

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 Iowa 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

The parties have been served, as follows:

Troy Howell (via WCES)

Andrew Bribriesco (via WCES)