



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, with the brief additional analysis set forth below.

I affirm the deputy commissioner's finding that claimant failed to meet his burden to prove he sustained permanent disability as a result of the work injury. In doing so, I affirm the deputy commissioner's finding that the opinions of claimant's IME physician, Mark Taylor, M.D., are not persuasive. I affirm the deputy commissioner's finding that the opinions of Michael Cullen, M.D., as supported by Laurence Krain, M.D. and Lara Lazarre, M.D., are most persuasive.

I also affirm the deputy commissioner's finding that claimant was not a credible witness. While I performed a de novo review, I give considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed the credibility of claimant in this case. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

In fact, I find the record is supportive of the deputy commissioner's credibility findings. While I acknowledge the surveillance footage in this case was brief and occurred over a limited period of days in July 2017, claimant's actions in the footage are simply not consistent with the symptoms he was reporting to his medical providers in the comparable timeframe.

In the summer and fall of 2017, claimant was reporting daily headaches and migraines that were exacerbated by standing, physical exertion, and sunlight. (See, e.g., Joint Exhibit 3, page 12; JE 4, p. 13; JE 5, p. 30). Importantly, however, claimant is seen in the surveillance footage walking and moving about nonchalantly and without issue. More specifically, in the July 22, 2017, footage, claimant is seen outside with his sunglasses off at various points over the course of several hours. This evidence, coupled with the evidence set forth by the deputy commissioner in her arbitration decision, supports the deputy commissioner's finding that claimant was not a credible witness. The deputy commissioner's credibility findings are therefore affirmed.

With this additional analysis, I affirm the deputy commissioner's finding that claimant did not satisfy his burden to prove he sustained any permanent disability as a result of his work-related injuries.

With some additional brief analysis, I likewise affirm the deputy commissioner's finding that claimant did not meet the requirements for reimbursement for his IME as set forth in Iowa Code section 85.39. On appeal, claimant argues a full-duty release from an employer-retained physician gives rise to an inference that the employer-retained physician does not believe claimant has permanent impairment resulting from the work injury.

As noted in my past decisions, however, the Iowa Supreme Court adopted a strict and literal interpretation of Iowa Code section 85.39 in DART v. Young, 867 N.W.2d 839 (Iowa 2015). As a result, I have adopted a similar strict interpretation of the pre-requisites for reimbursement as set forth in Iowa Code section 85.39. See Reh v. Tyson Foods, Inc., File No. 5053428 (App. March 2018). In this case, there was no evaluation of permanent disability before claimant obtained his IME with Dr. Taylor. As a result, the reimbursement provisions of Iowa Code section 85.39 were not triggered.

With this additional analysis, I affirm the deputy commissioner's finding that claimant is not entitled to reimbursement for his IME under Iowa Code section 85.39.

I affirm the deputy commissioner's decision to not assess claimant's IME report as a cost.

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

#### ORDER


IT IS THEREFORE ORDERED that the arbitration decision filed on May 13, 2019, is affirmed in its entirety with the additional analysis set forth above.

Claimant shall take nothing further from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, 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 20<sup>th</sup> day of April, 2020.

  
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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Emily Anderson      Via WCES

Laura Schultes      Via WCES

Jordan A. Kaplan    Via WCES