BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LADONNA MARTINEZ,	:	File Nos. 5055195, 5055196
Claimant,	:	APPEAL
vs.	:	DECISION
JAMES D. HEFFELMEIER,	:	
Employer, Defendant.	:	Head Note Nos: 1801; 1803; 2001; 2002; 2500; 5-9998

FILED
JAN 11 2019
WORKERS' COMPENSATION

Defendant James D. Heffelmeier, uninsured employer, appeals from an arbitration decision filed on August 30, 2018. Claimant LaDonna Martinez responds to the appeal. The case was heard on March 29, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 7, 2018.

In File No. 5055195, the deputy commissioner found claimant carried her burden of proof to establish she was an employee of defendant, and not an independent contractor, on April 30, 2015, when claimant sustained an injury that arose out of and in the course of her employment with defendant. The deputy commissioner found claimant is entitled to receive no temporary disability benefits and no permanent disability benefits as a result of the April 30, 2015, work injury. The deputy commissioner found claimant is entitled to reimbursement or payment from defendant for all requested past medical expense itemized in Exhibit 12 related to the April 30, 2015, work injury. The deputy commissioner found claimant is entitled to reimbursement by defendant for all requested past mileage expense itemized in Exhibit 10 related to the April 30, 2015, work injury.

In File No. 5055196, the deputy commissioner found claimant carried her burden of proof to establish she was an employee of defendant, and not an independent contractor, on May 1, 2015, when claimant sustained a second injury that arose out of and in the course of her employment with defendant. The deputy commissioner found defendant failed to prove his Iowa Code section 85.23 notice defense for the May 1, 2015, work injury. The deputy commissioner found claimant is not at maximum medical improvement (MMI) for the May 1, 2015, work injury. The deputy commissioner found claimant is entitled to a running award of healing period benefits from May 2, 2015, through the date of the hearing and continuing for the May 1, 2015, work injury. The deputy commissioner found claimant's correct gross average weekly wage for the May 1, 2015, work injury is $435.19, and the deputy commissioner found claimant's correct weekly benefit rate for that injury, classification single with one exemption, is $278.55. The deputy commissioner found claimant is entitled to

reimbursement or payment by defendant for all requested past medical expenses itemized in Exhibit 12 related to the May 1, 2015, work injury. The deputy commissioner found claimant is entitled to reimbursement by defendant for the requested past mileage expense itemized in Exhibit 10 related to the May 1, 2015, work injury, but excluding the mileage for the independent medical evaluation (IME) performed by Sunil Bansal, M.D., on January 20, 2017. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of $21,000.00 for defendant's unreasonable failure to pay weekly benefits. The deputy commissioner found claimant is not entitled to reimbursement from defendant under Iowa Code section 85.39 for Dr. Bansal's IME. The deputy commissioner ordered defendant to pay claimant's costs of the arbitration proceeding in the amount of $2,456.94.

In File No. 5055195, defendant asserts on appeal that the deputy commissioner erred in finding claimant carried her burden of proof to establish she was an employee of defendant, and not an independent contractor, on April 30, 2015, when claimant sustained the first work-related injury. Defendant asserts the deputy commissioner erred in finding claimant is entitled to reimbursement or payment from defendant for the requested past medical expenses itemized in Exhibit 12 related to the April 30, 2015, injury. Defendant asserts the deputy commissioner erred in finding claimant is entitled to reimbursement by defendant for the requested past mileage expense itemized in Exhibit 10 related to the April 30, 2015, injury.

In File No. 5055196, defendant asserts on appeal the deputy commissioner erred in finding claimant carried her burden of proof to establish she was an employee of defendant, and not an independent contractor, on May 1, 2015, when claimant sustained a second work-related injury. Defendant asserts the deputy commissioner erred in finding defendant failed to prove his Iowa Code section 85.23 notice defense for the May 1, 2015, work injury. Defendant asserts the deputy commissioner erred in finding claimant is not at MMI for the May 1, 2015, work injury. Defendant asserts the deputy commissioner erred in finding claimant is entitled to a running award of healing period benefits from May 2, 2015, through the date of the hearing and continuing for the May 1, 2015, work injury. Defendant asserts the deputy commissioner erred in finding claimant is entitled to reimbursement or payment by defendant for the requested past medical expenses itemized in Exhibit 12 related to the May 1, 2015, work injury. Defendant asserts the deputy commissioner erred in finding claimant is entitled to reimbursement by defendant for the requested past mileage expense itemized in Exhibit 10 related to the May 1, 2015, work injury. Defendant asserts the deputy commissioner erred in finding claimant is entitled to receive penalty benefits in the amount of $21,000.00 for defendant's unreasonable failure to pay weekly benefits. Defendant asserts the deputy commissioner erred in ordering defendant to pay claimant costs of the arbitration proceeding.

