BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KATHY GAMBLE, Claimant, vs. AG LEADER TECHNOLOGY, Employer, and THE CHARTER OAK FIRE INS. CO., Insurance Carrier, Defendants.	FILED APR 24 2018 WORKERS' COMPENSATION File No. 5054686 APPEAL DECISION Head Note Nos: 1702; 1803; 3800

Defendants AG Leader Technology, employer, and its insurer, The Charter Oak Fire Ins. Co., appeal from an arbitration decision filed on November 8, 2016. Claimant Kathy Gamble responds to the appeal. The case was heard on September 19, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 26, 2016.

The deputy commissioner found claimant sustained 60 percent industrial disability as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on May 9, 2013, which entitles claimant to receive 300 weeks of permanent partial disability (PPD) benefits, commencing on September 30, 2013. The deputy commissioner found defendants are entitled to a credit against the award for 50 weeks of PPD benefits paid prior to the arbitration hearing for the work injury. The deputy commissioner ordered defendants to pay interest on unpaid weekly benefits awarded in the decision pursuant to Iowa Code section 85.30. The deputy commissioner found claimant is not entitled to receive temporary partial disability (TPD) benefits for the work injury. The deputy commissioner found defendants are not entitled to a credit against the award pursuant to Iowa Code section 85.34(7) for weekly payments made in a prior injury claim because the prior claim was settled pursuant to Iowa Code section 85.35(3). The deputy commissioner also ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained 60 percent industrial disability as a result of the work injury.

Defendants assert the award for industrial disability should be reduced substantially. Defendants assert the deputy commissioner erred in finding defendants are not entitled to a credit against the award pursuant to Iowa Code section 85.34(7) for the weekly payments made in the prior injury claim.

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

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 November 8, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 60 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that defendants are entitled to a credit against the award for 50 weeks of PPD benefits paid prior to the arbitration hearing. I affirm the deputy commissioner's finding that claimant is not entitled to receive temporary partial disability (TPD) benefits for the work injury. I affirm the deputy commissioner's finding that defendants are not entitled to a credit against the award pursuant to Iowa Code section 85.34(7) for weekly payments made in the prior injury claim because that prior claim was settled pursuant to Iowa Code section 85.35(3). I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues, with additional analysis concerning interest, in light of changes enacted by the Iowa Legislature in 2017:

CONCLUSIONS OF LAW

I. Statutory Provisions

Iowa Code chapter 85 governs workers' compensation in Iowa. Under the statute:

> Compensation payments shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period

> for which compensation is payable, and if not paid when due, there shall be added to the weekly compensation payments, interest at the rate provided in section 535.3 for court judgments and decrees.

Iowa Code § 85.30.

Iowa Code chapter 535 addresses money and interest generally, including the rate of interest for contracts, loans, and securities, and interest rates on judgments, decrees, and "periodic compensation payments," in addition to other matters. For many years, Iowa Code section 535.3 (2015), provided, in part,

> 1. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13, except for interest due pursuant to section 85.30 for which the rate shall be ten percent per year. . . .

In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa, including Iowa Code section 535.3. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Iowa Code section 535.3 (2017) now provides, in part:

> 1. *a*. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13.
> *b*. Notwithstanding paragraph "*a*", interest due pursuant to section 85.30 shall accrue from the date each compensation payment is due 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.

The legislature did not enact any changes to Iowa Code section 85.30.

2017 Iowa Acts chapter 23 contains an applicability section as follows:

> Section 24. APPLICABILITY
> 1. The sections of this Act amending sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, and 86.42 apply to injuries occurring on or after the effective date of this Act.
> 2. The sections of this Act amending section 85.45 apply to commutations for which applications are filed on or after the effective date of this act.

II. Principles of Statutory Interpretation and Construction

Given the changes to Iowa Code section 535.3 in 2017, it is necessary to consider the effective date of the changes, and whether the changes apply retrospectively to all past due weekly compensation benefits. This inquiry raises issues of statutory interpretation and construction.

