

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DESHON WYATT,

Claimant,

vs.

BERTCH CABINET
MANUFACTURING,

Employer,

and

EMC PROPERTY & CASUALTY
COMPANY,

Insurance Carrier,
Defendants.

File No. 5060912

A P P E A L

D E C I S I O N

Head Notes: 1402.40; 1801; 1803; 2502;
2701; 2901; 5-9998

Claimant DeShon Wyatt appeals from an arbitration decision filed on April 24, 2019. Defendants Bertch Cabinet Manufacturing, employer, and its insurer, EMC Property & Casualty Company, respond to the appeal. The case was heard on March 12, 2019, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 12, 2019.

The deputy commissioner found claimant failed to carry his burden of proof to establish he sustained permanent disability as a result of his stipulated work-related right shoulder injury which occurred on February 15, 2016. The deputy commissioner found claimant is entitled to receive nothing in the way of permanent partial disability benefits. The deputy commissioner found claimant did carry his burden of proof to establish he sustained temporary disability as a result of the work injury, and the deputy commissioner found claimant is entitled to receive healing period benefits from March 28, 2016, through May 4, 2016. The deputy commissioner found that because claimant proved only a temporary injury to his right shoulder, claimant is not entitled to receive alternate medical care. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of the independent medical evaluation (IME) of claimant performed by John Kuhnlein, D.O., on September 13, 2017. The deputy commissioner also declined to tax the charge for Dr. Kuhnlein's IME report as a cost to be reimbursed to claimant by defendants pursuant to rule 876 IAC 4.33. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof to establish he sustained permanent disability as a result of the work injury. Claimant asserts the deputy commissioner erred in failing to award claimant a substantial amount of industrial disability for the work injury. Claimant asserts the deputy commissioner erred in failing to award claimant alternate medical care for the work injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Kuhnlein's IME or, in the alternative, claimant asserts the deputy commissioner should have taxed the charge for Dr. Kuhnlein's IME report as a cost pursuant to rule 876 IAC 4.33.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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 April 24, 2019, 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 claimant failed to carry his burden of proof to establish he sustained permanent disability as a result of the February 15, 2016, work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing in the way of permanent partial disability benefits. I affirm the deputy commissioner's finding that claimant did carry his burden of proof to establish he sustained temporary disability as a result of the work injury. I affirm the deputy commissioner's finding that claimant is entitled to receive healing period benefits from March 28, 2016, through May 4, 2016. I affirm the deputy commissioner's finding that because claimant proved only a temporary injury to his right shoulder, claimant is not entitled to receive alternate medical care. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Kuhnlein's IME. I affirm the deputy commissioner's decision not to tax the charge for Dr. Kuhnlein's IME report as a cost pursuant to rule 876 IAC 4.33. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$100.00.

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on April 24, 2019, is affirmed in its entirety.

Claimant shall take nothing in the way of permanent partial disability benefits.

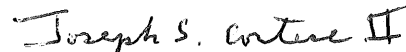
Defendants shall pay claimant temporary total disability benefits at the stipulated weekly rate of two hundred seventy-two and 52/100 dollars (\$272.52), from March 28, 2016, through May 4, 2016.

Defendants shall pay accrued weekly benefits, including but not limited to the underpayment of the weekly rate, 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, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one hundred and no/100 dollars (\$100.00), and claimant shall pay 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 30th day of March, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Joanie L. Grife

Kent Smith