

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUSTIN LOEW,

Claimant,

vs.

MENARD, INC.,

Employer,

and

XL INSURANCE AMERICA,

Insurance Carrier,
Defendants.File Nos. 1652966.01
20700736.01

A P P E A L

D E C I S I O N

Head Notes: 1402.20; 1402.30; 1402.40;
1803; 1806; 2209; 2501; 2907;
5-9998

Claimant Justin Loew appeals from an arbitration decision filed on December 15, 2021. Defendants Menard, Inc., employer, and its insurer, XL Insurance America, cross-appeal. The case was heard on August 26, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 13, 2021.

In the arbitration decision, the deputy commissioner found claimant proved he sustained an injury to his low back arising out of and in the course of his employment with defendant-employer on August 13, 2018, and the deputy commissioner found claimant sustained a cumulative injury to his low back arising out of and in the course of his employment with defendant-employer which manifested on March 13, 2019. The deputy commissioner found claimant sustained permanent functional impairment of eight percent of the body as a whole as a result of the August 13, 2018, work injury, and the deputy commissioner found claimant sustained no permanent functional impairment as a result of the March 13, 2019, work injury. The deputy commissioner found that because claimant was awarded 30 percent industrial disability for a 2015 work injury that arose out of and in the course of claimant's employment with defendant-employer, and because claimant's total functional impairment for the 2015 and 2018 injuries was 28 percent, defendants are entitled to a credit for the prior 30 percent award, and claimant is not entitled to receive any additional benefits for the eight percent functional impairment sustained as a result of the August 13, 2018, work injury. The deputy commissioner found defendants are responsible for the requested past medical expenses from David Kinkle, D.O., Grundy County Hospital, Justin Elwood, M.D., Agape Therapy and Loren Mouw, M.D. The deputy commissioner found defendants are responsible for all causally related future medical care. The deputy commissioner found claimant is not entitled to reimbursement from defendants in the amount of \$300.00 for the cost of a telephone conference with Dr. Mouw.

Claimant asserts on appeal that the deputy commissioner erred in finding defendants are entitled to a credit for the prior 30 percent award, and in finding claimant is not entitled to receive any additional benefits for the eight percent functional impairment claimant sustained as a result of the August 13, 2018, work injury.

Defendants assert on cross-appeal that the deputy commissioner erred in finding claimant sustained work-related injuries on August 13, 2018, and on March 13, 2019. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment by defendants for the requested past medical expenses and in finding defendants are responsible for future medical care.

Those portions of the proposed arbitration 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 December 15, 2021, which relate to the issues properly raised on intra-agency appeal.

I affirm the deputy commissioner's finding that claimant proved he sustained work-related injuries on August 13, 2018, and on March 13, 2019. I affirm the deputy commissioner's finding that claimant sustained permanent functional impairment of eight percent of the body as a whole as a result of the August 13, 2018, work injury, and I affirm the deputy commissioner's finding that claimant sustained no permanent functional impairment as a result of the March 13, 2019, work injury. I affirm the deputy commissioner's finding that because claimant was awarded 30 percent industrial disability for the 2015 work injury, and because claimant's total functional impairment for the 2015 and 2018 injuries is 28 percent, I affirm the deputy commissioner's finding that defendants are entitled to a credit for the prior 30 percent award, and I affirm the deputy commissioner's finding that claimant is not entitled to receive any additional benefits for the eight percent functional impairment sustained by claimant as a result of the August 13, 2018, work injury. I affirm the deputy commissioner's finding that defendants are responsible for the requested past medical expenses from Dr. Kinkle, Grundy County Hospital, Dr. Elwood, Agape Therapy and Dr. Mouw. I affirm the deputy commissioner's finding that defendants are responsible for all causally related future medical care. I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement from defendants for the cost of the telephone conference with Dr. Mouw.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 15, 2021, is affirmed in its entirety.

Claimant shall take nothing from these proceedings in the way of weekly benefits.

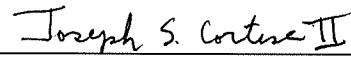
Defendants are responsible for all causally related medical charges from Dr. Kinkle, Grundy County Hospital, Dr. Elwood, Agape Therapy and Dr. Mouw.

Defendants are responsible for all causally related future medical care.

Pursuant to rule 876 IAC 4.33, the parties shall split 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 12th day of April, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Paul Thune (via WCES)

Rachel Neff (via WCES)

Charles Blades (via WCES)