

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GARY CARLSON,

Claimant,

vs.

PATTISON SAND COMPANY, LLC,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.

FILED

OCT 5 2017

WORKERS' COMPENSATION

File No. 5051757

A P P E A L

D E C I S I O N

Head Note No: 1804, 5-9998

Defendants Pattison Sand Company, LLC, employer, and its insurer, Zurich American Insurance Company, appeal from an arbitration decision filed on March 14, 2016. Claimant Gary Carlson cross-appeals. The case was heard on February 10, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 17, 2016.

The deputy commissioner found claimant carried his burden of proof that the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on December 13, 2012, caused claimant to sustain a 100 percent loss of earning capacity. The deputy commissioner awarded permanent total disability benefits from the date of injury. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to reimbursement from defendants for the cost of the independent medical evaluation (IME) performed by John D. Kuhnlein, D.O. on May 12, 2015. The deputy commissioner found that pursuant to rule 876 IAC 4.33, claimant is entitled to reimbursement from defendants in the amount of \$1,250.00 for the cost of the vocational report prepared by Phil Davis, M.S. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant carried his burden of proof that he sustained a 100 percent loss of earning capacity as a result of the work injury, and in awarding claimant permanent total disability benefits. Defendants assert the deputy commissioner erred in failing to award

claimant "moderate industrial disability." Defendants assert the deputy commissioner erred in finding claimant is entitled to reimbursement from defendants in the amount of \$1,250.00 for the cost of Mr. Davis' vocational report.

Claimant asserts on cross-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, 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 March 4, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis 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 a 100 percent loss of earning capacity, which entitles claimant to permanent total disability benefits from the date of injury. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants for the cost of Dr. Kuhnlein's IME. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants in the amount of \$1,250.00 for the cost of Mr. Davis' vocational report. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

Some of the findings by the deputy commissioner in the arbitration decision were based on the deputy commissioner's findings regarding claimant's credibility. I find the deputy commissioner correctly assessed claimant's credibility. While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's findings regarding claimant's credibility.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 14, 2016, is affirmed in its entirety.

Defendants shall pay claimant permanent total disability benefits from the date of injury and throughout the time claimant remains permanently and totally disabled. Those benefits shall be paid from December 13, 2012, at the stipulated rate of four hundred two and 27/100 dollars (\$402.27) per week.

Defendants shall be entitled to credit for all benefits previously paid.

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

Defendants shall reimburse claimant for the cost of Dr. Kuhnlein's IME.

Defendants shall reimburse claimant in the amount of one thousand two hundred fifty and 00/100 dollars (\$1,250.00) for the cost of the vocational report prepared by Phil Davis, M.S.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, 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 this 5th day of October, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Erik D. Bair
Attorney at Law
2545 E. Euclid Ave., Ste. 120
Des Moines, IA 50317-6045
erik@walklaw.com

Valerie A. Foote
Attorney at Law
1225 Jordan Creek Parkway, Suite 108
West Des Moines, IA 50266
vfoote@scheldruplaw.com