

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERIC KIBBE,

Claimant,

vs.

I-35 AUTO & TRUCK, LLC,

Employer,

and

CINCINNATI INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

File No. 5061492

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1703; 1802; 1808;  
3001; 3002; 4000.2; 5-9998

Claimant Eric Kibbe appeals from an arbitration decision filed on August 30, 2019. Defendants I-35 Auto & Truck, LLC. employer, and its insurer, Cincinnati Insurance Company, respond to the appeal. The case was heard on April 18, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 15, 2019.

The deputy commissioner found that the stipulated work injury which occurred on November 3, 2015, caused claimant to sustain scheduled member functional disability of five percent of the body as a whole pursuant to Iowa Code section 85.34(2)(s) for injuries to claimant's right hand and right knee, which entitles claimant to receive 25 weeks of permanent partial disability benefits commencing on November 26, 2015. The deputy commissioner found claimant failed to carry his burden of proof to establish he sustained permanent disability of his right ankle as a result of the work injury. The deputy commissioner found claimant's correct weekly benefit rate for the work injury is \$461.90. The deputy commissioner found that pursuant to Iowa Code section 85.34(4), defendants are entitled to receive a credit against the award for permanent disability benefits for an overpayment by defendants of temporary disability benefits. The deputy commissioner found claimant is not entitled to receive penalty benefits from defendants for alleged unreasonable delays in paying weekly benefits. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Claimant asserts on appeal that the deputy commissioner erred in awarding claimant scheduled member functional disability of five percent of the body as a whole

pursuant to Iowa Code section 85.34(2)(s) for the injuries to claimant's right hand and right knee. Claimant asserts the award for the injuries to claimant's right hand and right knee should be increased substantially. Claimant asserts the deputy commissioner erred in finding claimant failed to prove he sustained permanent disability of his right ankle as a result of the work injury, and claimant asserts the deputy commissioner erred in failing to award claimant permanent disability benefits for his right ankle. Claimant asserts the deputy commissioner erred in finding claimant's correct weekly benefit rate for the work injury is \$461.90. Claimant asserts it should be found on appeal that claimant's correct weekly benefit rate for the work injury is \$517.68. Claimant asserts the deputy commissioner erred in finding that pursuant to Iowa Code section 85.34(4), defendants are entitled to receive a credit against the award for permanent disability benefits for the overpayment by defendants of temporary disability benefits. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive penalty benefits from defendants for alleged unreasonable delays in paying weekly benefits.

Defendants assert 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.

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 August 30, 2019, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all of 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 the work injury caused claimant to sustain scheduled member functional disability of five percent of the body as a whole pursuant to Iowa Code section 85.34(2)(s) for injuries to claimant's right hand and right knee. I affirm the deputy commissioner's finding that claimant failed to prove he sustained permanent disability of his right ankle as a result of the work injury. I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the work injury is \$461.90. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.34(4), defendants are entitled to receive a credit against the award for permanent disability benefits for the overpayment by defendants of temporary disability benefits. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from defendants. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

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 30, 2019, is affirmed in its entirety.

Defendants shall pay claimant twenty-five (25) weeks of permanent partial disability benefits commencing on November 26, 2015, at the weekly rate of four hundred sixty-one and 90/100 dollars (\$461.90).

Defendants shall receive credit for all benefits previously paid, including a credit for any overpayment of temporary disability benefits against permanent disability benefits awarded in this case.

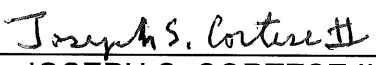
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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 provide claimant future medical care for all treatment causally-related to claimant's right knee and right hand injuries.

Pursuant to rule 876 IAC 4.33 defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00), and claimant 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 12<sup>th</sup> day of June, 2020.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Joseph S. Powell      Via WCES

Aaron T. Oliver        Via WCES