BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICHOLAS HERNANDEZ,

Claimant, : File No. 5067924

vs. : RULING ON DEFENDANT'S

JOHN DEERE DAVENPORT WORKS, : APPLICATION FOR REHEARING

Employer, Self-Insured, Defendant.

On May 8, 2020, the undersigned filed an arbitration decision in this case. On May 14, 2020, defendant filed a rehearing application pursuant to 876 IAC 4.24. On May 14, 2020, claimant filed a resistance. The application for rehearing and resistance

are timely and are considered.

Defendant's application for rehearing seeks a ruling and order regarding defendant's request for credit for overpayment of temporary disability benefits. In the May 8, 2020 arbitration decision the undersigned determined claimant had failed to carry his burden of proof to demonstrate by a preponderance of the evidence that he sustained an injury to his right shoulder which arose out of and in the course of his employment with John Deere Davenport Works on October 20, 2018. As such, claimant was not entitled to payment of any weekly benefits and in the arbitration decision, the undersigned did not address the issue of credit. Defendant is seeking a ruling regarding credit for overpayment of temporary disability benefits. Claimant argues that because claimant was not successful in his arbitration decision, no credits are due. Claimant does not cite any legal authority for his position. I do not find claimant's argument to be persuasive. Defendant's application has merit. The arbitration decision in these matters should be amended.

At the time of the hearing defendant contended that it was entitled to a credit pursuant to Iowa Code section 85.34(4) and/or Iowa Code section 85.37(5) as a result of excess temporary disability benefits paid to claimant. (Hearing Report & Order) Defendant is seeking a credit in the amount of \$3,111.88 as the result of employer's overpayment of temporary disability benefits to the claimant. (Defendant's post-hearing brief, pages 30-32)

Iowa Code Section 85.34 provides:

- 4. Credits for excess payments. If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due for an injury to that employee, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.
- 5. Recovery of employee overpayment. If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for any current or subsequent injury to the same employee.

Defendant correctly points out that the arbitration decision failed to address this issue. On November 20, 2018, Mr. Hernandez received a letter from defendant denying his alleged right shoulder injury. Prior to investigating claimant's injury, Davenport Works had been paying Mr. Hernandez temporary total disability benefits (TTD). Davenport Works was required to continue paying temporary benefits to Mr. Hernandez for thirty days after issuance of the denial letter. Davenport Works paid a total of \$3,111.88 in temporary total and temporary partial disability benefits. Because claimant failed to prove he sustained a compensable injury on October 20, 2018, Davenport Works is entitled to a credit pursuant to lowa Code sections 85.34(4) and 85.34(5) in the amount of \$3,111.88, for any future weekly benefits due pursuant to subsection 2, for any current or subsequent injury to the same employee. (Exhibit D; Ex. B, p. 3)

THEREFORE, IT IS ORDERED:

The defendant's application for rehearing is granted. The arbitration decision is supplemented and amended by this ruling.

Signed and filed this 18th day of May, 2020.

ERIN Q. PALS

DEPUTY WORKERS'

COMPENSATION COMMISSIONER

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The parties have been served, as follows:

Troy Howell (via WCES)

Andrew Bribriesco (via WCES)