weekly benefits. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$2,705.81 for Dr. Hines' IME and for the mileage expense incurred by claimant for the IME. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$1,171.30.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 26, 2018, is affirmed in its entirety.

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing on January 14, 2015, at the weekly rate of five hundred twenty and no/100 dollars (\$520.00).

Defendants shall receive a credit against the award for all benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall reimburse claimant in the amount of two thousand seven hundred five and 81/100 dollars (\$2,705.81) for the cost of Dr. Hines' IME and for the mileage expense incurred by claimant for the IME,

Pursuant to rule 876 IAC 4.33, defendants shall claimant's costs of the arbitration proceeding in the amount of one thousand one hundred seventy-one and 30/100 dollars (\$1,171.30), and the parties shall split 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 26th day of July, 2019.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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