

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DENNIS GOODMAN,

Claimant,

vs.

RUPP TIRE SHOP,

Employer,

and

CONTINENTAL WESTERN
INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

JUN 6 2018

WORKERS' COMPENSATION

File No. 5045203

APPEAL DECISION

Head Note No.: 5-9999

Defendants, Rupp Tire Shop, employer and Continental Western Insurance Company, insurance carrier, appeal from an arbitration decision filed August 2, 2016. Claimant, Dennis Goodman has filed a cross-appeal.

The case was heard on April 22, 2016, in front of the deputy workers' compensation commissioner and considered fully submitted on May 20, 2016. On March 19, 2018, the case was delegated to the undersigned to issue the final agency decision of the intra-agency appeal.

The deputy commissioner awarded claimant healing period benefits from May 11, 2015, to November 19, 2015, and two hundred fifty (250) weeks of permanent partial disability benefits.

The procedural history is relevant in this appeal. On July 30, 2014, defendants filed a motion for summary judgment based on a statute of limitations defense. The motion for summary judgment was granted on September 9, 2014. However, the ruling on the motion was reversed on appeal on September 18, 2015. The basis for the reversal was that the defendants had failed to raise the statute of limitations as an affirmative defense in their answer and therefore the affirmative defense was waived. On September 30, 2015, defendants amended their answer and raised the statute of limitations as an affirmative defense. Defendants then filed a second motion for summary judgment on October 23, 2015, but the motion was denied on March 8, 2016, based on an issue of material fact. Defendants appealed, but the interlocutory appeal was denied on April 11, 2016. No appeal was filed in district court.

Defendants assert on appeal that the deputy commissioner erred in finding that claimant's claim for indemnity benefits is not barred by the statute of limitations as set forth in Iowa Code section 85.26(1). Defendants also contend the deputy erred in finding the claimant sustained 65 percent industrial disability. Defendants further assert on appeal that claim preclusion applies in this case based on the first motion for summary judgment and that claimant's petition is barred by issue preclusion.

Claimant asserts on cross-appeal that the deputy commissioner erred in considering any testimony or evidence submitted with defendants' prior motions for summary judgment, in support of their affirmative defense of statute of limitations. Claimant also asserts that the deputy erred in finding that claimant's industrial disability was limited to 65 percent.

The detailed arguments of the parties have been considered and the record of evidence has been reviewed de novo.

Pursuant to Iowa Code sections 86.24 and 17A.5, I affirm and adopt as the final agency decision those portions of the arbitration decision filed on August 2, 2016, that relate to issues properly raised on intra-agency appeal with the following additional comments, except for the issues of the statute of limitations defense and the preclusion claims which are modified in part.

First, we turn to the issue of the statute of limitations defense. Defendants argue that the claimant's claim should be barred by operation of Iowa Code section 85.26(1) because the case was not filed within three years from the date of the last payment of weekly compensation benefits. The arbitration decision held that the defendants did not prove the date the last payment was mailed, and therefore it was determined that the claimant's petition was not barred by the statute of limitations. At the time of the arbitration hearing defendants did not present any evidence supporting their affirmative defense. Claimant contends that in the arbitration decision the deputy should not have considered any testimony or evidence submitted with the defendants' prior motions for summary judgment.

The deputy and attorneys had a discussion about evidence at the beginning of the arbitration hearing. The defense counsel asked, "[i]f I don't enter the most recent motion for summary judgment on the record today as an exhibit, will it carry forward following this hearing?" The presiding deputy workers' commissioner responded, "[w]ell, motions aren't considered exhibits. You can make your motion. I mean, I understand it's an affirmative defense. *It'll have to go forward on whatever record we make today.*" (Transcript page 12) (emphasis added). The deputy made it clear at the beginning of the hearing that the only evidence that would be considered would be the evidence presented at the arbitration hearing. At the hearing defendants did not seek to introduce any deposition testimony of any witness. Defendants also did not offer evidence of when the last payment of benefits was mailed to Mr. Goodman. As noted in the arbitration decision, "[t]hey (defendants) also assert a statute of limitations defense.

Defendants presented no evidence at hearing but instead rely upon the past testimony and evidence introduced in support of the motions for summary judgment.” (Arbitration Decision p. 7) Because the deputy made it clear at the beginning of the arbitration hearing that any decision would be based on the record made at hearing the undersigned cannot consider any evidence from prior to the hearing. Defendants offered no testimony or evidence to support their affirmative defense at hearing. Therefore, I conclude that defendants failed to carry their burden of proof to show that claimant’s claim is barred by operation of Iowa Code section 85.26.

Next, we turn to the arguments of claim and issue preclusion.

In the arbitration decision, the deputy noted that claim preclusion was raised in the defendants’ brief. However, the deputy stated that claim preclusion had already been addressed in the denial for summary judgement and would not be revisited in the arbitration decision. (Arb. Dec., p. 7) On appeal defendants argue that claim preclusion applies based upon the first ruling for summary judgment. This argument is not persuasive. The doctrine of claim preclusion is based upon the principle that a party “may not split or try his claim piecemeal, but must put in issue and try his entire claim or put forth his entire defense in the case on trial.” See B & B Asphalt Co. v. T.S. McShane Co., 242 N.W.2d 279, 286 (Iowa 1976)(“An adjudication in a *former* suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination. A party must litigate all matters growing out of his claim at one time and not in separate actions.” (emphasis added).

Defendants also argue that claimant’s petition is barred by issue preclusion. This argument fails because in order for issue preclusion to apply the issue must have been raised and litigated in a prior action. See Larson Mfg. Co. Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009)

Issue and/or claim preclusion is not applicable in the present case because the motions for summary judgment and the arbitration proceeding are all the same action. These were all part of a single action, not consecutive actions where preclusion might apply. In the present case, defendants merely amended their answer to include the statute of limitations defense. Defendants have failed to show that issue and/or claim preclusion apply in this case.

The arbitration decision is modified with regard to the issues of the statute of limitations, claim preclusion, and issue preclusion. With regard to all other issues the arbitration decision is affirmed in its entirety.

ORDER

IT IS THEREFORE ORDERED that the decision of August 2, 2016, is AFFIRMED in part and MODIFIED in part. It is ordered:

That defendants are to pay unto claimant two hundred fifty (250) weeks of permanent partial disability benefits at the rate of three hundred sixty-nine and 70/100 dollars (\$369.70) per week from September 20, 2010.

That defendants are to pay unto claimant healing period benefits at the rate of three hundred sixty-nine and 70/100 dollars (\$369.70) per week from May 11, 2015, to November 19, 2015.

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 Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

That defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Defendants shall pay the costs of this appeal including preparation of the hearing transcript.

Signed and filed this 6th day of June, 2018.



ERIN Q. PALS
DEPUTY WORKERS
COMPENSATION COMMISSIONER

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