



## Case Summary and Issue

Bernard Pettis appeals the decision of the Full Worker's Compensation Board (the "Board") that affirmed the decision of a hearing member awarding him, among other compensation, \$19,811.60 in temporary total disability ("TTD") benefits. Pettis argues that he should have been awarded \$26,914.00 in TTD benefits and raises the sole issue of whether the "Board erred in upholding the Single Hearing Member's decision of June 24, 2009, based upon a clear mathematical error on the face of that decision." Appellant's Brief at 1. Concluding that Pettis has not shown clear error in the Board's computation of benefits, we affirm.

## Facts and Procedural History

On June 7, 2005, Pettis suffered a compensable neck injury during the course of his work as a material handler for appellee R.R. Donnelley & Sons ("Donnelley"). The injury resulted from his being made to stack heavy bundles atop a crate more than six feet high when the safety limit was four feet. Pettis's claim was initially denied by Donnelley's worker's compensation carrier, MetLife.

In July 2005, Pettis filed with the Board an application for adjustment of claim. On May 12, 2008, a hearing was held before hearing member Daniel G. Foote. The resulting decision, issued on May 21, 2008, found that:

2. [Pettis] is entitled to compensation for temporary total disability beginning June 8, 2005 through and including May 9, 2007.
3. [Donnelley] is entitled to a credit for any wages paid to [Pettis] for work performed between June 8, 2005 and May 9, 2007.
4. [Donnelley] is entitled to a credit for any non-worker's compensation disability payments it made to [Pettis] during the same period.

5. [Pettis] is entitled to compensation for permanent impairment based on the compensable neck condition as reported by Dr. Buschbacher in his report of May 9, 2007.
6. [Pettis] is entitled to an award of statutory medical benefits for medical services and supplies provided in connection with [Pettis]'s compensable neck condition beginning June 7, 2005 and ending May 9, 2007.

Appellant's Appendix at 6-7. The decision did not specify the dollar amounts of the total award, its TTD component, or the two credits to Donnelley that were found applicable. As a result, the parties were unable to agree on the amount of benefits awarded and agreed that clarification should be sought from a single hearing member.

On December 17, 2008, Donnelley filed a "Response to [Pettis]'s Motion to Remand Case to Single Hearing Level for Clarification of Benefits Awarded in Original Award." Appendix of Appellee at 8. In this filing, Donnelley made the following representations as relevant to its credit for non-worker's compensation disability payments made to Pettis. First, Donnelley represented that MetLife paid Pettis a total of \$29,021.27 for short- and long-term disability. Second, Donnelley stated MetLife was seeking reimbursement of \$21,918.67, leaving \$7,102.40 which Pettis did not have to repay. Therefore, Donnelley claimed, it was entitled to a credit of \$7,102.40 toward Pettis's TTD award.

On May 18, 2009, a hearing was held before hearing member Andrew S. Ward. The resulting decision, issued on June 24, 2009, found that Pettis was entitled to:

Temporary total disability benefits . . . from June 8, 2005 through and including May 9, 2007 in the amount of Nineteen Thousand Eight Hundred Eleven Dollars and Sixty Cents (\$19,811.60) for one hundred (100) weeks of TTD at Two Hundred Sixty-Nine Dollars and Fourteen Cents (\$269.14) per week[.]

Appellant's App. at 9. In addition, the June 24, 2009 decision determined the other amounts comprising Pettis's award: a permanent partial impairment benefit of \$40,000 based on a 28-percent rating to the whole person, statutory medical expenses of \$11,243.61, and out-of-pocket expenses of \$2,989.40, for a total award of \$74,044.61.

