

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

---

DANTE TORIELLO,	:		<b>FILED</b>
Claimant,	:		SEP 14 2017
vs.	:	File No. 5029653	WORKERS' COMPENSATION
MERCY MEDICAL CENTER,	:		
Employer,	:		A P P E A L
and	:		D E C I S I O N
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,	:		
Insurance Carrier, Defendants.	:	Head Note Nos: 1802, 1803, 2905, 4000.2, 5-9998	

---

Claimant Dante Toriello appeals from a review-reopening decision filed on December 29, 2015. Defendants Mercy Medical Center, and its insurer, Indemnity Insurance Company of North America, cross-appeal. The case was heard in two sessions, on October 20, 2014, and on December 15, 2014, and it was considered fully submitted in front of the deputy workers' compensation commissioner on February 23, 2015.

The deputy commissioner found claimant is entitled to review-reopening in this matter because claimant carried his burden of proof that he sustained a physical change of condition and a financial change of condition following an arbitration decision which was filed in this matter on January 20, 2011, for an injury which occurred on August 25, 2006, which arose out of and in the course of claimant's employment with defendant-employer. In the arbitration decision, which was not appealed, claimant was awarded 45 percent industrial disability, which entitled claimant to 225 weeks of permanent partial disability (PPD) benefits, commencing November 20, 2006. Based on the finding of a change of physical condition and a change of financial condition in the review-reopening decision, the deputy commissioner awarded claimant an additional 30 percent industrial disability, which entitles claimant to an additional 150 weeks of PPD benefits, commencing on March 1, 2013. The deputy commissioner found claimant is not entitled to permanent total disability benefits under either a standard industrial disability analysis or under an odd-lot permanent total disability analysis. The deputy commissioner found claimant is entitled to additional healing period benefits from August 12, 2011, through February 12, 2012. The deputy

commissioner found claimant is entitled to a penalty in the amount of \$3,340.63 for an unreasonable delay in the payment of healing period benefits and the deputy commissioner found claimant is entitled to a penalty in the amount of \$21,806.25 for an unreasonable delay in the payment of PPD benefits. The deputy commissioner ordered defendants to reimburse claimant for his requested medical mileage, as itemized in Exhibit 20. The deputy commissioner also ordered defendants to pay claimant's costs of the review-reopening proceeding in the amount of \$1,788.22.

Claimant asserts on appeal that the deputy commissioner erred in awarding claimant 30 percent additional industrial disability because claimant asserts he is entitled to permanent total disability benefits under either a standard industrial disability analysis or under an odd-lot permanent total disability analysis. Claimant also asserts the deputy commissioner erred in failing to award substantially more in penalty benefits.

Defendants assert on cross-appeal that the deputy commissioner erred in finding claimant is entitled to additional healing period benefits from August 12, 2011, through February 12, 2012. Defendants assert the deputy commissioner erred in finding claimant is entitled to review-reopening in this matter and in awarding additional industrial disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to penalty benefits.

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 review-reopening decision filed on December 29, 2015, 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 review-reopening 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 review-reopening in this matter because I affirm the deputy commissioner's finding that claimant carried his burden of proof that he sustained both a physical change of condition and a financial change of condition following the January 20, 2011, arbitration decision. I affirm the deputy commissioner's award of an additional 30 percent industrial disability, which entitles claimant to an additional 150 weeks of PPD benefits, commencing on March 1, 2013. I affirm the deputy commissioner's award of additional healing period benefits from August 12, 2011, through February 12, 2012. I affirm the deputy commissioner's finding that claimant is entitled to a penalty in the amount of \$3,340.63 for an unreasonable delay in the payment of healing period benefits and I affirm the deputy commissioner's finding that claimant is entitled to a penalty in the amount of \$21,806.25 for an unreasonable

delay in the payment of PPD benefits. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement for his requested medical mileage, as itemized in Exhibit 20. I affirm the deputy commissioner's order that defendants pay claimant's costs of the review-reopening proceeding in the amount of \$1,788.22. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the review-reopening decision filed on December 29, 2015, is affirmed in its entirety.

Defendants shall pay claimant healing period benefits at the weekly rate of one thousand two hundred sixty-four and 00/100 dollars (\$1,264.00) for the period of August 12, 2011, through February 12, 2012.

Defendants shall pay claimant three hundred seventy-five (375) weeks of permanent partial disability benefits commencing March 1, 2013, at the weekly rate of one thousand one hundred sixty-three and 00/100 dollars (\$1,163.00).

Defendants shall receive credit for two hundred twenty-five (225) weeks of permanent partial disability benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendants shall pay penalty benefits in the total amount of twenty-five thousand one hundred forty-six and 88/100 dollars (\$25,146.88).

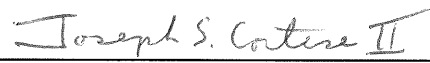
Defendants shall pay interest on the penalty benefits from the date of this decision. See Schadendorf v. Snap On Tools, 757 N.W.2d 330, 339 (Iowa 2008).

Defendants shall pay claimant's prior medical mileage as set forth in Exhibit 20.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of \$1,788.22, and the parties shall split 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 this 14<sup>th</sup> day of September, 2017.

  
\_\_\_\_\_  
JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies To:

Jean Mauss  
Attorney at Law  
6611 University Ave., Ste. 200  
Des Moines, IA 50324-1655  
[jmauss@smalaw.net](mailto:jmauss@smalaw.net)

D. Brian Scieszinski  
Attorney at Law  
801 Grand Ave., Ste. 3700  
Des Moines, IA 50309-2727  
[Scieszinski.brian@bradshawlaw.com](mailto:Scieszinski.brian@bradshawlaw.com)