Iowa Code chapter 4 (2017) governs the construction of statutes, and sets forth principles of statutory construction and interpretation. The goal of statutory interpretation is "to determine and effectuate the legislature's intent." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing United Fire & Cas. Co. v. St. Paul Fire Marine Ins. Co, 677 N.W.2d 755, 759 (Iowa 2004)). Workers' compensation statutes are interpreted liberally in favor of the injured worker. Denison Mun. Util. v. Iowa Workers' Comp. Comm'r, 857 N.W.2d 230, 237 (Iowa 2014); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010); Jacobson Transp. Co. v. Harris, 778 N.W.2d 192, 198 (Iowa 2010); Stone Container Corp. v. Castle, 657 N.W.2d 485, 489 (Iowa 2003); Danker v. Wilimek, 577 N.W.2d 634, 636 (Iowa 1998)

When interpreting a statute, the court begins with the wording of the statute. Myria Holdings, Inc. v. Iowa Dep't of Rev., 892 N.W.2d 343, 349 (Iowa 2017). When determining legislative intent, the court looks at the express language of the statute, and "not what the legislature might have said." Id. (citing Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008)). If the express language is ambiguous, then the court looks to the legislative intent behind the statute. Sanford v. Fillenwarth, 863 N.W.2d 286, 289 (Iowa 2015) (citing Kay-Decker v. Iowa State Bd. of Tax Review, 857 N.W.2d 216, 223 (Iowa 2014)). A statute is ambiguous when reasonable persons could disagree as to the statute's meaning. Ramirez-Trujillo, 878 N.W.2d at 769 (citing Holstein Elect. v. Brefogle, 756 N.W.2d 812, 815 (Iowa 2008)). An ambiguity may arise when the meaning of particular words is uncertain or when considering the statute's provisions in context. Id.

III. Effective Date of the Change to Iowa Code section 535.3

Considering the principles of statutory construction and interpretation, it is necessary to begin with the text of the statute. Myria Holdings, Inc., 892 N.W.2d at 349. The Act contains express effective date provisions. 2017 Iowa Acts ch. 23. The Act provides Iowa section 85.45 applies to commutation applications filed on or after the effective date of the act, and the changes to Iowa sections 85.16 (intoxication), 85.18 (no private cause of action), 85.23 (notice), 85.26 (statute of limitations), 85.33 (suitable work), 85.34 (date for permanency benefits, compensation for shoulder injuries, determination of permanency benefits, forfeiture of benefits, credits, and preexisting disability), 85.39 (independent medical examinations), 85.71 (injuries occurring outside of Iowa), 86.26 (bonds on judicial review), and 86.42 (judgment by a district court on

award) apply to injuries occurring on or after the effective date of the Act. The Act does not contain express provisions regarding the effective date of Iowa Code sections 85.70 (career vocational training and education program for shoulder injuries), 86.39 (attorney fees), or 535.3 (interest). 2017 Iowa Acts ch. 23.

Under the Iowa Constitution,

> [a]n act of the general assembly passed at a regular session of a general assembly shall take effect on July 1 following its passage unless a different effective date is stated in an act of the general assembly. An act passed at a special session of a general assembly shall take effect ninety days after adjournment of the special session unless a different effective date is stated in an act of the general assembly. The general assembly may establish by law a procedure for giving notice of the contents of acts of immediate importance which become law.

Iowa Const., art. III, § 26. Thus, under the Iowa Constitution, an act passed by the legislature takes effect on July 1 following the act's passage, unless a different effective date is stated in the act.

In this case, the Act contains express effective date provisions for the changes to Iowa sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 86.26, and 86.42. 2017 Iowa Acts ch. 23. The Act does not contain express effective date provisions for Iowa Code sections 85.70, 86.39, or 535.3. The Act was adopted on March 30, 2017. 2017 Iowa Acts ch. 23. Pursuant to the Iowa Constitution, the effective date for Iowa Code sections 85.70, 86.39, or 535.3 is July 1, 2017.

IV. Prospective or Retroactive Applicability

Following de novo review, I affirmed the deputy commissioner's award of 300 weeks of permanent partial disability benefits from September 30, 2013, and providing defendants with a credit of 50 weeks. Temporary partial disability benefits, temporary total disability benefits, healing period benefits, permanent partial disability benefits, and permanent total disability benefits are all types of compensation payments. Iowa Code §§ 85.30, .33, .34. As discussed above, under Iowa Code section 85.30:

> Compensation payments shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to the weekly compensation payments, interest at the rate provided in section 535.3 for court judgments and decrees.

