

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANTHONY OXLEY,

Claimant,

vs.

LENNOX INDUSTRIES,

Employer,

and

INDEMNITY INSURANCE COMPANY  
OF NORTH AMERICA,Insurance Carrier,  
Defendants.

File No. 5067306

A P P E A L

D E C I S I O N

Head Notes: 1100; 1801; 1803; 2501; 2701;  
2907; 3002; 5-9999

Defendants Lennox Industries, employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on March 18, 2020. Claimant Anthony Oxley responds to the appeal. The case was heard on January 16, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on January 30, 2020.

In the arbitration decision, the deputy commissioner found claimant's hernia was more likely than not caused by the work he performed after July 2018. The deputy commissioner found claimant was entitled to receive temporary benefits from November 21, 2018, through January 7, 2019. However, the deputy commissioner found claimant was not entitled to receive any permanency benefits. The deputy commissioner found claimant was entitled to reimbursement of the requested past medical expenses and future medical care. The deputy commissioner found defendants lost their right to control claimant's medical care and awarded claimant's request for ongoing care with J. Michael McCune, M.D. The deputy commissioner adopted claimant's weekly benefit rate calculation. The deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

On appeal, defendants assert the deputy commissioner erred in finding claimant's hernia arose out of and in the course of his employment with defendant-employer. Defendants alternatively assert the deputy commissioner erred in finding defendants lost their right to direct claimant's medical care and in ordering defendants to authorize ongoing care with Dr. McCune.

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 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 March 18, 2020, is affirmed in part without additional analysis and affirmed in part with substituted analysis.

I affirm the deputy commissioner's finding that claimant's hernia arose out of and in the course of his employment. In affirming this finding, I acknowledge the deputy commissioner found discrepancies in claimant's testimony and even referred to the claimant's testimony as "troubling at times."

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. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's credibility findings.

Despite the deputy commissioner's concerns about claimant's testimony, the deputy commissioner found sufficient evidence that it was more likely than not that claimant's hernia was caused by the work he performed for defendant-employer after July of 2018. (See Arbitration Decision, pp. 7-8) I affirm this finding and the deputy commissioner's analysis of, and rationale for, this finding in their entirety.

I affirm the deputy commissioner's calculation of claimant's weekly benefit rate. I affirm the deputy commissioner's order that defendants pay claimant's costs of the arbitration proceeding.

The remaining issue on appeal is whether the deputy commissioner erred in finding defendants lost their right to control claimant's medical care and in ordering authorization of ongoing care with Dr. McCune.

Citing Brewer-Strong v. HNI Corp., 913 N.W.2d 235, 245 (Iowa 2018), the deputy commissioner held, "The Supreme Court has confirmed that when an employer denies care, it loses its authorization defense for the care that the employee has requested." (Arb. Dec., pp. 7-8) I agree with defendants that this statement by the deputy commissioner slightly misconstrued the court's holding in Brewer-Strong.

In Brewer-Strong, the court held that the defendant lost its authorization defense and its right to direct care under Iowa Code section 85.27 during its period of denial but then re-acquired the defense and right to direct care once it amended its answer to admit liability. 913 N.W.2d at 245. Thus, the deputy commissioner's statement in this

case is modified to reflect the qualifier in Brewer-Strong that defendants' authorization defense and right to control care is lost only during periods in which they deny liability.

The difference between this case and Brewer-Strong, however, is that defendants in this case did not amend their position to admit liability after their denial. Instead, defendants continued to contest liability at hearing.

The court addressed this scenario in Bell Bros. Heating & Air Conditioning v. Gwinn, in which it held as follows:

Likewise, the employer has no right to choose the medical care when compensability is contested . . . If the employee establishes the compensability of the injury at a contested case hearing, then the statutory duty of the employer to furnish medical care for compensable injuries emerges to support an award of reasonable medical care the employer should have furnished from the inception of the injury had compensability been acknowledged.

779 N.W.2d 193, 204 (Iowa 2010).

In this case, during a delay in treatment and defendants' period of denial, claimant established a relationship with Dr. McCune. Dr. McCune performed surgery on claimant and handled claimant's follow-up appointment post-surgery.

Defendants were not authorizing care at the time of the hearing, nor did defendants indicate what clinic or provider they planned to authorize should the deputy find in claimant's favor.

Thus, under the circumstances presented in this case, I find treatment with Dr. McCune is both reasonable and the type of care defendants should have furnished from the inception of the injury had compensability been acknowledged. Therefore, with this substituted analysis, I affirm the deputy commissioner's decision to award ongoing medical care with Dr. McCune.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on March 18, 2020, is affirmed in part without comment and affirmed in part with substituted analysis.

Defendants shall pay claimant temporary disability benefits at the weekly rate of six hundred forty-four and 45/100 dollars (\$644.45) from November 21, 2018, through January 7, 2019.

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).

Defendants shall reimburse claimant for the medical expenses itemized in Exhibit 3, and defendants shall pay for all reasonably necessary future medical care for claimant's inguinal hernia, including authorization for treatment with Dr. McCune.

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 as required by this agency.

Signed and filed on this 16<sup>th</sup> day of November, 2020.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

James M. Ballard (via WCES)

Robert Gainer (via WCES)