

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JULIO VASQUEZ,

Claimant,

vs.

DORMARK CONSTRUCTION CO.,

Employer,

and

BITUMINOUS INSURANCE CO.,

Insurance Carrier,
Defendants.

FILED

FEB 21 2018

WORKERS' COMPENSATION

File No. 5047236

A P P E A L

D E C I S I O N

: Head Note Nos: 1801.1; 1803; 2500; 2700;
: 5-9998

Defendants Dormark Construction Co, employer, and its insurer, Bituminous Insurance Company, appeal from an arbitration decision filed on August 22, 2016. Claimant Julio Vasquez cross-appeals. The case was heard on June 15, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the arbitration hearing.

The deputy commissioner found claimant sustained permanent injuries to his cervical spine as a result of the stipulated injury which arose out of and in the course of his employment with defendant-employer on October 29, 2013. The deputy commissioner found claimant sustained 25 percent industrial disability as a result of the work injury, which entitles claimant to receive 125 weeks of permanent partial disability (PPD) benefits commencing on December 6, 2013. The deputy commissioner found claimant is entitled to receive temporary partial disability benefits from November 5, 2013, through December 5, 2013. The deputy commissioner found claimant is entitled to receive penalty benefits of 50 percent of all PPD benefits accrued through August 22, 2016, the date of the arbitration decision. The deputy commissioner found claimant is entitled to receive ongoing medical treatment for the work injury. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding as itemized in Exhibit 18.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to receive any industrial disability for the work injury. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive temporary partial disability benefits from November 5, 2013, through November 17, 2013. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

Claimant asserts on cross-appeal that the deputy commissioner erred in failing to find claimant is entitled to receive temporary total disability benefits from November 5, 2013, through November 17, 2013.

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, 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 August 22, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's finding that claimant sustained permanent injuries to his cervical spine as a result of the October 29, 2013, work injury. I affirm the deputy commissioner's finding that claimant sustained 25 percent industrial disability as a result of the work injury, which entitles claimant to receive 125 weeks of PPD benefits. I affirm the deputy commissioner's finding that claimant is entitled to receive temporary partial disability benefits from November 5, 2013, through December 5, 2013. I affirm the deputy commissioner's finding that claimant is entitled to receive penalty benefits of 50 percent of all PPD benefits accrued through August 22, 2016. I affirm the deputy commissioner's finding that claimant is entitled to receive ongoing medical treatment for the work injury. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding as itemized in Exhibit 18. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 22, 2016, is affirmed in its entirety.

Defendants shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the weekly benefit rate of six hundred sixty-seven and 74/100 dollars (\$667.74) per week and commencing December 6, 2013.

Defendants shall pay claimant temporary partial disability benefits from November 5, 2013, through December 5, 2013.

Defendants shall be given credit for all benefits previously paid.

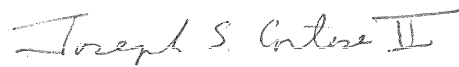
Defendants shall pay all accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall pay fifty (50) percent of the permanent partial disability benefits accrued through the issuance of the arbitration decision on August 22, 2016, as a penalty pursuant to Iowa Code section 86.13.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding as itemized in Exhibit 18, 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 21st day of February, 2018.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

James B. Neal
Attorney at Law
6611 University Ave., Ste. 200
Des Moines, IA 50324
jneal@smalaw.net

James M. Ballard
Attorney at Law
14225 University Ave., Ste. 142
Waukee, IA 50263-1699
jballard@jmbfirm.com