

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICOLE M. ARNOLD,	:	
	:	
Claimant,	:	
	:	
vs.	:	File No. 5059581
	:	
DICK'S SPORTING GOODS,	:	
	:	A P P E A L
Employer,	:	
	:	D E C I S I O N
and	:	
	:	
FEDERAL INSURANCE COMPANY,	:	
	:	
Insurance Carrier,	:	Head Note Nos: 3000; 3001; 3002
Defendants.	:	

Claimant Nicole Arnold appeals from an arbitration decision filed on November 28, 2018, and from a ruling on claimant's motion for rehearing filed on January 10, 2019. Defendants Dick's Sporting Goods, employer, and its insurer, Federal Insurance Company, respond to the appeal. The case was heard on October 9, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the hearing.

The sole issue on appeal is whether the deputy commissioner correctly calculated claimant's weekly workers' compensation benefit rate.

In the arbitration decision, the deputy commissioner found claimant was working an average of 40 hours a week in the 13 weeks preceding her injury. As a result, the deputy commissioner determined application of Iowa Code section 85.36(6) was more appropriate than section 85.36(9). The deputy commissioner therefore adopted defendants' rate calculation of an average weekly wage of \$296.78 and a weekly benefit rate of \$207.60.

Claimant filed a motion for rehearing. The deputy commissioner granted claimant's motion for rehearing in part, finding claimant worked less than 40 hours per week for the 13 weeks preceding the injury. However, because there was insufficient evidence of whether claimant was earning less than the usual weekly earnings of the regular full-time adult laborer in the industry in which claimant was injured, the deputy commissioner determined section 85.36(6) was still the appropriate code section to

apply. The deputy commissioner therefore did not modify her finding that claimant's rate is \$207.60.

On appeal, claimant again argues section 85.36(9) is applicable. In the alternative, claimant argues the deputy commissioner's rate calculation is incorrect because she used a period of 18 weeks instead of 13 weeks as required by section 85.36(6).

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, those portions of the proposed arbitration decision filed on November 28, 2018, as modified by the ruling on claimant's motion for rehearing filed on January 10, 2019, that relate to the issues properly raised on intra-agency appeal are affirmed in part and modified in part.

I affirm the deputy commissioner's finding that claimant worked less than 40 hours per week for the 13 weeks preceding her injury. I also affirm the deputy commissioner's finding that there was insufficient evidence regarding whether claimant was earning less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which claimant was injured, as required by section 85.36(9). Thus, I affirm the deputy commissioner's determination that section 85.36(6) is the appropriate code section to apply.

However, as correctly noted by claimant, defendants' rate calculation as set forth in Exhibit A considers the 18 calendar weeks preceding claimant's injury - not the 13 weeks set forth in section 85.36(6). Claimant asserts her rate should include the pay periods ending July 17, 2015, through October 9, 2015, which encompasses 14 weeks due to the biweekly nature of claimant's checks. I agree.

Claimant's total gross income during this time frame was \$4,245.63, making her average weekly wage \$303.26 ($\$4,245.63 / 14$). Per the parties' stipulations, she is single and entitled to two exemptions. Using the Iowa Workers' Compensation Manual (rate book) effective July 1, 2015, through June 30, 2016, I find claimant's weekly benefit rate for the injury is \$211.36. The deputy commissioner's rate calculation is therefore modified.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 28, 2018, as modified by the ruling on claimant's motion for rehearing filed on January 10, 2019, is modified to reflect the correct weekly benefit rate of two hundred eleven and 36/100 dollars (\$211.36) for the injury.

Defendants are to pay claimant twelve point five (12.5) weeks of permanent partial disability benefits at the weekly rate of two hundred eleven and 36/100 dollars (\$211.36) commencing October 16, 2015.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) 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 (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

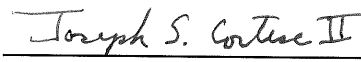
Defendants shall receive credit for all benefits previously paid.

Defendants shall pay one thousand one hundred sixty-one and 50/100 dollars (\$1,161.50) of the independent medical examination of Mark Taylor. M.D.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand two hundred sixty-eight and 50/100 dollars (\$1,268.50), and the parties shall split the costs of the appeal, if any.

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 February, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas M. Wertz Via WCES

Abigail A. Wenninghoff Via WCES