

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANTHONY ROLAND,

Claimant,

vs.

ANNETT HOLDINGS, INC., d/b/a
TMC TRANSPORTATION, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5050174

A P P E A L

D E C I S I O N

FILED

APR 21 2017

WORKERS' COMPENSATION

Head Note Nos: 3000, 3001, 3002

Defendant Annett Holdings, Inc., d/b/a TMC Transportation, Inc., self-insured employer, appeals from an arbitration decision filed on December 1, 2015. Claimant Anthony Roland responds to the appeal. The case was heard on September 30, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 12, 2015.

The deputy commissioner found claimant carried his burden of proof that his average weekly wage for the stipulated work injury, which occurred on March 4, 2014, is \$1,094.53. The deputy commissioner found that because claimant's status is single with two exemptions, claimant's weekly benefit rate for the work injury is \$651.58. Because defendant paid claimant at the weekly benefit rate of \$586.24, the deputy commissioner found claimant was underpaid \$65.34 per week for 5.57 weeks of healing period benefits and for 35 weeks of permanent partial disability benefits, which is the number of weeks of benefits the parties stipulated claimant is entitled to receive for the March 4, 2014, injury.

In calculating claimant's average weekly wage, the deputy commissioner found that earnings for the following weeks are not customary earnings and should be excluded from the calculation:

The week ending November 29, 2013 - \$661.80

The week ending December 20, 2013 - \$541.69

The week ending January 31, 2014 - \$461.10

The deputy commissioner also found the first installment of \$300.00 for the sign-on bonus paid to claimant the week ending November 1, 2013, and the second

installment of \$250.00 for the sign-on bonus paid to claimant the week ending January 24, 2014, should be included in the calculation of claimant's average weekly wage.

Defendant asserts on appeal that the deputy commissioner erred in excluding from the calculation of claimant's average weekly wage the weeks ending November 29, 2013, December 20, 2013, and January 31, 2014. Defendants also assert the deputy commissioner erred in including the two installments for the sign-on bonus in the calculation.

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

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, pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on December 1, 2015, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant's earnings for the week ending November 29, 2013 - \$661.80 - are not customary earnings and that week should be excluded from the calculation of claimant's average weekly wage because that week included the Thanksgiving holiday and claimant did not have the opportunity to transport the usual number of loads.

I affirm the deputy commissioner's finding that claimant's earnings for the week ending December 20, 2013 - \$541.69 - are not customary earnings and that week should be excluded from the calculation of claimant's average weekly wage because claimant's truck was serviced that week and claimant was not provided with a substitute truck while his truck was being serviced..

I affirm the deputy commissioner's finding that claimant's earnings for the week ending January 31, 2014 - \$461.10 - are not customary earnings and that week should be excluded from the calculation of claimant's average weekly wage because claimant was ill that week and missed several days of work.

I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

I reverse the deputy commissioner's finding that the sign-on bonus should be included in the calculation of claimant's average weekly wage. I find the sign-on bonus to be an irregular bonus and I find the first installment of \$300.00 paid to claimant the week ending November 1, 2013, and second installment of \$250.00 paid to claimant the week ending January 24, 2014, should not be included in the calculation of claimant's average weekly wage. I provide the following analysis regarding the issue of the sign-on bonus:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Iowa Code section 85.36 states the following in pertinent part:

The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as regularly required by the employee's employer for the work or employment for which the employee was employed, computed or determined as follows and then rounded to the nearest dollar:

6. In the case of an employee who is paid on a daily or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, including shift differential pay but not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

Iowa Code section 85.61(3), states the following:

"Gross earnings" means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits. (emphasis added)

Because a sign-on bonus is a one-time item, or as in this case, a one-time item paid in two installments, I find such bonuses to be irregular bonuses which are to be excluded from an injured worker's average weekly wage calculation pursuant to Iowa Code section 85.61(3). This finding is consistent with the Iowa Supreme Court's holding in Jacobson Transp. Co. v. Harris, 778 N.W.2d 192 (Iowa 2010):

Consistent with the remedial nature of workers' compensation laws, statutes for computation of wage bases are "meant to be applied, not mechanically nor technically, but flexibly, with a view always to achieving the ultimate objective of reflecting fairly the claimant's probable future earning loss."

Id. at 197.

Because a sign-on bonus occurs only once, at the very beginning of employment, to include it in an injured worker's average weekly wage calculation would not fairly reflect probable future loss of earnings.

In this case, because the sign-on bonus is not to be included in the average weekly wage calculation, the week ending November 1, 2013, cannot be included in the calculation because without the \$300.00 sign-on bonus installment payment included that week, claimant's earnings for that week are only \$584.83, which is not customary earnings for claimant. Because of the short length of time claimant worked for defendant-employer before the work injury occurred, to discard the week ending November 1, 2013, leaves only 12 weeks of customary earnings which can be used pursuant to Iowa Code section 85.36(7) to calculate claimant's average weekly wage. Calculating claimant's average weekly wage in this manner results in an average weekly wage of \$1,091.17. Because claimant's classification is single with two exemptions, the resulting weekly benefit rate is \$649.62. That calculation is as follows:

Week	Week Ending	Gross Weekly Earnings	
1	02/28/14	\$1,008.99	
2	02/21/14	\$743.98	
3	02/14/14	\$1,070.27	
4	02/07/14	\$1,342.03	
Not included	01/31/14	\$461.00	Not customary earnings
5	01/24/14	\$1,109.80	After deduction of \$250.00 payment for sign-on bonus
6	01/17/14	\$1,327.85	
7	01/10/14	\$996.50	
Not included	01/03/14	\$224.74	Not customary earnings

Not included	12/27/13	\$255.31	Not customary earnings
Not included	12/20/13	\$541.69	Not customary earnings
8	12/13/13	\$835.83	
9	12/06/13	\$928.52	
Not included	11/29/13	\$661.80	Not customary earnings
10	11/22/13	\$1,238.96	
11	11/15/13	\$1,241.95	
12	11/08/13	\$1,249.33	
Not included	11/01/13	\$584.83	Not customary earnings after deduction of \$300.00 payment for sign-on bonus
Not included	10/25/13	\$500.00	Not customary earnings – trainee pay
TOTAL INCLUDED		\$13,094.01	
AWW	/12	\$1,091.17	
Weekly Benefit Rate	Classification: S-2	\$649.62	

Based on the above calculation, I find claimant's average weekly wage in this matter to be \$1,091.17. I find claimant's weekly benefit rate, classification single with two exemptions, to be \$649.62. Because claimant has been paid at the weekly benefit rate of \$586.24, claimant has been underpaid \$63.38 per week for the 5.57 weeks of healing period benefits and for the thirty-five 35 weeks of permanent partial disability benefits which is claimant's entitlement in this matter. Therefore, claimant has been underpaid \$2,571.33 in this matter

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of December 1, 2015, is MODIFIED as follows:

Defendant shall pay claimant all weekly benefits at the correct weekly benefit rate of six hundred forty-nine and 62/100 dollars (\$649.62) per week for both five point five seven (5.57) weeks of healing period benefits and for thirty-five (35) weeks of permanent partial disability benefits.

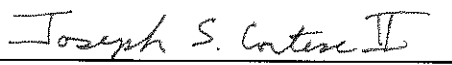
Defendant shall take credit for all benefits previously paid at the incorrect rate of five hundred eighty-six and 24/100 dollars (\$586.24) per week.

Defendant shall pay accrued and unpaid weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed this 21st day of April, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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