Pettis sought review of the June 24, 2009 hearing member's decision, and the Full Board, following a hearing, adopted and affirmed that decision. Pettis now appeals pro se.<sup>1</sup>

### Discussion and Decision

#### I. Standard of Review

“On appeal, we review the decision of the Board, not to reweigh the evidence or judge the credibility of witnesses, but only to determine whether substantial evidence, together with any reasonable inferences that flow from such evidence, support the Board's findings and conclusions.” Bertoch v. NBD Corp., 813 N.E.2d 1159, 1160 (Ind. 2004) (quotation omitted). We are bound by the factual determinations of the Board and may not disturb them unless the undisputed evidence leads inescapably to a contrary conclusion. Bowles v. Second Injury Fund, 827 N.E.2d 142, 146 (Ind. Ct. App. 2005), trans. denied; see Ind. Code § 22-3-4-8(b). When, as here, a single hearing member enters written findings and conclusions and the Board adopts the hearing member's decision, the findings and conclusions become those of the Board. Young v. Marling, 900 N.E.2d 30, 34-35 (Ind. Ct. App. 2009).

#### II. Computation of TTD Award

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<sup>1</sup> Pettis's appellant's brief was filed by attorney John B. Steinhart, but Pettis discharged Steinhart and this court subsequently granted Steinhart's motion to withdraw his appearance. No new counsel has appeared on Pettis's behalf.

Initially we note that Pettis does not challenge the sufficiency of the evidence supporting the Board's findings. Neither does he challenge the legal propriety of the May 21, 2008 hearing member's finding that Donnelley is entitled to a credit for any non-worker's compensation disability payments it made to Pettis. Pettis's sole claim of error is that the Board "improperly calculated One Hundred (100) weeks of [TTD] payments, at a rate of \$269.14 per week, to be \$19,811.60 instead of \$26,914.00" and therefore he should have been awarded an additional \$7,102.40. Appellant's Br. at 6.

Reading the Board's computation of TTD benefits in light of the May 21, 2008 finding that Donnelley was entitled to a credit, it is not clear that the discrepancy Pettis challenges resulted from a mathematical error. The May 21, 2008 award established, and Pettis apparently did not thereafter dispute, that Donnelley should receive a credit for any non-worker's compensation disability payments it made to Pettis. At issue in the May 18, 2009 hearing was not the correctness of the original award, but only clarification of the amount of benefits awarded. No transcript of this hearing or verified statement of the evidence has been included in the record for this appeal, and in his brief Pettis states that the hearing was neither recorded nor transcribed.<sup>2</sup> Neither do we have before us any transcript or exhibits from the Full Board hearing held on February 25, 2010. As a result, we are unable to determine what, if any, evidence or stipulations were offered in support of Donnelley's position that its credit for non-worker's compensation disability payments made to Pettis through its worker's compensation carrier, MetLife, was \$7,102.40. Nonetheless, given that the difference between \$26,914.00 in TTD (which would have resulted from the base

calculation of \$269.14 per week multiplied by 100 weeks) and the \$19,811.60 actually awarded exactly matches Donnelley's proposed credit of \$7,102.40, we infer that the hearing member, and the Board by affirmation, adopted Donnelley's computation of a \$7,102.40 credit. Pettis makes no explicit argument that the credit should have been computed differently or not at all.

Given the sparse appellate record and that Pettis makes no explicit argument that Donnelley's credit should have been computed differently, we decline to sua sponte review whether sufficient evidence supports the Board's implicit computation of Donnelley's credit. "It is a cardinal rule of appellate review that the appellant bears the burden of showing reversible error by the record . . . ." Marion-Adams Sch. Corp. v. Boone, 840 N.E.2d 462, 468 (Ind. Ct. App. 2006). Pettis has not met his burden to show an obvious mathematical error or other clear error in the Board's computation of his TTD award, and we therefore affirm.

#### Conclusion

Pettis has not shown clear error in the Board's computation of his TTD award. The Board's decision is therefore affirmed.

Affirmed.

RILEY, J., and BROWN, J., concur.

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<sup>2</sup> Pettis's appellate counsel did not participate in the May 18, 2009 hearing, where Pettis appeared pro se.