

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEFFREY WALL,

Claimant,

vs.

CITY OF DES MOINES,

Self-Insured  
Employer,  
Defendant.

File No. 21701301.01

RULING ON DEFENDANT'S  
APPLICATION FOR REHEARING

On May 22, 2023, Defendant moved for a rehearing. The basis of the rehearing motion is alleged erroneous findings regarding the date of injury and the benefit rate. Claimant has not filed a resistance.

Iowa Administrative Code rule 876–4.24 states, in relevant part:

An application for rehearing shall be deemed denied unless the deputy commissioner or workers' compensation commissioner rendering the decision grants the application within 20 days after its filing. For purposes of this rule, motions or requests for reconsideration or new trial or retrial or any reexamination of any decision, ruling, or order shall be treated the same as an application for rehearing.

Defendant argues that when the discovery rule is applied to determine the date of injury in a workers' compensation case, both actual knowledge and imputed knowledge should be considered. See Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 685 (Iowa 2015). Defendant believes that an analysis of whether the claimant had imputed knowledge of the injury was not performed, specifically, that there should be a finding whether the claimant had knowledge of facts sufficient to trigger a duty to investigate the nature, seriousness, and probable compensation of the injury. In support of this, defendant cites City of Harlan v. Thygesen, 977 N.W.2d 523 (Iowa Ct. App. 2022)(Table). Thygesen is an unreported case and to the extent that it differs from published decisions, it is not binding precedent. However, the undersigned grants the motion for rehearing.

The question the defendant poses is whether claimant had knowledge of the facts sufficient to trigger an affirmative duty to investigate prior to 2021. While the defendant is not clear on what investigation tactics the claimant should have undertaken prior to 2021, presumably it is seeking out medical care and/or a medical opinion. However, prior to 2021, the pain was not constant, and it did not lead to him missing any work. It was not

unreasonable for a person in claimant's position to believe the aches were temporary and would abate. It was not unreasonable to believe that so long as claimant could perform the essential functions of his job that pain in the knee would not result in a permanent adverse impact on his employment. Based on the aforementioned facts, it is found a reasonable worker in claimant's circumstances would have investigated whether the nature, seriousness, and probable compensation of his injury at or about October, 2021.

Defendant also argues the proposed weekly benefit rate is \$773.68 and not \$1,020.82 as ordered by the arbitration decision. The parties stipulated the weekly benefit rate was \$773.68. The order section erroneously ordered the benefit rate to be paid at \$1,020.82 per week. Defendant's motion for rehearing is granted.

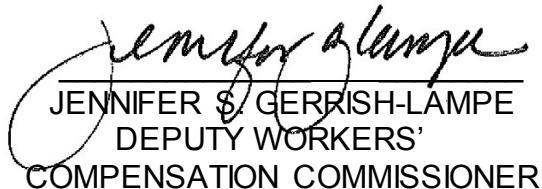
According to the Rate book for 7/1/21 - 6/30/22, a gross weekly wage of \$1,203 with a status of married with 2 exemptions, results in a weekly rate of \$777.08 not \$773.68. The order section shall read:

That defendant is to pay unto claimant 81.4 weeks of permanent partial disability benefits at the rate of seven hundred seventy-seven and 08/100 dollars (\$777.08) per week from June 6, 2022.

THEREFORE IT IS ORDERED, defendant's motion is granted. It is found that the date upon which claimant should have investigated his work-related injury began on or around October, 2021. In regard to the indemnity benefits, the order of the Proposed Arbitration Decision shall read as follows:

That defendant is to pay unto claimant 81.4 weeks of permanent partial disability benefits at the rate of seven hundred seventy-seven and 08/100 dollars (\$777.08) per week from June 6, 2022.

Signed and filed this 6th day of June, 2023.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Molly Tracy (via WCES)