

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN ELMER,

Claimant,

vs.

CLAYTON COUNTY RECYCLING,

Employer,

and

AMERICAN INTERSTATE INSURANCE
COMPANY,

Insurance Carrier,

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5030948

RULING
ON
REHEARING

FILED

OCT 14 2013

WORKERS' COMPENSATION

Defendants, Clayton County Recycling and American Interstate Insurance Company, on October 3, 2013, filed a motion for reconsideration of the remand decision filed in this matter on September 27, 2013. Claimant has not resisted the motion for reconsideration. Defendants have filed the motion for reconsideration despite being fully successful upon remand. Therefore no justiciable issue is apparent for reconsideration upon motion by defendants.

Regardless, defendants assert in their motion that the Division of Workers' Compensation should accept the interpretation and findings of the Honorable District Court Judge contained in his well-reasoned remand order and overrule the division's interpretation of the Supreme Court's holding as to credit for overpayment of benefits found in Swiss Colony, Inc. v. Deutmeyer; 789 N.W.2d 129 (Iowa 2010). The division notes that its own prior precedent of credit in overpayment situations corresponds with the findings of the district court's ultimate interpretation.

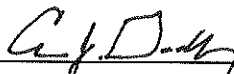
In support of their argument defendants assert that the division and commissioner "should see" from the text of the Supreme Court decision that the issue of

a credit for temporary disability benefit overpayments was not before the court and therefore only credit for overpayment of permanent partial disability benefits were addressed in the court's holding. In support of such assertion, which was adopted with greater analysis by the district court, defendants cite to the language of the prior credit award from the district court on page 133 of the North Western Reporter, Second Series. Having again reviewed the Supreme Court decision, the undersigned is unwilling to look beyond the text of the actual decision for an interpretation of the holding. In the decision the Supreme Court relied upon expansive language as to credits when finding: "The plain language of section 85.34(5) directs that the overpayment of *any* weekly benefits be credited to payments for subsequent injuries." Duetmeyer, 789 N.W.2d at 137. While defendants may likely be correct in their recitation of the underlying procedural history of the case of Swiss Colony, Inc. v. Deutmeyer, the undersigned is unwilling to go beyond the recitation of the procedural history actually found in the published decision of the Iowa Supreme Court. As such, the motion for reconsideration shall be denied.

ORDER

IT IS THEREFORE ORDERED THAT defendants' motion for reconsideration is DENIED.

Signed and filed this 14TH day of October, 2013.



CHRISTOPHER J. GODFREY
WORKERS' COMPENSATION
COMMISSIONER

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