

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

 LAURA L. JOHNSON,

Claimant,

vs.

CITY OF CLINTON,

Employer,

and

IMWCA,

Insurance Carrier,
Defendants.

File No. 5065802

A P P E A L

D E C I S I O N

Head Notes: 1402.30; 1402.40; 2502;
2907

Claimant Laura L. Johnson appeals from an arbitration decision filed on January 28, 2020. Defendants City of Clinton, employer, and its insurer, IMWCA, cross-appeal. The case was heard on August 27, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 12, 2018.

The deputy commissioner found claimant failed to satisfy her burden of proof to establish she sustained an injury that arose out of and in the course of her employment with defendant-employer as alleged. The deputy commissioner found that because claimant failed to prove compensability, she is not entitled to receive temporary disability benefits, permanent disability benefits and medical benefits. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants in the amount of \$1,000.00 for the cost of the independent medical evaluation (IME) of claimant performed by Richard Kreiter, M.D., on November 15, 2017. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding in the amount of \$665.39.

On appeal, claimant asserts the deputy commissioner erred in finding claimant failed to prove she sustained a work-related injury. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to receive temporary disability benefits, permanent disability benefits and medical benefits.

Defendants assert on cross-appeal that the deputy commissioner erred in finding claimant is entitled to receive reimbursement from defendants for the cost of Dr. Kreiter's IME, and in ordering defendants to pay claimant's costs of the arbitration proceeding in the amount of \$665.39.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on January 28, 2020, is affirmed in part and is modified in part.

I affirm the deputy commissioner's finding that claimant failed to prove she sustained a work-related injury as alleged. I affirm the deputy commissioner's finding that because claimant failed to prove compensability, claimant is not entitled to receive temporary disability benefits, permanent disability benefits and medical benefits. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.39, claimant is entitled to receive reimbursement from defendants for the cost of Dr. Kreiter's IME.

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

The remaining issue to be decided on defendants' cross-appeal is the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$665.39.

Iowa Code section 86.40 states:

All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Claimant failed to prevail on any of the major issues raised in this matter. The only issue upon which claimant prevailed is the minor issue of responsibility for the cost of Dr. Kreiter's IME. Therefore, in the exercise of my discretion under Iowa Code section 86.40, I reverse the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding in the amount of \$665.39, and I order the parties to pay all of their own costs of the arbitration proceeding. The deputy commissioner's award of costs in the arbitration proceeding is hereby modified.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 28, 2020, is affirmed in part and modified in part.

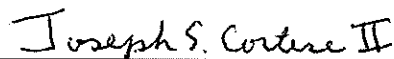
Claimant shall take nothing in the way of weekly benefits or medical benefits from these proceedings.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant in the amount of one thousand and 00/100 dollars (\$1,000.00) for the cost of Dr. Kreiter's IME.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and the parties shall split 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 3rd day of September, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Matthew Leddin (via WCES)

Jean Dickson (via WCES)