

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NOAH J. KRELL,

Claimant,

vs.

LARSON CONTRACTING CENTRAL,  
LLC,

Employer,

and

AUTO-OWNERS INSURANCE,

Insurance Carrier,  
Defendants.

**FILED**

**APR 26 2019**

**WORKERS' COMPENSATION**

File No. 5055555

**A P P E A L**

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

: Head Note Nos: 1100; 1105; 1107; 1402.30;  
: 1802; 1803; 2501; 2502;  
: 3001; 2907; 5-9998

Defendants Larson Contracting Central, LLC, employer, and its insurer, Auto-Owners Insurance, appeal from an arbitration decision filed on November 1, 2017. Claimant Noah J. Krell, cross-appeals from the arbitration decision and from the ruling on claimant's request for rehearing filed on November 7, 2017. The case was heard on March 24, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 7, 2017.

The deputy commissioner found the stipulated incident which occurred on July 21, 2015, which resulted in physical injuries to claimant, arose out of and in the course of claimant's employment with defendant-employer, thus entitling claimant to receive workers' compensation benefits. The deputy commissioner found claimant was not engaging in horseplay at the time of the injury and the deputy commissioner found this claim is not barred by Iowa Code section 85.16(3). The deputy commissioner found that although the injury occurred approximately 25 feet away from the workplace, claimant was in the course and the scope of his employment when the injury occurred. The deputy commissioner found claimant is entitled to receive healing period benefits from July 22, 2015, through September 28, 2015. The deputy commissioner found claimant sustained scheduled member functional disability of nine percent of the right lower extremity, which entitles claimant to receive 19.8 weeks of permanent partial disability (PPD) benefits, commencing on September 29, 2015. The deputy commissioner found claimant's gross average weekly wage for the injury is \$512.72, with the result that claimant's weekly benefit rate for the injury, classification single with one exemption, is \$323.74. The deputy commissioner found claimant is entitled to

payment or reimbursement by defendants for the requested past medical expenses itemized in Exhibit 17. The deputy commissioner found that pursuant to Iowa Code Section 85.39, claimant is not entitled to reimbursement for the cost of the IME of claimant performed by Sunil Bansal, M.D., on September 2, 2016. The deputy commissioner found that pursuant to Iowa Code section 86.40, Dr. Bansal's total charge in the amount of \$1,580.00 for records review and for drafting his report cannot be assessed against defendants as a cost because Dr. Bansal did not differentiate how much was charged for records review and how much was charged for drafting his report, with the only recoverable portion of the charge being the drafting of the report. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$113.48.

Defendants assert on appeal that the deputy commissioner erred in finding that the July 21, 2015, incident which resulted in claimant's injury was work-related and in finding claimant is entitled to receive worker's compensation benefits. Defendants assert the deputy commissioner erred in finding claimant was not engaging in horseplay at the time of the injury. Defendants assert the deputy commissioner erred in finding this claim is not barred by Iowa Code section 85.16(3). Defendants assert because the injury occurred approximately 25 feet away from the workplace, the deputy commissioner erred in finding claimant was in the course and scope of his employment when the injury occurred. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive healing period benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to receive PPD benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to payment or reimbursement by defendants for the requested past medical expenses itemized in Exhibit 17. Defendants assert the deputy commissioner erred in ordering defendants to pay claimant's costs of the arbitration proceeding.

Claimant asserts on cross-appeal that the deputy commissioner erred in finding Dr. Bansal's total charge for records review and for drafting his report cannot be assessed against defendants as a cost.

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 November 1, 2017, and the ruling on claimant's request for rehearing filed on November 7, 2017, 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 the July 21, 2015, incident which resulted in claimant's injury was work-related and I affirm the deputy commissioner's finding that claimant is entitled to receive worker's compensation benefits. I affirm the deputy commissioner's finding that claimant was not engaging in horseplay at the time of the injury. I affirm the deputy commissioner's finding that this claim is not barred by Iowa Code section 85.16(3). I affirm the deputy commissioner's finding that although the injury occurred approximately 25 feet away from the workplace, claimant was in the course and the scope of his employment when the injury occurred. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from July 22, 2015, through September 28, 2015. I affirm the deputy commissioner's finding that claimant sustained scheduled member functional disability of nine percent of the right lower extremity, which entitles claimant to receive 19.8 weeks of PPD benefits, commencing on September 29, 2015. I affirm the deputy commissioner's finding that claimant's gross average weekly wage for the injury is \$512.72, and that claimant's weekly benefit rate for the injury is \$323.74. I affirm the deputy commissioner's finding that claimant is entitled to payment or reimbursement by defendants for the requested past medical expenses itemized in Exhibit 17. I affirm the deputy commissioner's finding that pursuant to Iowa Code Section 85.39, claimant is not entitled to reimbursement for the cost of Dr. Bansal's IME. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 86.40, Dr. Bansal's total charge in the amount of \$1,580.00 for records review and for drafting his report cannot be assessed against defendants as a cost because Dr. Bansal did not differentiate how much was charged for records review and how much was charged for drafting the report, with the only recoverable portion of the charge being the drafting of the report. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$113.48.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 1, 2017, and the ruling on claimant's request for rehearing filed on November 7, 2017, are affirmed in their entirety.

All weekly benefits shall be paid at the weekly rate of three hundred twenty-three and 72/100 dollars (\$323.72).

Defendants shall pay claimant weekly healing period benefits from July 22, 2015, through September 28, 2015.

Defendants shall pay claimant nineteen point eight (19.8) weeks of permanent partial disability benefits commencing on September 29, 2015.

Defendants shall pay all accrued weekly benefits in a lump sum, along with applicable interest calculated pursuant to Iowa Code section 85.30.

Defendants shall pay, reimburse, or otherwise satisfy and hold claimant harmless for all past medical expenses itemized in Exhibit 17.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred thirteen and 48/100 dollars (\$113.48), 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 on this 26<sup>th</sup> day of April, 2019.



---

JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies to:

Jason Neifert  
Attorney at Law  
1441 – 29<sup>TH</sup> Street, Suite 111  
West Des Moines, Iowa 50266  
[JNeifert@nbolawfirm.com](mailto:JNeifert@nbolawfirm.com)

Matthew R. Phillips  
Attorney at Law  
801 Grand Ave., Ste. 3700  
Des Moines, IA 50309-8004  
[Phillips.matthew@bradshawlaw.com](mailto:Phillips.matthew@bradshawlaw.com)