

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUDITH ANN NABER,

Claimant,

vs.

T & D HORIZONS, INC. d/b/a
COUNTRY JUNCTION RESTAURANT,

Employer,

and

ILLINOIS CASUALTY COMPANY,

Insurance Carrier,
Defendants,

File No. 5060433

A P P E A L
D E C I S I O NHead Notes: 1108.50; 1402.40; 1803;
2501, 2907; 5-9998

Defendants T & D Horizons, Inc., d/b/a/ Country Junction Restaurant, employer, and its insurer, Illinois Casualty Company, appeal from an amended and substituted arbitration decision filed on January 6, 2021. Claimant Judith Ann Naber cross-appeals. The case was heard on September 23, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 23, 2020.

In the original arbitration decision, the deputy commissioner found claimant's right knee replacement surgery was casually related to the April 23, 2016, work injury. The deputy commissioner found defendants responsible for all reasonable and necessary medical expenses associated with the knee replacement along with the medical expenses related to claimant's first knee surgery that were paid by Medicare and claimant's Medicare supplemental insurer. The deputy commissioner found claimant sustained 16 percent scheduled member functional right lower extremity impairment as a result of the work injury. However, the deputy commissioner found claimant failed to prove her entitlement to any additional reimbursement for her independent medical examination or supplemental reports.

In the amended and substituted arbitration decision, the deputy commissioner considered the updated impairment rating assigned by Robin Sassman, M.D., after claimant's total knee replacement surgery. The deputy commissioner found claimant sustained 37 percent scheduled member functional right lower extremity impairment as a result of the work injury. The remainder of the deputy commissioner's findings were unchanged.

On appeal, defendants assert the deputy commissioner erred by attributing claimant's total knee replacement surgery to the work injury, and by awarding claimant weekly benefits.

On cross-appeal, claimant asserts she is entitled to additional reimbursement for her IME and for Dr. Sassman's supplemental reports.

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 amended and substituted arbitration decision filed on January 6, 2021 which relate to the issues properly raised on intra-agency appeal.

I affirm the deputy commissioner's finding that claimant's right knee replacement surgery was causally related to the April 23, 2016, work injury. I affirm the deputy commissioner's finding that defendants are responsible for all reasonable and necessary medical expenses associated with the knee replacement surgery, along with the medical expenses related to claimant's first knee surgery that were paid by Medicare and/or claimant's Medicare supplement insurer. I affirm the deputy commissioner's finding that claimant sustained 37 percent impairment of her right lower extremity. I affirm the deputy commissioner's finding that claimant is not entitled to any additional reimbursement for her IME or for Dr. Sassman's supplemental reports.

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

ORDER

IT IS THEREFORE ORDERED that the amended and substituted arbitration decision filed on January 6, 2021, is affirmed in its entirety.

All weekly benefits shall be paid at the stipulated weekly rate of two hundred six and 75/100 dollars (\$206.75).

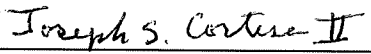
Defendants shall pay claimant eighty-one point four (81.4) weeks of permanent partial disability benefits commencing on the stipulated commencement date of March 29, 2017.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Pursuant to rule 876 IAC 4.33, each party shall bear their own costs of the arbitration hearing, and the parties shall split the cost 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 (SROI) as required by this agency.

Signed and filed on this 10th day of May, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Dirk Hamel (via WCES)

Mark A. Woollums (via WCES)

Lori N. Scardina Utsinger (via WCES)