

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SADIJA RAKANOVIC,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5046583

A P P E A L

D E C I S I O N

Head Note Nos: 1402.30, 1801, 1803, 2500

FILED

JAN 6 2017

WORKERS' COMPENSATION

Defendant Tyson Fresh Meats, Inc., self-insured employer, appeals from an arbitration decision filed on July 27, 2015. Claimant Sadija Rakanovic responds to the appeal. The case was heard on January 14, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 3, 2015.

The deputy commissioner found claimant carried her burden of proof that she sustained an injury which arose out of and in the course of her employment with defendant on February 2, 2012. The deputy commissioner awarded claimant healing period benefits from August 29, 2012, through November 18, 2013, and from December 5, 2013, through June 9, 2014. The deputy commissioner awarded claimant 30 percent industrial disability, which entitles claimant to 150 weeks of permanent partial disability (PPD) benefits commencing on June 10, 2014. The deputy commissioner ordered defendant to pay the providers, or reimburse claimant, for past medical expenses itemized in Exhibit 8, which the deputy commissioner found were for treatment necessitated by the work injury. The charges itemized in Exhibit 8 which the deputy commissioner ordered defendant to pay included independent medical evaluation (IME) charges from Farid Manshadi, M.D., and from Arnold Delbridge, M.D., and also a charge from Dr. Delbridge for a supplemental IME report. The deputy commissioner also ordered defendant to pay claimant's costs of the arbitration proceeding.

Defendant asserts on appeal that the deputy commissioner erred in finding claimant carried her burden of proof that she sustained an injury which arose out of and in the course of her employment with defendant on February 2, 2012. Defendant asserts the deputy commissioner erred in awarding claimant 30 percent industrial disability. Defendant asserts the deputy commissioner erred in ordering defendant to pay the providers, or reimburse claimant, for past medical expenses itemized in Exhibit

8 for treatment of claimant's condition. Defendant asserts the deputy commissioner erred in ordering it to pay the cost of Dr. Delbridge's IME and the cost of Dr. Delbridge's supplemental IME report. Defendant also asserts the deputy commissioner erred in ordering it to pay claimant's costs of the arbitration proceeding.

While claimant did not file a cross-appeal, she asserts in her appeal brief that she should be awarded substantially more than 30 percent industrial disability.

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

Having 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, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed in this matter on July 27, 2015, which relate to the following issues:

I affirm the deputy commissioner's finding that claimant carried her burden of proof that she sustained an injury which arose out of and in the course of her employment with defendant on February 2, 2012.

I affirm the deputy commissioner's award of healing period benefits from August 29, 2012, through November 18, 2013, and from December 5, 2013, through June 9, 2014.

I affirm the deputy commissioner's award of 30 percent industrial disability, which entitles claimant to 150 weeks of PPD benefits commencing on June 10, 2014.

I affirm the deputy commissioner's order that defendant pay the providers, or reimburse claimant, for past medical expenses itemized in Exhibit 8 for treatment necessitated by the work injury.

I affirm the deputy commissioner's order that defendant pay Dr. Manshadi's IME charge.

I affirm the deputy commissioner's order that defendant pay claimant's costs of the arbitration proceeding.

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

I reverse the deputy commissioner's order that defendant pay Dr. Delbridge's IME charge and the charge for Dr. Delbridge's supplemental IME report. Pursuant to Iowa Code section 85.39, claimant is entitled to have defendant pay for only one IME by a provider of claimant's choice. Dr. Manshadi's IME took place on October 8, 2014. Dr. Delbridge's IME took place on November 25, 2014. Defendant concedes in its brief that

claimant is entitled to be reimbursed for the cost of Dr. Manshadi's IME. Because Dr. Delbridge's IME took place after Dr. Manshadi's IME, claimant is not entitled to be reimbursed for Dr. Delbridge's IME, or for the cost of Dr. Delbridge's supplemental IME report, which is part of Dr. Delbridge's IME.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of July 27, 2015, is MODIFIED as follows:

Defendant shall pay claimant healing period benefits at the rate of four hundred thirty-two and 60/100 dollars (\$432.60) from August 29, 2012, through November 18, 2013, and from December 5, 2013, through June 9, 2014.

Defendant shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits commencing June 10, 2014, at the rate of four hundred thirty-two and 60/100 dollars (\$432.60).

Defendant shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendant shall pay the providers, or reimburse claimant, for past medical expenses itemized in Exhibit 8 for treatment of claimant's condition.

Defendant shall pay the cost of Dr. Manshadi's IME, but not the cost of Dr. Delbridge's IME or the cost of Dr. Delbridge's supplemental IME report.

Defendant shall pay claimant's future medical expenses necessitated by the work injury.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's 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), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed this 6th day of January, 2017.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

Copies To:

Adnan Mahmutagic
Attorney at Law
PO Box 178
Waterloo, IA 50704
adnan@beecherlaw.com

Chris J. Scheldrup
Jason P. Wiltfang
Attorney at Law
PO Box 36
Cedar Rapids, IA 52406-0036
cscheldrup@scheldruplaw.com
jwiltfang@scheldruplaw.com