

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAMELA CARROW,

Claimant,

vs.

HY-VEE, INC.,

Employer,

and

EMC PROPERTY AND CASUALTY
COMPANY,

Insurance Carrier,
Defendants.

File Nos. 5062477, 5062478

A P P E A L

D E C I S I O N

Head Note Nos: 1402.30; 1803; 2501;
2502; 2701; 2907;
5-9998

FILED
APR 17 2019
WORKERS' COMPENSATION

Claimant Pamela Carrow appeals from an arbitration decision filed on August 15, 2018, and from a ruling on motion for rehearing filed on September 11, 2018. Defendants Hy-Vee, Inc., employer, and its insurer, EMC Property and Casualty Company, respond to the appeal. The case was heard on October 24, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner at the conclusion of the arbitration hearing.

In File No. 5062477, alleged injury date of August 18, 2015, the deputy commissioner found claimant failed to carry her burden of proof that she sustained a traumatic injury which arose out of and in the course of her employment with defendant-employer. The deputy commissioner found claimant was not credible. The deputy commissioner found claimant is entitled to receive nothing in File No. 5062477. The deputy commissioner found claimant is not entitled to payment by defendants for requested past medical expenses. The deputy commissioner found claimant is not entitled to alternate medical care and payment by defendants for ongoing medical treatment for the alleged injury. 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 Jacqueline Stoken, D.O., on September 11, 2017. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5062478, alleged injury date of October 9, 2015, the deputy commissioner found claimant failed to carry her burden of proof that she sustained a

cumulative injury which arose out of and in the course of her employment with defendant-employer. The deputy commissioner found claimant was not credible. The deputy commissioner found claimant is entitled to receive nothing in File No. 5062478. The deputy commissioner found claimant is not entitled to payment by defendants for requested past medical expenses. The deputy commissioner found claimant is not entitled to alternate medical care and payment by defendants for ongoing medical treatment for the alleged injury. 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 Dr. Stoken's IME. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

In File No. 5062477, Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained a traumatic injury on August 18, 2015. Claimant asserts the deputy commissioner erred in finding claimant was not credible. Claimant asserts the deputy commissioner erred in finding claimant is entitled to receive nothing in File No. 5062477. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for requested past medical expenses. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to alternate medical care and payment by defendants for ongoing medical treatment for the alleged injury. Claimant asserts the deputy commissioner erred in finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Stoken's IME. Claimant asserts the deputy commissioner erred in failing to order defendants to pay claimant's costs of the arbitration proceeding.

In File No. 5062478, Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry her burden of proof that she sustained a cumulative injury on October 9, 2015. Claimant asserts the deputy commissioner erred in finding claimant was not credible. Claimant asserts the deputy commissioner erred in finding claimant is entitled to receive nothing in File No. 5062478. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to payment by defendants for requested past medical expenses. Claimant asserts the deputy commissioner erred in finding claimant is not entitled to alternate medical care and payment by defendants for ongoing medical treatment for the alleged injury. Claimant asserts the deputy commissioner erred in finding that pursuant to Iowa Code section 85.39, claimant is not entitled to receive reimbursement from defendants for the cost of Dr. Stoken's IME. Claimant asserts the deputy commissioner erred in failing to order defendants to pay claimant's costs of the arbitration proceeding.

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 August 15, 2018, and the ruling on motion for rehearing filed on September 11, 2018, 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.

In File No. 5062477, I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained a traumatic injury on August 18, 2015. I affirm the deputy commissioner's finding that claimant was not credible. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing in File No. 5062477. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for requested past medical expenses. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care and payment by defendants for ongoing medical treatment for the alleged injury. 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. Stoken's IME. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

In File No. 5062478, I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained a cumulative injury on October 9, 2015. I affirm the deputy commissioner's finding that claimant was not credible. I affirm the deputy commissioner's finding that claimant is entitled to receive nothing in File No. 5062478. I affirm the deputy commissioner's finding that claimant is not entitled to payment by defendants for requested past medical expenses. I affirm the deputy commissioner's finding that claimant is not entitled to alternate medical care and payment by defendants for ongoing medical treatment for the alleged injury. 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. Stoken's IME. I affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding.

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

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

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 15, 2018, and the ruling on motion for rehearing filed on September 11, 2018, are affirmed in their entirety.

File No. 5062477 – Alleged Date of Injury: August 18, 2015

Claimant shall take nothing from these proceedings.

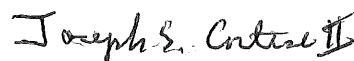
Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

File No. 5062478 – Alleged Date of Injury: October 9, 2015

Claimant shall take nothing 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.

Signed and filed on this 17th day of April, 2019.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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