

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEVON BUTCHER,

Claimant,

vs.

ADVANCE SERVICES, INC.,

Employer,

and

ACE AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5068391.01

A P P E A L

D E C I S I O N

: Head Notes: 1402.20; 1402.40; 1802; 2501;
: 2701; 2907; 3001; 3002;
: 5-9998

Defendants Advance Services, Inc., employer, and its insurer, Ace American Insurance Co., appeal from an arbitration decision filed on August 27, 2021. Claimant Devon Butcher responds to the appeal. The case was heard on May 25, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 28, 2021.

In the arbitration decision, the deputy commissioner found claimant is entitled to receive healing period benefits from October 29, 2019, to December 10, 2019, for the stipulated work injury, which occurred on April 9, 2019. The deputy commissioner also found claimant is entitled to a running award of healing period benefits from October 19, 2020, through the date of the arbitration hearing, and continuing into the future until claimant reaches maximum medical improvement (MMI). The deputy commissioner found claimant had not reached MMI as of the date of the arbitration hearing, and the deputy commissioner found the issue of claimant's permanent disability was not ripe for determination. The deputy commissioner found the lumbar fusion surgery claimant underwent on February 9, 2021, was causally related to the work injury. The deputy commissioner found claimant's gross average weekly earnings for the work injury are \$540.90 per week, and the deputy commissioner found claimant's correct weekly benefit rate for the work injury is \$348.02. The deputy commissioner found defendants are responsible for the requested past medical expenses itemized in claimant's Exhibit 9, totaling \$68,105.43. The deputy commissioner found claimant is entitled to alternate medical care with Jamie Wilson, M.D. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$1,081.80.

Defendants asserts on appeal that the deputy commissioner erred in finding claimant is entitled to receive healing period benefits from October 29, 2019, to December 10, 2019. Defendants assert the deputy commissioner erred in finding claimant is entitled to a running award of healing period benefits. Defendants assert the deputy commissioner erred in finding claimant had not reached MMI as of the date of the hearing, and defendants assert the deputy commissioner erred in finding the issue of claimant's permanent disability was not ripe for determination. Defendants assert the deputy commissioner erred in finding that the lumbar fusion surgery claimant underwent on February 9, 2021, was causally related to the work injury. Defendants assert the deputy commissioner erred in finding defendants are responsible for the requested past medical expenses. Defendants assert the deputy commissioner erred in finding claimant is entitled to alternate medical care with Dr. Wilson. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

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 August 27, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 is entitled to receive healing period benefits from October 29, 2019, to December 10, 2019, for the work injury. I affirm the deputy commissioner's finding that claimant is entitled to a running award of healing period benefits from October 19, 2020, through the date of the arbitration hearing, and continuing into the future until claimant reaches MMI. I affirm the deputy commissioner's finding that claimant had not reached MMI as of the date of the hearing, and I affirm the deputy commissioner's finding that the issue of claimant's permanent disability was not ripe for determination. I affirm the deputy commissioner's finding that the lumbar fusion surgery claimant underwent on February 9, 2021, was causally related to the work injury. I affirm the deputy commissioner's finding that claimant's gross average weekly earnings for the work injury are \$540.90 per week, and I affirm the deputy commissioner's finding that claimant's correct weekly benefit rate for the work injury is \$348.02. I affirm the deputy commissioner's finding that defendants

are responsible for the requested past medical expenses. I affirm the deputy commissioner's finding that claimant is entitled to alternate medical care with Dr. Wilson. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$1,081.80.

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 August 27, 2021, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits from October 29, 2019, to December 10, 2019, at a weekly benefit rate of three hundred forty-eight and 02/100 dollars (\$348.02).

Defendants shall pay claimant healing period benefits at a weekly benefit rate of three hundred forty-eight and 02/100 dollars (\$348.02) from October 19, 2020, through the date of the arbitration hearing, and continuing until such time as the first qualifying factor outlined in Iowa Code section 85.33 shall be achieved.

Defendants shall pay claimant twenty-five and 54/100 dollars (\$25.54) for benefits previously paid at an incorrect rate.

Defendants shall receive credit for all benefits previously paid, as stipulated.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants are responsible for the requested past medical expenses itemized in claimant's Exhibit 9, totaling \$68,105.43.

Claimant's request for alternate medical care is granted. Defendants shall authorize care for claimant with Jamie Wilson, 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 eighty-one and 80/100 dollars (\$1,081.80), and defendants shall pay 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 10th day of January, 2022.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

James Ballard (via WCES)

Timothy Wegman (via WCES)