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.

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, 2018, 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.

In File No. 5055195, I affirm the deputy commissioner's finding that claimant carried her burden of proof to establish she was an employee of defendant, and not an independent contractor, on April 30, 2015, when claimant sustained the first work-related injury. I affirm the deputy commissioner's finding that claimant is entitled to receive no temporary disability benefits and no permanent disability benefits as a result of the April 30, 2015, work injury. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement or payment from defendant for the requested past medical expenses itemized in Exhibit 12 related to the April 30, 2015, work injury. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement by defendant for the requested past mileage expense itemized in Exhibit 10 related to the April 30, 2015, work injury.

In File No. 5055196, I affirm the deputy commissioner's finding that claimant carried her burden of proof to establish she was an employee of defendant, and not an independent contractor, on May 1, 2015, when claimant sustained the second work-related injury. I affirm the deputy commissioner's finding that defendant failed to prove his Iowa Code section 85.23 notice defense for the May 1, 2015, work injury. I affirm the deputy commissioner's finding that claimant is not at MMI for the May 1, 2015, work injury. I affirm the deputy commissioner's finding that claimant is entitled to a running award of healing period benefits from May 2, 2015, through the date of the arbitration hearing and continuing for the May 1, 2015, work injury. I affirm the deputy commissioner's finding that claimant's correct gross average weekly wage for the May 1, 2015, work injury is $435.19, and I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for that injury is $278.55. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement or payment by defendant for the requested past medical expenses itemized in Exhibit 12 related to the May 1, 2015, work injury. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement by defendant for the requested past mileage expense itemized in Exhibit 10 related to the May 1, 2015, work injury, but excluding the mileage for Dr. Bansal's IME. I affirm the deputy commissioner's finding that claimant is entitled

to receive penalty benefits in the amount of $21,000.00 for defendant's unreasonable failure to pay weekly benefits I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendant under Iowa Code section 85.39 for Dr. Bansal's IME. I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding in the amount of $2,456.94.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 30, 2018, is affirmed in its entirety.

Regarding File No. 5055195, injury date of April 30, 2015:

Defendant shall reimburse claimant for her out-of-pocket medical expenses itemized in Exhibit 12 related to the April 30, 2015, work injury, and defendant shall pay, reimburse, or otherwise satisfy all such medical expenses, along with all related mileage expense itemized in Exhibit 10.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Regarding File No. 5055196, injury date of May 1, 2015:

Defendant shall pay claimant a running award of healing period benefits from May 2, 2015, through March 29, 2018, the date of the arbitration hearing, and continuing thereafter, until such time as it becomes appropriate to stop healing period benefits under Iowa Code section 85.34(1).

All weekly benefits shall be paid at the weekly rate of two hundred seventy-eight and 55/100 dollars ($278.55) per week.

Defendant 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).

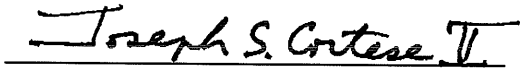
Defendant shall reimburse claimant for her out-of-pocket medical expenses itemized in Exhibit 12 related to the May 1, 2015, work injury, and defendant shall pay, reimburse, or otherwise satisfy all such medical expenses, along with all related mileage expense itemized in Exhibit 10, excluding the mileage for Dr. Bansal's IME.

Defendant shall pay claimant penalty benefits in the amount of twenty-one thousand and 00/100 dollars ($21,000.00).

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of $2,456.94, and defendant shall pay the costs of the appeal decision, 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 on this 11th day of January, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Robert E. Tucker
Attorney at Law
2400 – 86th St., Ste. 35
Urbandale, IA 50322-4306
robtucker@tuckerlaw.net

Joseph A. Happe
Attorney at Law
215 – 10th St., Ste. 1300
Des Moines, IA 50309-3993
joehappe@davisbrownlaw.com