

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL M. HOEFER,

Claimant,

vs.

CB RICHARD ELLIS, INC.,

Employer,

and

ZURICH AMERICAN INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

**APR 18 2018**

**WORKERS' COMPENSATION**

File No. 5052635

**A P P E A L**

**D E C I S I O N**

Head Note Nos: 1402.40; 1803; 1803.1;  
2907; 3002; 4000.2;  
5-9998

Defendants CB Richard Ellis, Inc., employer, and its Insurer, Zurich American Insurance Company, appeal from an arbitration decision filed on October 27, 2016. Claimant Daniel M. Hoefer cross-appeals. The case was heard on July 13, 2016, and it was considered fully submitted in front of the deputy workers' compensation commissioner on August 12, 2016.

The deputy commissioner found claimant carried his burden of proof that he sustained both a permanent scheduled member injury and a permanent sequela injury to his body as a whole as a result of the stipulated injury which arose out of and in the course of claimant's employment with defendant-employer on June 28, 2012. The deputy commissioner found claimant's permanent disability resulting from the work injury is properly compensated as an industrial disability. The deputy commissioner found claimant sustained 20 percent industrial disability as a result of the work injury, which entitles claimant to receive 100 weeks of permanent partial disability (PPD) benefits, commencing on August 23, 2012. The deputy commissioner found claimant's average weekly wage for the work injury is \$958.00, and the deputy commissioner found claimant's weekly benefit rate for the injury, classification married with two exemptions, is \$621.59. The deputy commissioner found claimant is entitled to receive penalty benefits in the amount of \$1,200.00 because it was found defendants unreasonably delayed the payment of PPD benefits. The deputy commissioner found claimant is not entitled to reimbursement from defendant under Iowa Code section 85.39 for the \$5,653.90 charge from Robin Sassman, M.D., for her independent medical evaluation (IME) of claimant performed on March 30, 2016. The deputy commissioner

ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$3,165.90.

Defendants assert on appeal that the deputy commissioner erred in finding claimant sustained both a permanent scheduled member injury and a permanent sequela injury to the body as a whole as a result of the work injury. Defendants assert the deputy commissioner erred in finding claimant's permanent injury extends into the body as a whole and in awarding anything beyond scheduled member permanent functional disability. Defendants assert the deputy commissioner erred in awarding claimant 20 percent industrial disability. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive penalty benefits because defendants assert the deputy commissioner erred in finding defendants unreasonably delayed the payment of PPD benefits.

On cross-appeal, claimant asserts the deputy commissioner erred in failing to award substantially more than 20 percent industrial disability. Claimant asserts the deputy commissioner erred in failing to award substantially more than \$1,200.00 in penalty benefits. Claimant asserts the deputy commissioner erred in failing to award claimant's additional requested costs of the arbitration proceeding in the amount of \$2,452.75.

Those portions of the proposed agency 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 October 27, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all 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 carried his burden of proof that he sustained both a permanent scheduled member injury and a permanent sequela injury to his body as a whole as a result of the June 28, 2012, work injury. I affirm the deputy commissioner's finding that claimant's permanent disability resulting from the work injury is properly compensated as an industrial disability. I affirm the deputy commissioner's finding that claimant sustained 20 percent industrial disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant's average weekly wage for the work injury is \$958.00 and claimant's weekly benefit rate for the injury is \$621.59. I affirm the deputy commissioner finding that claimant is entitled to receive penalty benefits in the amount of \$1,200.00 because I affirm the deputy commissioner's finding that defendants unreasonably delayed the payment of PPD benefits. I affirm the deputy

commissioner's finding that claimant is not entitled to reimbursement from defendant under Iowa Code section 85.39 for Dr. Sassman's IME charge. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$3,165.90. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on October 27, 2016, is affirmed in its entirety.

Defendants shall pay claimant one hundred (100) weeks of permanent partial disability benefits, commencing on August 23, 2012, at the weekly rate of six hundred twenty-one and 59/100 dollars (\$621.59).

Defendants shall receive a credit for all 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 claimant one thousand two hundred and 00/100 dollars (\$1,200.00) in penalty benefits.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of three thousand one hundred sixty-five and 90/100 dollars (\$3,165.90), 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 18<sup>th</sup> day of April, 2018.

  
JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

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