

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

**FILED**

**JAN 31 2018**

JAZZ FREEMON,

Claimant,

vs.

ANNETT HOLDINGS, INC.,

Employer,  
Self-Insured,  
Defendant.

File No. 5047798 WORKERS' COMPENSATION

A P P E A L

D E C I S I O N

Head Note Nos: 1802; 1803; 3001

Defendant Annett Holdings, Inc., self-insured employer, appeals from an arbitration decision filed on May 5, 2016. Claimant Jazz Freemon cross-appeals. The case was heard on August 19, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 15, 2015.

The deputy commissioner found claimant carried his burden of proof that he sustained industrial disability as a result of the stipulated injury which arose out of and in the course of his employment with defendant on December 19, 2013. The deputy commissioner found claimant sustained 20 percent industrial disability, which entitles claimant to receive 100 weeks of permanent partial disability (PPD) benefits commencing on July 17, 2014. The deputy commissioner found claimant is entitled to receive healing period benefits from January 20, 2014, through March 4, 2014, because defendant failed to offer claimant suitable light duty work during that time period as required by Iowa Code section 85.33(3). The deputy commissioner found claimant's average weekly wage for the work injury is \$913.99, and claimant's weekly benefit rate for the work injury, classification single with three exemptions is \$573.38. The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$356.97.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant sustained 20 percent industrial disability. Defendant asserts the deputy commissioner erred in awarding claimant anything more than ten percent industrial disability. Defendant asserts the deputy commissioner erred in finding defendant failed to offer claimant suitable light duty work for the period of January 20, 2014, through March 4, 2014, and in awarding claimant healing period benefits for that period.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding claimant's average weekly wage for the work injury is \$913.99, and in finding claimant's weekly benefit rate for the work injury is \$573.38. Claimant asserts the correct average weekly wage is \$963.26 and the correct weekly benefit rate is \$601.08.

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 May 5, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned 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 Claimant sustained 20 percent industrial disability as a result of the work injury, which entitles claimant to 100 weeks of PPD benefits commencing on July 17, 2014. I affirm the deputy commissioner's finding that claimant's average weekly wage for the work injury is \$913.99, and claimant's weekly benefit rate for the work injury is \$573.38. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$356.97.

I also affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from January 20, 2014, through March 4, 2014, because defendant failed to offer claimant suitable light duty work during that time period as required by Iowa Code section 85.33(3). I provide the following analysis regarding this issue:

Claimant resided in the State of Mississippi when he was hired by defendant and also at the time the work injury occurred. (Hearing Transcript, page 6) When claimant was hired by defendant, he signed a document entitled "Memorandum of Understanding and Consent Applicability of the Iowa Workers' Compensation Act (MOU - Exhibit 1, p. 10). In the MOU, claimant agreed that if he sustained a work-related injury and was capable of performing light-duty work following that injury, defendant could require claimant to perform the light-duty work at defendant's place of business in Des Moines, Iowa. (Id.)

After claimant's work injury occurred on December 19, 2013, defendant notified claimant that defendant would provide claimant with light-duty work in Des Moines starting January 20, 2014, which complied with his work restrictions which were in force

at that time. (Ex. 6, depo. pp. 62-63) Claimant refused from January 20, 2014, through March 3, 2014, to accept the light-duty work because he did not want to be away from home for personal reasons. (Ex. 6, depo. p. 61) Defendant then suspended claimant's weekly workers' compensation benefits for the period of claimant's refusal. (Ex. I, pp. 1-2)

In finding defendant failed to offer claimant suitable light-duty work as required by Iowa Code section 85.33(3), the deputy commissioner noted it has been held by this agency, by the Iowa district court, and by the Iowa court of appeals that an MOU at issue in another case involving defendant, which is identical to the MOU at issue in this case, violates Iowa Code section 85.18. (See, e.g., Annett Holdings, Inc. v. Roland, 881 N.W.2d 470 (Iowa App. 2016) The Iowa court of appeals decision in Roland was issued in February, 2016, six months after the arbitration hearing was held in this case and three months before the arbitration decision was filed on May 5, 2016.

The deputy commissioner stated in the arbitration decision: "Absent the MOU, defendant would have little basis to believe they could suspend claimant's temporary disability benefits due to his failure to accept light duty in Des Moines." (Arbitration Decision, p. 14) Based on the fact that the MOU violates Iowa Code section 85.18, and also based on the fact defendant did not address why claimant was not offered light-duty at one of defendant's terminals closer to claimant's home in Mississippi, I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from January 20, 2014, through March 4, 2014, because defendant failed to offer claimant suitable light duty work during that time period as required by Iowa Code section 85.33(3).

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 May 5, 2016, is affirmed in its entirety.

Defendant shall pay claimant healing period benefits at the weekly rate of five hundred seventy-three and 38/100 dollars (\$573.38) for the period of January 20, 2014, through March 4, 2014.

Defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits commencing July 17, 2014, at the weekly rate of five hundred seventy-three and 38/100 dollars (\$573.38).

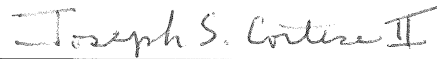
Defendant shall receive credit for benefits paid.

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

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of \$356.97, and the parties shall split the costs of the appeal, 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 this 31<sup>st</sup> day of January, 2018.



---

JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies To:

Nicholas L. Shaul  
Attorney at Law  
2423 Ingersoll Ave.  
Des Moines, IA 50312-5233  
[nick.shaul@sbsattorneys.com](mailto:nick.shaul@sbsattorneys.com)

Sasha L. Monthei  
Attorney at Law  
PO Box 36  
Cedar Rapids, IA 52406  
[smonthei@scheldruplaw.com](mailto:smonthei@scheldruplaw.com)