

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PHILLIP AHRENS,

Claimant,

vs.

EARWOOD FAMILY PROPERTIES,

Employer,
Uninsured,
Defendant.

File No. 5066611

ARBITRATION DECISION

Head Note No.: 4000

STATEMENT OF THE CASE

Claimant, Phillip Ahrens, has filed a petition for arbitration seeking penalty benefits against Earwood Family Properties, Inc., employer. It is defendant's position that it is not required to have workers' compensation insurance. A previous arbitration decision held that claimant was an employee of defendant employer. The arbitration decision was upheld on appeal to the commissioner in an appeal decision issued on August 31, 2021.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on August 10, 2021, and considered fully submitted upon the same.

The record consists of the exhibits submitted in the underlying arbitration hearing of September 20, 2020, which include joint exhibit one through seven and claimant's exhibits 1-5, Def A, B, and D. Exhibit C was excluded. Testimony was received from Ben Earwood on at the August 10, 2021, hearing.

ISSUES

1. Whether claimant was an employee at the time of his alleged injury;
2. Whether he sustained an injury arising out of and in the course of his employment, and if so, the nature and extent of that injury;
3. Whether claimant is entitled to temporary or healing period benefits;
4. Whether claimant is entitled to permanent benefits;
5. Whether claimant is entitled to reimbursement of medical expenses itemized in CE 2;
6. Whether claimant is entitled to an assessment of costs.

The parties agree that if the injury is found to be the cause of a permanent disability, the disability is a scheduled member disability limited to the little finger and compensable under Iowa Code section 85.34(2)(d). The commencement date for permanent partial disability benefits, if any are awarded, is December 6, 2018.

At the time of the alleged injury, the claimant's gross earnings were \$557.64 per week. He was single and entitled to two exemptions. Based on the foregoing, the weekly benefit rate is \$368.35.

FINDINGS OF FACT

On October 31, 2018, claimant sustained an amputation injury to his left little finger while performing work for defendant. In an arbitration hearing of September 2020, defendant argued that claimant was an independent contractor and not an employee. Based on this defendant obtained no workers' compensation insurance and paid no benefits to the claimant.

Mr. Earwood testified that because he did not view claimant as an employee, he did not submit the injury to his insurance carrier. Much of his testimony was a rehash of his testimony of the September 2020 hearing in which he maintained that claimant was not an employee, that 1099s were issued, that no taxes were withheld from any pay, and that Earwood Family Properties, LLC, has never had employees.

He testified that claimant did not submit an employment application and that he, Mr. Earwood, had a discussion with claimant about keeping track of travel for tax purposes. Mr. Earwood testified that claimant had his own tools but that the defendant provided a financial arrangement to help claimant purchase tools. Claimant was not told how many hours a week he needed to work nor was he told when to leave at the end of the day.

He acknowledged that if he did have employees he would have to cover things such as unemployment and workers' compensation insurance. He claimed that if he paid an employee a \$10.00 an hour wage, the take home, after tax payment would be \$6.00 per hour. He denied that paying an hourly rate to an independent contractor saved him money.

After the injury occurred, Mr. Earwood informed claimant that the work injury would not be covered because claimant was an independent contractor.

As previously stated, the undersigned found claimant to be an employee and this decision was upheld by the Commissioner on appeal.

CONCLUSIONS OF LAW

While the hearing report identified a number of issues, all but the claim for penalty were decided in the underlying hearing decision dated February 25, 2021. The only issue considered is whether claimant was entitled to penalty benefits. In this claim

for penalty benefits, the outcome turns on whether the defendant's denial of benefits and subsequent nonpayment of benefits was fairly debatable.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

Iowa Code section 86.13(4) requires that if a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award additional weekly benefits in an amount not to exceed 50 percent of the amount of benefits that were unreasonably delayed or denied. Iowa Code section 85.13(4)(b). A reasonable or probable cause or excuse must satisfy the following requirements:

- (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee;
- (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits;
- (3) The employer or insurance carrier contemporaneously conveyed the basis of the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay or termination of benefits.

(Iowa Code section 86.13(4)(c))

Defendant has the burden to show compliance with this statutory provision in order to avoid the mandatory assessment of a penalty. The law requires proof of a prompt investigation and that factual basis be provided to the injured worker at the time of the denial, delay, or termination of benefits.

Defendant did convey to claimant that no benefits would be provided based on defendant's determination that claimant was not an employee. The question is whether that excuse had a reasonable basis.

In reviewing the evidence of the underlying decision, I find that defendant did not have a reasonable basis to assume claimant was an independent contractor.

The 1099s defendant claims were sent to claimant was not issued to claimant until after the claimant's injury. Of the multifactorial test for deciding whether a worker was an independent contractor as opposed to an employee, only two of nine weighed slightly in favor of an independent contractor status. One was evenly weighted between employee status and independent contractor status.

Defendant is not an unsophisticated business entity. The company owns at least 20 rental properties with 60 tenant doors. Defendant retains the services of between six to ten workers that are paid by the hour. Mr. Earwood testified that he knew if he had employees that he would be responsible for unemployment and workers' compensation

insurance. While he testified that having employees would increase the cost of business, this response is not credible. Employees would require payroll taxes, unemployment and workers' compensation costs and other costs. Labor costs would rise as he would not be able to pay \$10.00 per hour to a worker if taxes were withheld.

By not designating these individuals as employees, defendant was able to escape both tax and insurance costs. Defendant did not have a reasonable basis upon which to deny claimant was an employee.

Based on the foregoing, it is found that claimant is entitled to 50 percent penalty benefits based on the defendant's failure to timely pay workers' compensation benefits when claimant suffered a work injury.

ORDER


THEREFORE, it is ordered:

That defendant is to pay unto claimant fifty (50) percent of the unpaid temporary and permanent benefits owed to claimant until such time as those benefits are made current.

That defendant shall pay accrued benefits in a lump sum.

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 27th day of December, 2021.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Michelle Schneiderheinze (via WCES)

Michael Galvin (via WCES)

Paul Powers (via WCES)

Lori Scardina Utsinger (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.