

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CASSIDY HUBBARD-McKINNEY,

Claimant,

vs.

NEWTON COMMUNITY SCHOOL
DISTRICT,

Employer,

and

EMCASCO INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5066276

A P P E A L

D E C I S I O N

Head Notes: 1108.50; 1402.30; 1402.40;
1803; 2907; 5-9999

Defendants Newton Community School District, employer, and its insurer, EMCASCO Insurance Company, appeal from an arbitration decision filed on February 2, 2021. Claimant Cassidy Hubbard-McKinney responds to the appeal. The case was heard on May 28, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 29, 2020.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proof to establish that the stipulated February 19, 2018, work injury caused claimant to sustain a material aggravation of the pre-existing degenerative condition of her left knee, with the result that claimant sustained nine percent permanent functional scheduled member impairment of the left lower extremity as a result of the work injury. The award entitles claimant to receive 19.8 weeks of permanent partial disability benefits commencing on February 28, 2019. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

Defendants assert on appeal that the deputy commissioner erred in finding claimant proved she sustained a material aggravation of the pre-existing degenerative condition of her left knee as a result of the work injury, and defendants assert the deputy commissioner erred in finding claimant sustained nine percent permanent impairment of the left lower extremity as a result of the work injury. Defendants assert the award for permanent impairment should be reduced to two percent of the left lower extremity.

Claimant asserts 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 February 2, 2021, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient 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 proved she sustained a material aggravation of the pre-existing degenerative condition of her left knee as a result of the work injury. I affirm the deputy commissioner's finding that claimant sustained nine percent permanent impairment of the left lower extremity as a result of the work injury. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding causation and permanent impairment with the following additional analysis:

The deputy commissioner based his finding that claimant proved the work injury caused claimant to sustain a material aggravation of the pre-existing degenerative condition of her left knee on the report of John D. Kuhnlein, D.O., who evaluated claimant on March 5, 2020. (Exhibit 5) The deputy commissioner found Dr. Kuhnlein's opinions regarding causation and permanent impairment to be most convincing.

Defendants base their assertion that claimant failed to prove the work injury caused claimant to sustain a material aggravation of the pre-existing degenerative condition of her left knee on the report of Christopher Vincent, M.D., dated May 7, 2020. (Exhibit A) In his report, Dr. Vincent states the following, in pertinent part:

. . . I would also like to comment on Dr. Kuhnlein's opinion on causation related to [claimant's] osteoarthritis and ongoing osteoarthritic symptoms. As noted above, Dr. Kuhnlein himself submits the opinion that the osteoarthritic changes and chondromalacia were present prior to the work-related injury. He then comments, "If the history Ms. Hubbard-McKinney presents is accurate, she had no left knee pain before the incident and she did after the incident, as documented in the currently available medical records. As a result, if the history is accurate, then the February 19, 2018, incident served to "light up" and materially aggravate the pre-existing asymptomatic osteoarthritis in the left knee and make it symptomatic, which would make such "lighting up" of the osteoarthritis and aggravation related

to the February 19, 2018, work incident.” Dr. Kuhnlein bases this opinion on causation related to osteoarthritic changes in the knee on a history of not having prior symptoms in the knee. One can simply pull up Ms. Hubbard-McKinney’s radiographic records from MercyOne Newton and review the radiographs and history of this left knee.

July 14, 2016, left knee x-rays obtained at the order of Emily Karston.

July 29, 2015, left knee x-rays obtained.

July 30, 2014, left knee radiographs obtained.

May 17, 2013, left knee radiographs obtained.

December 10, 2018, left knee x-rays obtained.

This demonstrates a long history of the patient seeking medical care for left knee pain. **While I do not have the medical records and clinic visit notes associated with these studies,** (emphasis added) which were ordered, this clearly demonstrates a pattern of longstanding left knee pain and symptoms. This contradicts the history [claimant] gave me and the history she gave Dr. Kuhnlein of no prior problems with the knee. Therefore, this proves with medical certainty that the history she gives to Dr. Kuhnlein and to myself is inaccurate with regard to pre-existing symptoms, and that the osteoarthritic symptoms she now has are related to pre-existing condition and did not become symptomatic as a result of her work injury. . .

(Ex. A, pp. 3-4)

While recognizing that the films referenced above in the quote from Dr. Vincent do in fact exist, I find that without the medical records and the clinic visit notes associated with those films, the only thing the films by themselves establish is that claimant had x-rays taken of her left knee on the particular dates in question. Without the medical records and the clinic visit notes associated with those films, it is not possible to determine why the films were taken. While Dr. Vincent assumes that the existence of the films demonstrates “a long history of the patient seeking medical care for left knee pain,” such an assumption cannot be established as a fact without the actual medical records and the actual clinic visit notes associated with the films. Because the medical records and the clinic visit notes in question have not been introduced into evidence in this matter and, in fact, are referenced nowhere in the record, I affirm the deputy commissioner’s finding that Dr. Kuhnlein’s causation and permanent impairment opinions are most convincing. I affirm the deputy commissioner’s finding that the work injury caused claimant to sustain a material aggravation of the pre-existing degenerative condition of her left knee, and I affirm the deputy commissioner’s finding that claimant sustained nine percent permanent functional scheduled member impairment of the left lower extremity as a result of the work injury.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 2, 2021, is affirmed in its entirety.

Defendants shall pay claimant nineteen and eight-tenths (19.8) weeks of permanent partial disability benefits at the stipulated weekly rate of two hundred and nineteen and 22/100 dollars (\$219.22) commencing on February 28, 2019.

Defendants shall receive credit for the four and four-tenths (4.4) weeks of benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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, and defendants 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 (SROI) as required by this agency.

Signed and filed on this 12th day of May, 2021.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Richard Schmidt (via WCES)

David Scieszinski (via WCES)