Under the express wording of the statute, temporary partial disability benefits, temporary total disability benefits, healing period benefits, permanent partial disability

benefits, and permanent total disability benefits must be paid "each week . . . during the period for which compensation is payable." Iowa Code § 85.30.

This case concerns a work injury occurring on May 9, 2013. As a general rule, a statute is applied prospectively, unless it appears the legislature has clearly intended for the statute to apply retrospectively. Iowa Code § 4.5; Janda v. Iowa Industrial Hydraulics, Inc., 326 N.W.2d 339, 344 (Iowa 1982).

The Act does not contain a provision stating Section 23, which addresses the interest provisions in Iowa Code section 535.3, applies retrospectively. Iowa Code § 535.3 (2017); 2017 Iowa Acts ch. 23. In Janda, the court noted, "[a]n exception exists, however: when a statute relates solely to a remedy or procedure, it is ordinarily applied both prospectively and retrospectively." Janda, 326 N.W.2d at 344. The Iowa Supreme Court in Janda interpreted the interest provisions contained in Iowa Code section 535.3 to be remedial as opposed to substantive because the interest provisions provide a remedy. Id.

At first blush it may appear Janda is dispositive of this issue, and the statute would apply prospectively and retrospectively. Janda involved interest awarded by the district court on a judgment following a trial. Temporary partial disability benefits, temporary total disability benefits, healing period benefits, permanent partial disability benefits, and permanent total disability benefits are not payable based upon a judgment. Iowa Code section 85.30 requires compensation benefits, which include healing period benefits, to be paid "each week . . . during the period for which compensation is payable."

Unlike a district court judgment, Iowa Code sections 85.30 and 535.3 provide interest shall be paid for each week a compensation payment is payable and not paid when due. Under the general savings provisions for construing statutes,

> 1. The reenactment, revision, amendment, or repeal of a statute does not affect any of the following:
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> . . . .
>
> *b.* Any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under the statute.
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> . . . .
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> *d.* Any investigation, proceeding, or remedy in respect of any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended. . . .

Iowa Code § 4.13(1). Under the principles of construction enacted by the legislature, an amendment to a statute does not affect obligations and liabilities existing at the time of the amendment.

Under the former version of Iowa Code section 535.3 (2013), defendants incurred an obligation to pay ten percent interest on compensation payments for each week compensation was payable and not paid. Thus, defendants incurred an obligation or liability to pay interest at the rate of ten percent on accrued temporary partial disability benefits that were payable and not paid when due from September 30, 2013. As discussed above, on July 1, 2017, the new statute took effect. Defendants are obligated to pay interest on all permanent partial disability benefits payable and not paid from July 1, 2017 to the present at the rate of 2.14 percent, pursuant to the H15 report settled as of the date of claimant's injury, plus two percent.[1]

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 8, 2016, is affirmed in its entirety.

Defendants shall pay claimant three hundred (300) weeks of permanent partial disability benefits at the stipulated weekly rate of five hundred seventy-six and 16/100 dollars ($576.16) commencing on September 30, 2013.

Defendants shall receive credit against this award for the fifty (50) weeks of permanency benefits paid prior to the arbitration hearing.

Defendants 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.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding, and defendants shall pay the costs of the appeal, including the cost of the hearing transcript.

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[1] https://www.federalreserve.gov/datadownload/Download.aspx?rel=H15&series=c3ec77dedd37c9aa112f71c9eba34b50&filetype=csv&label=include&layout=seriescolumn&from=09/01/2013&to=09/30/2013.

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 24th day of April, 2018.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Nicholas W. Platt
Attorney at Law
2900 – 100th St., Ste. 304
Urbandale, IA 50322
plattlawpc@outlook.com

James W. Bryan
Attorney at Law
1089 Jordan Creek Pkwy., Ste. 360
West Des Moines, IA 50266
jbryan@travelers.com